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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

**QWEST’S ANSWER IN OPPOSITION TO
STAFF’S MOTION TO STRIKE PORTIONS
OF THE REBUTTAL TESTIMONY OF
WILLIAM E. TAYLOR**

I. INTRODUCTION

Qwest hereby files its answer in opposition to the Commission Staff’s April 24, 2003 Motion 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 Staff erroneously claims that Qwest has presented testimony challenging imputation for the first time in its rebuttal case and that the testimony that is the subject of the motion is not proper rebuttal at all, but rather is directly related to and should have been made a part of Qwest’s direct case. The portions of Dr. Taylor’s testimony that Staff seeks to strike address economic and policy arguments why it is in the public interest to end imputation upon approval of the sale of Dex.²

¹ Qwest will respond to Staff’s motion only as it pertains to the testimony of its witness, Dr. William E. Taylor. Qwest has been informed that the Buyer will respond to Staff’s Motion as it pertains to Dr. Kalt.

² Portions of Dr. Taylor’s rebuttal testimony Staff seeks to strike 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;
- (4) page 36, line 1, through page 40, line 5; and
- (5) page 43, line 18 through page 44, line 5.

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1 Qwest opposes Staff's motion. As will be described below, Qwest's testimony is proper rebuttal
2 in response to Staff's March 17, 2003 testimony. Qwest did not withhold any part of its direct case. Dr.
3 Taylor's testimony is well within the scope of the issues raised in the direct testimony Qwest presented on
4 January 17, 2003. Further, Dr. Taylor's testimony is directly responsive to Staff's position in this case,
5 and would therefore be proper rebuttal even if it addressed issues that were not raised in Qwest's direct
6 testimony.³

7 II. ARGUMENT

8 Staff's position regarding the alleged inappropriateness of the specified testimony appears to be
9 based on two main arguments. First, Staff claims that Dr. Taylor's testimony is not proper rebuttal
10 testimony because it challenges ". . . the 'traditional imputation' practices that have been applied by the
11 Commission for almost two decades and have been upheld by the state Supreme Court."⁴ Staff contends
12 that the issues addressed, are ". . . clearly not rebuttal at all, but rather, are directly related to, and
13 properly should have been made a part of, Qwest's [and Dex Holdings] direct cases."⁵

14 Second, Staff argues that Dr. Taylor's testimony is not rebuttal because it is not specifically
15 directed at any of the testimonies of Dr. Selwyn, Mr. King or Dr. Blackmon, stating that in the challenged
16 section of his testimony, Dr. Taylor "only once alludes to" those testimonies.⁶

17 Underlying Staff's motion is a fundamental misunderstanding of Qwest's direct case. This
18 misunderstanding is evidenced by Staff's statement that Qwest's proposal in its direct and rebuttal
19 testimony proposes a continuation of imputation and, Staff notes, it is thus ironic that Qwest should
20 present arguments against imputation in Dr. Taylor's testimony.⁷ Qwest has not proposed a continuation

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22 ³ Rebuttal evidence is defined in Black's Law Dictionary as: "Evidence given to explain, repel, counteract, or disprove facts given in
23 evidence by the opposing party. That which tends to explain or contradict or disprove evidence offered by the adverse party. [. . .
24 .]" This definition is consistent with the Commission's practice with regard to rebuttal testimony – parties are permitted to
25 respond to all of the issues raised by the opposing party.

26 ⁴ Motion at ¶ 1

⁵ Motion at ¶ 4

⁶ Motion at ¶ 7

⁷ Id.

1 of imputation. Qwest has, in both its direct and rebuttal testimonies, proposed an end to imputation, with
2 the gain on the sale being distributed to ratepayers through the continuation of the imputation *amount* for
3 a set period of time.

4 **A. The Testimony at Issue Does Not Raise New Arguments**

5 Staff contends that Dr. Taylor's testimony raised new economic and policy arguments against
6 imputation. Staff argues that Qwest's testimony raised new issues and arguments for the first time on
7 rebuttal, claiming that if Qwest wanted to challenge imputation, it should have done so in its direct case.
8 Qwest did. A review of Ms. Jensen's direct testimony, now adopted by Mr. Reynolds, shows very
9 clearly that Qwest proposed an end to imputation, and raised a number of arguments against the
10 continuation of imputation.

11 For example, Ms. Jensen's testimony states that the Commission should approve the sale
12 transaction and allow ratepayers to receive the value of the current level of imputation for a set period of
13 time in order to satisfy the ratepayers' interest in the sale proceeds. (See, e.g. Jensen Direct at pp. 5-6,
14 19, 44). Ms. Jensen's testimony clearly explains that Qwest is proposing an amortization of the gain on
15 the sale. (Jensen Direct at p. 24 and Exhibit TAJ-4C). Ms. Jensen also explains that imputation in the
16 traditional sense of the word⁸ can no longer be sustained after the sale transaction, but that a continuation
17 of the imputation amount for a finite period can be used to flow the benefit of the sale proceeds to the
18 ratepayers. (Jensen Direct at pp. 5-6).

19 Staff apparently understood that Qwest was in fact arguing to end imputation, because Staff
20 acknowledges as much in its motion. However, Staff also alleges that the *only* reason offered in the
21 direct case for an end to imputation was that the ratepayers' share of the proceeds would be exhausted.⁹
22 This is simply not true. Ms. Jensen explains that changes in market conditions from the 1980s until the

23 ⁸ The Commission has held that imputation is the ascription or attribution of income, not otherwise recorded on the regulated
24 company's accounts. (Docket No. UT-980948, 14th Supplemental Order, ¶ 172). The Commission has also held that imputation is
25 not a substitute for, nor is it a means to implement, the amortization of any value to be distributed. (Id. at ¶ 173) It is clear from
26 Qwest's proposal that it has recommended the distribution of value through an amortization, and is using the imputation *amount*
to do so.

⁹ Motion at ¶ 6

1 present time support the end of imputation, *even absent a sale transaction*. In this section of her
2 testimony, Ms. Jensen describes the dramatic changes in the telecommunications industry and the markets
3 in the past six years.¹⁰ She also describes the growth in competition in the Washington market, detailing
4 the entry of competitive providers of service and the increasing choices that consumers have for
5 telecommunications. (Jensen Direct at pp. 35-38 and Exhibit TAJ-5C).

6 Within the context of this direct testimony, it is clear that Staff is simply wrong when it alleges that
7 Qwest failed to raise these issues in its direct case. Staff stops short of directly accusing Qwest of “sand-
8 bagging” with regard to these issues, but implies as much in its motion.¹¹ This implication is entirely
9 unwarranted. Qwest did not withhold part of its direct case and present it on rebuttal, but gave all parties
10 clear and fair notice of its position and arguments.

11 **B. The Testimony at Issue is Directly Responsive to Staff’s Position**

12 Dr. Taylor’s testimony at pages 36-40 discusses why he believes imputation is inconsistent with
13 sound economic and public policy, as well as the contradiction between imputation and the pro-
14 competitive policies of the Act. This testimony is directly responsive to the testimony of Dr. Selwyn and
15 Dr. Blackmon. Staff argues that Dr. Taylor only alludes to their testimony once in this section of his
16 rebuttal, suggesting that this somehow means that it is not true rebuttal. However, Dr. Taylor’s testimony
17 in this section is provided in direct response to Staff’s position that the Commission should disapprove the
18 sale. Under Staff’s primary recommendation in this docket, Dex would not be sold. (Blackmon at p. 3).
19 If there is no sale, and the status quo continues, imputation continues.¹² Thus, economic and policy
20 arguments against imputation are proper rebuttal, and would be proper in response to Staff’s position
21 even if Qwest had not raised these issues in its direct case.

22 ¹⁰ Ms. Jensen’s testimony, page 3, lines 4-6, specifically cites to the Commission’s order in Docket No. UT-980948 (paragraph 19)
23 to introduce the argument that the Commission has recognized that ending imputation might be justified based on changed
24 conditions. Staff’s challenge to Qwest’s rebuttal on the basis that it improperly questions the “traditional imputation” practice
fails to recognize this aspect of the testimony, and fails to recognize that Qwest introduced evidence of changed conditions in its
direct testimony.

25 ¹¹ Motion at ¶ 8

26 ¹² Dr. Blackmon suggests that the sale could go forward as to the other six Rodney states, without Washington. However, that is
not the transaction that is presented in this docket, and Staff has agreed in discovery that it has no knowledge as to whether the
transaction could be so modified. (Staff response to Qwest data request 22). Thus, Staff’s speculation as to that scenario is not
material to this discussion.

1 Further, even under Staff's alternate proposal, where the sale would be approved but some large
2 sum of money would be retained in an undefined regulatory account, Dr. Taylor's testimony is proper
3 rebuttal. Staff's alternate proposal essentially proposes to capture cash from the transaction in an amount
4 and manner so that ratepayers would *forever* receive the benefit of ever-increasing imputation.
5 (Blackmon Direct at pp. 26, 28). Dr. Taylor's testimony explains why such a result is inconsistent with
6 good economics and good public policy, and is therefore proper rebuttal to that proposal as well.

7 **III. RELIEF REQUESTED**

8 Qwest believes that Staff's motion is without merit and is therefore opposed to any of the relief
9 requested by that motion. However, should the Commission disagree, and find that some relief is
10 warranted, Qwest would like to be clear that under no circumstances does it wish to see the schedule
11 extended. The parties agreed to the current schedule many months ago, and the determination of a week
12 where all parties and the Commissioners would be available for hearings was not an easy task even then.
13 Qwest is very concerned about extending the schedule, because time is of the essence in the transaction
14 at issue, and an earlier closing would minimize risk to the transacting parties. Thus, Qwest believes that
15 the Commission should adhere to the schedule already established.

16 **IV. CONCLUSION**

17 For the reasons set forth herein, the Commission should deny Staff's motion to strike and allow
18 the testimony of Dr. Taylor to stand as filed. In no case should the hearings be extended beyond the
19 schedule currently established and in place.

20 Respectfully submitted this 29th day of April, 2003.

21 QWEST CORPORATION
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24 _____
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