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 Volume V Pages 362 to 576

A hearing in the above matter was held on May 21, 2003, from 9:00 a.m to 4:50 p.m., at 1300 South Evergreen Park Drive Southwest, Room 206, Olympia, Washington, before Administrative Law Judge DENNIS MOSS and Chairwoman MARILYN SHOWALTER and Commissioner RICHARD HEMSTAD and Commissioner PATRICK J. OSHIE.

The parties were present as follows:

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P R O C E E D I N G S

JUDGE MOSS: Staff distributed to the Bench and I assume to the -- no, I take it back, it was Qwest. Qwest distributed to the Bench and to the parties some data responses that came in and that were previously identified as exhibits, and so those are already numbered, and it just fleshes out the material in your notebooks.

We received last evening the supplemental testimony and exhibits filed on behalf of the Federal Executive Agencies, Department of Defense, by Charles W. King, that's five documents. For identification, I have marked the supplemental testimony as Exhibit Number 286. Then we have Exhibit 287C, which is a comparison of rate payer benefits; 288C, a graphic presentation of the comparison of rate payer benefits; 289, described as present value of the agreement; and 290, Dex Holdings response to DoD/FEA Data Request I-2.

In addition, we have received this morning supplemental direct testimony from Dr. Selwyn. I'm marking that for identifications as Exhibit Number 363.

And we received supplemental testimony from Dr. Glenn Blackmon. I'm marking that as 421C. And Dr. Blackmon's testimony is accompanied by an exhibit, comparison of proposals, numbered 422 for identification.

We also received this morning the response by Dex Holdings witness Kennard to the record requisition interposed by Staff during Mr. Kennard's cross-examination. I believe I had previously assigned Number 252 to that, and that will be its number. Typically if there are objections to that sort of thing, we hear them at the time of the requisition, and I heard none, but I will ask.

And apparently there are no objections, so it will be admitted, and I will mark that as admitted today since we received it today.

I am wondering too so that we make good use of our time here, there are certain exhibits that I expect not to be controversial. For example, we have these two very large volumes up here which we pre-marked as Exhibit Number 1, which are all the transactional documents related to this, and I don't see any -- there's no particular witness sponsor, but why don't we see about admitting that. Is there any objection to the admission of the transaction documents?

All right, well, we will go ahead and admit Exhibit Number 1 as of today.

Now parties will wish to continue, I expect, to refer to individual portions of that that they have tendered as potential cross-examination exhibits. But if there is a need to refer to something that hasn't been previously identified, then we can always refer back to Exhibit 1 for that.

I would propose as well since we're going to be talking about it that we go ahead and accept as an exhibit in the proceeding the stipulation and settlement agreement among signatories Qwest, Dex Holdings, Public Counsel, AARP, and WeBTEC, Exhibit Number 2.

And hearing no objection to that, we will go ahead and admit that, and people can refer to it freely then.

MR. SHERR: Your Honor, Adam Sherr, Qwest.

JUDGE MOSS: Yes.

MR. SHERR: I believe DoD is also a signatory to the --

JUDGE MOSS: I apologize, thank you for correcting that, so DoD/FEA I will add at the end.

And by way of further housekeeping moving on from exhibits, I think that probably completes the housekeeping on the exhibits.

MS. SMITH: Your Honor, Shannon Smith for Commission Staff. I have copies of Exhibits 91 and 92, which were responses to data requests that were filed subsequent to the pre-hearing conference where we distributed the exhibits, and those cross exhibits were marked for the testimony of Mr. Reynolds. However, I learned from counsel the other day that he would have deferred those questions to Mr. Cummings, and so these two exhibits plus some others we will be dealing with in the cross-examination of Mr. Cummings, and I would like to know from the Bench whether you would like me to distribute these copies now or wait until a few moments before he takes the stand.

JUDGE MOSS: Let's go ahead and do it now.

MS. SMITH: Thank you, Your Honor.

JUDGE MOSS: And we will renumber those, that's 91 and 92 you say. All right, so those happen to fall at the end of a set, so convenient simply renumber and make those 203 and 204 so that they are identified with witness Cummings.

And I should note if I did not previously that Staff also passed out this morning, and I'm sure the parties have it as well, some updated material with respect to Exhibit 146 and 149. So if you don't have the updates, you will need to check with Staff.

Did you have those, let's see, we already have 91, no, you're going to hand them out now, 203 and 204.

MS. SMITH: And I'm renumbering those, Your

Honor.

JUDGE MOSS: Okay, good. While you're renumbering those, I will just talk about witness order a little bit.

MR. SHERR: Your Honor, sorry to interrupt.

JUDGE MOSS: That's all right, we'll get through the exhibits here in a minute I guess. Go ahead.

MR. SHERR: Adam Sherr for Qwest.

JUDGE MOSS: Sure.

MR. SHERR: One other exhibit related housekeeping matter, and I advised Ms. Smith of this prior to convening today. Qwest has identified two new cross exhibits for Ms. Folsom. Both are newspaper articles that have been published since we marked exhibits in this case.

JUDGE MOSS: Okay.

MR. SHERR: I have handed a copy to Ms. Smith and to Ms. Folsom. Unfortunately I only brought ten copies foolishly thinking that was sufficient, but I will bring the requisite number after lunch today.

JUDGE MOSS: Yeah, why don't we deal with this at lunch, okay.

MR. SHERR: Okay.

JUDGE MOSS: So let's take this one up at lunch when you have all the copies. I will need six up here.

MR. SHERR: Your Honor, apparently we have one more housekeeping matter relating to --

JUDGE MOSS: Go ahead.

MR. SHERR: It's just been pointed out to me that there are two cross exhibits that are duplicates among those that have been marked already. Exhibits 404 and 405 have been replicated as 445 and 446, so we may be able to remove one of those sets.

JUDGE MOSS: Okay.

MR. SHERR: They are for different witnesses.

JUDGE MOSS: All right, well, let's note that again when we get to those witnesses.

MR. SHERR: Thank you, Your Honor.

JUDGE MOSS: I don't want to take that up just right at this moment. I may actually just do something about it in the interim and announce it to the parties.

All right, while we remain on the record taking care of our housekeeping matters, I think we now have concluded the exhibits. I will say that for, what, is that the fourth or fifth time, I think we have made it now in terms of cleanup.

Witnesses. We have had Mr. Kennard, of

course. The order that I believe we will follow, and I want to announce this so that we can have any corrections that we need to have, have Mr. Burnett followed by Ms. Koehler-Christensen followed by Mr. Grate followed by Mr. Mabey. And then I have talked to some counsel, not all counsel, Mr. King is here and I went ahead and scheduled him for Thursday morning. We have a session Thursday morning, and so he is from Washington D.C. I'm trying to accommodate witnesses who are traveling as best we can, so Thursday morning for Mr. King.

Friday I would expect we will have Mr. Cummings and Dr. Selwyn. And then the following week on Thursday I would expect us to have Mr. Brosch and Mr. Blackmon, and I have put Ms. Folsom on the Friday, but we may be able to fit her in somewhere earlier, we'll just have to see how things go in terms of the lengths of examinations and whatnot.

Now as to Dr. Taylor, my understanding is that it's one of those that if you don't, I won't situations where everybody is saying, well, if nobody else has questions, then we don't need to have him. So at this juncture, we have no need to have Dr. Taylor appear, and we can have his testimony and exhibits by stipulation as to cross-examination, that there will be no cross. Or, of course, Qwest may choose to put Dr. Taylor on. He's identified as a witness. So have you reached a decision on that, Ms. Anderl?

MS. ANDERL: Yes, Your Honor, I think it would be our preference to offer Dr. Taylor to testify either next Wednesday or next Thursday.

And I did want to also point out to you that you didn't identify Mr. Reynolds as being a witness on Wednesday the 28th.

JUDGE MOSS: That's because it's not on my notes, but that was what was intended, of course. Thank you, Wednesday the 28th.

MS. ANDERL: And I haven't yet been able to speak with Dr. Taylor live, and we will pin down a day, either Wednesday or Thursday.

JUDGE MOSS: Next week?

MS. ANDERL: Yes.

JUDGE MOSS: Okay, and then the other thing is Dr. Kalt.

CHAIRWOMAN SHOWALTER: I have a question about that. I thought we had just said nobody is going to cross examine him. My personal preference is always to have people here live. On the other hand, if he travels all the way here and no one has a question --

MS. ANDERL: My understanding was that Staff would not have -- if he did not appear, Staff would not have questions for him, but that it might be if he were here in the hearing room, both the Bench and other parties might want to speak with him about his testimony, and we're willing to make him available to do that.

MR. TRAUTMAN: Well, no, our position was as the Chair said, if no one else has questions, then we don't. That was what our position was.

CHAIRWOMAN SHOWALTER: Well, if you don't mind having him come here at the risk that he simply comes and sits in the chair and steps down, that's great, because I think the greater probability is he will get in the chair and we will have questions.

MS. ANDERL: That was my thinking as well, and that's why we would like to bring him in.

MR. CROMWELL: Your Honor, also I think we had agreed that Mr. Brosch would be on Friday next week.

JUDGE MOSS: Did we agree to that?

MR. CROMWELL: I believe so, and he is able --

JUDGE MOSS: We can agree to that.

CHAIRWOMAN SHOWALTER: We did.

JUDGE MOSS: That's fine, not a problem.

MR. CROMWELL: I have confirmed with him, he will be able to fly out, get here about midnight Thursday and be here Friday morning.

JUDGE MOSS: That's right, we had a lengthy discussion about that. Well, I'm slipping in my middle years, okay.

Now did we want to talk about Dr. Kalt?

MR. HARLOW: No, Your Honor.

JUDGE MOSS: You have something else?

MR. HARLOW: Yeah, something you haven't heard of.

JUDGE MOSS: Oh, no.

MR. HARLOW: And I wanted to give you a heads up. We have issued a subpoena to Mr. Lott of the Commission Staff, and Staff has accepted that reserving objections other than service. And the reason we have done that is that we have issued a series of data requests in which Dr. Blackmon was listed as the witness, but Mr. Lott was listed as the respondent. We still have some confusion regarding those responses, and which rather than moving to compel, we decided to deal with through cross-examination. And it's quite possible that Dr. Blackmon will be able to answer our questions. But in the event that he is not able to do so, we wanted to have Mr. Lott as a backstop. And so what I propose that we do is, if it's agreeable to Staff, is that we defer any motions to strike until after Dr. Blackmon testifies and that we pencil in Mr. Lott for Friday at the end of the proceeding since it's quite possible that we won't need to call him as a witness in any event.

JUDGE MOSS: Well, he is located conveniently to us, and so we will no doubt be able to squeeze him in either on Friday or Thursday.

MR. HARLOW: I don't know if he has any availability issues, Your Honor, on any of those days. That may change things.

JUDGE MOSS: We'll work it out.

All right, now but we do have the question of Dr. Kalt. As in the case of Dr. Taylor, at this juncture my understanding is that parties at least have said they don't have questions for Dr. Kalt unless someone else has questions for Dr. Kalt. And presumably that would be maybe questions from the Bench, so maybe we can resolve -- Dr. Kalt is here, and so --

MR. HARLOW: Your Honor, we had intended that he be here for Dr. Selwyn's cross-examination anyway, so at this point his availability is not an issue.

JUDGE MOSS: The question is whether we need to have him take the stand, and I have not consulted with the Commissioners on that subject, so we will probably need to discuss that and talk about it again later.

MS. ANDERL: Your Honor.

JUDGE MOSS: Yes.

MS. ANDERL: Just a couple of additional things maybe. I know that we had intended to defer all cross-examination of witnesses supporting and opposing the settlement until next week. However, it does look like we will have time to start on the cross of Dr. Selwyn, and because of the amount of time I have estimated already on his pre-filed testimony from March, it would be my preference to start on him this week. I just wanted to make sure that we were all okay with that. He did file testimony in opposition to the stipulation, and I believe it's likely that if he's not on the stand until Friday I will be ready to cross him on that as well, but I have only had it for a couple of minutes.

JUDGE MOSS: Yeah, the schedule that I have outlined for you is based on my evaluation of the estimates of cross-examination time, not even including the settlement material. And so I think in order to get everything done, we're going to have to start Dr. Selwyn this week, because there's nearly four hours of cross-examination indicated for him alone, so we will have to do what we can.

CHAIRWOMAN SHOWALTER: There's just one other thing, maybe you were going to mention this, but tentatively on Wednesday we would start at 10:45, but we will be able to give you a later estimate I think by tomorrow, or no, maybe by Friday.

JUDGE MOSS: Now I believe from my perspective at least that completes our housekeeping matters and that we are ready to proceed with Mr. Burnett.

MR. SHERR: Your Honor, at the risk of you throwing something at me, I do have but one more procedural matter to bring up.

JUDGE MOSS: All right.

MR. SHERR: And that relates to Dr. Blackmon's revised testimony that was filed last Wednesday afternoon, the 14th. Qwest has now had an opportunity to read that very carefully and to understand what has changed in that testimony, and Qwest is quite concerned. Initially I think our response, our internal response was that we were going to move to strike that testimony. Given the changes in the schedule and the opportunity for cooler heads to prevail, we would instead prefer and ask that Qwest have the opportunity to file I guess you would call it surrebuttal testimony of Mr. Reynolds in response to the changes in that testimony.

JUDGE MOSS: When would you propose to do that?

MR. SHERR: We could do that -- we could provide it to the parties on Monday, so we could do it over the weekend, provide it to the parties on Monday, understanding that it's a holiday so that we couldn't actually file it, but we could E-mail it to the parties on Monday and file it first thing Tuesday morning.

I can go on at length if you would like about why we need to do so, but.

JUDGE MOSS: All right, we'll hear your argument then, and we'll also give Staff an opportunity to respond, and then we'll make a determination.

MR. SHERR: Thank you, Your Honor, and I will try to keep it as brief as I can.

JUDGE MOSS: Sure.

MR. SHERR: The testimony that was filed last Wednesday in Qwest's estimation can only be described as surrebuttal testimony. It was not in the nature of an errata, it was not technical fixes or changes in spelling or citations, but was a wholesale change to Dr. Blackmon's ultimate recommendation in this case, not only fundamental changes, but also adding a ton of specifics that were not there previously in his March 18 testimony.

Qwest is very concerned about that, because it's, number one, inconsistent with the second supplemental order which set out the procedural schedule in this case, which gave Staff the opportunity to file testimony on March 18th, which it did. Had Staff been under the impression that it needed to file surrebuttal testimony, what would have been appropriate would have been a long time ago for Staff to have filed a motion asking for leave to do so. That would have given Qwest the opportunity once it received that testimony and had an opportunity to object if necessary to go through the process of discovery, ask questions of Staff to fully ferret out what was in this new testimony, and if necessary to ask for leave to file its own rebuttal testimony.

It's also inconsistent with the rules of procedure of this Commission, specifically WAC 480-09-735, which very clearly gives the party with the burden of proof, here Qwest, the right to file the last evidence. Given the nature of Dr. Blackmon's changes in position, we think that that's basically then violated, that Qwest has been deprivated of its opportunity to do discovery, and we ask that we have the opportunity to file surrebuttal testimony.

JUDGE MOSS: Thank you.

Any response from Staff?

MS. SMITH: Yes, Your Honor, thank you, Shannon Smith representing Commission Staff. The Commission Staff opposes any opportunity that Qwest may seek to file surrebuttal testimony to Dr. Blackmon's settlement testimony. Dr. Blackmon's settlement --

CHAIRWOMAN SHOWALTER: Ms. Smith, I understood it not to be on the settlement testimony. I understood it to be on last Wednesday's testimony.

JUDGE MOSS: That's right, this was the revised testimony that Dr. Blackmon filed before the settlement.

MR. TRAUTMAN: Well, again, we would object to any surrebuttal of that testimony. We feel that that testimony filed by Dr. Blackmon was an appropriate response to the testimony of Qwest.

CHAIRWOMAN SHOWALTER: Yeah, but I think the question was he's not moving to strike Dr. Blackmon's testimony, he's requesting to file testimony in response to it. So the issue is, I think, does Dr. Blackmon's testimony raise issues that require Qwest to have the opportunity to file something beyond I presume cross-examination questions.

MR. TRAUTMAN: And we do not believe that it does.

CHAIRWOMAN SHOWALTER: But for what reason?

JUDGE MOSS: Mr. Trautman, rather than put you to the labor of extensive research there while we're waiting --

MR. TRAUTMAN: Well, there were basically two -- there were two areas in the testimony that was changed. One was simply an amendment to reflect additional information that had been provided to Staff by Qwest, and that would involve pages 15 to 16. And then the other changes were on pages 24 to 25, and I believe the only significant change was to change the amount of up front payment. That was the most significant change, the change to the amount of up front payment that Staff would recommend.

JUDGE MOSS: All right.

MR. SHERR: Your Honor, may I be heard, response?

JUDGE MOSS: I don't think we really need to hear any more argument on this. The Bench is prepared to grant your motion, and you will have the opportunity to file the, I'm not sure what it is at this point, so surrebuttal or whatever we want to call it, supplemental testimony let's call it.

And I believe you indicated that could be done, at least distributed to the parties by electronic means on Monday, and so parties are alerted to that fact. If they choose to check their E-mail on that day, they will have it then. Otherwise, of course, Tuesday is a business day, and it will be there first thing. So we will have it before we go back into our session on Wednesday. And actually, we may start Dr. Blackmon on Wednesday, depends on how things go with Reynolds and what we end up doing with Mr. Lott and one thing and another. So anyway parties will have it in advance, and I would expect it would be reasonably brief.

MR. SHERR: I sure hope so.

JUDGE MOSS: Yes.

MR. SHERR: Thank you, Your Honor.

One other thing that relates to a question Ms. Smith raises. We would reserve the right to come back and ask for permission to file surrebuttal testimony, again whatever we would call it, to the testimony that was just filed this morning. Obviously haven't had a chance to review it and don't know if that's going to be necessary or not. I just want to make it clear to the Bench that we haven't precluded that.

JUDGE MOSS: Well, you may make another motion at the appropriate time if needed. I would encourage, however, given the tightness of our schedule, we can certainly do things live on the stand, and we have had supplemental direct testimony live on the stand before. Personally I kind of like it. So we'll see.

MR. SHERR: Thank you, Your Honor.

JUDGE MOSS: But that's another option is my only point.

MR. SHERR: Thank you.

JUDGE MOSS: All right, anything else before we move to our witnesses?

Let's get Mr. Burnett on the stand.

Whereupon,

GEORGE A. BURNETT,

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

MR. ROSELLI: Good morning, Judge Moss, Chairwoman Showalter, Commissions Hemstad and Oshie, Philip Roselli representing Qwest. We have called Mr. Burnett to the stand, and he has been sworn.

D I R E C T   E X A M I N A T I O N

BY MR. ROSELLI:

Q. Mr. Burnett, could you please repeat your name and provide your business address, please.

A. Yes, my name is George Arthur Burnett.

CHAIRWOMAN SHOWALTER: You need to have the red button up.

THE WITNESS: The red button is now up.

JUDGE MOSS: We're set, great.

THE WITNESS: That's a little off convention, isn't it, but okay.

A. My name is George Arthur Burnett, my business address is 198 Inverness Drive West, Suite 800, Englewood, Colorado.

BY MR. ROSELLI:

Q. And by whom are you employed, and in what capacity?

A. I am actually employed by two companies. I am employed by Qwest as the President of the division or Chief Executive Officer of the seven western states which Qwest currently owns of the directory business. I am also employed by Carlyle and Welsh Carson as the Chief Executive Officer of Dex Media East.

Q. Okay, thank you. And you should have in front of you some documents that have been pre-marked as Exhibits 51, 52, and 53, Exhibit 51 being your pre-filed testimony and Exhibits 52 and 53 being exhibits to that pre-filed testimony. Do you see those documents?

A. Yes, sir, I have them in front of me.

Q. Were those prepared under your direction and supervision?

A. Yes, they were.

Q. If I were to ask you the same questions that are put to you in that testimony today, would you provide the same answers?

A. Yes, I would.

MR. ROSELLI: With that, Your Honor, I would move the admission into evidence of Exhibits 51, 52, and 53.

MR. TRAUTMAN: No objection.

JUDGE MOSS: Okay, there being no objection, those will be admitted as marked.

MR. ROSELLI: And with that, Mr. Burnett is available for cross-examination, thank you.

MR. TRAUTMAN: Thank you.

C R O S S - E X A M I N A T I O N

BY MR. TRAUTMAN:

Q. Good morning, Mr. Burnett.

A. Good morning.

Q. I'm Greg Trautman, Assistant Attorney General for the Commission Staff. If you could just start by turning to Exhibit 51.

A. Yes.

Q. Which is your direct testimony. And on page 14.

A. Yes, sir, I have it in front of me.

Q. On line 6, you refer to the new publishing agreement as a long-term agreement. From your perspective as a directory publisher, do you consider it to be an advantage to have a long-term agreement instead of an agreement that renews every two to three years?

A. Yes, I do.

Q. And if you could have negotiated a long-term agreement with the various independent LECs, would you have done so?

A. Yes, I would.

CHAIRWOMAN SHOWALTER: Mr. Trautman, I'm just not certain what you mean by the various independent LECs, so I didn't really understand the answer.

MR. TRAUTMAN: Well, okay. Qwest has publishing agreements, not only the current one, the existing one and the current -- and then the one that's proposed between Qwest and Dex Holdings, but also it has publishing agreements with other telephone companies. And, in fact, most of those other agreements, in fact, those other agreements are contained in Exhibit 152, which was provided on CD, and I passed around the paper response and included one illustrative agreement.

CHAIRWOMAN SHOWALTER: Thank you.

JUDGE MOSS: And I will just note for the record that LECs is a local exchange company.

BY MR. TRAUTMAN:

Q. And I'm referring just generally here to the handout I provided of Exhibit 152, an illustrative publishing agreement, and I think I believe I gave --

A. Yes, 152 is sitting here, I can refer to it.

Q. Are you familiar with or were you involved in the publishing agreements that Qwest Dex has with the other local telephone companies?

A. I was not specifically involved with those agreements, no. They predated my tenure.

Q. Are you familiar with any of them?

A. Not directly, no, I'm not.

Q. Do you know whether any of these agreements provide for a 50 year term?

A. No, I do not.

Q. So you don't know whether they do or --

A. I do not know whether they do or do not, that's correct.

Q. Do you know whether any of the agreements restrict the ability of the local telephone company to sell its exchanges or assets?

A. No, I do not.
Q. You don't know that?
A. No.
Q. Does Qwest have a non-competition agreement in conjunction with any of these directory publishing agreements, to your knowledge?
A. Does Qwest?
Q. Yes.
A. No, no, it does not, not to my knowledge. I do not know that they do.
Q. Okay. You don't know or --
A. I do not know.
Q. -- you think they don't?
A. I do not know.
Q. You don't know, all right.
Turning to page 4.
A. Of?
Q. Line 8 of -- I'm back on your direct testimony.
A. All right, we're back.
Q. Which is Exhibit 51.
A. I literally am the one armed paper hanger, so we're back to page 4.
Q. And there you describe the current contractual relationship between QC and Qwest Dex?

A. Correct.

Q. Now did you participate in the negotiation of the publishing agreement that is in effect today between QC and Qwest Dex?

A. No, I did not. Those were negotiated between buyer and seller.

Q. Okay, maybe I misspoke, let me make sure I'm clear. Did you participate in the negotiation of the publishing agreement between QC and Qwest Dex?

A. Between?

Q. I want to make sure I'm not referring to the QC Dex Holdings agreement, that the current agreement, the current publishing agreement between QC and Qwest Dex.

A. No, I did not.

Q. Okay. Now are you familiar with the publishing agreement that's proposed as part of the sale transaction?

A. Yes, I am.

Q. And that would be I believe Exhibit 77, which was Exhibit D, publishing agreement?

A. Yes, I have that in front of me.

Q. Did you participate in the negotiation or development of the Exhibit D publishing agreement?

A. I was not a participant in the negotiations, that was done between buyer and seller.

Q. And what was your involvement, if any?

A. At various times the buyer or seller would ask me and other management members our opinions on certain topics. Frankly, not a specific one comes to mind. And we would give an opinion, but we were not privy or party to the direct negotiations.

Q. Okay. Did anyone who reports to you participate in that, in writing that agreement?

A. No, they did not.

Q. And Exhibit D is a proposed agreement between QC and the entities referred to as the Dexter Publisher and the Rodney Publisher; is that correct?

MR. ROSELLI: If I might interpose an objection just for clarity, Mr. Trautman is referring to it as Exhibit D. It would probably be more clear to refer to it as it has been pre-identified.

Q. And that's correct, Exhibit 77.

A. That's my understanding from reading on the first page of Exhibit 77.

Q. Now is it fair to say in this case that you're not testifying about the reasonableness of the Exhibit 77 agreement from the perspective of Qwest Corporation?

A. That's correct, I think that is fair to say.

In my testimony I think I was describing simply the obligations involved in the agreement as presented.

Q. Are you speaking from the perspective of Dex Media, the buyers?

A. Actually, because I have -- I have really both obligations here. I mean I represent both Qwest in terms of running the directory company in West, and I represent the buyers in running it in East. So in a sense, my perspective of sitting here is really around running a good directory company.

Q. So you're not speaking from either perspective in particular?

A. Either perspective of buyer or seller, no. I'm speaking from an operating perspective of running a first class directory company.

Q. Do you have any opinion about the reasonableness of the agreement?

A. If you wouldn't mind, Mr. Trautman, could you give me a specific provision? I might be able to give you a point of view. As opposed to the whole agreement, it seems to -- I mean I have accepted it as what the buyer and seller have negotiated is reasonable, and, you know, we were prepared to implement this agreement and certainly will be in other states.

Q. Can you explain why there are not separate publishing agreements for the Dexter Publisher and the Rodney Publisher?

A. No, I can not. I don't fully comprehend the issue of what's at issue there.

Q. If you could turn in Exhibit 51, your direct testimony.

A. Yeah.

Q. To page 15.

A. Yes.

Q. At line 11.

A. Yes.

Q. There you say that the structure established by the publishing agreement, and I am then skipping, is identical to the model in place today.

A. Mm-hm.

Q. Now the publishing agreement you're referring to is the proposed publishing agreement in Exhibit 77; is that correct?

A. Correct.

Q. Now just to be clear, you're not saying that the Exhibit 77 publishing agreement is identical to the existing publishing agreement between QC and Qwest Dex, are you?

A. What I'm referring to is the fact that the structure is -- I think what I have said is that the structure is identical, meaning at least from an operating perspective that Qwest has, you know, Qwest continues to have a regulatory obligation, and Dex will fulfill that regulatory obligation in the same quality and manner as it did when it was owned by Qwest as it will when it is separated. So I stand by this statement that the structure is identical on that major point. Whether it is identical in technical words or in some specific detail, I don't think I testified to that, and I'm actually not knowledgeable whether it is exactly identical.

Q. Are you testifying that there are no significant differences between those two publishing agreements?

A. I'm testifying that the structure is in my judgment similar, or I used a specific word, identical.

Q. Could you please describe the significant differences in the two agreements?

A. No, I can not.

Q. Is the term of the agreement significantly different?

A. I'm not aware of the term of the agreement in the current QC document, so I can not comment.

Q. All right. So in other words, the publishing agreement in Exhibit 77 has a 50 year term, you do not know whether the existing publishing agreement has --

A. Whether it has that one or is in perpetuity, no, I do not know.

Q. Are you familiar or do you know whether there are any provisions in the existing publishing agreement providing for publisher's liquidated damages?

A. No, I am not specifically aware. I suspect there are not, but I do not know.

Q. Do you know whether -- I guess let me refer you to Exhibit 77.

A. Okay.

Q. This agreement you're familiar with. The question I had just asked previously was related to Paragraph 6.4 on page 25, Section 6.4, and that section on publisher's liquidated damages. And it's your testimony that you're not aware whether the current publishing agreement has any such term?

A. No, I'm not.

Q. Okay.

A. I repeat myself, I am not aware whether it does.

Q. And turning to page 14.

JUDGE MOSS: Of?

Q. Oh, of Exhibit 77, and Section 3.10.

A. Mm-hm.

Q. Which carries over to the next page, changes in service areas, and contains certain restrictions on QC sale of exchanges. Do you know whether this type of provision is included in the existing publishing agreement?

MR. ROSELLI: I would interpose an objection to the extent that counsel is characterizing the provision. It does speak for itself.

JUDGE MOSS: Well, I don't really understand the objection, so let's let the question stand, and the witness can answer it if he can.

THE WITNESS: That's fine.

A. No, I'm not aware whether there is a provision for that in the existing agreement.

BY MR. TRAUTMAN:

Q. And turning to page 16 of that agreement, 3.13 on regulatory change and the things that can happen upon a regulatory change. Do you know whether that type of provision or whether that particular provision is contained in the existing publishing agreement?

A. No, I do not. And what I would like to do is just reiterate for all of these questions that at the level that an operating -- where I'm concerned, other than living up to whatever agreement we decide on, is that the fundamental purpose of a publishing agreement is to make sure that we as the publisher can fulfill in a quality manner Qwest's regulatory obligation in terms of, you know, supporting the citizenry in any state. And it is in my belief that this publishing agreement was absolutely designed to support --

JUDGE MOSS: Wait, Mr. Burnett, I'm going to stop you, I'm going to cut you off there, because you're going way beyond the response to any questions that's pending, so we appreciate your comments, but let's keep your remarks confined to a response to the questions.

Q. All right, so you testified that the structure is the same, but that you do not have knowledge of any of these particular terms or indeed of the existing publishing agreement, correct?

A. That is correct, and I defined structure previously.

Q. Who for Qwest would be able to testify as to these matters? Let me ask you who is familiar with the existing publishing agreement?

A. I would imagine our legal counsel would be -- would be available or somebody in the regulatory staff.

MR. TRAUTMAN: Does Qwest have any witness --

MR. ROSELLI: Yeah, hopefully I won't be testifying, but I believe the next witness we are intending to call, Ms. Ann Koehler-Christensen, will be able to answer any questions that you specifically have addressed to the current publishing agreement between QC and Dex.

CHAIRWOMAN SHOWALTER: Is she also going to -- will she be able -- is she familiar with the new agreement so that she can make the comparison?

MR. ROSELLI: I sure hope so, yes, I believe she is.

BY MR. TRAUTMAN:

Q. And are you familiar with Exhibit 79, which was the non-competition agreement?

A. I do not have that in front of me, but I am generally familiar with it, yes.

Q. Is there today a non-competition agreement between QC and Qwest Dex?

A. I doubt there is, but I'm not aware of one.

Q. Are you familiar, well, are you familiar at all with the Qwest and the Qwest Dex trademarks and the agreements pertaining to that?

A. I'm generally familiar with them, yes.

Q. Now it appears that there are two relevant agreements in that regard, one being Exhibit 78, which was the trademark license agreement, and one being Exhibit 328, which was the branding exhibit to the publishing agreement. Is that correct?

A. Yes, I believe it is, and I have both of those exhibits in front of me.

Q. What specific trademarks are covered by the trademark license agreement?

A. It's my understanding it is the use of Qwest, it's the use of the combined mark of Qwest Dex and the use of Dex. And I think there's another one, Dex Advantage or something like that, but that's not an active mark that we use.

Q. Could you turn to page -- this is again Exhibit 78.

A. Yes.

Q. Turning to page 21 of that document, which at the top says Appendix A, marks.

A. 21, yes.

Q. And does that not indicate that the two specific trademarks are Qwest Dex and Qwest Dex Advantage?

A. Yes, it does.

Q. What's the term of the trademark license agreement?

A. I believe it's five years.

Q. Does Dex Holdings intend to make use of the Qwest Dex name during the transition away from Qwest Dex to simply Dex?

A. Yes, that would be our intent.

Q. And what's the purpose of the transition period?

A. The purpose of the transition period is to give the company time to manage its brand relationship with customers and advertisers as it moves to Dex and moves to how it will deal with the official publisher of Qwest designation.

Q. Now at the end of the transition period, Dex Holdings will no longer have the right to use the Qwest Dex name; is that correct?

A. That is correct, that is my understanding, yes, that's correct.

Q. Okay. Now that's under the trademark agreement. Turning to the branding exhibit, Exhibit 328, and if you turn to page 1, and is it not -- and Section 1.10 has the definition of Qwest directory branding. Isn't it correct that the branding exhibit allows Dex Holdings as the official publisher of the Qwest directories to continue to use the Qwest brand name and mark on its directories for a period of 50 years, assuming no breach of the publishing agreement?

A. I believe that's correct.

Q. So then is it correct that the distinction in what's permitted and not permitted under these two agreements is that after the end of the five year transition, Dex may not use the Qwest Dex mark, but it may use the Qwest mark, and it may also use the Dex mark, which, in fact, it will own; is that correct?

A. Yes.

MR. ROSELLI: I would object that that calls for a legal conclusion and an interpretation of the contracts, and Mr. Burnett is not a lawyer.

JUDGE MOSS: I will overrule that objection.

You may answer the question if you know.

A. It is my understanding that that is correct.

BY MR. TRAUTMAN:

Q. So is there any specific requirement as to the amount of blank space or distance between -- that must be left between the words Qwest and Dex?

A. I don't know if there is a specific guideline in that regard. You know, I believe we do agree to manage the Qwest mark within Qwest's defined guidelines.

Q. So you're not sure what that -- did you indicate you don't know?

A. I indicated two things. One was you asked me a specific question about whether there was specific space requirements, and I said I did not know that. I did say, however, that I believe we agreed with Qwest that we would adhere to whatever brand guidelines they had in effect at the time, because it was their brand and we wanted to treat that appropriately. If that included a specific space requirement, then that would be applicable.

Q. I was going to ask, is there anything in the guidelines that addressed that issue?

A. I'm not familiar with the specific provisions.

Q. Now isn't it also true that under the branding exhibit, and I'm referring to Section 2.4, which is on -- starts on page 3 and carries over to page 4, and I believe the relevant section is on page 4, isn't it also true that if QC should change its name or sell any of its service areas that QC would be required to obtain from the new LEC, L-E-C, the right for Dex Holdings to use the LEC's name on any directories or Web sites?

A. Yes, that is my understanding.

JUDGE MOSS: Did you say the LEC's, Mr. Trautman?

MR. TRAUTMAN: LEC, L-E-C apostrophe S.

JUDGE MOSS: I'm going to ask you to try to avoid that particular acronym, because with Dex and LECs and so forth, it begins to get a little bit difficult.

MR. TRAUTMAN: All right, I will say LEC or local exchange carrier.

JUDGE MOSS: All right, thanks, appreciate that.

BY MR. TRAUTMAN:

Q. Are the Dexter and the Rodney entities currently operating on a separated or on an integrated basis?

A. On an integrated basis except for their financials.

Q. And besides yourself, how many other employees are currently being shared between Rodney and Dexter?

A. I believe the number is six.

Q. So all the other employees either work for one company or the other?

A. That is correct. However, they can do work for the other entity, and there are cross charging provisions between the two companies, but they are assigned from an administrative and a pay perspective to one or the other.

Q. How many employees work for each entity?

A. There are approximately 3,000 employees in total, and I think it splits, and again this is an approximate, about 1,500 for each entity.

Q. If you could refer to what was provided to us today, it was Exhibit 252HC.

A. I would be happy to. I don't have that in front of me if someone can --

Q. It was the response to Record Requisition Number 1.

MR. HARLOW: Just a moment, Your Honor.

Don't look at it, please.

Mr. Burnett is not a party to the highly confidential protective order, and I think we need a moment to confer to see whether he's covered by some other agreement.

MR. TRAUTMAN: He doesn't need to look at it in particular.

JUDGE MOSS: Then take it away.

MR. TRAUTMAN: It's not the particular numbers, it's the context of the question.

JUDGE MOSS: Give us a minute, Mr. Trautman.

(Discussion on the Bench.)

JUDGE MOSS: All right, go ahead now, Mr. Trautman.

BY MR. TRAUTMAN

Q. Are you generally familiar that in response to questions to Mr. Kennard that there were figures provided as to target returns on equity?

A. Actually, I'm not familiar about that particular aspect of his testimony.

Q. Well, is it correct that the debt equity structure for Dex Holdings will be approximately 80% debt, 20% equity?

A. That is my understanding, yes.

Q. And perhaps this needs to be made as a record requisition and it may be confidential as well, what return on equity does Dex Holdings currently project over the next three to five years?

A. Dex Holdings in aggregate?

MR. ROSELLI: Let me object and ask for some clarity in the question. Dex Holdings is a vague term at this point, and I don't know if he means the consolidated or aggregated operations of Dex Holdings, if they're reintegrated, if in fact Dex Holdings acquires the western operations of Dex or the separated operations or both. I would ask for some clarity in the question.

JUDGE MOSS: In light of that, I think it might be helpful to just clarify what you mean, what entity you're referring to when you say Dex Holdings.

BY MR. TRAUTMAN:

Q. I'm referring to the combined Dexter and Rodney entities.

A. I would tell you that -- I mean this is really a determination of the buyer, their models. To my knowledge, there have been equity returns that have been, you know, a range of projections. I think the kind of middle most likely projection is I have heard from the high teens to the low 20's.

Q. And what return on equity would Dex, does Dex Holdings currently project over the next 15 years?

A. I don't know that.

MR. HARLOW: Your Honor, I'm going to object, I think we're getting to the same area that we designated as highly confidential earlier this week. There is also no foundation. Mr. Burnett does not work for Dex Holdings, he works for Dex Media East, which at best is half of Dex Holdings, and I think we're getting into highly speculative areas while potentially confidential.

JUDGE MOSS: Mr. Trautman, how do we --

MR. TRAUTMAN: Well, he will work for Dex Holdings, is that correct, upon assuming the transaction?

MR. HARLOW: No.

MR. TRAUTMAN: No, with whom are we --

JUDGE MOSS: I'm going to remind counsel again to direct their comments to the Bench, not to each other. And so if you have questions, now if you have a question for the witness with respect to whom he works for, that would be the appropriate person to put it to, not to counsel, so let's focus on the witness.

And I think you may be referring to Dex Holdings in a particular way as a combined entity. If you are defining it that way for the purpose of all your questions as you previously defined it, then I think the witness understands what you're referring to. And if not, we can cover that ground. Mr. Burnett is nodding in the affirmative, I think he understands what you mean, so why don't you put your question.

MR. TRAUTMAN: All right.

BY MR. TRAUTMAN:

Q. You are employed by Dex Holdings or Dex Media East?

A. I think I'm employed by Dex Media East and on the closing of the western portion would be employed by Dex Media West. I don't know of any employees who are employed by that legal entity of Dex Holdings at this point.

Q. At the closing, who will you be employed by, at the closing of Dex Media West?

A. My understanding is I will be employed by Dex Media West.

Q. And not by --

A. And Dex Media East, and both of those entities are owned by Dex Holdings.

Q. Now given that, what return on equity would the two entities together, Dex Media East and Dex Media West, currently project?

MR. HARLOW: Before the witness answers, Your Honor, if he has a number in mind, we would like that to be maintained as confidential. Maybe he doesn't, but.

JUDGE MOSS: You mentioned before that perhaps this could be handled as a records requisition, Mr. Trautman. Maybe that would be the easiest way to do this is we'll just make this question a records requisition. We can have it provided on a confidential or highly confidential basis as appropriate, and then we could perhaps move along.

MR. TRAUTMAN: Can we have both of the questions in terms of we had one question of what return on equity does Dex Holdings currently project over the next three to five years?

MR. HARLOW: Your Honor, we would object to that. The question needs to be limited to Dex Media East at this point, since that's the witness's capacity. The question to Dex Holdings should have been asked of Mr. Kennard when he was available.

JUDGE MOSS: Well, we could always recall

him, I suppose.
MR. HARLOW: It sort of was, and he answered. Well, he might be happy to return. But we just made this important distinction between Dex Holdings and the witness's employers, employer and prospective employer, and now we're going back to the same problem.
BY MR. TRAUTMAN:
Q. Who is in charge of Dex Holdings right now?
A. It's my understanding that Welsh Carson and Carlyle as represented by their managing partners are Jim Atwood at Carlyle and Tony de Nicola of Welsh Carson Anderson and Stowe. They're the co-chairmen of the company, and I understand they're in control of Dex Holdings.
Q. Did you not indicate you were one of the shared employees between --
A. Between --
Q. -- Rodney and Dexter?
A. What I think I said, I hope I said this correctly, was that I'm a shared employee between working for Qwest, which runs Qwest Dex, which is the western states, seven states, and Dex Media East, which runs the eastern states, and that -- and I work for Welsh Carson and Carlyle in that capacity.
JUDGE MOSS: Lest we lose the point, we're

trying to work on this records requisition here. And while we do have, you know, a particular witness on the stand at a particular time, a records requisition is to a party. It's just like a data request, only it comes up during the course of the proceeding. And so I would expect the answer to be furnished by the person best able to furnish the response, assuming the question is otherwise allowed. And so I don't think we're going to let this turn on witness availability nor need to recall Mr. Kennard.

So the one question as I understand it is what Dex Holdings projects over the next three to five years as a return on equity, and that answer can be furnished by Mr. Kennard or somebody else that represents Dex Holdings or that works for Dex Holdings. And then the other question is the combined companies?

MR. TRAUTMAN: The same question over the next 15 years rather than 3 to 5 years.

JUDGE MOSS: And you're interested at the level of Dex Holdings?

MR. TRAUTMAN: Correct.

JUDGE MOSS: Which is the parent company of Media East and Media West.

MR. TRAUTMAN: Yes.

MR. HARLOW: And if I may clarify, is that assuming that Rodney closes?

MR. TRAUTMAN: Yes.

MR. HARLOW: With the caveat since we don't have the witness here that the response may be that we don't have such projections, but we'll take it back to Dex Holdings.

JUDGE MOSS: All right, and I'm going to just reserve, I will go ahead and reserve numbers 3 and 4 since those will be separate answers, I suppose.

MR. HARLOW: Records Requisition 3 and 4?

JUDGE MOSS: We'll call them Records Requisition 3 and 4, right. I'm sorry, that would be Records Requisition 2 and 3.

All right, now maybe we can wrap up. Did you have some more questions?

MR. TRAUTMAN: No, that's all the questions I have, thank you.

JUDGE MOSS: All right, do we have questions from the Bench for this witness?

(Discussion on the Bench.)

JUDGE MOSS: I think the Bench's preference at this point would be to take a brief recess, so 15 minutes, we'll be back at 20 before the hour by the wall clock.

(Recess taken.)

JUDGE MOSS: I think we are ready for some questions from the Bench, Mr. Burnett.

CHAIRWOMAN SHOWALTER: Thank you.

E X A M I N A T I O N

BY CHAIRWOMAN SHOWALTER:

Q. Mr. Burnett, I would just like to get a better sense of the physical operation of Dex as it operates now and how it would operate after the sale. First, how long have you been with -- what is the right term here?

A. I really started with Qwest in August of 2000 and took the leadership of the Dex organization, which continues in a sense despite this deal structure uninterrupted from an operating perspective in February of '01. That puts my tenure at about two and a half years now.

Q. All right, so is it fair to say in colloquial terms you're the head of the Yellow Pages operation for Qwest?

A. That's exactly right.

Q. All right. And prior to the proposed sale, were all 3,000 employees, roughly 3,000 --

A. Right.

Q. -- under a single entity?

A. That's correct. You know, directory operations are really different than telco operations, and so therefore it's really always been run, I mean before my time, it's always been run really as a separate operating company.

Q. All right. And are the employees assigned to separate states, maybe one employee to a single state or a couple of states?

A. It would really -- it would really depend on department.

Q. I was thinking of advertising.

A. Well, if you don't mind, let me say functional group. If you're a salesperson, you certainly are assigned to a specific market, although you might work several markets during the year. Generally those would be in one state.

Q. And are markets typically divided? Would Washington be a market, or would the Seattle area and maybe the Vancouver area or Spokane area be a separate market?

A. The markets would really be defined really by the economic trading area, so they would tend to be more of your former. They would be Seattle, Tacoma, Spokane, those would be markets where we would have sales offices. If you're in operations, you're probably --

you may be located in a state, but you're probably handling work that might go well beyond the state boundaries. It's not a state specific operation. If you're doing credit and collections, for example, you might do that -- you might be sitting in Portland or you might be sitting in Omaha, but you may do that for a variety of states. Same thing with our artists, our artists who are located in many of our markets both do local work, you are an artist in Seattle doing work for Seattle advertisers, but you may well get a job electronically in from a very different state and do that work to even out your work flow.

Q. And what about common costs or common functions, maybe payroll.

A. Right.

Q. Other things, what proportion of the business are those common functions either in terms of expenses or number of employees by some measure that you could give?

A. It would be easier for me to do number of employees. Common functions would be things like finance, HR, marketing, certain collection functions and operations functions. If you included operations, it would be approximately 40% of the business if you included operations. If you did not include operations, which is about 900 of our 3,000 employees, and they operate for all the directories irrespective of where they're physically located, those kind of HR, marketing, finance functions which you alluded to, would be probably about 20% of our business, 20% of the employee base.

Q. All right. Without operations, the common functions are about 20% of your employee base; is that --

A. That's a guesstimate, but that feels about right.

Q. And with operations it's about 40%?

A. Correct.

Q. And, I'm sorry, what is involved in operations?

A. Operations would be the folks who physically do things like get the book published in the sense of they enter the orders, they run the commissioning system for our sales people, they -- operations people are people who -- the artists who create the ads themselves and then do the physical compilation of the book, which is sent to the printer to end up in the physical product which you have seen.

Q. And then for the other 60%, generally speaking, those employees do that?

A. They would tend to -- the other 60% would really be involved primarily in sales or sales support, people who physically have the relationship with the customer, call on the customer, and generate the orders.

Q. Now getting to the proposed sale, you have divided this into east and west, are those common functions that we mentioned, either the 20% or the 40%, being divided now?

A. They really are operating as an integrated entity. I said that one of the purposes or intentions of both buyer and seller in this intervening period was to run the company as seamlessly as possible for our advertisers and for our customers and for our employees. So all those common functions really operate on behalf of the entire company. So in other words, they're producing books in East one day, West another day. We're doing finance for both East and West, marketing for East and West on a daily basis which no real distinction from an operating perspective of whether it's East or West.

We have financially charging people appropriately, because there's two different financial entities and we have a fiduciary responsibility to both entities. But if you asked our operating people, they would say, well, I'm in the business of producing books, and those books, I don't make a distinction every day between whether it's an Omaha book in East or whether it's a Seattle book in West.

Q. All right. And then of the 20% or the 40%, let's say the 40%.

A. Fine.

Q. I'm trying to get some sense of how scalable that is or divisible it could be if the company were actually divided.

A. One of the --

Q. Would you address that question?

A. Yes, I will. One of the arguments that we made, not to you but just between buyer and seller, is that they were not easily divisible and that there were tremendous diseconomies of scale in trying to break up the common functions into smaller geographic units. For example, we argued in a sense -- counsel had asked me earlier, was I asked to opine on certain issues, this was one issue I was asked by both buyer and seller, well, could you break these things up. We said, sure, everything is physically possible, but your finance department to run half is about the same as to run whole.

I mean you're talking out of a finance department of 60 people maybe 4 or 5 difference, because all the functions are the same. And it's not lends itself at this scale to any kind of economy of scale where -- economy of scale. So therefore, finance would be about -- have to be duplicated. Marketing to a large extent would have to be duplicated. National sales and direct marketing would have to be duplicated. And our operations we did not think would -- we thought, this is that other 20%, up to 40 -- we thought again was not easily divisible, because the systems, the physical systems and the people who run those systems, really doesn't change how many books they do. Their throughput is about the same. So you would see some not duplication, but it would be reasonably close.

Q. So then by the same token, if you were to contract with another company or another state, and I take it you do contract with other local exchange companies for books, it does not add 40% more cost proportionately for the common costs, but your 60% --

A. Right.

Q. -- segment would probably be almost totally non-scalable?

A. I think that is accurate. If you were going to go into a new geography, you know, all your local on the ground sales things would be new. Those can't be replicated from any other location. A number of your common functions could extend, and I don't know exactly what -- depends how much geography you add, but I don't know -- those things could expand to handle in a sense more books.

Q. And if I'm asking for a confidential number, just stop, don't answer the question. But what is approximately the total expenses for Dex right now? And if that's confidential, let me know.

MR. ROSELLI: You mean, I'm sorry, Chairwoman Showalter, do you mean the current Dex operations?

CHAIRWOMAN SHOWALTER: Yes.

MR. ROSELLI: If I might have just a moment.

Yes, we do deem it confidential.

CHAIRWOMAN SHOWALTER: I will just withdraw the question, but it may very well be that there's a place in the testimony where you can just point me to that figure later, and anyone can do so at a break or a later time.

BY CHAIRWOMAN SHOWALTER:

Q. I wanted to ask you about the transition process of brands. Did you help facilitate a transition from the U S West Dex era to the Qwest Dex era?

A. I actually did in a different capacity as Chief Marketing Officer of Qwest.

Q. And at the outset of the merger, was the term for Yellow Page books a combination of U S West and Dex?

A. That's correct, what was on the books was U S West Dex.

Q. And if you look at a Yellow Page book today, is it Qwest Dex?

A. That's correct, and a what we would call in branding terms a combined brand. Qwest Dex has one, in a sense is one word.

Q. And how long did it take to make that transition?

A. Well, because we publish on a continuous basis across our 14 states, we publish in a sense a little bit more than one book every day. We have about -- every business day we do about 269 directories throughout the 14 states. It takes, you know, with planning things, it probably takes about 18 months.

Q. In the case of that transition, did the very next book drop U S West and add Dex, I mean add Qwest?

A. That would be a -- that would be a choice that you could make. And, in fact, that's in a sense what happens. You decide to make the conversion, and you convert it with whatever book you can -- you decide is the right thing, particularly in communicating with your customers and employees, and then you start the process through books that are subsequent in terms of production.

Q. Well, I guess the last question I have is where do the names Rodney and Dexter come from? That's sort of the first question that pops into your mind as I starting reading.

A. I think -- they were named by the bankers as a -- during a long and protracted negotiation between buyer and seller.

Q. So is it a mystery as to --

A. No, Dex -- do you want the origin?

Q. Yes.

A. I actually don't like those terms, because I think, you know, for our employees it's East or West as opposed to these rather cutesy names. But to satisfy your curiosity on this issue, I think because it was Dex was being sold and it was seven states, it was half, it was kind of the diminutive term of Dex or Dexter. And then Rodney stands for rest of Dex. And then it had to be equally cute, so, you know, it's the way things are born, and Dexter and Rodney were born, and I can't wait until the transaction is over and those go away and we're back to one company.

CHAIRWOMAN SHOWALTER: All right, thank you, I have no further questions.

E X A M I N A T I O N

BY COMMISSIONER HEMSTAD:

Q. On the issue of common costs or shared employees, what is the relationship between Dex as it has been operating and either the utility, Qwest Corporation, or the parent, Qwest International; what kind of common costs are there, if any?

A. There are the common costs are really in the area of what we -- what we have now is transition services are really the common corporate functions. So they would be things like if you are on the Qwest side what we receive from the corporation in the West would be finance, HR, IT would be the three big departments. There would be smaller ones like real estate. There would be some subfinancial functions like treasury or procurement.

Q. And during the transition period, Qwest Corporation or Qwest International will continue to provide those services; is that the point?

A. That's correct, they continue to provide them for what I believe is 18 months past the close of Dexter. And what we are doing on East is we are building up our own capabilities and slowly transitioning off the capabilities of Qwest into a stand alone environment. And in some cases where we have done that prior to the close of West, we are then providing those new services back to West for a fee.

Q. Pursuing the issue of the branding and the trademarks, after a five year period the arrangement is, as I understand it, that the new Dex will no longer use the term Qwest; is that right?

A. No, sir, that is not entirely correct.

Q. Okay.

A. After five years we are not allowed to use this combined mark, Qwest Dex, so therefore we have to break them apart. We will own the Dex mark. Dex is well known in the 14 states, and therefore the book would become labeled Dex. I think it would -- it would be our intent today to continue to use Qwest under the designation of the official publisher of Qwest or in a sense the local exchange carrier, because people want you associated with the local exchange carrier. And so therefore we would find a space on the book appropriate to Qwest's brand guidelines in order to make that designation. So it would be like, if you will, Nike or Reboc, the official sports shoe of the Olympics, we would have that type of relationship.

Q. So is it a fair assumption that for the next 40 years it would be the intention to continue to use the phrases or the terms Qwest and the official directory of Qwest in your cover or your advertising?

A. Yes, sir, that would be, you know, sitting here today, that would be the intent. And I think just for one point of clarification, I think it would be Dex, the official publisher of the local exchange carrier, and I think that is the publishing agreement would be for 50 years.

Q. So, Mr. Kennard responded to this in his comments yesterday, so is there any real significance to the splitting of the operating term now and Qwest Dex into on the one hand just saying Dex and below that Qwest? I don't quite understand what the strategy is here.

A. It is my understanding, and frankly I would have to defer you more to intellectual property counsel, but that there was a concern between buyer and seller that if Qwest were to give Dex or whatever this entity is the 50 year right to that couplet, there may be some diminution of Qwest's ownership of Qwest. So there was no formal strategy other than to make sure that Qwest had full ownership of Qwest, which it obviously has a desire to have, you just had to break that couplet up.

Our -- the intent of the buyer it seemed to me was that we want to be associated as the official publisher, and we can do that without having them in a sense in one word, and Dex is a well known brand, which we, in a sense, which they purchased, and that would be the name of the book. So no formal strategy, I think it was something done as a matter of practicality to satisfy Qwest and the buyers' intellectual property needs.

Q. So that the overall general strategy is to continue the branding of Qwest and Dex going forward?

A. Yes, sir, that is correct.

COMMISSIONER HEMSTAD: That's all I have, thank you.

E X A M I N A T I O N

BY COMMISSIONER OSHIE:

Q. Mr. Burnett, there is your exhibit, I guess it's GAB-2, which is I think it might have been attached to your direct testimony, you list your work experience, and in the body of the initial paragraph there are, there exists the sentence:

Developed and currently implementing a
five year strategic growth plan
projected to produce significant
incremental shared owner value.

I'm assuming that you produced the document entitled George Burnett and work experience?

A. Yes, that's correct.

Q. And what do you mean by a five year strategic growth plan?

A. We had identified prior to frankly any consideration of the sale of Dex some modeling and projections of things we could do to continue to grow the business, which has had an enviable track record of growth since the divestiture.

Q. How do you mean by growth? I mean how do you define growth? Is it growth of revenues, growth of --

A. We were defining growth in revenue.

Q. And growth in revenue would also, it would include growth in subscribers or individuals that are delivered, if you will, the directory?

A. In an ideal world, those would have been ancillary effects of a growth plan and revenue. But the situation that the business was in in 2000 and which raised frankly, you know, some -- considerable issues of risk with the buyers, was that the business had been losing usage in its print books over many, many years. I could say five, because I know that's true, but it may even be longer than that. And losing subscribers in the sense of advertisers. It always had in a sense universal distribution as part of its publishing agreement and it's a good value to proposition to customers.

So what we were talking about in this plan was we have seen growth, in a sense rates of top line revenue growth deteriorating since the, you know, late '90's, and we were saying, okay, what could we do strategically to get the business to in a sense either flatten out that decline and continue to be in positive growth territory going forward.

Q. And that would include increasing advertiser rates?

A. Actually, no, that was not one of the primary notions of the plan. Because what we have seen in the marketplace was that the elasticity of demand for our services, people were becoming more elastic, and I will have to defer to the economists in the room, but basically they were less and less willing to absorb price increases, and so therefore our pricing power was becoming less, and therefore you could not just grow revenue by simply pricing.

What were other things you could do, and what we came up with was a plan with various planks and various degrees of operational risks and outcomes for things like innovating our product line, White Pages, Hispanic directories, new things on the covers. Like we just put a magnet on the Seattle book, things like that in the product area. How to increase the productivity of our sales force, how to manage better our national business, and how to improve our infrastructure to make it more efficient for us to produce.

Q. How much growth did your five year strategic plan project?

A. We had three different levels of projection.

MR. ROSELLI: I'm going to indicate that we might be getting into an area that could be deemed confidential or proprietary here.

JUDGE MOSS: Well, we need to know.

MR. ROSELLI: Well, we are, because that was a document that I think was produced in response to a data request and was marked as confidential.

JUDGE MOSS: Do we have that in our record anywhere?

MR. ROSELLI: I don't believe it's in the record, no.

JUDGE MOSS: Would you like to have that furnished as a Bench request response?

COMMISSIONER OSHIE: Yes, please.

JUDGE MOSS: All right, we will make that a Bench request. That will be the first Bench request.

MR. ROSELLI: Thank you.

COMMISSIONER OSHIE: And perhaps this might be the second Bench request is the expected rate of return from operations over the five year strategic growth plan period.

JUDGE MOSS: Confidential?

MR. ROSELLI: Confidential, yes, I'm sorry.

JUDGE MOSS: All right, we will ask that that be a second Bench request.

BY COMMISSIONER OSHIE:

Q. I know, Mr. Burnett, that you testified that you weren't intimately familiar, I don't think that those were your words but they're my words, intimately familiar with the contract between what I will just refer to as Dex Holdings and QC. But there is a term in there I thought you might be able to shed some light on for me at least, and that is under Section 3.13, the parties use the term, any additional legal requirement, and they explain that to be a material regulatory change. And from your perspective as the CEO of Dex as it currently exists, what is, at least in your mind, what would be a material regulatory change that would cause concern, if you will, for you?

A. Well, it, you know, again I don't -- I will speculate here a little bit, but it seems to me that it would be Qwest still has a regulatory obligation to publish, therefore it has a relationship with commissions about, you know, the specifications of that publishing. And there could be, you know, there could be requirements by the Commission to do X, and I can't even speculate what X would be, and if we're fulfilling that obligation, then there would be associated operational and costs and other considerations associated with fulfilling what you have asked Qwest to do, and we're in a sense the prime contractor of fulfilling that.

Q. Well, let me ask, maybe I can use this fact situation as a hypothetical. If you were required as the new Dex Holdings West to provide Hispanic language directories in areas in which the population of that particular exchange were over 50% Hispanic, would that be a material regulatory change?

A. Yes, I believe it -- I believe it would be. It also is probably something that we would actually -- it would be very positive for us to do, so it would be significant in the sense that it would be new and different. It wouldn't be significant in the sense that it would be onerous.

Q. Another hypothetical, if we, if the Commission required Dex Holdings West to provide more than one White Page directory annually, would that be a material regulatory change?

A. I suspect it would, because it would -- it would require a substantial incremental cost associated with producing incremental books and distributing them, yes.

COMMISSIONER OSHIE: I don't have any further questions, thank you.

E X A M I N A T I O N

BY CHAIRWOMAN SHOWALTER:

Q. I have a couple of follow-up questions, one to Commissioner Hemstad's questions. I realize I might not have understood even what I was asking in my questions. That is, of the 3,000 employees that you have, how many of them perform the first 20% of your common costs as distinct from the next 20%, which was operations?

A. How many people?

Q. Yeah, how many -- well, when I was asking you those questions, I assumed that the 3,000 employees did everything 100%. Then when I heard your answer to Commissioner Hemstad's questions, I got the impression that it was not Dex employees, it was Qwest, in one of the other endings of Qwest, employees that were performing those functions.

A. No --

Q. Maybe you could just clarify it for me.

A. Yes, please, I don't think so. I mean Qwest really runs -- Dex really runs as a kind of whole unit, very separate from a systems and people standpoint. I think I was trying to say to the Commissioner that, you know, Qwest has the regulatory obligation, so it is the one who would face the Commissions in terms of what would be required to fulfill its directory obligations. And then we're the prime contractor to that, so that if a commission were to ask something of Qwest, obviously that's going to come back to us to be able to fulfill it, and that would meet the criteria.

Q. Well, I --

A. We would have to -- we would be the people having to fulfill that.

Q. Okay, that wasn't my question.

A. I'm sorry.

Q. Let's take the human resources function.

A. Okay.

Q. Right now or let's say a year ago.

A. Yeah.

Q. Employees of whom performed that function?

A. Qwest employees performed that function and provided them to the Dex division, and the Dex division paid Qwest for those services.

Q. All right. Then I am correct that, I have been corrected in my thinking that the 3,000 employees that you have do not perform directly all of those functions that I was going through.

A. That is -- that is correct with the understanding that we're now in transition, for example, today. A year ago that was correct, and a year from now it will be holistically correct. Right now I do have probably 15 people in my HR department, and we're doing about half of the service, half of the services come from Qwest HR people, and half are being generated internally, and then the costs internally are being distributed East and West.

Q. All right, so again, of the original employee base of Dex, are virtually all of them going to be transferred with the sale of the business, first of all?

A. Yes.

Q. All right. But am I right that that does not include --

A. Common functions.

Q. -- those common functions, and is it the first 20% common functions or the next 20%, which was that operations question?

A. It's -- let me see if I can clarify it, and I'm going to have to drill down a little bit to do it, because the answer is really depending on department. So if you go -- in that 20% includes things where we are hiring new and our employment is going up, because in a sense we have to replicate an HR function, we're not taking Qwest people. So in the HR example, our employment goes up. You know, in marketing we actually had those -- that was a common function which we had entirely in house. That's simply being transferred in a sense from Qwest to the new entity, and those people come intact, but they always worked for Dex.

Q. All right. So the new functions that Dex will have to develop either in the transition or afterwards primarily include that first 20% of functions?

A. Part of that first 20%, and the main ones that we have to rebuild are HR and finance. IT because so many people -- our systems are separate than a lot of the telco systems, the IT department of about 200 people came over from West from East on the first close.

Q. All right. Commissioner Oshie also asked you some questions about your five year plan, and you can keep your answers on a qualitative level. Is your five year plan different with or without the sale?

A. I think at a strategic level, the basic points of the strategy, which is innovate your product line, expand the productivity of your sales force, improve your infrastructure, it is not different. And, in fact, we presented to all those numerous buyers who bid for this business, we presented our thinking about how to grow this business going forward and very particularly talked about the different risks of accomplishment of different levels. I believe the implementation of that plan actually accelerates under the new owners, because they are more focused on this business and have more interest in in a sense investing in the business going forward than when we were a division of Qwest.

Q. So if you compare your business staying within Qwest versus being sold, do you see more value being generated if the business is sold?

A. I think the -- I think the advertiser and the consumer will get a better product sooner.

Q. I didn't really mean that qualitative. I meant more in terms of the revenues or profitability of Dex itself. Do you feel that it itself will be more profitable, for lack of a better term, if it's sold than if it is not sold?

A. Actually, the business is probably less profitable if it's sold.

Q. And why is that?

A. Because you have to run a stand alone company. So in a sense from a straight margin perspective, it's probably less profitable if it's sold, but the quality -- but I come back to you asked me about implementing the strategy, and the strategy is really about better products and services, and that probably happens more quickly and at a higher rate of development under new ownership.

Q. But then what I heard your answer is, if it's not sold, it would be at least in the short term more profitable?

A. That's correct.

CHAIRWOMAN SHOWALTER: Thank you.

JUDGE MOSS: Before we turn to Mr. Roselli for any redirect, I will ask Mr. Trautman if there's anything the Bench prompted that you wanted to follow up on so that Mr. Roselli will have a full opportunity on redirect.

MR. TRAUTMAN: We did have -- we had one question.

R E C R O S S - E X A M I N A T I O N

BY MR. TRAUTMAN:

Q. I believe you indicated that Qwest would be transferring about 200 employees in IT and HR to Dex.

A. No, I mentioned that in IT.

Q. In IT.

A. Not in HR.

Q. Okay. Will Qwest need to replace any of the employees that are being transferred --

A. No.

Q. -- to Dex?

A. My understanding is they will not, because these people were dedicated to the, I'm sorry to stumble there, they're dedicated to the Dex systems, and, you know, those systems are also being transferred.

Q. Are the Qwest systems and the Dex systems integrated in any significant way?

A. No, they are not, because the Dex systems are really around the publishing of directories. And what I'm talking about is the production systems are really around the production of directories, which is not a, in a sense, a networked telco function. They're separate, they come over, the people who are knowledgeable and dedicated to those systems are coming with them or, in fact, came with them on the close of East.

MR. TRAUTMAN: Thank you.

JUDGE MOSS: Mr. Roselli?

MR. ROSELLI: Yes, thank you.

R E D I R E C T   E X A M I N A T I O N

BY MR. ROSELLI:

Q. You were asked by Commissioner Oshie about this five year plan which we are going to provide as Bench Request Number 1. Would you characterize that as a projection, a growth plan, or something else?

A. I mean I think it -- I would characterize it as some modeling and some projections at various levels of growth with various plans, underpinning them with differing risk factors, risk rates associated with those at different levels.

Q. And without getting into any of the specifics obviously because the Bench will be reviewing this document, does the document anticipate for the various scenarios some levels of investment and investment risk?

A. Yes, obviously with the higher, more speculative investments being, you know, kind of additive to higher rates of potential growth.

Q. Does the document represent where you think Dex will be in five years?

A. No, not specifically. This was a -- this was a model that we had presented, and I will give you one, in a sense, specific, that the under, you know, the economy of these -- when these projections were done almost two years ago looked a lot rosier than it does today. And so therefore, you know, the underlying growth assumptions in the business and our ability to price in the business I think are -- have substantially eroded from what they were 24 months ago. So almost on its face, the value of this modeling is not to definitively determine exactly where you're going to be, because frankly nobody knows.

It would be like can you definitively model where the DOW is going to be five years from now, no, you can't. But you can determine and model the choices that you can make strategically, you can assess RIFs, and you can, you know, kind of see -- you can kind of use that as a testing ground for programs that you would put into the marketplace.

Q. Thank you. In a related vein, does this plan contain any guarantees or assurances of particular growth rates; would you characterize it in that fashion?

A. No, in fact, very much the opposite. I think that when these were shared with the buyers associated with the offering memorandums, there was explicit language associated with the fact that there were no representations this is going to -- I mean on its face if I could guarantee something five years from now, I would probably take up a different line of work. But that having been said, I mean there were explicit representations that you could not -- that these were not definitive, nor could you count on them, that there were varying degrees of risk associated with different programs. I mean we can bring a new ad size to a White Pages, that's very different than putting a voice based product in the marketplace, fundamentally different in terms of capital, in terms of risk, in terms of potential return.

Q. Thank you. Chairwoman Showalter asked you some questions about divisibility, scalability of the Dex operations in relationship to this transaction. I want you to assume with me hypothetically that the second phase of the sale, Rodney or Dex West, closes but closes without Washington, that Washington is not part of that transaction. And assume that you with your operational expertise were brought in to assist QC in figuring out how QC would get its publishing obligations fulfilled and have its directories published. What kind of issues do you see that you would face in making that determination?

A. You give me a fun job, okay. First thing is I have to understand the situation that I'm in, and that is that on average in the state of Washington we produce a directory every 15 days, because we do about 26 directories, 28 directories here. So I've got to understand that the Commission is going to hold me to a regulatory obligation that comes up every couple of weeks, so I've got a certain amount of urgency to fulfill that obligation.

I've got to look at both in-house development as well as outsourcing options for myself. Let me just tick through some of those. In house I basically have to hire and reconstitute depending on what's left in Washington particularly all of the systems and operations folks and common functions. I may or may not have the sales people depending on how the sale gets disposed.

So the building option seems to have two characteristics. One is to be very time and labor intensive and difficult to do given the regulatory obligation to publish right along, which, you know, I don't know the specifics, but I would say that would be very much on my mind. And then second, because of diseconomies of scale, I've got to be concerned about the economics, whether it's a very profitable business or not.

I also have to be concerned about the guys I just left, Dex, whether they're going to be a competitor of mine or not. And if they're a competitor, then that's kind of chunking up the former market into a couple of pieces of unknown proportion, which is probably going to lower the profitability of the new entity.

I also have to look at outsourcing options, and let me just tick through some of those, you know, kind of off the top of my head. I could look to Verizon because they're in this state. The question on my mind there is, or more interpreting for the Commission, is that's going to be really taking a major competitor out of the market, because they're now going to have themselves, they compete with us in several markets, and now they're going to now have, in a sense, my new territory, and the question is how are they going to deal with those competitive issues where we have been competing head to head. Now they're going to have to, you know, are they going to advantage or disadvantage me in the wholesale agreement that I have with them now to publish the directories when they also have a retail directory in the same marketplace. In fact, Washington has the characteristic of probably having the most competitive market in our 14 states because of the very strong presence of Verizon as the, in a sense, local exchange carrier under the former GTE territories.

I can look at Transwestern, which is another major competitor. The issue there is similar from a competitive perspective, that I'm now taking a competitor out of the market, meaning me, because I'm now having Transwestern do both, and I have the question of where we compete how are they going to separate, put the Chinese wall between what they do at retail and what they do at wholesale. And then, of course, Transwestern is non-unionized, and I come from a union culture and environment, and I've got substantial union questions about how let's say the people who were left like unionized sales employees would operate and would they get union support in a Transwestern environment.

And then finally I guess I would have to look at the other regional Bell operating companies. Remember, as the Commission well knows, you know, Washington is a very large state with lots of capacity needed to use, so the people who can do this kind of job are probably people like BellSouth or SBC. And then the question there is, how fast can they ramp up and logistically operate 26 directories, $300 Million in revenue. I think we have something like 7, don't quote me on this please, but 75,000 customer relationships with advertisers, how well can they ramp up in a noncontiguous geography.

And, of course, all the while I've got my former employer, Dex Media East, constituting an ability to enter the market and take their systems, whatever people they have left, and all the relationships they have prior and obviously compete against me.

Q. You may already be quoted on it, I hate to tell you.

I have a follow-up question. You mentioned some companies, BellSouth, SBC, Transwestern, Verizon, have any of those companies published directories for QC in the last 20 years?

A. No.

Q. Has any company other than Dex published directories on behalf of QC in the last 20 years?

A. Not to my knowledge.

Q. Okay, thank you. You were also asked some questions by Mr. Trautman and also by Commissioner Oshie with regard to the branding and the license agreements. You were asked specifically about the publishing agreement and the non-competition agreement. I want you to put your buyer's hat on for a moment.

A. Okay.

Q. And you're now in a capacity representing the buyer and the new company. Do those agreements add value from the buyer's perspective? Is this a better deal given that buyer has those agreements in place with QC?

A. Publishing and non-compete?
Q. And the branding and the license agreements.
A. Yes, they absolutely add value to the deal.
Q. Is that the entirety of the value from the buyer's perspective?
A. No, not in my judgment.
Q. And why not?
A. Because there is substantial value associated with systems, with people, and their relationships. In other words, if you took those things away and you had all the other operating parts of the company, you still have a relationship irrespective of brand that you probably had -- our average customer relation between our employees and our customers is over ten years. So you still have those employee relationships, you have all the publishing systems, you have all the intellectual property and history of an employee body, and those are of substantial, you know, substantial value too. So the idea that the official designation things is all the value is would be a nonstarter from my perspective.
MR. ROSELLI: Thank you, I have no further questions.

E X A M I N A T I O N

BY CHAIRWOMAN SHOWALTER:

Q. I have a follow up to this scenario if Washington were left out of the sale. If you now put on your hat as head of the new Dex operation that was sold, what would it take for your new operation to compete with or to compete in Washington?

A. Right.

Q. And how would you go about that?

A. Well, I have all -- now if I'm on the other side of the fence, I have all the physical capabilities to compete from day one. And so the calculous that I would probably do is, do I want to try to compete and bid for the Washington business in a sense on a supplier basis, be one of those bidders, or do I want to go in as an independent now and use my Dex name which is well known. I have all of the physical capabilities to do it.

It seems to me I don't know -- I don't know in this scenario whether, you know, to what extent I have the sales employees, and I don't know to what extent I have a non-solicit. But to the extent I have a non-solicit, I would try to take those employees. To the extent that I -- I don't -- I need to reconstitute my sales force, but I have every other capability.

And I have to do a financial calculation, which I have not done in any way, shape, or form, to is it better to enter as an independent in this market and take my share with all of the advantages I have in a contiguous market, or do I want to bid versus other bidders, of which I think there are very few by the way that are legitimate, to handle Qwest operations for Qwest.

Q. And in the case of being an outright competitor as opposed to one of the bidders, you would not be able to use the Qwest name?

A. No, I would not. But I would be an independent. I would, in a sense, I would grow from zero revenue, so I would have a, you know, so the attractiveness of that is, you know, I don't have the Qwest business, but I've got lots of leg up, it's a contiguous market. And we have seen, for example, in Nebraska where we have gone from Omaha to Lincoln where Alltel is the big local exchange carrier that we have been able to very effectively move into contiguous markets. That I could actually add to my growth rate and my business by growing in a big market like Washington from zero now, because I don't own it, with lots of leg up in terms of having systems people, knowledge of the market, and relationships.

CHAIRWOMAN SHOWALTER: Thank you.

JUDGE MOSS: All right, does this complete our examination of Mr. Burnett then?

MR. TRAUTMAN: We have one or two follow ups.

R E C R O S S - E X A M I N A T I O N

BY MR. TRAUTMAN:

Q. First of all kind of following up, in your capacity as the CEO of Dex assuming Washington was not part of the sale, would Dex be willing to enter into a publishing agreement with Qwest Washington to publish the Qwest Washington directories on an outsourcing basis?

A. You're asking me to speculate, because frankly that would be determined by the buyer. And I think in -- I would answer it the same way I answered Commissioner Showalter's or Chairwoman Showalter's question, which is I think that becomes a financial calcu -- would we be willing to? We would be willing to entertain it, but it would not be a forgone conclusion, because there's another very legitimate economic alternative.

Q. If the sale is not approved in this state, on what basis could you use the Dex name in Washington?

A. It's my understanding that as part of the transaction we own the Dex name, and we would be able to use it -- it is my understanding we would be able to use it in Washington.

Q. If the Rodney deal were not approved at all, would they be able to use the Dex name in any of the Rodney states?

MR. ROSELLI: I'm going to object again, that does call for a legal conclusion and interpretation of the branding and license agreements.

JUDGE MOSS: I think we are getting into the area of legal interpretation, Mr. Trautman.

MR. TRAUTMAN: Well, I'm just asking to the extent he knows.

JUDGE MOSS: To the extent he knows as a non-legal professional.

A. I do not have -- I do not know what the answer to that question would be.

BY MR. TRAUTMAN:

Q. Well, did your response to the Chairwoman assume that you would be able to use the Dex name in Washington?

A. When I answered the question, it did assume that. But I would not assume that if we were not able to through some formal determination that that would -- that would change the calculus, but it would not eliminate the option in any way, because we would still have all the other assets.

JUDGE MOSS: All right, then, that does appear to conclude our questioning of Mr. Burnett, and I will go ahead and thank you very much for your testimony and let you step down at this time.

While he's doing that, I will just remind the parties that we need to economize our questions to the extent possible. We had one half hour designated for this witness, and we have had him on the stand for two hours. So if we follow that trend, we will be here a very long time, so we don't want to do that. We don't want to have hearings that run late into the evening and that sort of thing if we can avoid it. So please do try to be crisp in your questioning and precise.

CHAIRWOMAN SHOWALTER: Are you directing those comments to the Bench?

JUDGE MOSS: I would never dream of doing such a thing. Actually, the Bench was fairly economical in its questioning.

We do need to take advantage of the remaining time, so I will ask you to call your next witness, Ms. Anderl.

MS. ANDERL: Thank you, Your Honor, Qwest calls Ms. Ann Koehler-Christensen.

Whereupon,

ANN KOEHLER-CHRISTENSEN,

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

D I R E C T   E X A M I N A T I O N

BY MS. ANDERL:

Q. Good morning.

A. Good morning.

Q. Would you please state your name and your business address for the record.

A. My name is Ann Koehler-Christensen, and I work for Qwest in Seattle, Washington, 1600 Seventh Avenue.

Q. And, Ms. Koehler-Christensen, you have previously filed rebuttal testimony in this matter; is that correct?

A. Yes, it is.

Q. And in that rebuttal testimony you adopted a part of the pre-filed testimony of Ms. Theresa Jensen; is that also right?

A. Yes, it is.

Q. And you have various exhibits associated with both your testimony and Ms. Jensen's pre-filed direct?

A. Yes.

Q. Do you have those documents before you?

A. Yes, I do.

Q. And those documents have been numbered by the Administrative Law Judge as Exhibits 131, 132, 133C, 134C, and 135C. Do you have any changes or corrections to make to any of that testimony or those exhibits at this time?

A. No, I don't.

Q. If I were to ask you the questions contained in that testimony today, would your answers be the same?

A. Yes, they would.

MS. ANDERL: Thank you. Your Honor, we would offer Exhibits 131 through 135C inclusive.

MR. TRAUTMAN: No objection.

JUDGE MOSS: Okay, there being no objection, then those will be admitted as marked.

MS. ANDERL: And Ms. Koehler-Christensen is available for cross-examination.

JUDGE MOSS: And I will just interject that while I appreciate the crispness with which you are presenting there, I think we did get a little fast there a couple of times, and for the sake of our reporter who is keeping up with all of this remarkably well, I would ask that everyone be mindful of the pace at which they speak so that we don't overtax.

Mr. Trautman.

MR. TRAUTMAN: Thank you.

C R O S S - E X A M I N A T I O N

BY MR. TRAUTMAN:

Q. Good morning, Ms. Koehler-Christensen.

A. Good morning.

Q. I would like to start initially by looking at what was marked as Exhibit 151, and that was a Qwest response to Staff Data Request 49.

A. Okay.

Q. And I'm looking at response number four, and this reads:

Dex strives to publish the listings of all businesses and residences within the scope of their directories irrespective of which local exchange company provides telephone service, because this makes its directories more valuable to directory users.

Do you see that?

A. Yes, I do.

Q. And now wasn't there a time when Dex did not include CLEC customers in its directories?

A. Before there were CLECs obviously. Not to my knowledge was there a time when CLECs existed and Dex chose not to include them. That may have been true of other publishers in other areas of the country, but it is not my understanding that that was the policy at Dex.

Q. Are you -- do you know that for a fact?

A. I can not say with absolute certainty that there was never a moment in time. I do know that at the time CLECs began to provide service in Washington and throughout Qwest territory that we had conversations, and it was Dex's policy at the very beginning of that time that they wanted to include them because it created value. There were various interconnection agreements where the CLECs were anxious to have it documented that Dex must because they had fears that they would not. But Dex's policy always was, to my understanding, that they would and wanted to include the listings.

Q. If you could turn to Exhibit 131, which is your rebuttal testimony, and turn to page 9, and I'm reading lines 9 to 12. And here you say:

The imputation calculation in Docket Number UT-950200 thus erroneously included not just operating revenues associated with publishing directories for U S West Communications, but also

for additional directories and other
local exchange carriers listings.
Do you see that?
A. Yes, I do.
Q. And when was the first time that you brought this error to the attention of the Commission in any formal filing?
A. I think I pretty much described that in my testimony, that it wasn't really looked at in either this docket, 950200, because that wasn't the focus of Qwest's testimony at that time. And then the subsequent docket was simply what was considered a make whole case, and it wasn't addressed at all. There was no filed testimony.
So the first time that I'm aware that we made it known was actually when I assumed additionally in addition to my responsibilities related with Dex some responsibilities associated with filing information in the state of Washington. And at that time, I recognized that the information being included included revenues, financial results from areas outside of the scope of providing directories for the affiliate relationship with Qwest Corporation, so I believe it was in the year 2000 that we did that.
Q. And you formally brought this error to the

attention of the Commission?

A. We filed a report and with a cover letter that fully disclosed what we were doing, yes.

Q. Did Qwest ever petition the Commission to modify any previous decision specifically to correct this error in your words?

A. No, because we were not asking for any retroactive treatment on this, and we were already under a regulatory scenario that effectively froze our rates until a future point in time. So we began filing the corrected information, disclosed that, but felt that there was no regulatory action that needed to be taken until there was a case that would deal with the issue again.

Q. So then the filing that you made did not change the amount of the imputation, correct?

A. It did not change the amount of the embedded imputation, no. It simply changed the amount of -- the requirement was to look at Dex's financials annually and recalculate using the same formula, and we began using only the financials that were related to publishing directories on behalf of Qwest Corporation.

Q. Has the Commission ever issued an order in which it recognized the existence of this error, an order, any correction?

A. This is the first proceeding that this issue has been raised.
Q. And you --
A. Formally.
Q. Excuse me. And you make a distinction here between primary and secondary directories.
A. Yes, I do.
Q. Is that a distinction that would be obvious to the average customer?
A. I really can't speak for the average customer, because I'm not an average customer. I have had too many years experience in this. I can say that the secondary directories are distinctly different than the average Qwest customer would deal with. Secondary, the two secondary directories in Washington, one is published totally outside of the service area where QC provides telephone service, and the other one includes no White Pages and includes only advertising for an area that extends for the greater Puget Sound area well beyond any normal White and Yellow Pages directory. So therefore, I would say that while they may not be able to say, oh, this is a secondary directory, they wouldn't know the terminology of course, but I think they would recognize these directories as something different and other than the normal directories that they're used to

seeing.

Q. Is it possible to provide -- for you to provide the covers of the two secondary directories or provide the two secondary directories I should say to which you refer?

A. I'm sure I can obtain copies of the two secondary directories, yes.

MR. TRAUTMAN: And that will be a record requisition.

MS. ANDERL: Your Honor, I guess I will interpose an objection at this point as to why it's necessary to make this as a record requisition and could not have been made during the past seven months as a data request. I don't mind providing it, it's not objectionable, its relevant, but it does seem as though we're going to be burdening the record with things coming in that certainly could have been asked for a long time ago.

JUDGE MOSS: Well, I would have to say that's not really an objection, that's more of a complaint. And while I appreciate your basis of your complaint, let's just provide it and save time.

MS. ANDERL: That's fine, Your Honor, I guess it is.

JUDGE MOSS: And we have a great big stack of them back there anyway that I'm anticipating somebody is going to dump on the Bench at some point, so let's have two more.

Go ahead with your questions, Mr. Trautman.

MS. ANDERL: May I clarify the record, is he asking just for the cover or for the entire --

JUDGE MOSS: I think it was just the cover.

CHAIRWOMAN SHOWALTER: I think he wanted the whole thing.

MR. TRAUTMAN: The entire directory.

JUDGE MOSS: The entire directory. I actually thought I saw one floating around the room somewhere.

MS. ANDERL: And that's Record Requisition Number 4?

JUDGE MOSS: That's right.

BY MR. TRAUTMAN:

Q. On page 42 of Exhibit Number 131 in your rebuttal.

MS. ANDERL: Excuse me, Your Honor, may I get the page reference?

Q. Page 42.

A. Yes.

Q. And this is where you describe the publishing agreement with the buyer. On lines 15 to 17, you say:

The only difference between Dex's agreements with these other local exchange carriers and Dex's agreement with QC is the length of its term, 50 years.

Do you see that?

A. Yes, I do.

Q. And in response to Staff Data Request Number 50, which has been marked as Exhibit 152, and I should add that the response itself was provided on a CD, and there were several publishing agreements, of which for reference purposes I have printed out the first one that you have put down, and it's Attachment A, Allegiance Telecom; do you have that for reference?

A. And that was the CD was offered under which exhibit?

Q. Exhibit 152.

A. 152, actually, yes, I do have it.

MS. ANDERL: Your Honor, may I?

THE WITNESS: Oh, okay, thank you.

BY MR. TRAUTMAN:

Q. And is this a copy of one of the agreements; do you recognize it?

A. Yes, I do.

Q. Are each of the ten agreements publishing agreements that you provided in response to this request, that being Attachments A through J, are they essentially the same?

A. Yes, it's my understanding that they are essentially the same. I think it's possible that there were one or two that were negotiated and signed prior to 1997. I believe it was Inland Telephone was in 1995. These publishing agreements, the remaining ones, were modelled after the publishing agreement between Dex and QC that was negotiated and signed in 1997. So while there may be a few wording differences depending on what individual carriers wanted in their agreements, the agreements are essentially the same, including the terms of the agreements. In fact, it's my understanding that the CLECs, I'm not familiar with the ILECs that have the publishing agreements, but the CLECs were very concerned that their agreements be essentially the same as the agreement between Dex and QC. So therefore, to answer your question, I would say they are essentially the same, and that makes them essentially the same as the agreement between the buyer and QC as well for the future.

Q. Are you saying that the agreement between, the current agreement between QC and Dex is substantially the same as the agreement between, the proposed publishing agreement between Qwest and Dex Holdings?

A. Yes.

Q. Okay.

A. I think they are structured the same. They have made some changes and actually just rearranged some information. For example, the branding exhibit, there is a paragraph in the current agreement between Dex and QC that has been pulled out and put into the branding exhibit in the one with the buyer.

Q. All right. Now sticking with Exhibit 152, and you're familiar then with Exhibit 77, again which was the publishing agreement between Dex Holdings and Qwest; is that correct?

A. Yes, I am.

Q. Now is it true that in length alone there is a significant difference between Exhibit 152 and Exhibit 77, that being that Exhibit 77 is 34 pages versus 15?

A. Yes, there is a difference in length.

Q. Are there any liquidated damage clauses in the agreements between Allegiance Telecom in Exhibit 152 and Dex?

A. No, and I think the difference here is that with Allegiance, Allegiance -- there wasn't any sale involved. Allegiance was contracting with the publisher. There is in the Allegiance contract language that states that Allegiance can not contract with any other publisher or publish themselves a directory that is at least branded with Allegiance's name in any way. So there was that protection in the Allegiance, but since Allegiance wasn't -- there was no sale involved, and so there is a difference between the agreements because of those differences.

Q. And is there a difference in the agreement in terms of ability to assign the agreement to other parties?

A. I have to say I don't know. I would have to read it more carefully. I don't recall whether there is a difference in -- assign what part of the agreement, I was not clear on that?

Q. Well, comparing -- if you compare page 31 of Exhibit 77, 9.6, although it says no assignment, then there are several conditions that follow. And in comparison in Exhibit 152, Paragraph 10.3 on page 12, it appears to be a much more strict prohibition against assignment.

A. Yes, I will agree there's a difference.

Q. I believe you stated with reference to the branding exhibit that a paragraph from Exhibit 152 had been pulled out and placed in the branding exhibit. Now are you claiming that the paragraph in Exhibit 152 is the same as the entire branding exhibit?

A. I don't believe that I claimed -- I certainly did not intend to claim that the paragraph was pulled out. My intent is to say that in the publishing agreement with Allegiance and with the others as well as with the publishing agreement that exists today with QC and Dex, Qwest Dex, there is a paragraph, and I believe in this example it is Paragraph 3.4, where the LEC grants Dex a nonexclusive, royalty free, worldwide right and license to use the LEC's trade names, trademarks, logos, service marks, and any other words or designs collectively referred to as the LEC's marks in connection with the directories that it publishes on behalf of these, I'm paraphrasing now, on behalf of the local exchange carrier.

What I'm wanting to explain is that in the publishing agreement between Dex Holdings and QC, rather than including this paragraph, and I believe in order to assure the buyer that they have the proper protections, they created instead of this paragraph a branding exhibit, which effectively does the same thing. The Allegiance allows Dex to use their brand, their logos, their trademarks, in association with publishing directories on their behalf, and the branding exhibit between Dex Holdings and QC allows Dex Holdings to use QC's trademarks names in branding the directories they publish on behalf of QC. So it's essentially the same idea. The words are probably different. In fact, they are different, but they provide about the same.

Q.   So your testimony is that this one paragraph, really this branding exhibit is almost unnecessary, I mean to have -- to go to the trouble of having a 13 page attachment?

A.   No, I didn't say that, and I don't mean to imply that. And the paragraph that is in this agreement is not in the agreement between Dex Holdings and QC. So I would submit that it is necessary to have some contractual agreement between QC and Dex Holdings with respect to the use of QC's brands.

Q.   All right. Referring to that branding exhibit, is it correct that the branding exhibit to the publishing agreement includes the right for Dex to use the Qwest name on not just the primary directories but also on the secondary directories and the Internet ventures as well?

A.   You know, I don't have the branding exhibit in front of me, but I do know that it was intended to allow Dex Holdings to brand what is currently branded by Qwest Dex. It does not allow, for example, my understanding is that it does not allow Dex Holdings to create new products or new secondary directories and brand them with Qwest's brand. It only allows them to brand what is already produced today.

Q. And is it also true that the branding exhibit requires that QC should it change its name or sell its service area to a LEC with a different name to secure for Dex the right to use the new service area LEC name on Dex's primary and secondary directories and in its Internet ventures?

A. That is my understanding, yes.

Q. Now is it true, it's true, I believe, is it not, that the publishing agreement between QC and Dex Holdings, and that would be Exhibit 77, guarantees that QC will refer QC customers only to Dex for Yellow Page advertisements?

A. Yes, that's true.

Q. However, in your rebuttal testimony, Exhibit 131, on page 34.

A. Yes.

Q. At line 15, however, you say:

However, it is estimated that less than 1% of QC's business customers are referred to Dex on an annual basis. The number of referrals is so small as to be considered inconsequential.

Do you see that?

A. Yes, I do.

Q. All right. Now if you could turn to what's been marked as Exhibit 156, and this is the Qwest response to Staff Data Request 54.

A. Yes.

Q. And if you could turn to Attachment A of that exhibit.

A. Yes.

Q. It says referral estimates.

A. Yes.

Q. Now this spreadsheet indicates that in 2001 there were an estimated 12,000 customer referrals, correct?

A. Yes, it does, and that is my estimate, and I have recently found that I significantly overestimated the number of referrals.

Q. Have you supplemented the exhibit?

A. No, I haven't. It didn't -- I didn't feel it, while I overestimated the number of referrals, it didn't affect the meaning of my testimony nor the -- nor the less than 1%. It was still less than 1%.

Q. All right. Using the numbers that you have in your exhibit.

A. Okay.
Q. Is this estimate for the entire Qwest Dex region for Rodney only or for Washington?
A. It is for the entire Qwest Corporation region, 14 state region.
Q. And I believe I gave for your reference, I just have one, I believe, one quick reference to make from it, I gave you a copy of Exhibit 243, which has previously been marked for Mr. Kennard, and it was the FAS 141 report.
A. What was the exhibit number again?
Q. 243.
A. Oh, yes, okay.
Q. And I'm looking at page 6 near the bottom of that page. And I believe it indicates there that there are, as of December 31, 2001, there are approximately 206,000 Dex customers in the Dexter area; is that correct?
A. Yes.
Q. Do you know what the corresponding figure would be for the Rodney area?
A. No, I don't.
Q. I believe, now just for purposes of assumption, I believe, well, we know that Dexter in terms of the sales price is $2.75 Billion out of the

total of $7 Billion; is that correct?

A. Yes.

Q. And so it's about 39% doing the math of the sales price?

A. I will accept that subject to check.

Q. So for assumption purposes, if there were 206,000 Dex customers in the Dexter area, there would be approximately 300,000 in the Rodney area, that being a 60 to 40 ratio?

A. I believe that your math is correct.

Q. Right.

A. I am not certain that you can assume that. I think depending on the parts of the country, the states, that the number of businesses can vary. Because I do know that there are large advertisers, small advertisers, so I really couldn't make that conclusion that that would mean that there was that many in the Rodney or the western part of the business. I do not know that answer.

Q. All right. Can we assume for purposes of my question that that approximation is correct, as a hypothetical if you will?

A. As a hypothetical, all right, as a hypothetical.

Q. All right. Assuming 500,000 for the entire area, now remaining with that Exhibit 243, turning to pages 26 to 27, there's the carryover paragraph, and again assuming that there is zero growth in the Dex customer base, all right, the carryover, this paragraph, indicates that Dex had anywhere from an 89% to a 93% renewal rate; is that correct?

A. Yes.

Q. All right. So assuming an 89% renewal rate and zero growth, all right, in order to maintain a steady state of growth, Dex would need to replace 11% of its customers every year, correct?

A. If you say so. I haven't done the math, and I apologize, but I can't do it that quickly up here on the stand to follow the numbers.

Q. I'm taking 100% minus 89%, and I'm saying if 89% renew and 11% leave, you have to replace those 11% to stay at the same level, correct?

A. All right. But I don't know that we're staying at the same level, because I thought I heard Mr. Burnett testify that the number of advertisers were decreasing, not increasing, so I don't know that that's an appropriate assumption. But under a hypothetical, we could accept that.

JUDGE MOSS: Mr. Trautman, we need to take our noon recess, so I'm going to cut you off at this point, and we need an hour and a half at lunch today, so we will ask that people be back at 1:30.

(Luncheon recess taken at 12:05 p.m.)

A F T E R N O O N   S E S S I O N

(1:35 p.m.)

JUDGE MOSS: During the luncheon recess, we had distributed three new exhibits, proposed cross-examination exhibits by Qwest, for witness Folsom, Staff witness Folsom, and those have been numbered as 447 is it looks like a news article I guess with the title Notebook: Enron may use PGE shares, so we'll just identify it by its title. 448 is a copy, an excerpt from the Daily Bankruptcy Review. And 449 is it looks like a part I guess of a 10-K for PGE, is it? Okay, so we have those identified, and we'll get to them in the course.

I have also been informed that parties have been making efforts to shorten their cross-examination. Mr. Butler, for example, has informed me that he and Public Counsel have honed theirs to the finest possible level.

MR. CROMWELL: Zero from zero.

JUDGE MOSS: But in all seriousness, Mr. Trautman informed me that we promise to move things a little more quickly from this point forward, and that's good news.

So with that, I think we can proceed with our cross-examination, Mr. Trautman.

MR. HARLOW: Your Honor.

JUDGE MOSS: Oh, I'm sorry, there was a preliminary matter, Mr. Harlow reminds me. He told me before and I forgot.

MR. HARLOW: Yes, thank you, Your Honor.

Dex Holdings moves for permission to offer oral surrebuttal from Dr. Kalt, who I believe we expect to testify on Friday. And the motion is really two parts. He would like to offer oral surrebuttal to the revised Blackmon pages at the Bench's invitation. That might be an efficient way to handle it. And then particularly for him we didn't feel that written surrebuttal would be feasible given the short time between now and Friday when he's expected to leave the state.

Part two, we wish to offer oral surrebuttal of Dr. Kalt on the settlement testimony filed by Staff for Dr. Selwyn and Dr. Blackmon.

And the grounds for the motion as to the revised pages has already been adequately stated by Qwest, I won't repeat that.

The settlement surrebuttal is a new matter. And just very briefly, Qwest and Dex are the proponents of the settlement along with others, but really it's just a shifting of our recommendation and similar to an extension of the prior recommendations. And as the proponents of the application in this case, I believe Dex, and Qwest can speak for themselves, but also Dex are entitled to have the last word on this matter, and so surrebuttal is appropriate to the settlement testimony filed by Staff.

JUDGE MOSS: Do you have something too, Ms. Anderl?

MS. ANDERL: Yes, Your Honor, we support the motion. We would also like to request leave for oral surrebuttal by Mr. Mabey to the settlement testimony proposed by Dr. Selwyn and Dr. Blackmon. We believe that we could do that on Friday.

We would also request leave to file Mr. Reynolds' written responsive testimony on Monday wherein he's going to respond to the May 14th revisions, that he be permitted as well to respond to the settlement testimony.

JUDGE MOSS: All right, so part of your proposal then would put Mr. Mabey off until Friday?

MS. ANDERL: It looks like that may be when he would be testifying in any event.

JUDGE MOSS: We're going to speed things along Mr. Trautman has told me, so we might get to Mr. Mabey, but would he be ready?

MS. ANDERL: He would be ready to stand cross on his written testimony to date.

JUDGE MOSS: We could perhaps move Cummings up instead.

MS. ANDERL: We could do that.

JUDGE MOSS: All right, fine, well, we have some flexibility there.

We have the motions in mind, do we want to hear argument from Staff?

MR. TRAUTMAN: Well, Your Honor, with regard to any oral surrebuttal on Mr. Blackmon's revisions, those were filed back on May 14th, and any motion for oral surrebuttal could have been made prior to today. We would -- and discovery. We believe that any rebuttal to be fair to Staff should and could be done in writing as had previously been provided, and I do not hear -- I have not heard any reason why oral surrebuttal is necessary in this matter.

JUDGE MOSS: Anybody else want to be heard?

All right.

COMMISSIONER HEMSTAD: Well, I was

anticipating this kind of a motion, and I'm trying to sort out just in a process sense, yes, the filing parties are entitled to the last word. But, of course, this was a settlement that has now been proposed, and Staff has responded to that settlement. What is the process rationale for a response to the response?

MR. HARLOW: The process rationale is that the settlement is really simply an extension of the parties' positions in the case of Qwest and Dex Holdings. They're kind of extending their proposal as to what is fair, just, reasonable, and in the public interest, and the other settling parties are extending theirs downward to where they met, but ultimately it's Qwest and Dex that are still the proponents of approving the sale with conditions, conditions that we must demonstrate to you are in the public interest. I think we bear the burden of proof on the settlement agreement. Is that fair to say?

MS. ANDERL: I would agree with that. I would also note that the settlement testimony, while we have only had it for a short time, we have had a brief opportunity to review it, it does appear to inject a new position on the merits and the outcome taken by Staff. Now, while that may be responsive to the stipulated settlement, it is also adverse to our case in chief, and

I think that thereby gives us the right to have the last word on it.

MR. HARLOW: So procedurally since we still bear the burden of proof we should have the last word.

MR. TRAUTMAN: Your Honor, I'm not sure whether any party bears a burden of proof on a settlement, as would be the case of a litigation position.

MR. HARLOW: I will gladly give you the burden of proof.

MR. TRAUTMAN: But, Your Honor, they already have an opportunity to cross examine Dr. Selwyn and Dr. Blackmon at the scheduled times, as had been the procedure that was previously agreed upon, and that should be -- that should be deemed sufficient.

CHAIRWOMAN SHOWALTER: Well, I guess the practical issue I'm thinking about is given the witnesses and given the settlement and the response, I can tell you I have the desire to say to the settling witnesses, so, what about what Dr. Blackmon says, which in essence is going to be their surrebuttal or response. And I think if we don't grant the motion and allow it to be done in an orderly way, it's probably going to be done in a somewhat disorderly jumbled way. The Commissioners need to join the issues somehow, and we always get to this point in a hearing where questions are asked on the stand, if there's something that really does surprise a witness or they need time to react to it, we entertain that motion.

MR. TRAUTMAN: And Staff did not -- we did not object to having the Commissioners ask questions or to have the witnesses be questioned on both the settlement testimony and their original testimony, and that had been the procedure that had been agreed to by all parties when it was determined that Staff would have the opportunity, would have the one day of no hearings in order to file their testimony. And the response to that through questioning of the witnesses had already been agreed to, I believe, by all the parties.

CHAIRWOMAN SHOWALTER: I guess what I'm trying to get at is, what is the real difference functionally between oral testimony in response to a question, what do you think about Dr. Blackmon's critique, and something that's called formally surrebuttal or response or rebuttal?

MR. TRAUTMAN: Well, I suppose, Your Honor, that may depend in part on the way in which the questions are framed. But in response -- answers have to be phrased in response to particular questions. It's not simply an open ended opportunity for the witness to now expound on whatever comes to mind, and particularly if it's done orally, not done in writing, if at all.

(Discussion on the Bench.)

JUDGE MOSS: All right, we're ready to rule. The Bench is of the view that the questions from the Bench will be sufficiently thorough and pointed to elicit the information that we require. And so the motion for oral surrebuttal with respect to the settlement portions is denied.

With respect to the revised testimony submitted by Dr. Blackmon on the Wednesday, last Wednesday I believe it was, we did provide Qwest the opportunity to file some written surrebuttal, and I believe it was Mr. Reynolds who was going to provide it?

MS. ANDERL: Yes.

JUDGE MOSS: And we would provide that same opportunity to Dex Holdings if you want to file something brief in response to the revised testimony.

But otherwise, the motion or motions are denied. And if anybody feels prejudiced at the end of the day, they will certainly let us know. And if you feel like the record has in some way suffered from our decision on this process, you will no doubt let us know. But we do believe that the record will be adequate on the basis of the exchanges that we expect this week and next.

MR. HARLOW: Your Honor, I expect that we will want to file the written testimony, so perhaps we could discuss timing briefly. We would hope that Dr. Kalt could be crossed on that very brief surrebuttal on Friday with his other testimony, so I think we would be prepared to file sometime in the middle of the day tomorrow if that would be acceptable.

JUDGE MOSS: Well, I would expect it to be quite brief, so yes. And Staff is acknowledging through its head nods that that will be all right. After lunch.

CHAIRWOMAN SHOWALTER: Say before lunch so that we could read it.

MR. HARLOW: Well, you know, if we could get it ready this evening and hand it out tomorrow, of course we would.

JUDGE MOSS: Okay, well, let us know if it's going to be a problem to get it to us by noon, and we'll figure something out.

MR. HARLOW: Okay, thank you.

MS. ANDERL: And, Your Honor, just to advise you with regard to Mr. Mabey's ability to respond to questions on the settlement testimony that we received this morning, that may be somewhat limited today. I think we would be better prepared to do that if you would stand cross on Friday on that issue. He would, of course, otherwise be ready to appear today, but there's simply been no time to --

JUDGE MOSS: Okay, well, we still need to finish Ms. Koehler-Christensen and we've still got Mr. Grate, although do you have anything on Grate?

MR. TRAUTMAN: No, we do not.

JUDGE MOSS: Okay, so we will be I suppose moving then to Cummings. Do you have something on Cummings?

MS. SMITH: Yes, Your Honor.

JUDGE MOSS: Okay, good, then we will not be witnessless if that's a word.

All right, let us resume our cross exam.

All right, I shouldn't get ahead of myself. Every time I do, somebody tells me there's something else that we need to take up. I should say then, can we proceed with our cross-examination?

It appears that we can, Mr. Trautman, go ahead.

MR. TRAUTMAN: Thank you, Your Honor. I only have a few questions remaining.

C R O S S - E X A M I N A T I O N

BY MR. TRAUTMAN:

Q. I just wanted to clarify where we were. I had referred you to a, Ms. Koehler-Christensen, to a portion of your testimony where you compared the percent of QC's business customers.

MR. CROMWELL: Your Honor, are we still at page 34 of Ms. Koehler-Christensen's testimony?

MR. TRAUTMAN: Yes.

MR. CROMWELL: All right.

JUDGE MOSS: So we're at page 34.

MR. TRAUTMAN: Correct.

JUDGE MOSS: All right.

BY MR. TRAUTMAN:

Q. And on lines 15 to 17 you had stated that it was estimated that less than 1% of QC's business customers are referred to Dex on an annual basis, and therefore you were taking referrals as a percentage of the business customers, correct?

A. Yes, that's correct.

Q. All right. And then I referred you to a statistic from the Exhibit 243, which indicated that there were 206 Dex customers.

A. Dexter.

Q. Dexter, correct, Dexter customers in 2001.

And then for the sake of argument or as a hypothetical, because I believe you indicated you were not aware of the exact numbers, taking a 60% to 40% ratio, we will assume that there's 300,000 Dex customers in the Rodney area and 500,000 for the entire region, business customers. So 200 plus 300, 500,000. And so -- and then I also referred you to the Exhibit 243, which was the FAS 141 report, and that indicated an 89% renewal rate. And so again as part of the hypothetical, I said in order to maintain a steady state of growth, all things being equal, Dex would need to replace 11% of the customers each year. Now 11% of Dex's customers using the 500,000 as a hypothetical, 11% of that would be about 55,000 customers, correct?

A. Yes.

Q. So if -- and that would represent the new customers, the ones that would have to be replaced to maintain the growth. So if the 12,000 referrals that you cite in your exhibit, in I should say Exhibit 156, that would actually then be approximately 22% of the total new Dex customers under this hypothetical, correct?

A. Yes, it would be, but I think there's two problems with that assumption even though I recognize it's a hypothetical. One is that you are assuming that every referral becomes a new customer. And, of course, we don't know that to be the fact. And secondly, as I stated earlier, and I do apologize for not having supplemented the data response because I didn't -- was not aware it would be an important issue, the actual referrals according to Dex, which they got to me only late last week, was 2,400. So if you take 2,400 divided by that 55,000, that comes out somewhat less than 5%, and that's just assuming that every one of those referrals became a new customer, which I think is unlikely.

Q. And first, do you intend to supplement your response?

A. I will be glad to do that.

Q. And secondly, in any event, if the comparison is made of the referrals to the new customers rather than of the referrals to the entire business customer base, the percentages will be quite different, would you agree?

A. They will be higher, yes, because obviously there are fewer advertisers than there are Qwest business customers, that's right.

Q. I believe you indicated that you got 2,400 referrals, correct, in 2001?

A. Approximately.

Q. As a record requisition, I would like to ask how many new customers did Dex get in 2001?

A. Okay, I will see if I can get that information from Dex.

MS. ANDERL: As a point of clarification, is that new advertising business, advertising customers for Yellow Pages?

MR. TRAUTMAN: Yes.

JUDGE MOSS: All right, that will be Record Requisition Number 5.

A. I would like to point out that if we used the same hypothetical assumptions that Dex's advertising customers are somewhat less than 25% of QC's business customers, then the referrals one could assume that -- I'm not sure it's a correct assumption, but mathematically one could using the same logic you used assume that it would be in the neighborhood of 600 actual advertisers from those business customer referrals.

MR. TRAUTMAN: I have no further questions.

JUDGE MOSS: Thank you.

MS. ANDERL: Your Honor, further clarification on the record requisition. Is Staff seeking information on total number of new or ones resulting from referrals?

MR. TRAUTMAN: Total number of new customers.
JUDGE MOSS: All right.
MR. TRAUTMAN: And that's for the year 2001.
MS. ANDERL: Thank you.
JUDGE MOSS: Thank you, okay, are we clear on that then?
All right, do we have questions from the Bench for this witness?
CHAIRWOMAN SHOWALTER: I have one.

E X A M I N A T I O N

BY CHAIRWOMAN SHOWALTER:
Q. Could you turn to page 37 of your rebuttal testimony, Exhibit 131.
A. I'm sorry, what line was it?
Q. I haven't told you yet.
A. Oh, sorry.
Q. Lines 8 to 10.
A. Okay.
Q. The sentence is:
Revenues from Dex's income stream have
been imputed to QC's revenue
requirement, but QC does not actually
receive the revenues, so there are no QC
risks associated with a loss of these

revenues.

And I want to question you about that last assertion, there being no risks associated with a loss of these revenues. Isn't it the case today that the revenues that go to Dex enable or help to enable QC and QCI, I hope that's the right term, the biggest, broadest version of Qwest, isn't it -- don't those revenue streams enable or help to enable the imputation?

A. Well, certainly the -- Dex's revenues or their earnings flow to the parent, QCII, but there are no dollars that flow directly to QC. So from QC's perspective, the imputation exists, we don't have the dollars today, so the fact that we don't have the dollars tomorrow, we don't view it as anything different. Is it -- does it affect the overall health of the company? Of course it does just like the risk of bankruptcy affects the overall health of the company, and that flows to QC. And therefore, that's why QC sees the sale as a benefit, because it helps avoid bankruptcy. But to QC itself, there's no flow, there's no actual dollars received from imputation, so the loss of dollars within the corporation doesn't affect QC directly.

Q. All right. But if you removed the revenues from the Yellow Pages operation completely without substituting any other benefit such as sales proceeds, would imputation put QCII at greater risk and therefore also QC? In other words, supposing you gave the Yellow Pages away, would QC itself and QCII be at greater risk?

A. I would have to say that QC would be at greater risk if QCII is at greater risk but that QC is not directly at greater risk because of that. So to the extent that any of those dollars may or may not be flowed from QCII to QC, and I'm not saying there are because I don't have access to that kind of information, then QC could be at greater risk. But it's my general understanding that QC froze its earnings to QCII, so QCII would receive less from Dex, because Dex wouldn't be there any longer, but QC would not be directly affected.

Q. And so if the Yellow Pages were given away, imputation could continue without risk to QC?

A. I'm saying that the financial impact on QC would be no different.

Q. I was just asking if -- what I think I'm trying to get at is whether the loss of Yellow Pages revenue in and of itself and only that would increase risks to QC?

A. Not directly.

Q. Well, indirectly would it?

A. Well, indirectly as far as any impact on the health of the total corporation, yes, I would say there would be some impact. But it was claimed that the Yellow Pages were given away in 1984 and the imputation was created because of that, and QC has not received any of the revenues but has set rates as if it did receive the revenues through the imputation process.

Q. But in that instance, that is the current instance, the QC family still owns the Yellow Pages, it still get gets the revenue from it?

A. Yes, but QC doesn't get the revenue. And my statement here was directed to QC. I guess that's the controlling factor was that I was not speaking of the entire Qwest Corporation, I was speaking of QC.

Q. All right. So now if the sale is approved and Dex is separate and the settlement or something like it is approved and imputation continues, what happens if QC itself doesn't have enough revenue to allow for the imputation and QCI or QCII, I'm not sure which, also does not have enough revenue to allow for that imputation?

A. Well, assuming rate of return regulation, it isn't QCII's financial status that is considered, it's QC's. So that when you look at the revenue requirement, when you establish or develop a revenue requirement, it's based on QC's financials, and I don't see any change in that with a sale or without a sale.

Q. I don't know about change, I'm just asking you to tell me what happens. I don't --

A. You know, I guess what you do is you look at, have to look at all along it has the perspective as I understand it from the company's side is that the revenue requirement has been established, and in the case of the last time rates were set the imputation was approximately $85 Million, so the results because of the imputation was that QC's rates were set to collect $85 Million less than they would have otherwise collected without the imputation. If QC has a higher revenue requirement because of other factors, that would be the case with or without the imputation, with or without the ownership of the directory company and the total corporation, in my opinion. It would be you would take a look at what is QC's stand alone revenue requirement and determine whether it was appropriate to adjust it by an imputation or not.

Q. Well, let's say Qwest comes in for a rate case, and let's just say that all of the expenses and other things add up to, well, $100 Million absent the -- let's say if there is continued -- if there is continued imputation, the total revenue requirement would be $100

Million.

A. Okay.

Q. All right, so that's the revenue requirement. But let's assume that there actually is not enough revenue if either within QC alone or QCI itself -- is it QCI or QCII?

A. QCII.

Q. Okay.

A. I believe.

Q. That that additional imputation amount can not be afforded, that's my question, what happens? Because isn't it a given that the settlement says that's to be excluded from a revenue requirement?

A. Yes.

Q. So I mean I take it this is not the answer. The answer is not, well, we just go back to the Commission and get our total revenue requirement and make up for the difference. That's the normal regulated scheme, regulatory scheme. But here there's an agreement to exclude that amount, so where does it -- what would happen in that instance?

MS. ANDERL: And, Your Honor, I don't mean to preclude your opportunity to explore this with this witness, but I do know that Mr. Reynolds is probably a better witness to talk to about these issues. Certainly

Ms. Koehler-Christensen is familiar with the history of imputation, but the questions that you're asking seem to have a lot to do with how the settlement agreement and the impact of it is going to flow out or even not, but it certainly relates at least in some sense to what the parties have proposed under the settlement, and Mr. Reynolds is definitely prepared to talk to that as well as the hypotheticals you're posing.

CHAIRWOMAN SHOWALTER: All right, I'm happy to have anybody answer the question. It's not really solely with respect to the settlement. It's the imputation, post sale imputation scheme and how it would work. But if you think Mr. Reynolds is the more appropriate witness, I'm happy to ask the questions of him. My questions were triggered by this statement about risk of loss of revenues.

MS. ANDERL: Yes, I understand.

CHAIRWOMAN SHOWALTER: But would you prefer I ask these questions of Mr. Reynolds?

MS. ANDERL: You can --

CHAIRWOMAN SHOWALTER: I'm going to ask the questions, it's not important to me -- I want the company to provide the witness that can answer the questions the best.

MS. ANDERL: Mr. Reynolds would probably like a five day preview of his questions, so if you were to ask them to Ms. Koehler-Christensen and Mr. Reynolds ends up answering them, it might work out just fine.

CHAIRWOMAN SHOWALTER: I will take a cue from Ms. Anderl, and I will ask these questions of Mr. Reynolds.

Thanks, that's all I have.

E X A M I N A T I O N

BY COMMISSIONER HEMSTAD:

Q. Of QCII's total revenues, what is the approximate proportion of that total that comes from QC?

A. I have no idea, I'm sorry. I suspect that that could best be answered by Mr. Reynolds or Mr. Grate, but I don't have that information.

COMMISSIONER HEMSTAD: All right, I will ask --

MS. ANDERL: Or Mr. Cummings.

A. Or Mr. Cummings.

COMMISSIONER HEMSTAD: I guess I will ask it sequentially.

JUDGE MOSS: And we can always make it a Bench request if we don't get it any other way.

COMMISSIONER HEMSTAD: That's all I have.

THE WITNESS: Okay.

E X A M I N A T I O N

BY COMMISSIONER OSHIE:

Q. And my question will be brief as well. Would you please turn to page 42 of your Exhibit 131C.

A. Okay.

Q. And on the sentence that runs from line 19 to the end of 21, and on line 21 you make the statement that the directories will be provided to both QC and QC's customers at no cost for the same period of time, and that being 50 years. And my question has to deal with your phrase at no cost, and is that true under all circumstances, that there will be no change in the cost to QC for the provision of the directories under the publishing agreement?

A. Well, certainly under the publishing agreement, both the current publishing agreement with Qwest Dex and with the buyer, Dex Holdings. If there are additional regulatory requirements placed on QC, as was discussed this morning with Mr. Burnett, there may be some additional costs that will be referred back to QC rather than having the publisher absorb all of those costs. But under the terms of the publishing agreement with the conditions as they are today, the directories are published at considerable cost to Dex, and none of those costs are passed back to QC or its customers.

Q. So I guess then the term at no cost is conditioned on no changes in the regulatory environment?

A. Yes, but as I said, those costs under a change in regulatory environment would be incurred whether the sale goes through or whether the existing publishing agreement with Dex is in place.

COMMISSIONER OSHIE: Okay, thank you, I have no further questions.

JUDGE MOSS: Is there any follow-up to the Bench's questions before we go to redirect?

MR. TRAUTMAN: We just had a couple, Your Honor.

R E C R O S S - E X A M I N A T I O N

BY MR. TRAUTMAN:

Q. Respecting the effect of the imputation on QC and QCII, in determining the dividend that QC pays to QCII, does QC calculate that amount with or without the revenues associated with the imputation from Dex?

A. I can venture a guess, but I am not the correct person to answer that, I'm sorry.

Q. Do you know which witness that would be?

A. Mr. Cummings.

JUDGE MOSS: Maybe counsel can tell us.

MS. ANDERL: I think Ms. Koehler-Christensen correctly identified Mr. Cummings.

JUDGE MOSS: Okay.

MR. TRAUTMAN: All right, that's all I have.

JUDGE MOSS: Any redirect?

R E D I R E C T   E X A M I N A T I O N

BY MS. ANDERL:

Q. Ms. Koehler-Christensen, you were asked about the referrals that Qwest Corporation might make to either Qwest Dex or Dex Holdings; do you recall those questions?

A. Yes, I do.

Q. Under either the existing publishing agreement or the new agreement that will take place after -- that will take effect after closing, is Qwest Corporation obligated to make those referrals?

A. No, Qwest isn't obligated to make the referrals. They're only obligated if referrals are made to refer them to Dex, and that's the same arrangement that Dex has with all of the local exchange carriers with which it has publishing agreements.

MS. ANDERL: Thank you, nothing else.

JUDGE MOSS: Did you want to move exhibits?

MR. TRAUTMAN: Oh, yes, Your Honor. We would move to admit Exhibits 143C through 158.

MS. ANDERL: Well, Your Honor, most of those were not even identified by the witness, nor were any questions asked. I guess I did not understand that counsel was going to offer those, and I might have redirect on some of those that were not questioned about, but I would need to take a moment to look at them.

JUDGE MOSS: While Ms. Anderl is doing that, we had identified during the pre-hearing conference a number of potential cross-examination exhibits from Public Counsel, Department of Defense, and so forth, I'm just assuming that those are not being offered.

MR. CROMWELL: That's correct, Your Honor, at this point we would intend to offer only our pre-filed testimony as well as the stipulation, which I believe has been identified as Exhibit 2.

JUDGE MOSS: Sure. That makes sense that you wouldn't offer them, but I just wanted to confirm that. In that connection, we had previously noted in the record that Exhibit Number 145 that Staff has now tendered was a duplicate of Number 138, and so I just want to be clear that we will be considering 145. 138, of course, will not be offered, so the duplication thereby disappears.

MR. MELNIKOFF: Your Honor, as far as our two cross-examination exhibits, we would not offer the one for this witness. The other one is now incorporated into what was identified as Exhibit Number 290, which is associated with Charles King's supplemental testimony.

JUDGE MOSS: Oh, okay.

MS. ANDERL: Your Honor, no objections to these exhibits and no redirect on them.

JUDGE MOSS: Okay, very well, then the Exhibit Numbers 143C through 158 will be admitted as marked.

And with that, I believe you are free to go, thank you very much for your testimony.

Give me just a minute.

Now let's discuss what we want to do in terms of Mr. Grate. Mr. Trautman has previously indicated that Staff does not have questions. Let me -- well, actually I see we have lost Commissioner Oshie. Let's be off the record, let's see if the Bench has any questions.

(Discussion off the record.)

JUDGE MOSS: Let's have Mr. Grate.

MS. ANDERL: Oh, all right, Mr. Roselli will be handling that.

Whereupon,

PHILIP E. GRATE,

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

JUDGE MOSS: Mr. Roselli, your witness.
MR. ROSELLI: Thank you, Judge Moss.

D I R E C T E X A M I N A T I O N

BY MR. ROSELLI:

Q. Could you please state your name and business address.

A. Philip Grate, 1600 Bell Plaza, Seattle, Washington.

Q. And by whom are you employed, and in what capacity?

A. I am employed by Qwest Corporation as a state finance director.

Q. Okay. I think you should have Exhibits 101 through 111 in front of you. Exhibit 101 has been pre-marked. It is your pre-filed direct testimony. Exhibits 102 through 109 are exhibits to your pre-filed direct testimony. Exhibit 110 is your pre-filed rebuttal testimony. And Exhibit 111 is an exhibit to your pre-filed rebuttal testimony. Is that correct?

A. That is.
Q. And were these documents prepared by you or under your direction and supervision?
A. Yes.
Q. And if I asked you the same questions posed in that testimony today, would you provide the same answers?
A. I would.
MR. ROSELLI: With that, I would move into evidence Exhibits 101 through 111.
MR. TRAUTMAN: No objection.
JUDGE MOSS: There being no objection, those will be admitted as marked, and I believe we have questions from the Bench.

E X A M I N A T I O N

BY COMMISSIONER HEMSTAD:
Q. Good afternoon. Actually I had been anticipating there might be other questions, but I'm looking at page 12 of your direct testimony, Exhibit 101 I believe. And at line 6, the sentence reads:

Consequently after 1917, rate payers never had to bear the financial burden of the company's directory expenses.

This comes up again in here later I believe, but is that statement intended by you to be a matter of fact or a matter of theory? When I say theory, are you asserting that under no circumstances putting one's self in the position of 1917, that in theory it could never in the future have been the circumstance whether the rate payers would have to bear the financial burden of the company's directory expense?

A. It was an assertion of fact, which was that as it happened, rate payers never did have to bear the expenses, because the revenues were in excess.

Q. And, of course, that's the benefit of hindsight. But you are not asserting, are you, that that's how one looks at the issue of risk reward and benefit burden?

A. I am asserting that, yes. I am asserting that whether rate payers have born the burden is a question of fact.

Q. And it is not whether the rate payers could have born the burden?

A. No, it's not. In the case of the question of burden, it is a question of whether they actually did or did not bear the burden.

Q. Well, let me give you a different fact circumstance. A regulated company buys a piece of property, whether depreciable or not, and some years later it sells it at a gain, and the asset has never experienced a circumstance where in the accounting it would be considered to have lost money. Is it your assertion that under the Democratic Central Committee and its progeny that all of the gain in that circumstance upon the sale would then go to the company?

A. Well, under Democratic Central Committee we need to do a two step test. And the first step of the test is whether or not the rate payers bore the risk of a capital loss on that asset. And that is a question of what was the rate making policy, what was the regulatory scheme in effect during the period of time that the asset was held. So in that case, there is a question about if there had been a loss, a capital loss on that asset during the period of time that it was held, would the rate payers have been obligated through the rate making process to make the owners of the asset whole for the loss. That's the first step of the test. And under Democratic Central, the court says, if you can answer that question, then you need not go to the second step.

But if you do go to the second step, then you look at what was the actual as a matter of fact burden that the rate payers bore. So they're very -- they're different tests. One is what would have happened had there been a loss, the other is what actually was the

burden that the rate payers bore.
Q. Well, back to my hypothetical.
A. In your hypothetical, there was no capital loss on the asset.
Q. Held for a period of time.
A. Right.
Q. And then sold for a gain.
A. And it really -- it depends on what the regulatory scheme was during the period that the asset was held.
Q. Rate of return, rate base regulation.
A. Okay. With original cost, let's assume it's original cost.
Q. Original cost.
A. Under those facts, under the first step of the test the rate payers would be entitled to the gain.
Q. All right. Then take the publishing issue, and any time during the period of rate base rate of return regulation, let's assume hypothetically that the publishing function internal to the utility, not having been spun off, experiences a loss, would the rate payers be responsible for that?
A. I assume you're speaking of an operating loss.
Q. Yes.

A. Where the revenues are less than the expenses?

Q. Yes.

A. And under cost of service regulation as we know it, the answer is yes, that the rate payers would be responsible for bearing that loss in a rate making setting. That does not say that under the second step of the test rate payers would have born the burden if there were no actual operating loss. My understanding of the standard under Democratic Central Committee is that the rate payers need to actually bear operating losses, they need to actually provide through their rates recovery of the costs incurred for the operation of a utility function. And so even though they could have been at risk of bearing an operating loss or of having to provide rates to cover the cost of the activity, if they didn't in fact bear any costs, their rates never forced them to bear those costs, then under the second step of the test they would not qualify for entitlement to the gain.

COMMISSIONER HEMSTAD: Interesting analysis, and that's all I have.

JUDGE MOSS: Okay.

E X A M I N A T I O N

BY CHAIRWOMAN SHOWALTER:

Q. Could you turn to page 4 of, oh, no, I'm sorry, it's Exhibit 110. I'm kind of confused here because it appears to me that page 4 of Exhibit 110 at the top says direct testimony. Maybe it's just --

A. That header is incorrect because that's my rebuttal testimony.

Q. All right, so page 4 of Exhibit 110. I want to see if I understand your position. You say that the Yellow Pages, I believe you say that this has always provided a subsidy to the operations of or to the rate payers of what is now QC. And I guess there are two ways to look at that. One is a subsidy in the sense that they weren't entitled to it in the first place, and therefore it's just a simple subsidy that the absence of which shouldn't create any entitlement. The other way is that it's part and parcel of an operation of the regulated company, a predecessor of the regulated company, and therefore its absence then triggers the question of what are the rate payers owed, in which case then your argument goes into risk and lack of risk.

A. Mm-hm.

Q. But on the first question or the first level of my question, do you agree or disagree that the Yellow

Pages operation from the point of 1984 onwards, maybe at the point of 1984, was a part of the operations of the regulated company for the benefit of the rate payers?

A. Yes, I think it was a part of the regulated operations before 1984 and that effectively nothing changed after 1983. It continued to be a part of the regulated operations.

Q. So from your point of view, it's not the fact that this is or isn't a subsidy, however one wants to determine that, that triggers the question of whether -- how the gain should be distributed. You have moved, not moved in your testimony, but you focus on the question of what has been the risk to the rate payers, and that's how your analysis begins of how to distribute the gain?

A. That's true, I start with -- well, what I'm attempting to do in my testimony is to analyze all the facts that I think bear on this question of risk of capital loss and then secondarily burden of the regulatory or the utility activity. And the fact that we -- that there was a subsidy, what that means to me, the significance of that to me is that that simply says that the rate payers were not providing revenues to support the directory operation, that the directory operation was providing revenues to support the rate payers. So that the rate payers were not burdened by the directory operations, they were -- they were benefited by the directory operations, so --

Q. Can you stop at that point?

A. Sure.

Q. Because I want to question you about that. Does that analysis that you just laid out simply reflect an operation whose -- of where the revenues exceeded the costs and no more, or does it somehow -- well, first let me ask you that. Is it just the case that if revenues exceed cost, then there are no risks to the rate payers?

A. Well, I think it's important to remember the source of the revenues. These were not revenues that were coming from rate payers, they're revenues that were coming from advertisers. And so in terms of -- not in terms of the risk analysis, but in terms of the burden analysis, the fact that those revenues came from advertisers meant that rate payers didn't have to provide that source of revenue. And to my mind, that's what's significant about the burden test is that the rate payers weren't burdened with those costs because the revenues were coming from advertisers.

Q. Well, let me follow up with Commissioner Hemstad's analogy. Supposing old Pacific Northwest Bell at some point had a building in downtown Seattle that was a prime piece of real estate. Maybe it wasn't originally, but now it is, and so the rents are very high. And supposing the building itself, the ownership, was transferred within the Qwest family at some point, but the sale, there was no sale or no approved sale by the Commission, and so the Commission said, well, the rents are going to keep going to the rate payers.

A. Mm-hm.

Q. Now in a situation like that, of course, let's say the rents exceeded the cost of the building by quite a bit but that originally somewhere back in history the rate payers had taken on the cost of the building. Now if in that case, I suppose, you know that this is all hypothetical, but a commission could have said, well, all right, we're still going to count the expenses and the revenues of the building as if they were in the regulated company. But the other scenario would be, well, the costs are very cheap, it's just payment of taxes, the revenues are very great, so we'll impute those revenues. Are you drawing any distinction between those two types of scenarios, those scenarios, or at what point in that analogy would you say, if you do, that the rate payers bear no risk and therefore don't deserve the gain?

A. Yes, I do think there is a distinction. In the case of the building, under modern day, you know, that would be after about 1947 at Washington, under modern day rate making based on original cost, the rate payers bear a risk of capital loss on the building, assuming it's a part of the rate case, they bear a risk of capital loss on the building if the building gets sold for less than its net value. And so in that case where you transfer the building out of the regulated utility to some other entity, the rate payers who have born this risk of capital loss under Democratic Central Committee have an entitlement to the gain, and that's essentially what Democratic Central Committee was about, although it was a different set of facts there. But in that case, they bore the risk of the capital loss.

If they -- if the rents were not coming from the rate payers but were coming from just commercial rents, for instance, and those commercial rents exceeded the expenses that the rate payers were bearing in terms of, you know, the taxes and the maintenance and operations and so forth, then in that hypothetical the rate payers did not bear the burden of the operation. They were receiving a net benefit from it. But they would still be, under Democratic Central, they would still be entitled to the gain because they were bearing the risk of loss of the asset in the first place.

Q. All right. Then what is the distinction, and maybe you already answered but I don't think I understand, what is the distinction between the valuable old building in downtown Seattle and this Yellow Pages case?

A. Well, the distinction is that instead of selling a single tangible asset, we're selling an entire business, and that business is comprised of all the operations that we heard about this morning. It's a business that has existing customer relationships with customers. The rate payers are not at risk for losses on the intangible value of the business. They don't -- they don't have an obligation, if the value of the business declines, they don't have an obligation through the rate making process to compensate the owners of the business for that loss in value of the business as a whole. And so we're talking about something that's significantly different than the sale of a tangible asset that's been included in the rate base.

The intangible assets that create the value of the business, the customer relationships, the employee skill and ability, those are not items that were ever reflected in the rate base. They have a value clearly, because it's the business is fetching a large sales price, but they were never in the rate base such that the rate payers had any risk of having to

compensate the shareholders for loss.
Q. So in other words, if 20 years ago the management of the Yellow Pages had been abysmal and/or even scandalous and the managers had lost most of the value of the Yellow Pages and then a new competitor came in, that you were saying that the rate payers would not have born any risk there, and so -- or they would not have a stake in the matter?
A. Well, they clearly have a stake in the matter. They wouldn't have born an obligation to pay the owners for that loss on the value of the business as a whole. They would have in that scenario have lost the benefit of the revenues that had been coming in from the advertisers, so they would lose the subsidy that the Yellow Pages business had been providing them. They might even get to a point where they would have to start bearing the costs of the directory operations in order to have printed directories, so in that sense they would have a risk that they would have to bear operating costs or bear the costs of I want to say the financial costs of the utility activity. But under Democratic Central, the risk that they might have to bear the cost at some point in the future is not one of the two tests.
Q. So are you saying that in that scenario that I outlined, the rate payers would have been basically

out of luck that the precursor of debts had done a bad job, and so likewise if the operation is a success, they don't enjoy the benefits either; is that part of what you're saying?

A. Well, I'm not sure that I'm following you, but to the extent that the revenues decline because of this debacle in the business, the rate payers would then be in a position where they would receive less of a subsidy from the operation. So if that's what you mean by out of luck, then I agree with you that that's what would happen.

In terms of the flip side, would the rate payers have an opportunity to enjoy additional benefits if the business were more successful, I think that's also equally true, that their opportunity to enjoy a higher level of subsidy corresponds to their opportunity to lose part of the benefit of the subsidy.

CHAIRWOMAN SHOWALTER: I see, okay, thank you.

E X A M I N A T I O N

BY COMMISSIONER HEMSTAD:

Q. I would like to pursue the point. I'm interested in your use of the term subsidy. Are you using that term in the sense of providing support for services such that they will be sold below cost? Is that your use of the term subsidy, or are you using it more loosely in the sense of the benefits?

A. Well, I didn't really think of it in terms of whether or not it meant that services were being sold below cost from a -- the way in which I was using the term was to recognize that revenues from an advertising activity were providing a benefit that caused rates for telephone service to be lower than they would be without the revenues. So that's what the subsidy is.

Q. Okay. Let me give you another hypothetical. This is in an unregulated environment. Assume a newspaper publisher, and it receives revenues from two sources, the sale of the newspaper through subscriptions or news stand sales and the sale of advertising. Is it your view that the sale of advertising is a subsidy to the persons buying the newspaper?

A. No, and the reason is that we're talking about an unregulated business.

Q. But that's the distinction?

A. That is the distinction. The rates set for the newspaper price, the purchase price of the newspaper, is not determined under cost of service regulation.

Q. But then transferring the issue to the environment of the regulated company, and let's ignore the issue about compensation for the moment and we'll assume that the Yellow Pages are simply spun off. At one point that seemed to be part of the scenario or the strategy. And as a result of that, of course, then it would follow that rates would have to rise to make up for the loss of the your term subsidy or generically benefit that otherwise was assisting rate payers?

A. I agree.

COMMISSIONER HEMSTAD: Okay, that's all I have.

E X A M I N A T I O N

BY COMMISSIONER OSHIE:

Q. Mr. Grate, this is a very general question, but from your position as the director of finance for the state of Washington for Qwest, what's going to change if the sale is consummated? How is it going to change, you know, how, you know, what you're doing in your position at the company or how you look at the financing of the corporation?

A. Looking at it strictly from a standpoint of how I view the finances of the state of Washington, I don't see that it causes a change. If the stipulation is approved, then if and when we have a rate case in

Washington, I will be developing a revenue requirement based on the assumption of whatever level of revenue credit is as reflected from the stipulation. From that standpoint, I don't see that as being fundamentally different from where I am today. When I develop a revenue requirement, I take into account the level of imputation. So from a rate making standpoint, I see no fundamental difference at all.

COMMISSIONER OSHIE: Thank you.

E X A M I N A T I O N

BY JUDGE MOSS:

Q. It would be unusual if I made it through an entire case without having a question, so, Mr. Grate, I will jump in here on the Democratic Central Committee and ask you a question about your view of it. The first part of the test you described is the principle that the capital loss, who bears the risk of capital loss is entitled to any capital gain. Essentially that's the principle, isn't it?

A. That's correct.

Q. And so that answers the question of who gets the capital gain, if any, on the sale of the capital asset. The second part of the test though, there seems to be just a one piece. The question is, did the rate payers bear the burden, the financial burden, and if so, then they're entitled to the gain, and if not, they're not entitled to the gain. Is that how you see it working?

A. That is.

Q. But does the case really stand for the proposition that the shareholders by default are entitled to, if there's no capital assets involved, then clearly there's no question of capital loss or capital gain, that part of the test just falls by the way. The second part of the test then seems to only ask half the question. Why does it necessarily follow that the shareholders are entitled to 100% of the gain? Is it just the case that perhaps the Democratic Central Committee case didn't have enough alternatives before the court to truly address the issue that we face here where we have an asset that is not part -- not a capital asset?

A. I'm not sure I agree with you that we don't have a capital asset here. And in Democratic Central Committee, the presumption is that you are selling a capital asset.

Q. Yeah, it's real estate.

A. Real estate, tangible property, and intangible property, which is principally what we're selling here. So because we do have a capital asset, if we know what the risk is, if we know who bore the risk of capital loss, then that's the end of the inquiry. But if we don't know who bore the risk of capital loss, I think we do, but if we don't know, that's when we go to the burden test.

And I think I may have lost sight of your question completely, so I'm going to stop there, and if you would state your question again.

Q.   Well, the question is whether in your view the old Democratic Central Committee case, which concerned a very specific set of facts concerning real estate in downtown Washington, D.C., the old trolley property as I recall, whether that case has sufficient breadth to capture the problem that we face here where we have a very different type of an asset, the first prong of the test isn't going to give us a satisfactory answer it appears, and then the second part of the test doesn't either?

A.   Well, I disagree own both counts.

Q.   Okay.

A.   I think both prongs give a satisfactory answer. I believe we are selling a capital asset, because we are selling a business, and a business is clearly a capital asset. And I think that while

Democratic Central addressed itself to the narrow question of what to do about some land, the reason the case is so often cited is because of the principles that it set forth and the fact that the case was exhaustive in its review of the history of the incidents of risk and burden under the history of various forms of regulation. The principles I think still stand on their own, on their own merits.

And let me just, if I might, I could read to you a small passage from the case itself that I think puts this in perspective.

Q. Sure, assuming it's a very small passage, because if it's very long --

A. I promise it's a small passage, and it begins on page 109 of the case, but it says:

> The relevant principles can be stated simply, that consumers become entitled to capital gains on operating utility assets when they have discharged the burden of preserving the financial integrity of the stake which the investors have in such assets. Their entitlement is established too when it is manifest that investors have benefited measurably from special

treatment accorded those assets in the past.

And it's my view that in this case, in the case of the Yellow Pages operations, the rate payers have not discharged the burden of preserving the financial integrity of the stake the investors have in the business, because the assets that create the value, the fact that there's a customer relationship with customers who are not buying telephone service but are buying advertising service, that's what causes rate payers to not have born this burden. They have been supported by the revenues from these other customers, from these advertising customers.

And I think that the second point that the case makes, it says that rate payers are entitled if investors have benefited measurably from special treatment accorded the assets in the past. Again, under Democratic Central, that falls in favor of, well, under the facts of this case that falls in favor of the owners, because it's the rate payers who have benefited measurably by the support that they have received from these unregulated directory advertising revenues.

So on both counts in the general concept or principle underlying the case, it's the rate payers that have enjoyed benefits and not been burdened with the risks of capital loss or the burdens of supporting the activity. It's pretty clear cut.

JUDGE MOSS: Well, thank you for sharing your view.

E X A M I N A T I O N

BY CHAIRWOMAN SHOWALTER:

Q. I just want to follow up on Commissioner Oshie's last question to you. I think you were saying that nothing changes, you just determine your revenue requirement, take into account whatever imputation is authorized, and calculate your revenue requirement and rate request at that point. And I know I'm supposed to ask this of Mr. Reynolds, but it does seem to me that you might be the person who would actually be facing this question, which is that -- so assume that we approve the settlement and there is an imputation amount, you go to calculate your revenue requirement taking that imputation amount into account, you derive kind of a net revenue requirement, and supposing we give you that rate, and now suppose that it's not enough to make ends meet. I suppose you would eat into your profits first.

A. Well --

Q. But then what? And what I'm positing is supposing the revenue, the imputation amount can't be covered perhaps because of other expenses that you have or conditions, but that it simply can't be covered by QC or QCII, what do you do?

A. Well, I think we have that problem whether or not Dex is sold.

Q. Yes, I suppose that's true. It may be the situation that you're close to today.

A. Perhaps so. In regards to Dex itself though, the sale of Dex is the liquidation of this expected stream of profits into the future, and when we liquidate that expected stream and take that cash and use that to pay down debt, we effectively -- we offset a burden that we were bearing financially because we had to support the debt. So we're simply trading items that are on our balance sheet today for items that would have been on our income statement in the future.

Today we have debt and we have a directory business. If we didn't sell the directory business, we would have debt expense and future interest expense and we would have profits from the directory operation. So selling the business today doesn't, in the large sense, doesn't create a situation that makes it -- makes our position financially untenable, you know, the scenario that you're suggesting. And it -- and we could reach that point even if we don't sell Dex. Of course, we would reach that point very quickly because we need to sell to avoid bankruptcy. But whether or not we sell, we still face that risk.

Q. If you do sell and there is a distribution because of actual credit, that amount anyway would be felt directly by the rate payers, correct, in a beneficial way?

A. Obviously, right, they would.

Q. Okay.

A. I mean if there were a customer credit on the bills of the customers, then the customers would directly feel the effect of that financially.

Q. But for the rest, for the imputation amount, do you agree that it's not something that can be counted on and perhaps can't be counted on today either, but that it is something that depends on the financial health of QC and QCII, in other words, it's not a contract amount?

A. No, echoing what Ms. Koehler-Christensen said, QC of course doesn't receive the cash from that, from the revenues from Dex. If we were talking about the overall health of QCII as a consolidated entity, then clearly we have lost the benefit, the financial benefit of the revenue stream and the income stream from

Dex. But we have also, by getting rid of the debt, we have offset that loss.

Q. I understand that point, but isn't it the case that the value of the imputation to the rate payers is dependent on the financial health at some level of QCII and QC, mainly QCII I think?

A. Well, I don't think it's dependent on the financial health of QC, because we have been going along with an imputation for a long time without those revenues coming back to QC to support us, so I wouldn't think so.

And so it goes to the broader question of whether QC's health in cost of service rate making, I suppose that affects QC, if QCII's health is weakened, what is the effect of that. That really starts to get out of my area of expertise and into Mr. Cummings' area of expertise, and I would really prefer to defer that kind of a question to him.

CHAIRWOMAN SHOWALTER: Okay, thank you.

JUDGE MOSS: And Mr. Cummings is slated to be our next witness, and we have about three hours of cross designated for him, so I say that in the hope that we haven't prompted too much in the way of follow up, have we?

MR. TRAUTMAN: Well, we have actually a

different line. We can save -- we have some questions for Cummings, but I have two or three follow ups.

JUDGE MOSS: Okay.

C R O S S - E X A M I N A T I O N

BY MR. TRAUTMAN:

Q. You had talked about the intangible versus the tangible assets. You're not suggesting that there are no tangible assets in the directory publishing operation, are you?

A. No, I think there's about -- no, well, I can't say that, I'm sorry. There is a small amount.

Q. And isn't it true that prior to 1983 those assets would have been in PNB's rate base?

A. Yes.

Q. And so if the directory business fell apart and had to be abandoned in 1983, would the loss of those assets have been recoverable from rate payers?

A. Well, if you mean by fell apart that for some reason those tangible assets would loss their value, because even if the business falls apart, it doesn't necessarily follow that the tangible assets would lose their value or be worth less than their net book value, but if those assets --

Q. That's what we're assuming, yes.

A. Okay, so if the tangible assets don't lose their value, if that value is maintained, then the rate payers would not have a loss to bear.

Q. We are assuming that the tangible assets lose their value. Would those losses be recoverable from the rate payers?

A. And you're also assuming that the rest of the business is not generating directory revenues?

Q. Correct.

A. Then the answer is yes.

MR. TRAUTMAN: Thank you.

JUDGE MOSS: Okay, Mr. Roselli, did you have any follow up on the questions you heard and answers?

MR. ROSELLI: Well, I do, and I will try to be brief.

JUDGE MOSS: Sure, thank you.

R E D I R E C T E X A M I N A T I O N

BY MR. ROSELLI:

Q. You thought this was going to be easy, Mr. Grate.

Can rate payers be said to bear any risk of capital loss on assets not in rate base, never in rate base?

A. No.

Q. Why not?

A. There's no mechanism to recover the capital loss from the rate payer in the regulatory accounting and rate making scheme.

Q. Do you have an understanding as to whether directory and tangible assets like good will have ever been recorded in the Washington rate base?

A. I don't believe that they ever have.

Q. I want to clear up, there have been a lot of questions put to you about risk. From your understanding of Democratic Central Committee, when that court spoke to risk, what risk specifically was it addressing?

A. It was specifically addressing the risk of capital loss, the risk that rate payers would have to compensate owners for capital losses, losses in the value of the assets.

Q. Is risk of decreased subsidy or contribution a risk element that Democratic Central Committee addressed?

A. No.

Q. Can you explain, and there are subtle nuances here, but can you explain the distinction of Democratic Central Committee between burden of utility activity and risk of burden of utility activity?

A. Burden of utility activity is the establishment of rates that include -- that require rate payers to pay rates to cover the costs of an activity. The risk of a burden is the possibility that if the unregulated revenues from the activity are insufficient to cover its costs that rate payers then would have to provide recovery of those costs in the rates that they pay.

Q. Are you aware or do you have an understanding that in 1983 this Commission approved the transfer of the Dex tangible assets out of rate base in the conveyance to Landmark and U S West Direct?

A. Yes, they did.

Q. So are those tangible assets in, the tangible assets relating to directory operations, are they in rate base, are they in QC's rate base today?

A. No, they have been out of QC's rate base since the transfer, 1984.

Q. And the intangible assets relating to directory operations, are they in QC's rate base today?

A. No.

Q. Have they ever been in QC's rate base?

A. No.

Q. If there were a situation where directory operation expenses exceeded revenues as opposed to vice versa and we are in traditional rate of return mode and these assets were in rate base, would you have a situation there where regulated activities could arguably be said to be supporting unregulated directory operations?

A. It's very unlikely that that would be the case, and we're talking now about the current, the status quo where we have a separate directory operation and a separate corporation. And in that case where the directory expenses exceed the directory revenues, it would require the Commission to impute those operating losses into the revenue requirement. Given the directory business is a competitive business, it's not a regulated telephone utility business, I'm not -- I doubt seriously that the Commission would do that. I'm not sure as a matter of law whether they even could.

Q. In your response to a question that Chairwoman Showalter put to you, you stated something to the effect that Yellow Pages has been a part of the regulated company both before and after 1984. Did you mean for rate making purposes or as a matter of corporate organization?

A. I meant it for rate making purposes. Obviously Dex has been a separate corporation for purposes of corporate structure since right after 1983.

Q. And then the question that Judge Moss put to you, it related to bearing the burden of utility activity, and he said something to the effect that if rate payers have born or bear the burden of utility activity, then you agreed that they're entitled to capital gains assuming you get to the second step of the two part test in Democratic Central Committee. Is it always a winner take all proposition or not?

A. No, it's not always a winner take all. Democratic Central Committee calls for a balancing of the interests of rate payers and shareholders.

Q. So is it possible that whether rate payers have born or bear the burden of operating losses can change over time?

A. Yes, that is true that it can change over time.

Q. Can you give an example relating to type of regulation?

A. Oh, yeah, sure. For instance, if the form of regulation -- well, first of all, if there's no regulation, then clearly the rate payers are not bearing the financial burden of the utility activities. And they ordinarily, under cost of service regulation, they do bear the burden of at least the regulated activities of the utility, price regulated activities of the utility. Under price cap regulation, again they do not bear the burden of the utility activities, because changes in cost do not entitle the rate payers or the utility to come in and ask for a change in rates based on that change in costs.

MR. ROSELLI: I have no further questions, thank you.

JUDGE MOSS: Thank you, Mr. Roselli.

All right, then I believe we have completed our examination, Mr. Grate. We appreciate you testifying today, and you may step down.

Why don't we take our afternoon break until 3:30, and then we will come back and put Mr. Cummings on.

(Recess taken.)

JUDGE MOSS: And so Mr. Cummings can sit down, I'm going to go ahead and swear the witness while you all are getting situated here.

Whereupon,

PETER C. CUMMINGS,

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

JUDGE MOSS: Thank you, please be seated.

Give me half a moment, if you would, Mr. Sherr. I just want to note a couple of exhibit matters. We formerly had identified Exhibits 91 and 92, which were responses to Staff Data Requests 65 and 66 respectively. Those are now remarked as Exhibits 203 and 204 for this witness. And in addition, Staff has distributed an exhibit which we have marked as 205, and it is described as Goldman Sachs High Yield Bond indices 1101 through 52103.

And with that I believe we can let you go forward, Mr. Sherr.

MR. SHERR: Thank you, Your Honor.

D I R E C T   E X A M I N A T I O N

BY MR. SHERR:

Q. Good afternoon, Mr. Cummings.

A. Good afternoon.

Q. Could you please state your name for the record.

A. My name is Peter Cummings.

Q. And please state your employer and your business address.

A. My employer is Qwest Corporation, and my business address is 1600 Seventh Avenue, Seattle, Washington.

Q. Do you have in front of you what has been marked for this hearing as Exhibits 171 through 181?

A. Yes.

Q. And Exhibit 171 is the direct testimony of Brian Johnson; is that correct?

A. That's correct.

Q. And you have adopted Mr. Johnson's testimony as yours in this case?

A. That's correct.

Q. And Exhibit 172 is the direct testimony of Peter Cummings dated January 17th of this year?

A. That's correct.

Q. And Exhibits 173 through 177 were attachments to that direct testimony; is that correct?

A. Yes.

Q. And Exhibit 178 is your rebuttal testimony from April 17 of this year?

A. That's correct.

Q. And Exhibits 179 through 181 were attachments to that rebuttal testimony; is that correct?

A. Yes.

Q. Have you any corrections to the exhibits we have just discussed other than those that have been marked via errata filings?

A. No.

Q. And are they true and correct to the best of your knowledge?

A. Yes, they are.

MR. SHERR: Your Honor, Qwest moves for the admission of Exhibits 171 through 181.

JUDGE MOSS: Okay, hearing no objection, those will be admitted as marked.

And the witness is available for cross-examination?

MR. SHERR: He is, Your Honor.

JUDGE MOSS: Thank you.

And, Ms. Smith, I believe are you doing the cross-examination?

MS. SMITH: Yes, I am, Your Honor, thank you.

JUDGE MOSS: All right, go ahead.

C R O S S - E X A M I N A T I O N

BY MS. SMITH:

Q. Good afternoon, Mr. Cummings, I'm Shannon Smith with the Attorney General's office representing Commission Staff.

A. Good afternoon.

Q. You were here this afternoon, weren't you, when Mr. Grate testified and deferred a few questions with respect to imputation to you, were you not?

A. I was. I hope I paid adequate attention. And if I didn't, I'm sure you will remind me of the question.

Q. Thank you, Mr. Cummings. I have a few questions for you that Mr. Grate deferred to you. The first question is in determining the dividend that Qwest Corporation pays to QCII, does QC calculate this amount with or without the revenues associated with the imputation from Dex?

A. The dividend that's paid from QC to QCII is based on a net income of QC. QC typically pays out 100% of its net income to QCII. The net income that QC records would include the effects of any directory imputation in the state of Washington or other states in which it operates.

Q. By including, do you mean that the dividend would be lower or higher as a result of imputation?

A. Let me try to clarify. There's no explicit adjustment for the directory imputation in terms of the revenues that are recorded on the books of QC. The directory imputation is used to set rates, and the revenues that QC ultimately records derive from those customer rates and the demand for its products and services that it incurs. So point number one to my answer is there's no explicit adjustment in the calculation of the dividend. Point number two would be to the extent that the revenues are lower because of the imputation, that would be reflected in the net income and thus in the dividend paid to the parent corporation.

Q. So would that dividend be higher or lower as a result of imputation?

A. Other things being equal, it would be lower.

Q. In the paying of dividends, is there an actual payment from Dex -- strike that.

With respect to the imputed revenues, is there an actual payment from Dex to Qwest Corporation?

A. No.

Q. And that's an internal decision, is it not?

A. The revenues aren't part of Qwest Corporation. That's why they are, in fact, imputed, so there's no reason for a payment.

Q. Would you agree that Qwest Corporation could do that and make the management decision to do that if it wanted to?

A. Qwest Corporation doesn't own Qwest Dex, isn't responsible for the results of operations for Qwest Dex, so I would say no, it wouldn't be within the management purview of Qwest Corporation.

Q. Would it be within the management purview of QCII to require a payment from Dex to QC?

A. I suppose that could be done, yes.

Q. Mr. Cummings, in the direct testimony of Brian Johnson that you have adopted at page 12, line 16, the testimony reads:

Under those circumstances, I am advised that the bankruptcy court and the trustee in bankruptcy would not give much, if any, consideration to rate payer interests in connection with the disposition of the proceeds from any sale.

COMMISSIONER HEMSTAD: Counsel, from what page are you reading again?

MS. SMITH: I'm sorry, I'm reading at page 12 of Mr. Johnson's direct testimony that Mr. Cummings has adopted.

JUDGE MOSS: It's Exhibit 171.

MS. SMITH: That's correct.

COMMISSIONER HEMSTAD: And what line?

MS. SMITH: Line 16.

COMMISSIONER HEMSTAD: Thank you.

BY MS. SMITH:

Q. Mr. Cummings, I would like to direct your attention to Exhibit 201. Do you have that before you?

A. Yes, I do.

Q. And that exhibit is a data request from Public Counsel asking for the reports, analyses, work papers, and other documents associated with that statement; is that correct?
A. Yes.
Q. And I would note that Qwest's response to that is contained in Exhibit 201; is that correct?
A. Yes, it is.
Q. If you would turn now, please, to your rebuttal testimony that's been marked as Exhibit 178, specifically to page 6.
A. Yes.
Q. And in answer to the question that begins on line 17 regarding other potential effects of the Enron bankruptcy, you say that Enron's bankruptcy may have an adverse affect on PSE's credit ratings and access to the capital markets. Is your testimony on that point speculative?
A. No, I would not characterize my testimony on that point to be speculative with the caveat that my testimony on this point derives from public disclosures by Portland General Electric in their 10-K filing for the year 2002.
Q. Well, and following that statement in your testimony, you quote PGE's recent 10-K filing, and you

quote it to the affect that Enron's management can't predict what the rating agencies would do. Now my question to you is, wouldn't that statement about the inability to predict future rating agency actions be true at any time for any company, not just PGE?

A. Companies are never certain what the rating agencies are going to do in the future, and that wasn't my point in citing the 10-K filed by PGE. I think it's notable that PGE specifically identified this as a risk in their communication to their shareholders.

Q. You also refer to PGE's annual report, the 10-K filing, where PGE has stated its ability to access its commercial paper market has been adversely affected by the May 2002 ratings reduction for commercial paper by Moody's and Fitch. You would agree, however, that the paragraph in PGE's annual report continues to read, management, and I quote:

> Management believes that it has the ability to use existing lines of credit along with cash from other operations to provide the company with sufficient liquidity to meet its day to day cash requirements.

A. I don't have the report in front of me, but that's consistent with my recollection of how that section generally read.

JUDGE MOSS: And, Ms. Smith, let me ask if you could when you're reading to try to slow down just a little bit.

MS. SMITH: I will, Your Honor, thank you.

CHAIRWOMAN SHOWALTER: I was going to ask the same thing, you're reading your questions as well, and it's very difficult to understand the language when it's read.

MS. SMITH: I will do my best to slow down and be more coherent.

CHAIRWOMAN SHOWALTER: You're coherent, it's just hard, the intonation is different reading than speaking.

BY MS. SMITH:

Q. In your rebuttal testimony on page 7, you have a list of bullet points with respect to the effects on PGE of the Enron bankruptcy as disclosed by PGE in its 2002 annual report. And your first bullet point indicates that PGE was included among those Enron subsidiaries suspended from contracting with the federal government. Do you see that bullet point?

A. Yes, I do.

Q. Would you accept that PGE believes and has noted in its 10-K report that it does not believe that the situation merits suspension, and it has initiated processes to have that suspension removed?

A. Is your question do I accept that subject to checking it or --

Q. Yes, would you accept that subject to check, that at page around 38 of the 10-K report from PGE that it makes those statements?

A. I would.

Q. Your next bullet point refers to the potential that PGE may have potential exposure to certain liabilities and asset impairments as a result of the Enron bankruptcy. Would you accept subject to check that PGE's 10-K states that a credit reserve has been established for the entire $2 Million remaining balance of those receivables as of December 31st, 2002?

A. Yes, I would.

MR. SHERR: Your Honor, I would like to ask that Ms. Smith provide a page number reference in that 10-K so that Mr. Cummings has an opportunity to find it.

MS. SMITH: I will, and the page reference I have is page 107. I downloaded this from the PGE web site, and occasionally the page numbers differ, so I would say it's either on page 107 or it's somewhere around there.

THE WITNESS: I think I can find it. I

downloaded if from their web site, and I also have another version, so.

BY MS. SMITH:

Q. Your third bullet point details some occurrences that PGE has noted in its 10-K with respect to merging the PGE pension fund with the Enron pension fund and some concerns about the PGE pension fund making up the deficiency in the Enron pension fund. Would you agree subject to check that on or about page 108 of PGE's 10-K PGE has noted that it would take legal action if necessary to prevent that from happening?

A. I would accept that subject to check, and yeah, I would also expect that.

Q. And with respect to your final bullet point that has to do with some tax consequences, would you also agree subject to your check on or about page 110 of PGE's 10-K filing that PGE management has indicated that it may take legal action or will take whatever legal action it can take with respect to those tax consequences?

A. Yes.

Q. In your rebuttal testimony at page 8 on lines 9 and 10, you state that PGE is a recent acquisition of Enron. Do you know when PGE merged with Enron?

A. I believe it was in 1997.

Q. When did Qwest complete its merger with U S West?
A. In June of 2000.
Q. And on that same page at lines 7 and 8, you state that Qwest Corporation is closely integrated with its parent company. Does Qwest Corporation issue debt in its own name?
A. Yes.
Q. Does Qwest Corporation receive a bond rating from Standard & Poor's and Moody's in its own name?
A. Yes.
Q. On line 10 of that same page where you state that PGE is not well integrated with Enron, could you tell me whether Enron bills PGE for allocated overheads and other costs?
A. I don't know that.
Q. Would you accept subject to your check that PGE's 10-K for 2002 on or about page 102 indicates that it, in fact, does, Enron does bill PGE for allocated overheads and other costs?
A. I will accept that.
Q. Do you know whether PGE provided services to other Enron subsidiaries prior to and post filing of bankruptcy?
A. I believe that they have.

Q. I would like to turn your attention please to your Exhibit PCC-8, which has been marked in this proceeding as Exhibit 179.

A. Yes.

Q. And in that exhibit, you show the current bond ratings of both PGE and QC.

A. That's correct.

Q. Are the Standard & Poor's and Moody bond ratings for PGE above investment grade?

A. Yes, they are.

Q. And for Qwest Corporation, whose parent company is not in bankruptcy, are those same ratings below investment grade?

A. Yes, they are.

Q. If we considered the Fitch rating agency, are the bond ratings worse for QC than PGE as well?

A. They're both below investment grade, but Fitch rates QC lower than PGE.

Q. Do you know whether Qwest has ever discussed with its lenders or the rating agencies the possibility of establishing a ring fence to protect Qwest Corporation in the event of a QCII bankruptcy filing?

A. I don't have any knowledge in that regard. I don't know.

Q. Would it be a good thing for Qwest, for Qwest

Corporation, to have an investment grade rating even if other Qwest entities were still in the junk bond category?

A. It would be advantageous for all of the entities of Qwest to have an investment grade rating.

Q. If QCII were to file for bankruptcy protection, is it reasonable to expect that Qwest and its creditors would consider establishing a ring fence mechanism around QC?

A. I don't think so, and I suggest that you may want to ask this question of Mr. Mabey as well, but I will tell you why I don't think so. The reason I don't think so is because of the dominant position that QC has in the corporate structure of QCII. QC really is the majority of the operations of the company, and from a financial perspective it would seem difficult to me to ring fence that subsidiary given its dominance and the high degree of integration that it has within the corporate structure.

Q. Mr. Cummings, would it be at all realistic to imagine a scenario where one of Qwest's unregulated subsidiaries such as Qwest Corporation, Qwest Communications Corporation, filed for bankruptcy protection and the result would be that the bond ratings of QC and QCII would actually increase?

A. It would be difficult for me to imagine a scenario where there's a bankruptcy for QCII that would as a result of that bankruptcy prompt an increase in the bond ratings of any of the subsidiaries.

CHAIRWOMAN SHOWALTER: I'm sorry, I thought the question was what if QCC, that is one of the affiliates or subsidiaries.

MS. SMITH: That's correct, it was Qwest --

A. I'm sorry, I may have misinterpreted the question. So the question is what if one of the subsidiaries, not the parent QCII?

Q. That's correct.

A. But a subsidiary other than QC files bankruptcy.

Q. And would it be possible in that scenario for the bond ratings of other subsidiaries such as QC and the parent company, QCII, to actually increase?

A. My answer relative to the bond ratings would remain the same. I don't think that's a plausible scenario that any bond ratings would increase given a bankruptcy anywhere in the corporate structure. It doesn't seem plausible to me either that a subsidiary such as QCC would be in a position to declare bankruptcy independent of the other subsidiaries in the corporation, but I would like to defer that question to

Mr. Mabey.

Q. Well, in that vein, are you aware of two companies that are regulated utilities, Northern States Power and Public Service Company of Colorado that are subsidiaries of Xcel, X-C-E-L, Energy, are you aware of those companies and their relationship to Xcel Energy?

A. I'm generally aware that they are subsidiaries of Xcel.

Q. Are you also aware that NRG Energy is also a subsidiary of Xcel Energy?

A. Yes.

Q. Are you aware that recently on May 14th, 2003, NRG Energy filed a voluntary bankruptcy petition?

A. I'm not aware of that.

Q. Would you accept that subject to check?

A. How would you propose that I check that?

Q. Well, perhaps we could --

A. It's not part of my testimony.

Q. Well, perhaps you could check news releases, or perhaps Commission Staff could provide you with information that would allow you to check that answer, and we would be willing to do that.

MR. SHERR: Your Honor, if Ms. Smith has a particular document that she would like to show to Mr. Cummings while he's on the stand, that might be helpful.

JUDGE MOSS: Well, you can just posit it as part of a hypothetical, and it's a matter of public record, I assume, if it's the truth.

MS. SMITH: I do have a document here somewhere. It's just going to take me a second to find it.

Your Honor, it appears that I do not have with me at the table a copy of the news release, so I would continue to ask this question subject to check.

JUDGE MOSS: Well, see if you can pursue your line without -- the witness is not really in a position to confirm or deny the news report that you wanted to use anyway, so just assume the fact and move on with your questions. Have the witness assume that the event has occurred as you described.

BY MS. SMITH:

Q. Mr. Cummings, could you assume, please, that --

MS. SMITH: Your Honor, may I have a moment, please?

JUDGE MOSS: Okay.

BY MS. SMITH:

Q. Mr. Cummings, please assume that on May 14th, 2003, NRG Energy filed for bankruptcy protection.

A. Yes.
Q. Please also assume that the regulated utility subsidiaries did not seek bankruptcy protection.
A. And that would include Northern States Power, Public Service of Colorado?
Q. That's correct.
A. Is the parent company --
Q. And Xcel.
A. And Xcel?
Q. That's correct.
A. And Xcel is the parent company of the other three?
Q. That's correct.
A. Thank you.
Q. And I would also --
A. I have that assumption now.
Q. Thank you. This is somewhat awkward to ask this question as an assumption as opposed to subject to check, but would you find it reasonable to assume that in that situation that Standard & Poor's could issue a news release putting the utility's subsidiaries on its credit watch for a possible positive ratings change as a result of the NRG bankruptcy?
A. I can see that as a plausible scenario given the multitude of factors that the rating agencies look

at. And, you know, that sort of resolution could be moving things in a positive direction compared to where they were before. You know, without knowing those details, I would be hesitant to prescribe the cause and effect that the declaration of bankruptcy by one entity prompts a rating increase by the other entity, other things being entirely equal.

Q. And again, in Exhibit 178, which is your rebuttal testimony, on page 5 at the top of the page, you say -- are you there, Mr. Cummings?

A. I am there.

Q. You say that in the event of a bankruptcy, customers would likely not get new services. Is it your testimony that a company can not offer new services while it is in bankruptcy?

A. No, that's not my testimony. My testimony here refers to my analysis of what might be the likely effects if QCI and QC were in bankruptcy. And my statement at the top of page 5 probably could have been more clear, but what I was attempting to point out here is that a company in bankruptcy has necessarily limited resources, and ours is a capital intensive business, and to bring new and improved services to our customers it generally requires capital expenditures. And my point here is that a company in bankruptcy is not likely to have the level of capital available for expenditures that an otherwise financially healthy company would.

Q. Hasn't Qwest already cut its investment dramatically even though it's not in bankruptcy?

A. I wouldn't say that Qwest has cut its investment dramatically. I would like to put two pieces of information into this answer. One is that if you look at the very recent past of 2001 and 2000, for instance, Qwest capital expenditures were notably higher than they were in previous years. That's point number one. Point number two is that Qwest has scaled back, if you will, or returned, if you will, to a more normal level of capital expenditures, which our chairman characterizes as in the range of 15% to 20% of our revenues. We have seen a noticeable decline in our revenues, in our access lines and in all of our revenues during the last year, and we feel that the current level of capital expenditures is appropriately scaled to that level of revenues.

Q. Do you have any specific services in mind that you think customers would not get in the event of a bankruptcy?

A. You're back to my statement at the top of page 5?

Q. Yes, I am.

A. No, I don't.

Q. So would it be accurate to say that your testimony on this point is speculative?

A. I have attempted in this testimony to outline what I see are the risks from the standpoint of a financial analyst in bankruptcy. I wouldn't call it speculative, I would call it identifying the risks.

Q. Are you familiar with the bankruptcy of WorldCom?

A. In a general sense, yes.

Q. Do you recall when WorldCom filed bankruptcy?

A. Not specifically, no.

Q. Would you accept subject to your check that it was sometime during the summer of 2002?

A. Yes.

Q. Are you familiar with the MCI Neighborhood service that WorldCom offers?

A. No.

CHAIRWOMAN SHOWALTER: Was that a yes or a no?

THE WITNESS: That was a no, I'm sorry.

BY MS. SMITH:

Q. Again at your rebuttal testimony at page 15.

A. Yes.

Q. I apologize, the reference is to your direct

testimony. That's been marked as Exhibit 172.
A. At page 15?
Q. That's correct, line 15. How much does Qwest currently owe under the ARCA?
A. Qwest currently owes $2 Billion under the ARCA.
Q. When the ARCA was agreed to, was it explicitly conditioned on the Dex transaction?
A. It was in the context of Dex and other potential asset sales. There were strict requirements having to do with the pay down of the ARCA based on those asset sales, and the Dex sale was mentioned specifically in the completion of the first phase and the amount that needed to be paid down at that point, which was $1,354,000,000.
Q. I guess my question is, does the ARCA explicitly state that the arrangements in the ARCA are conditioned on the Dex transaction? Is there any provision in the ARCA that would state that?
A. Well, I just gave you an example of one. The ARCA specifically states that from the proceeds of the first increment of the directory sale, not more than $1,354,000,000 needs to be paid at the time of the sale.
Q. Under the terms of the ARCA, is failure to complete either the Dexter portion or the Rodney portion

an event of default?

A. I don't believe it is, no.

Q. Is it correct that under the ARCA, making incorrect statements in any financial statement is an event of default?

A. I'm not sure about that. There are provisions in the ARCA which require the filing of financial statements, but I'm not sure about a provision like as you're speaking of.

Q. Would you agree subject to your check of the ARCA that such a provision is contained in Section 6.01 of that document?

A. I would. Thank you for the reference to where it is.

Q. Is it correct that a portion of the Dex transaction proceeds must be used to repay the ARCA loans?

A. Yes.

JUDGE MOSS: I probably should have interjected long before now that ARCA is an acronym, A-R-C-A, amended and restated credit agreement. I was first thinking of those black and white whales.

CHAIRWOMAN SHOWALTER: In a Baltimore accent.

BY MS. SMITH:

Q. In your rebuttal testimony, again that's been marked as Exhibit 178, at page 3, line 17, you testify that Qwest almost certainly would have been facing bankruptcy without the ARCA. Do you see that testimony?

A. Yes.

Q. What do you mean by that? Do you mean that Qwest would have sought bankruptcy protection had it not negotiated the ARCA?

A. You know, I mean in simple terms that Qwest would not have had the cash to pay the banks the money that was owed absent a renegotiation of that credit arrangement. It would not have had the liquidity to pay its debts when they came due. And that is a likely bankruptcy situation.

Q. Was Qwest solvent at the time it entered into the ARCA?

A. Yes.

Q. Well, isn't it true that Qwest had to certify to the ARCA lenders that its assets exceeded its liabilities and that it was able to pay its debts as they became due; is that correct?

A. Qwest had to demonstrate to its lenders that it had the capability to pay off the loans. That's why it was essential for -- I think I said Dex, I meant to say QCI had to demonstrate to its lenders that it had the ability to pay off the loans. That's why a crucial piece of this credit arrangement negotiation which became known as the ARCA was, in fact, the announced sale of the Dex assets.

Q. Would you agree subject to your check that in Section 4.2 of the ARCA Qwest stated that it was solvent?

A. I would agree with that.

Q. Do you believe that Qwest was truthful when it made that statement?

A. I believe it was. At the time that statement was made, Qwest had negotiated the sale of Dex and had the prospect of closing on $7.05 Billion in the asset sale.

Q. So it is your testimony then that Qwest conditioned that statement upon the foreseeability of the successful closing of the Rodney and the Dexter transactions?

A. It would be my testimony that the sale of Dex was a part of the analysis that led to that statement.

Q. The ARCA that we have been referring to replaced another credit facility, did it not?

A. Yes, it did.

Q. So the one that we are referring to, the ARCA in the questioning is the amended and revised credit agreement; is that true?

A. I think it's technically the second amended and restated credit agreement; but yes, that's true.
Q. Did the earlier agreement, the one that was revised by the ARCA that we have been referring to, also require that Qwest make accurate financial statements?
A. I don't know that for sure, but I believe it had similar conditions that the ARCA does in that financial statements had to be -- had to be provided upon a certain schedule, and I'm not certain about the language relative to the accuracy. It sticks in my mind that the language had to go -- had to go to material deficiencies or something like that rather than, you know, a simple typographical error or an item that would not be a material omission in the financial report.
Q. And does that mean that the bankers could have declared Qwest in default and demanded immediate repayment when Qwest admitted that its financial statements were not accurate?
A. I don't know.
Q. I would like to refer you back to your direct testimony marked as Exhibit 172 at page 20.
A. Yes, I'm there.
Q. And you refer in the chart that's in about the middle of the page that QC has debt, it looks like just over $1 Billion in debt that matures in 2003.

A. Yes.

Q. Do you know when that debt is due, what month that debt is due?

A. Yes.

Q. And what month might that be?

A. Some of it has already matured. The $155 Million has already matured. There is $1 Billion of debt that comes due next month in June of 2003.

Q. If the Rodney portion of the Dex sale does not close by June, does QC expect to default on that payment?

A. It's my understanding that QC and the larger enterprise, QCII, has sufficient cash from the proceeds of the Dexter transaction and other sources to satisfy this upcoming allocation. With the sale of Rodney, our chief financial officer has said that we are in essence fully funded through 2005, that we would have enough cash to take care of our obligations through 2005.

Q. I would like to refer you back to Exhibit 178, your rebuttal testimony, at page 13, line 3.

A. Yes.

Q. And there you say that Qwest was informed and advised by Lehman Brothers and Merrill Lynch with respect to these transactions.

A. Yes, that's correct.

Q. Are these firms also participating in the process of raising investment funds for the transaction itself?
A. I believe they are.
Q. Is any potential compensation to Lehman Brothers or Merrill Lynch contingent on the closing of the Rodney transaction?
A. I believe that to be the case.
Q. Can you quantify the size of those fees?
A. I can't, I don't know what the size of the fee is.
Q. Would this be somewhat like having the real estate broker and the mortgage banker write up an appraisal on the house when the house is sold?
A. I don't think I would accept that analogy. The investment bankers have multiple roles, and one of their roles is to provide a fairness opinion to the board of directors of QCII. And in doing so, they have to adhere to the ethics and standards of their industry. They're also responsible to the board of directors for rendering the fairness opinion as it's called. And I would expect and I am sure the board demanded that that be done in an independent professional manner. It would seem to me to be inconceivable to, you know, for an investment bank to essentially offer its fairness

opinion for sale, because I think its exposure in the securities industry and its potential for suits coming from shareholders and others would be so great that no investment bank would want to put themselves into that position.

Q. There are many references in your testimony about the possibility that Qwest, the parent company, would declare bankruptcy without the Dex sale. If Qwest had filed for bankruptcy, would it have filed for reorganization or for liquidation?

A. My assumption would be that, you know, if the liquidity issues facing Qwest were not able to be remedied by the sale of Dex that the logical alternative for Qwest would be a Chapter 11 filing in that it would not be able to meet its upcoming bank debt obligations. I wouldn't see a liquidation filing in that circumstance.

Q. At page 11 of your rebuttal testimony you discuss about the middle of the page, line 10 or so, you describe the decline in credit spread for QC since the Dex transaction was announced; is that correct?

A. Yes.

Q. Now at line 12 where you testify that the credit spread was down 3.488%, and that's the same thing as saying that it would be down 248 basis points; is that correct, 348 basis point?

A. 348 basis points, yes.

Q. And at line 13 where you say it's down 2.285%, that's the same thing as saying it's down 285 basis points; is that correct?

A. That would be 228 basis points, 228 1/2 basis points.

Q. Thank you, I'm glad you get the numbers better than I do. So is it your testimony that this decline in credit spread, which you show as 228 to 348 basis points, was unique to QC and not experienced by all corporate bonds with ratings similar to QC's?

A. No, I wouldn't make that claim. I provided this information in response to Dr. Blackmon's claim that the long-term risk of QCI is going to go up with the Dex sale, and I'm pointing out that the capital markets have reacted favorably since the announcement of the Dex sale, both in terms of equity securities and the spreads which you just quoted on the debt securities. It would not be my testimony that the announcement of the sale of Dex was the only factor involved in the markets.

Q. What has been the comparable change in credit spread for all B rated corporate bonds over this period?

A. I don't have that in my testimony.

Q. Could I direct you to Exhibit 205.

A. I have it right here on the top of the pile.

Q. And would you agree that Exhibit 205 is the Goldman Sachs high yield bond index printout?

A. Yes.

Q. And would you agree that according to this document the spread has declined from over 1,100 basis points in September 2002 to about 700 basis points in May 2003?

A. I would agree with that interpretation of this chart.

Q. And that's a decline of about 400 basis points or 4%; is that correct?

A. That's right.

Q. Now if you would turn to the next page of your testimony to page 12 in your testimony at line 1; do you see that testimony?

A. Yes.

Q. Since the credit spread is down for all companies that use high yield financing, is it your testimony that the Dex sale is providing lower financial risk not just for QC but for the entire universe of U.S. corporations with publicly traded bonds?

A. It would be great if I could make that claim relative to the entire high yield bond market, but I can't. I'm just, you know, observing that since the announcement of Dex, the specific credit spreads for QC debt have narrowed. And to me that indicates that the long-term risk for QC is not going up, it's going down.

Q. Turning back to page 10 of your rebuttal testimony at line 14 where you discuss Qwest's stock prices since last summer.

A. Yes.

Q. Is your point here that the stock price of Qwest has increased since the Dex transaction was announced?

A. It has, yes.

Q. Has Qwest's stock price increased steadily since the company announced in April of 2002 that it intended to sell Dex?

A. No.

Q. Is it your testimony that the only thing that occurred in the summer of 2002 that might affect Qwest's stock price was the agreement to sell Dex?

A. No, the rising tide does float all of the boats, and so Qwest did get some help from the stock market trends in general.

Q. Is there anything specific to Qwest that happened last summer that might have affected the stock price?

A. There were a lot of things that happened last summer that affected the stock price of Qwest. What did you have in mind?

Q. Do you think that the removal of Joe Nacchio as the CEO of Qwest could have affected the stock price?

A. It could have. You know, I didn't track it closely enough with that event to, you know, to say one way or the other.

Q. And do you think the naming of Richard Notebaert as the new CEO might have had an effect on the stock price?

A. He would probably like me to say that there was an immediate impact, but I'm not sure that I can make that claim. I just don't know. I didn't, you know, I didn't track the change in the CEO with the stock price.

Q. Do you think it's possible that any of the increases could have been attributed to the change in management?

A. Let me put it this way. I think the change in management was a positive influence on the company, and I think the change in management gave strong signals to the investment community, strong positive signals about the future of the company. How much and how specifically that was reflected in the stock price I can't tell you.

MS. SMITH: Your Honor, at this time I have a series of questions for Mr. Cummings with respect to a highly confidential exhibit, it's Exhibit 87, and I would like to hear from Qwest how it would like to proceed with this line of questioning in terms of preserving the confidential nature of the information.

JUDGE MOSS: And 87 was previously identified with witness Reynolds?

MS. SMITH: Yes, it was.

MR. SHERR: May I ask a question, Your Honor.

JUDGE MOSS: Sure.

MR. SHERR: May I ask a question directly of Ms. Smith?

JUDGE MOSS: Well, you can direct it to me.

MR. SHERR: I understand. Speaking to you, Judge Moss, that exhibit references, I believe, multiple data request responses, and if you could tell me which data request responses you're going to be speaking about, that would help.

MS. SMITH: Yes, Mr. Sherr, response to, or to the Bench, whomever I'm supposed to direct this response to, Public Counsel's Data Request Number 71.

MR. SHERR: Thank you, Your Honor.

JUDGE MOSS: And let's see, so the specific pages of the exhibit would be what, 4, 7, 8?

MS. SMITH: Really I think most of our questions are going to relate to page 7.

JUDGE MOSS: Okay.

MS. SMITH: But it's a 13 page document.

JUDGE MOSS: Right, well, you know, there's a couple of different ways we can handle this, and the way I prefer to handle it if we can is to simply have you refer the witness to the points on say page 7, which is a highly confidential portion of the exhibit, and without stating the data that is indicated there, he can look at it and -- so can you conduct your questioning in that fashion?

MS. SMITH: I believe that I can, Your Honor.

JUDGE MOSS: Okay, that way we don't have to go through the exercise of clearing the room and turning off the --

CHAIRWOMAN SHOWALTER: Using row and column is the easy way for others of us to get to the number quickly.

MS. SMITH: And if I may ask of the Bench for the benefit of Qwest the identifying names of the columns and the rows, for example the description of what's contained and the years that the numbers pertain to, that part is not confidential, it's just the actual numbers themselves; is that correct?

MR. SHERR: Your Honor, I'm sorry to not answer Ms. Smith's question directly, we're trying to get our copy of this exhibit.

JUDGE MOSS: Okay.

MR. SHERR: I apologize.

JUDGE MOSS: That's all right.

MR. SHERR: If you could give me just a moment.

JUDGE MOSS: You need to get it, sure.

MS. SMITH: Mr. Sherr, I have an extra copy for the witness if you need one for your witness.

MR. SHERR: Sorry, I missed that.

JUDGE MOSS: She has a copy for your witness, a spare copy.

MR. SHERR: Do you have an extra copy for counsel?

JUDGE MOSS: It has all the answers she wants noted in the margins.

Now the question that's pending, Mr. Sherr, is whether we can refer to the exhibit by the column and row designations without breaching anything confidential.

MR. SHERR: That would be fine.

JUDGE MOSS: So I think you can proceed in that fashion, Ms. Smith.

MS. SMITH: Thank you, Your Honor, and did we receive clarification from Qwest that the references to years and the references to topics are not confidential?

JUDGE MOSS: Right, you can refer to the column and row headings.

MS. SMITH: Thank you.

BY MS. SMITH:

Q. Mr. Cummings, before we move into the confidential portion of this exhibit, could you turn to page 3 of this exhibit.

A. Yes.

Q. Now in the supplemental response, the company described the attached current projection of cash flow as being developed on December 8th of 2002; is that correct?

A. I'm sorry, I'm having difficulty following where you are. You're on page 3?

Q. I'm on page 3 and --

A. Under supplemental response, 11-26-2002?

Q. That's correct. And in that response, the company states that this projected cash flow was developed on November 8th of 2002; is that correct?

A. Yes.

Q. And is it correct that the agreement to sell

Dex was finalized in August of 2002?

A. That's right.

Q. Have the projections contained in this exhibit been updated in any way since December of 2002?

A. Yes.

Q. How have those projections been updated?

A. There was a third supplemental response which I thought was filed after December of 2002, but maybe not. I'm now looking at page 5.

Q. In the supplemental response, you indicate that you have additional work papers, but did the actual projection change?

A. Bear with me for just a moment here.

MR. ROSELLI: And if I might interpose a question, which supplemental response just for the sake of clarity? Mr. Sherr is working with Ms. Anderl to try to verify that we have all versions of supplemental responses to this particular data request.

A. If it helps, in my notes I show a supplemental response on 1-21-2003. That was the basis for my answer that it had been updated since the end of the year.

COMMISSIONER HEMSTAD: The Bench doesn't quickly find that last supplemental order.

CHAIRWOMAN SHOWALTER: It's not in here.

MR. CROMWELL: Your Honor, Robert Cromwell. For purposes of the record, I don't believe I have or did not have for submission when we made these exhibit submissions a week ago the supplement that Mr. Cummings is referring to.

JUDGE MOSS: All right.

MR. CROMWELL: It may be a clerical error on my part, and I just wanted to note that. If that isn't the case, I don't think we brought it.

JUDGE MOSS: Where does this leave us in terms of what we need to do here today?

MR. SHERR: Your Honor, just to add another voice, I believe the confusion may be that what was identified as an exhibit was the second supplemental data request response, but there was actually a third supplemental data request response. But I think what we have as Exhibit 87 if I have that number correct is only the second supplemental, and that's why the confusion.

JUDGE MOSS: All right.

MS. SMITH: And when was, may I ask a question, when was the third supplemental response provided to Public Counsel?

JUDGE MOSS: Did you have a date for us, Mr. Cummings, I think you did, didn't you, January?

THE WITNESS: The material that I have shows it as January 21st, 2003.

MS. SMITH: Your Honor, it appears that we don't have that data request response, and we would like to pursue this line of questioning, but we don't have that. Would it be possible for us to take a break and see if we can't locate that?

JUDGE MOSS: How much more do you have all together?

MS. SMITH: Probably about, oh, half hour, 20 minutes.

JUDGE MOSS: Could we just jump to another line and make good use of our next 15 minutes?

MS. SMITH: This is it.

JUDGE MOSS: Oh, you have 30 minutes on this?

MS. SMITH: Well, actually it may not be 30 minutes. It really depends on the answers. It may be much shorter than that. I really don't know.

JUDGE MOSS: Okay. And what's the -- I guess I'm a little confused about the issue. If you don't have the exhibit, then I would presume your questions were based on something other than what you don't have.

MS. SMITH: We have questions based on the second supplemental response to --

JUDGE MOSS: Right, and why does the absence of the third preclude you from following that line?

MS. SMITH: Because if there is an updated cash flow projection, we would prefer to cross on that as opposed to one that's no longer up to date.

JUDGE MOSS: I see.

CHAIRWOMAN SHOWALTER: It sounds like if you got this update, you might be just ready to go with the line of questioning after you take a fairly quick look at it.

MS. SMITH: We probably could.

JUDGE MOSS: Do you have that, Mr. Sherr?

MR. SHERR: We do.

JUDGE MOSS: Mr. Sherr has it, so we can provide it right now. Let's provide it to Staff, please, and see if we can wrap this up. Well, I don't know if we'll wrap it up anyway, because we'll have probably questions from the Bench.

CHAIRWOMAN SHOWALTER: Well, also if we're going to pursue the line of questioning, of course we all want the proper exhibit.

MS. SMITH: And we would need to make copies on colored paper as well, because it's highly confidential.

CHAIRWOMAN SHOWALTER: Maybe we should end the day 15 minutes early.

JUDGE MOSS: Oh, my.

CHAIRWOMAN SHOWALTER: I know that Judge Moss --

JUDGE MOSS: How painful.

CHAIRWOMAN SHOWALTER: I think we're going to do all right, because we have all those extra days next week, but I'm an optimist.

JUDGE MOSS: With the caveat that our extra days have gotten rather full, we will be optimistic, and I suppose we will let Mr. Cummings -- I hate to leave a witness overnight, but we'll just have to do that, Mr. Cummings.

THE WITNESS: That's acceptable to me.

JUDGE MOSS: I'm glad to hear it.

MR. BUTLER: Do we have your assurance you won't punish us later by making us stay late?

JUDGE MOSS: No.

All right, is there any other business we need to conduct before we recess until tomorrow morning?

All right, now I will say this, we do have a commitment that we made, and that is that we will have Mr. King. So before we close, let me ask does Staff or no, let's see, yes, Staff, would you have anything for Mr. King?

MS. SMITH: We do not, Your Honor.

COMMISSIONER HEMSTAD: Is he here?

JUDGE MOSS: He is here, so it sounds though that we may be able to get Mr. King up and off very quickly. I don't know if the Bench knows at this juncture whether it has questions. Maybe we would want to look at it this evening, so we better have him here tomorrow morning. Okay, so I just want to make sure we can fulfill our commitments. All right, and then we can take care of Mr. Cummings as well and carry over. All right, that will work.

Let's be in recess until tomorrow morning at 9:00.

(Hearing adjourned at 4:50 p.m.)