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, a non-affiliate	DOCKET NO. UT-021120 MOTION OF COMMISSION STAFF TO STRIKE PORTIONS OF THE REBUTTAL TESTIMONY OF WILLIAM E. TAYLOR AND JOSEPH P. KALT, OR IN THE ALTERNATIVE, TO PERMIT THE FILING OF SURREBUTTAL TESTIMONY AND RESCHEDULE EVIDENTIARY HEARINGS

1 On April 17, 2003, Qwest Corporation and Dex Holdings, LLC, submitted testimony attacking the practice of imputing directory publishing revenues in determining the financial results of Qwest Corporation. The testimony is ostensibly submitted as rebuttal to the testimony of Staff and other parties. It is not proper rebuttal testimony, because it challenges the "traditional imputation" practices that have been applied by the Commission for almost two decades and have been upheld by the state Supreme Court. If Qwest Corporation and Dex Holdings, LLC, wished to challenge imputation, they should have done so as

part of their direct case. Withholding this evidence until the rebuttal phase – after other parties' single opportunity to submit testimony has passed – is fundamentally unfair and should not be permitted by the Commission.

2 As part of the rebuttal testimony submitted by Qwest Corporation ("Qwest") witness William E. Taylor, Mr. Taylor discusses Qwest's opposition to the continued imputation of Qwest Dex yellow pages revenues that this Commission has upheld repeatedly in past orders, and sets forth arguments that allege that "traditional imputation" is "inconsistent with economics and public policy." These arguments are primarily set forth in Section VI of Mr. Taylor's testimony, from page 36, line 1 through page 40, line 5, but are made at various other places as well.[1]

3 Joseph P. Kalt, Dex Holdings, LLC's ("Dex Holdings") new witness on rebuttal, also sets forth, for the first time, similar arguments to the effect that imputation of directory revenues is anticompetitive and contrary to public

[1] Other portions of Mr. Taylor's rebuttal testimony containing these arguments are as follows:
(1) page 4, lines 1 through 14;
(2) page 5, line 19 (beginning with "Third, . . .") through page 6, line 3;
(3) page 27, line 21 (beginning with "The local exchange market . . .") through page 28, line 7; and
(4) page 43, line 18 through page 44, line 5.

policy. Exhibit JPK-1RT, Rebuttal Testimony of Joseph P. Kalt, at page 2, line 17 through page 3, line 12; and page 11, line 14 through page 14, line 20.

4 These portions of Mr. Taylor's and Mr. Kalt's rebuttal testimony should be stricken, as they clearly are not rebuttal at all, but rather, are directly related to, and properly should have been made a part of, Qwest's and Dex Holdings, direct cases. In the alternative, Staff requests that it be permitted the opportunity to file surrebuttal to these portions of Mr. Taylor's and Mr. Kalt's testimony. Should the Commission permit surrebuttal rather than strike the testimony, it should reschedule the hearings currently set to begin on May 19. The current schedule provides Staff and other parties one month to review the rebuttal case of Qwest and Dex Holdings, conduct discovery on that evidence, and prepare for cross-examination of their own and other parties' witnesses. Staff should not be required to take time away from these necessary activities in order to prepare surrebuttal to testimony that should have been filed two months earlier. Rather, the evidentiary hearings and each subsequent procedural step should be delayed by at least one month, to a time amenable to the Commissioners and the parties.

5 It is quite clear that any concerns about imputation itself were present at the time Qwest and Dex Holdings filed their direct case, because Qwest's own

witness actually proposes a continuation of traditional imputation. Qwest's original proposal in this case, as set forth in the direct testimony of Theresa A. Jensen (since adopted by Qwest witness Mark S. Reynolds, *see* Exhibit MSR-1RT, Rebuttal Testimony of Mark S. Reynolds, at page 3), recommended that Washington ratepayers continue to receive "the current value of the existing imputation embedded in rates" only for four and on-half years, until the year 2008. Ms. Jensen continued, "Once the ratepayer interest is satisfied in 2008, the imputation will end." (Exhibit TAJ-1T, pages 19-20.) Ms. Jensen further set forth Commission orders dating back to 1989 in which the Commission authorized and directed the imputation of yellow page revenues. *Id.* at pages 17-19. This practice is not new, but rather, well-established Commission policy. Moreover, it is a policy that has been explicitly upheld by the State Supreme Court, in *US West Communications, Inc. v. Utilities and Transp. Comm'n*, 134 Wn.2d 74, 949 P.2d 1337 (1997).

6 Qwest's direct testimony recommended an abrupt end to directory imputation in 2008, but not for the competitive policy arguments now being made. Rather, the only reason offered in the direct case for an end to imputation was that the ratepayers' share of the proceeds from sale of Dex (as calculated by

Qwest) would be exhausted. Only now, in Mr. Taylor's rebuttal testimony, does Qwest set forth its many arguments why the company believes that imputation is "inconsistent with economics and public policy," and why it should be discontinued. Mr. Taylor testifies generally as to the purported effect of imputation on the prices of regulated telephone services; on the purported effect of yellow pages imputation on prices of rate-of-return-regulated services since the 1980's; and on the purported percentage of Qwest's services that have been subject to rate-of-return regulation from the 1980's to the present. Mr. Taylor also testifies as to the purportedly bad public policy of the Commission permitting "subsidies" through the imputation of directory revenues, and on the purported contradiction between the pro-competitive policies of the 1996 federal Telecommunications Act and imputation. Exhibit WET-1RTC, Rebuttal Testimony of William E. Taylor, at page 36, line 1 through page 40, line 5. (*See also* page cites noted in footnote 1 of this motion.)

7 All of these arguments are directly related to Qwest's direct testimony and to imputation practices that had operated for almost two decades before Staff submitted its testimony. In fact, Mr. Taylor only once alludes to the testimonies of Drs Selwyn and Blackmon and Mr. King in this section of his "rebuttal"

testimony, at page 38, lines 18-20. But this broad indictment of imputation, which the Commission has enforced since the 1980's, and which the State Supreme Court upheld in *US West v. WUTC,* is not rebuttal at all. Furthermore, it is all the more ironic in that coupled with Qwest's new arguments opposing imputation is a new proposal by Qwest witness Mr. Reynolds to *continue* imputation not only until 2008, but for five *more* years, until 2013 (Exhibit MSR-1RTC, at page 18.)

8 Qwest should not now be permitted to make its new arguments concerning the purportedly harmful effect of imputation on competition. By waiting until now to make these arguments, Qwest has deprived Commission Staff and other parties of their right to respond. The Commission only recently admonished parties that "rebuttal testimony should not be used to 'sand bag' opponents with evidence that should have been included in the direct case. Docket No. UT-020406, *AT&T Communications of the Pacific Northwest, Inc. v. Verizon Northwest, Inc.*, Seventh Supplemental Order, at ¶ 45, n. 1 (April 8, 2003.) That principle applies here as well.

9 Mr. Kalt, on behalf of Dex Holdings, makes virtually the same arguments as Mr. Taylor. Exhibit JPK-1RT, Rebuttal Testimony of Joseph P. Kalt, at page 2,

line 17 through page 3, line 12; and page 11, line 14 through page 14, line 20. He testifies, for the first time on rebuttal, that the Commission's policy of imputing directory revenues is anticompetitive and contrary to the public interest. Although initially couched as a "rebuttal" to a portion of Dr. Selwyn's standard for assessing the public interest, (*See* Rebuttal Testimony of Joseph P. Kalt at page 11, line 14), the subsequent three and one-half pages do not rebut Dr. Selwyn at all, but rather constitute a direct challenge to the Commission's well-established policy of imputation that has been upheld by the State Supreme Court. By waiting until rebuttal to introduce this testimony, Dex Holdings, like Qwest, has deprived Commission Staff and other parties of their right to respond.

10 Qwest and Dex Holdings have introduced a wholly new claim in their effort to win approval of this transaction. They now apparently suggest that a public interest *benefit* of the sale is that Qwest's customers will have to pay more for their telecommunications services. This is a claim that Qwest and Dex Holdings could have made at the time they filed their original application and direct case. Had they done so, Staff and other parties would have addressed these claims in their direct cases.

CONCLUSION

11 Staff requests that the Commission strike the above-referenced portions of Mr. Taylor's and Mr. Kalt's rebuttal testimonies. In the alternative, should the Commission decide that it wishes to consider these fundamental issues regarding imputation itself, Staff should be given the opportunity to file surrebuttal testimony addressing these new arguments made by Qwest and Dex Holdings, and should be provided with adequate time to do so. The evidentiary hearings and each subsequent procedural step should be delayed by at least one month, to a time amenable to the Commissioners and the parties.

DATED this 24th day of April, 2003.

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