EXHIBIT RRM-1RT

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of **QWEST CORPORATION** **Regarding the Sale and Transfer of Qwest Dex to Dex Holdings, LLC**	**DOCKET NO. UT-021120**

REBUTTAL TESTIMONY OF

RALPH R. MABEY

FOR

QWEST CORPORATION

APRIL 17, 2003

Q. PLEASE STATE YOUR NAME, EMPLOYMENT AND BUSINESS ADDRESS.

A. My name is Ralph R. Mabey. I am a partner with the law firm of LeBoeuf, Lamb, Greene & MacRae, L.L.P., currently working at LeBoeuf's Salt Lake City office, located at 136 South Main Street, Suite 1000, Salt Lake City, Utah 84101.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND EXPERIENCE QUALIFICATIONS IN THE FIELD OF BANKRUPTCY LAW.

A. I received my law degree from Columbia University in 1972 where I served on the Board of Editors of the Columbia Law Review. From 1979 to 1983 I served as a United States Bankruptcy Judge.

I am a member of the New York and Utah Bars and currently head the international corporate restructuring and bankruptcy practice of LeBoeuf, Lamb, Greene & MacRae, L.L.P.

My professional activities include: current chair of the American College of Bankruptcy; appointee of the Chief Justice of the United States to the U.S. Judicial Conference's Advisory Committee on the Bankruptcy Rules (1987-1993); managing editor of the Norton Bankruptcy Law Adviser (1983-1985); Editorial Advisory Board of the American Bankruptcy Law Journal (1990-1991); contributing author to Collier on Bankruptcy and the Collier Bankruptcy Manual.

I also am a member of the National Bankruptcy Conference, the American Law Institute and the American Bar Association's Select Advisory Committee on Business Reorganization (SABRE). In addition, I teach the bankruptcy and reorganization courses at the J. Reuben Clark Law School, Brigham Young University.

Particularly relevant to troubled utilities, I serve as the Chapter 11 Trustee of Cajun Electric. My firm is special bankruptcy counsel to Enron. I have represented the Public Service Company of Colorado in the Colorado Ute Chapter 11 utility bankruptcy and the official shareholders committee in the Columbia Gas System Chapter 11 case. On utility bankruptcy issues, I have made presentations at the Iowa State Regulatory Conference, the American Bar Association Conference on Electricity Law and Regulation, the ABA Section of Public Utility, Communications and Transportation Law, the Edison Electric Institute, and the Institute for International Research. I have recently published utility bankruptcy articles in the *Energy Law Journal* and the *Utilities Project*.

My service in other complex restructuring and bankruptcy matters includes A.H. Robins Company (as examiner with expanded powers), Dow Corning (as counsel for certain bondholders), Columbia Gas System (as equity committee counsel), Federated Department Stores (as pre-merger bond holders committee counsel), TWA and American Airlines (as counsel for the pilots).

Federal courts in Alaska, California, Louisiana, Michigan, New York, Texas and Virginia have appointed me to serve as mediator, examiner or trustee.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. My testimony rebuts the testimony of Staff witnesses Blackmon and Folsom in connection with their bankruptcy discussion. After providing a brief primer on Chapter 11 bankruptcies as background, my testimony describes the risks to which Qwest Corporation ("QC") may be exposed if its indirect parent, Qwest Communications

International Inc. ("QCI"), QCI's subsidiary Qwest Services Corporation ("QSC") or QC itself files for Chapter 11 bankruptcy protection.

I should make it clear that I am not acting, nor have I been retained to act, as bankruptcy counsel for QCI or any of its subsidiaries. I have not been retained to advise QCI or its subsidiaries whether, when or how to file bankruptcy or to protect themselves from creditors. My engagement with Qwest is limited to providing expert testimony for QC in this docket as to the bankruptcy issues raised by Staff. The descriptions of and data in my testimony concerning QCI, QCI's subsidiaries, Enron and PGE are based on publicly-available information.

Q. AS BACKGROUND, COULD YOU PLEASE PROVIDE A BRIEF OVERVIEW OF THE CHAPTER 11 BANKRUPTCY PROCESS.

A. Yes. Chapter 11 provides a process whereby a business may reorganize itself by restructuring its debt, business, and assets or by liquidating its assets in an orderly fashion. A company need not be insolvent to file bankruptcy. A troubled company may seek to reorganize under the bankruptcy laws without waiting until its circumstances are nearly hopeless.

When a voluntary bankruptcy petition is filed, an "estate" is created and is comprised, with limited exceptions, of all of the company's legal and equitable interests in property.[1] A company in Chapter 11 is called a debtor. The debtor's business usually continues to be run by the debtor's management; this circumstance is known as the "debtor-in-

[1] *See* 11 U.S.C. § 541.

possession."[2] Only on rare occasions will the court appoint a trustee to run the business of a Chapter 11 debtor.[3] Once the company enters bankruptcy, however, the duty of the debtor-in-possession is to maximize the value of the bankruptcy estate primarily for the benefit of the debtor's unsecured creditors.

In general, the debtor-in-possession may continue to make management decisions in the ordinary course of business without obtaining court approval. Actions not in the ordinary course of business generally require court approval.

An official committee of unsecured creditors is appointed to represent the interests of unsecured creditors generally in the bankruptcy reorganization case. The debtor is obligated to pay the legal and other professional fees incurred by this committee. However, a committee representing ratepayers is ordinarily not appointed. Ratepayers have no special priority in bankruptcy and, at least one court has suggested they are not creditors.[4] Typically the state regulatory commission may appear and be heard as a party in interest in the bankruptcy case along with the many other parties in interest.

Filing for bankruptcy triggers the "automatic stay" which generally enjoins all actions against the debtor to recover on its financial obligations or to make recovery against property of the estate.[5] Certain regulatory actions are exempted from the automatic stay,[6] although the Bankruptcy Court has power to issue separate injunctions to protect the

[2] *See* 11 U.S.C. §§ 1107, 1108.
[3] *See* 11 U.S.C. § 1108.
[4] *See In re Pacific Gas & Electric Co*., No. 01-30923, Memorandum Decision Regarding Motion For Order Vacating Appointment of Committee of Ratepayers (Bankr. N.D. Cal. May 18, 2001) (Docket No. 599).
[5] *See* 11 U.S.C. § 362(a).
[6] *See* 11 U.S.C. § 362(b)(4).

bankruptcy estate and its reorganization.[7] A creditor may receive relief from the automatic stay if the Bankruptcy Court finds that the property at issue is not necessary for an effective reorganization and the debtor has no equity in the property, or if there is other cause including a lack of adequate protection such as when a secured creditor's collateral is rapidly depreciating in value.[8]

Because the automatic stay prevents creditors from taking actions to recover on the debtor's obligations, creditors must file claims with the Bankruptcy Court seeking compensation for such claims or the Chapter 11 debtor must have scheduled the claims as uncontested.

Unless the relevant parties to the bankruptcy agree otherwise, claims, and shareholder interests are paid in accordance with statutory priorities.[9] Secured claims with valid perfected liens on property are entitled to payment equal to the value of their liens. To the extent that the value of collateral securing a creditor's claim is insufficient to cover the full amount of the claim, that creditor's claim is considered secured only up to the value of the collateral. The unsecured portion is treated as general unsecured debt. Administrative expenses necessary to keep the debtor operational during bankruptcy, including the professional fees for the debtor-in-possession and the official creditors committee, are normally treated as the highest priority of unsecured claims. General unsecured claims come next in priority and the equity interests of shareholders come last. In some cases, a court will grant a particular creditor a super-priority for post-petition

[7] *See* 11 U.S.C. § 105.
[8] *See* 11 U.S.C. § 362(d).
[9] For Chapter 7 liquidation cases, order of payment is set out in 11 U.S.C. § 726.

(debtor-in-possession or D.I.P.) financing or some other pressing need. The court may also subordinate some claims that might otherwise be entitled to a higher priority.

Ratepayers receive no special priority by virtue of their status as ratepayers. If a particular ratepayer is owed money by the estate on some independent basis (e.g., the utility owes a customer a refund for a mistaken charge), that ratepayer would simply be a general, unsecured creditor of the estate.

The debtor-in-possession or trustee is endowed with the power to avoid certain payments or transfers of property, such as fraudulent transfers or preferences,[10] as well as to reject burdensome executory contracts.[11] The debtor-in-possession or trustee may also assume and reinstate pre-petition leases and contracts that are in default but have not yet been terminated. The power to assume or reject executory contracts is a potent tool in the hands of the debtor-in-possession or trustee, allowing the company to take advantage of any favorable changes that may have occurred in the markets and thereby increasing the debtor's chances of successfully reorganizing.

The goal of Chapter 11 is for the Bankruptcy Court to confirm a plan of reorganization, usually proposed by the debtor, that restructures or sells the business and assets of the company and that classifies all of the claims or interests in the bankruptcy estate and discharges them pursuant to the terms of the plan. A proposed plan is described in a disclosure statement and is voted upon by creditors and shareholders, who are grouped together for voting purposes in classes according to their legal rights. In order for the

[10] *See* 11 U.S.C. §§ 548, 547.
[11] *See* 11 U.S.C. § 365.

plan to be confirmed, each impaired class must accept the plan by statutory majorities unless that class is "crammed down."[12] The Bankruptcy Court may cram down or confirm a plan of reorganization over the dissent of an impaired class, by finding that the plan "does not discriminate unfairly, and is fair and equitable" with respect to the dissenting class. The phrase "fair and equitable" has been interpreted to mean, among other things, that the plan must satisfy the "absolute priority rule." This rule requires that equity come last. Thus, if a plan is crammed down over the dissent of a class of unsecured creditors, shareholders of the debtor normally cannot retain or receive anything unless all of the creditors in the dissenting class have been paid in full. Once a plan is confirmed, the debtor's pre-confirmation obligations are discharged according to the terms of the plan, and the debtor is positioned to emerge from bankruptcy after the plan becomes effective. The confirmed plan of reorganization becomes binding on all parties in interest.

Implementation of the plan of reorganization, including the sale of assets, merger, and other corporate restructuring, is accomplished pursuant to the Bankruptcy Code. Other federal and state laws or regulations are subject to preemption by the Bankruptcy Code.

The Bankruptcy Court ordinarily retains jurisdiction to enforce the terms of the confirmed plan of reorganization and to enjoin interference with it.

Q. COULD THE ASSETS OF QWEST DEX HOLDINGS, INC. OR QWEST DEX, INC. (COLLECTIVELY, "DEX") BE SOLD THROUGH A CHAPTER 11 BANKRUPTCY?

[12] *See* 11 U.S.C. § 1129(b)(1).

A. Yes. QCI's subsidiary QSC owns Dex.[13] If, in addition to QCI, QSC filed bankruptcy, the Bankruptcy Court would have jurisdiction over the sale of QSC's assets, including the stock of Dex. The sale of Dex would be effected under the provisions of the Bankruptcy Code and, if applicable, QSC's plan of reorganization. The proceeds from this sale would be distributed to QSC's creditors and, if QSC is solvent, to QSC's shareholder, QCI. Such proceeds would then be property of QCI's estate and would be available to pay QCI's creditors. Either the plan of reorganization or the Bankruptcy Code statutory priorities would govern the distribution of these proceeds. Since QC ratepayers are not creditors of Dex's owner, QSC, or QSC's owner, QCI, they could not expect to receive anything from a distribution of proceeds should Dex be sold through a bankruptcy.

Q. COULD SOME OF THE PROCEEDS OF A BANKRUPTCY SALE OF DEX BE DIVERTED TO THE BENEFIT OF QC OR QC RATEPAYERS WITHOUT BANKRUPTCY COURT APPROVAL?

A. No. The Bankruptcy Court will have exclusive jurisdiction over all of the proceeds from the sale of the Dex stock.[14] The Bankruptcy Court could enjoin efforts by a state utilities commission to impute the sale's value to, for instance, QC if such imputation undermined the plan of reorganization or the statutory distribution scheme under the Bankruptcy Code. The Bankruptcy Court in the *Pacific Gas and Electric Company* case

[13] I am aware that, in this case, various witnesses have referred to Dex, although being legally and formally an asset of QSC, as being a "regulatory asset." Assuming the 1984 transfer of the Dex assets is not subject to attack as a matter of commercial law, a bankruptcy court would not view Dex as QC's asset. It would view Dex as an asset of QSC.

[14] *See* 28 U.S.C. § 1334(e).

has said as much.[15]

Q. IF QCI FILES FOR CHAPTER 11 BANKRUPTCY PROTECTION, MIGHT QC ALSO FILE FOR BANKRUPTCY PROTECTION?

A. Yes. As noted above, insolvency would not be a prerequisite to QC filing bankruptcy. One significant reason why QC might seek bankruptcy protection along with QCI and QSC would be to facilitate the proposed sale of Dex. An element of the currently proposed sale of Dex is two long-term agreements by which QC would agree to designate the buyer of Dex as its official directory publisher and QC would agree not to publish a competing directory. Therefore, QC's action may be necessary to the proposed sale of Dex. If QC is a debtor in Chapter 11, then the Bankruptcy Court would have the authority to approve these agreements.[16]

Q. ARE THERE OTHER REASONS THAT MIGHT PROMPT QC TO FILE BANKRUPTCY?

A. Yes. As I have earlier stated, Chapter 11 provides powerful means by which a company such as QC may sell assets, restructure debt, or restructure operations.

Q. IF QC DID FILE BANKRUPTCY ALONG WITH QCI, WOULD THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION'S ("COMMISSION") AUTHORITY OVER THE SALE OF DEX BE COMPROMISED?

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[15] *See In re Pacific Gas & Electric Co.*, 273 B.R. 795, 819 n.29 (Bankr. N.D. Cal. 2002) (stating that injunction against regulating authority would be appropriate if regulatory efforts to engage in imputation when it comes to ratemaking were perceived as attempt to circumvent Bankruptcy Court order confirming plan that preempted state and regulatory law); *see also* 11 U.S.C. § 1141.

[16] *See* 11 U.S.C. §§ 363(b), 1123.

A. Yes. I understand it is Qwest's position that, because Dex is not a QC asset, the Commission lacks jurisdiction over the Dex sale. I also understand that the Commission Staff disagrees and believes the Commission does have jurisdiction. Even assuming that Staff is correct as a matter of non-bankruptcy law, under current federal jurisprudence interpreting Section 1123(a) of the Bankruptcy Code (quoted below), the power of the Bankruptcy Court to authorize and control the sale of QC's assets would preempt or severely restrict the authority of the Commission to interfere with, or condition, such a sale. Most recently in *In re Pacific Gas and Electric Co.*, 283 B.R. 41 (N.D. Cal. 2002), the United States District Court for the Northern District of California (the "District Court") held that the Bankruptcy Court's power to authorize a dramatic restructuring including the transfer of generation assets preempted state law and the approvals or authorization ordinarily required by the California Public Utilities Commission or other state agencies. The District Court stated that its conclusion was supported by Ninth Circuit case law, including the Ninth Circuit' s decision in *In re Entz-White Lumber & Supply, Inc.*, 850 F.2d 1338 (9th Cir. 1988). The result reached by the District Court is also consistent with the decision of the United States Bankruptcy Court for the District of New Hampshire's in *Public Service Company v. New Hampshire (In re Public Service Co.)*, 108 B.R. 854 (Bankr. D.N.H. 1989). Ordinarily, the Commission would be entitled to appear before the Bankruptcy Court, along with all other parties in interest, to be heard. But the Bankruptcy Code would govern the Bankruptcy Court's decisions.

Q. MIGHT THERE BE OTHER IMPLICATIONS OF A QC BANKRUPTCY FILING ON THE AUTHORITY OF THE COMMISSION?

A. Yes, substantial implications. The Bankruptcy Code, 11 USC § 1123(a) states that, "Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall--

…

(5) provide adequate means for the [plan of reorganization's] implementation, such as

…

(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;

(C) merger or consolidation of the debtor with one or more persons;

(D) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate;

(E) satisfaction or modification of any lien;

(F) cancellation or modification of any indenture or similar instrument;

…

(H) extension of a maturity date or a change in an interest rate or other term of outstanding securities;

(I) amendment of the debtor's charter; or

(J) issuance of securities of the debtor…."

In each of the foregoing particulars, the Commission's authority to regulate QC may well be preempted if QC files bankruptcy.

The Bankruptcy Code does protect the Commission's authority to approve the rates which QC may propose under its plan of reorganization, but only if the assets of QC have not been sold or restructured in such a way to make them no longer subject to the Commission's regulatory authority.

While the Bankruptcy Code does protect the Commission's authority to set the rates coming out of bankruptcy, as I stated earlier, all parties would be bound by the disposition of property and proceeds determined by the plan of reorganization.[17] Thus, the Commission's ability to continue imputation, to order a different form of ongoing revenue credit or to order a one-time distribution to ratepayers based on the bankruptcy sale of Dex is highly questionable, and would probably be preempted and enjoined.

The Bankruptcy Code is unclear as to the Commission's unfettered rate-making authority over QC before a plan of reorganization is confirmed. It is possible that a Bankruptcy Court might interfere with this interim rate-making authority as well.

Q. IF QC DOES NOT FILE FOR BANKRUPTCY PROTECTION, DOES QC STILL FACE RISKS FROM A BANKRUPTCY FILING BY QCI OR ITS OTHER SUBSIDIARIES?

A. Yes. If, for instance, QSC filed bankruptcy, the stock of QC would be property of the bankruptcy estate since QSC is QC's parent and owns that stock. Moreover, the QC stock is subject to liens under the Amended and Restated Credit Agreement, the Dex Term Loan, and the new QSC notes which were issued in exchange for the Qwest Capital Funding notes. In order to restructure these debts, the sale to a third party of the QC stock may be called for. The Commission's authority over such a sale would probably be preempted by the Bankruptcy Code as I have earlier explained, and the Commission would very likely lose authority to control to whom and under what terms or conditions QC were sold.

[17] *See In re Pacific Gas & Electric Co.*, 273 B.R. 795, 819 n.29 (Bankr. N.D. Cal. 2002); s*ee also* 11 U.S.C. § 1141.

In addition, QC and its affiliates engage in substantial intercompany business transactions. QC's 10-K for the fiscal year 2001 states that it purchased approximately $1.5 billion in services from affiliated companies and had provided various services to affiliated companies. The automatic stay could prevent QC from collecting amounts owed to it from affiliates which have filed bankruptcy. Ultimately, alternative sources of goods and services might need to be secured.

Because of these possible outcomes, and the continuing threat that QC itself might be placed into bankruptcy, one may confidently predict that the QC bonds themselves would trade down if QCI or its subsidiaries file bankruptcy. The ratings on the bonds may also be expected to be lowered. This increases the cost of debt for QC and limits QC's access to the debt markets, as Mr. Cummings testifies.

Q. IN MS. FOLSOM'S AND DR. BLACKMON'S TESTIMONIES, THEY ASSERT THAT PORTLAND GENERAL ELECTRIC COMPANY'S ("PGE") SITUATION IS ANALOGOUS TO QC'S. DO YOU BELIEVE THAT INFORMATION RELATING TO PGE AND ITS PARENT ENRON IS HELPFUL IN UNDERSTANDING THE POSSIBLE EFFECTS ON QC OF ITS PARENT'S OR INDIRECT PARENT'S BANKRUPTCY?

A. Only marginally. In the first place, we do not now know what Enron's plan of reorganization will be, nor do we know the ultimate disposition of PGE. We do not know the real impact of Enron's bankruptcy on PGE until we know these facts.

Second, when Enron purchased PGE, it agreed to numerous regulatory and contractual restrictions on its ability to receive distributions from PGE. PGE is one of approximately

2,500 direct and indirect subsidiaries of Enron and operates in only one state, with separate management. In contrast, QC is deeply integrated into the entire Qwest enterprise. It shares management, substantial purchases and sales of goods and services, its revenues are the lion's share of Qwest enterprise revenues, and it has an important role in the Dex sale. All of these factors make QC much more interwoven into the Qwest enterprise, much more sensitive to the Qwest enterprise's financial fortunes, and therefore much more likely to suffer from a QCI bankruptcy.

Third, Enron placed a "ring fence" around PGE after Enron filed bankruptcy. This ring fence makes it much less likely that PGE would be put into bankruptcy. QCI, I would think, is unlikely to establish such a ring fence for QC because it may make sense for QC to file bankruptcy as I have explained earlier.

In summary, the Enron circumstances are only marginally helpful in understanding the Qwest circumstances. We do not yet know what will happen to PGE in the Enron bankruptcy. QC is much more important to and interwoven with its ultimate parent's enterprise than is PGE, and QC is not ring-fenced and could decide to file bankruptcy.

Q. YOU MENTIONED AN INSULATING "RING FENCE" STRUCTURE AROUND PGE. COULD YOU EXPLAIN THAT IN A LITTLE MORE DETAIL?

A. Public documents show that in order to increase the degree of insulation between PGE and Enron and shore up PGE's falling credit rating, Enron sought in its bankruptcy for authorization to create a ring fence structure around PGE. According to PGE's 10-K, in September 2002, PGE created a new class of Limited Voting Junior Preferred Stock and issued a single share of this stock to an independent party. The single share has preferred

voting rights that limit PGE's right to commence any bankruptcy, liquidation, receivership, or other similar proceedings without the consent of the holder. In order to establish this "ring fence" structure, Enron filed a motion with the Bankruptcy Court seeking authorization to vote its shares of PGE common stock to authorize issuance of the single share. The Bankruptcy Court approved the motion, which also required PGE to file Articles of Amendment with the Oregon Secretary of State and issue the single share to an independent person unaffiliated with Enron and acceptable to Standard & Poor's, the Creditors' Committee and Enron.

Q. BASED ON YOUR KNOWLEDGE OF QCI AND QC, COULD A RING FENCE STRUCTURE BE EFFECTIVELY USED TO INSULATE QC IN A QCI BANKRUPTCY?

A. This is highly unlikely. In the first place, QCI would not appear to have the same incentive to keep QC out of bankruptcy given its role in a sale of Dex. Second, QCI and QSC could not be forced to vote the shares of QC in order to establish the ring fence absent the appointment of a trustee or a general uprising by the creditors of QCI and QSC; both these eventualities are highly unlikely. Third, it is unlikely that any authority other than the Bankruptcy Court could impose a ring fence around QC since it operates in 14 different jurisdictions.

Q. DOES MS. FOLSOM ACCURATELY REPRESENT THE EFFECT OF ENRON'S BANKRUPTCY ON PGE?

A. No. As stated above, there are important distinctions between PGE and QC. A comparison between the two is of limited value. However, this aside, Ms. Folsom does not describe the full effect of Enron's bankruptcy on PGE. In making her assertions, with

one very limited exception (the number of employees), Ms. Folsom does not compare pre-Enron bankruptcy PGE to post-Enron bankruptcy PGE. Instead, Ms. Folsom compares post-Enron bankruptcy PGE to pre-QCI bankruptcy QC. Ms. Folsom also fails to mention that a significant factor considered by credit rating agencies in confirming PGE's current ratings is the creation of the insulating ring fence structure discussed above. PGE's credit rating may be currently higher than that of QC, but it should be remembered that QC does not have the insulating ring fence structure of PGE. QC's credit rating could be even more dramatically affected by its parent's bankruptcy filing than has PGE's.

Q. ARE THERE OTHER POTENTIAL EFFECTS OF ENRON'S BANKRUPTCY ON PGE THAT MS. FOLSOM DOES NOT MENTION?

A. Yes, and those are identified by Mr. Cummings in his rebuttal testimony. The bottom line is that the Enron bankruptcy, and its impact on PGE, is an unresolved issue. As such, Staff's conclusion that PGE has benefited from Enron's bankruptcy can not be supported and is, at best, premature.

Q. ARE THERE OTHER POTENTIAL EFFECTS ON QC OF A QCI BANKRUPTCY FILING?

A. Yes. As a utility bankruptcy expert, I cannot guarantee which, if any, of a list of negative impacts would befall QC should QCI file bankruptcy. Any meaningful prediction would require much more information about how a future QCI bankruptcy would be structured, timed and approached by the company or companies. What I can state with great confidence is that, at this moment in time, in the absence of any information about how a

hypothetical QCI bankruptcy would develop, Staff's non-detailed prediction that QC would likely benefit from a QCI bankruptcy is unfounded conjecture.

Further, it is well also to bear in mind that "benefit" to QC may be in the eye of the beholder. Bankruptcy would compromise the Commission's power over QC. Some might consider that a benefit and others might consider that a detriment. Such an argument is underway in the PG&E bankruptcy where PG&E proposes a plan that would permanently curtail the California Commission's regulatory power over its assets. In addition, it is highly likely that in a bankruptcy Dex would be sold and the proceeds of the sale distributed to creditors, but not to QC or to QC's ratepayers (as discussed above). The benefit of such a sale might be obvious to the creditors, but less obvious to other interests.

In any event, there are a number of additional ways in which QC may be impacted should QCI file bankruptcy. Those include, in a general way: reduced creditworthiness and borrowing power; disruption in the flow of goods and services among QC and other Qwest entities; lost opportunities while the Qwest enterprise is mired in bankruptcy; the inability of QC to obtain the performance of contracts it has with other Qwest entities; the merger, sale, or other disposition of QC or its assets; very substantial professional fees and other bankruptcy restructuring costs; QC claims against other Qwest entities which go unpaid; disruption of pension plans, health benefits and labor contracts; the potential loss of jobs; the probable loss of employee 401(k) investment; and the like.

Q. DOES MS. FOLSOM ADEQUATELY REPRESENT THE LIKELIHOOD THAT QC MAY JOIN ITS PARENT IN BANKRUPTCY IF QCI DOES FILE FOR BANKRUPTCY PROTECTION?

A. No. Ms. Folsom's simply asserts that "QC would likely have no reason to seek bankruptcy protection, because it would remain a financially sound corporation." As stated in my prior testimony, there are significant reasons why QC may be included in a bankruptcy filing. For example, this may be the most effective means of accomplishing the sale of Dex or QC assets, of restructuring debts, of restructuring operations, or of resolving intercompany debts.

Q. DR. BLACKMON CLAIMS THAT QWEST IS OVERSTATING THE EFFECT OF A PARENT-COMPANY BANKRUPTCY AND THAT "QC MIGHT EVEN BE BETTER OFF WITH ITS PARENT IN BANKRUPTCY." DO YOU AGREE WITH THIS ASSESSMENT?

A. Anything can happen in bankruptcy. A company cannot control its destiny in bankruptcy. As discussed above, there is the real possibility that QC would join QCI in a bankruptcy filing. If it does, virtually anything could happen. If QC does not file along with its parent, its credit rating, its access to commercial markets, its ownership, and its business relationships could nevertheless change dramatically. Either way, the Commission's power to influence QC's affairs would be significantly compromised. A confirmed plan of reorganization could take many shapes. Perhaps creditors who bought bonds at distressed prices will simply want a measure of profit and then to be cashed out. Trade creditors may prefer preserving more or less the status quo. Other creditors may seek drastic restructuring or liquidation. Initially, the debtor companies themselves would have the exclusive right to determine the shape of the plan of reorganization. At

some point, if the Court allowed, other parties in interest might file a plan of reorganization. No one can predict the outcome of a Qwest enterprise bankruptcy. One might, however, safely predict that it will be expensive.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.