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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3
4 In the Matter of the)Docket No. UT-021120
5 Application of)Volume VI
6 QWEST CORPORATION)Pages 577-623 and
7)662-675
8)
9 Regarding the Sale and Transfer)(Pages 624 through
10 of Qwest Dex to Dex Holdings,)661 contained in a
11 LLC, a non-affiliate.)separate record.)
12 _____)
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15 A hearing in the above matter was
16 held on May 22, 2003, at 9:09 a.m., at 1300 Evergreen
17 Park Drive Southwest, Olympia, Washington, before
18 Administrative Law Judge DENNIS MOSS and Chairwoman
19 MARILYN SHOWALTER and Commissioner RICHARD HEMSTAD
20 and Commissioner PATRICK J. OSHIE.

21 The parties were present as
22 follows:
23 QWEST CORPORATION, by Lisa Anderl
24 and Adam Sherr, Attorneys at Law, 1600 Seventh
25 Avenue, Suite 3206, Seattle, Washington 98191, and by
Phil Roselli, Attorney at Law, 1801 California
Street, Suite 4900, Denver, Colorado 80202.

THE PUBLIC, by Robert W. Cromwell,
Jr., Assistant Attorney General, 900 Fourth Avenue,
Suite 2000, Seattle, Washington 98164-1012.

DEX HOLDINGS, LLC, by Brooks E.
Harlow, Attorney at Law, Miller Nash, LLP, 601 Union
Street, Suite 4400, Seattle, Washington 98101, and by
Richard R. Cameron, Attorney at Law, Latham &
Watkins, LLP, 555 Eleventh Street, N.W., Suite 1000,
Washington, D.C., 20004-1304.

Barbara L. Nelson, CCR
Court Reporter

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1 DEPARTMENT OF DEFENSE, FEDERAL
2 EXECUTIVE AGENCIES, by Stephen S. Melnikoff, Attorney
3 at Law, Regulatory Law Office, U.S. Army Litigation
Center, 901 North Stuart Street, Suite 700,
Arlington, Virginia 22203-2960.

4 WEBTEC, by Arthur A. Butler,
5 Attorney at Law, Ater Wynne, LLP, 601 Union Street,
Suite 5450, Seattle, Washington 98101.

6 THE COMMISSION, by Shannon E.
7 Smith and Gregory J. Trautman, Assistant Attorneys
8 General, 1400 Evergreen Park Drive, S.W., P.O. Box
40128, Olympia, Washington 98504-0128.

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Nos. 271 through 274	--	584	584
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1 JUDGE MOSS: Let's come to order, please.
2 A couple of housekeeping matters. We have had handed
3 up this morning the update, if you will, or
4 supplement to Exhibit Number 87 that we were working
5 with yesterday with Mr. Cummings, and so everybody
6 should have that now.

7 We've also had distributed Exhibit 214,
8 which had previously been identified, but was not
9 available. There was a supplemental page or a
10 revised page for Dr. Kalt's testimony that has been
11 provided to all.

12 Ms. Smith, there was a new exhibit. The
13 number has escaped me. 206?

14 MS. SMITH: Your Honor, 206.

15 JUDGE MOSS: 206. And what was the
16 description on that?

17 MS. SMITH: It's an investment article
18 called Movers and Shakers, and it pertains to Xcel
19 Energy, Inc. And I had some questions yesterday for
20 Mr. Cummings, and this exhibit is associated with
21 that line of questioning.

22 JUDGE MOSS: All right. So we'll identify
23 that with Mr. Cummings, Number 206.

24 MS. SMITH: Thank you, Your Honor.

25 JUDGE MOSS: All right. Now, we agreed, in

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1 some off-the-record activity, to have Mr. King this
2 morning, so we could get him up and off and hopefully
3 on an airplane back to the East Coast in a timely
4 way, and then we'll get back to Mr. Cummings after we
5 complete that.

6 My understanding at this juncture is that
7 we don't have cross-examination for Mr. King, but, of
8 course, the Bench may have some questions and so on
9 and so forth. So with that introduction, let me
10 swear you in, Mr. King.

11 Whereupon,

12 CHARLES W. KING,
13 having been first duly sworn by Judge Moss, was
14 called as a witness herein and was examined and
15 testified as follows.

16 JUDGE MOSS: Thank you. Please be seated.
17 Mr. Melnikoff, your witness.

18 MR. MELNIKOFF: Thank you, Your Honor.
19 Good morning.

20

21 DIRECT EXAMINATION

22 BY MR. MELNIKOFF:

23 Q. Mr. King, would you state your name and
24 business address, please?

25 A. Charles W. King. My business address is

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1 Suite 410, 1220 L Street, N.W., Washington, D.C.,
2 20005.

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

5 A. I am president of the economic consulting
6 firm of Snavely, King, Majoros, O'Connor & Lee.

7 CHAIRWOMAN SHOWALTER: Mr. King, you need
8 to put the red button up.

9 THE WITNESS: Oh, the red button has got to
10 go on. I'm sorry, is this better? Do I need to
11 repeat anything?

12 JUDGE MOSS: No, I think we got that.

13 Q. Do you have in front of you exhibits
14 identified as 271 through 274-C, which is the
15 response testimony of Charles W. King and the
16 associated exhibits?

17 A. I do.

18 Q. And do you have the documents identified as
19 Exhibit Number 286 through 290, which are the
20 supplemental testimony of Charles W. King and
21 associated exhibits?

22 A. I do.

23 Q. Were they prepared by you or under your
24 direction?

25 A. Yes, they were.

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1 Q. Are there any revisions to any of those
2 documents?

3 A. No, there are not.

4 Q. Are they true and correct, to the best of
5 your knowledge?

6 A. Yes, they are.

7 Q. If I asked you the questions contained
8 therein, would the answers be the same?

9 A. Yes, they would.

10 MR. MELNIKOFF: Your Honor, with that, I
11 would move their admission.

12 JUDGE MOSS: All right. We've had the
13 Exhibits 271 through 290 moved for admission. Any
14 objection? Hearing no objection, 271 through 290 --
15 I'm sorry, there's a gap in there because of the
16 supplemental. I'm sorry, I'll have to restate that.
17 271 through 274 and 286 through 290. We had
18 previously identified cross exhibits by Qwest that,
19 of course, will not be offered, Numbers 275 through
20 285, so I appreciate counsel drawing my attention to
21 that gaff in the numbers.

22 MR. HARLOW: Simply looked confused, Your
23 Honor. That's all.

24 MR. MELNIKOFF: With that, Your Honor, Mr.
25 King is available for cross-examination questions.

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1 JUDGE MOSS: All right. And again, if I
2 haven't previously said on the record, my
3 understanding is that Staff doesn't have
4 cross-examination, but the Bench may have some
5 questions.

6 CHAIRWOMAN SHOWALTER: I do.

7

8 E X A M I N A T I O N

9 BY CHAIRWOMAN SHOWALTER:

10 Q. Good morning, Mr. King.

11 A. Good morning.

12 Q. I am interested in engaging you in a
13 comparison of imputation as a tool, a regulatory
14 tool, prior to any sale of an asset, with imputation
15 as a tool to distribute gain after sale of an asset.
16 And I -- if you look confused, I can point you.
17 Let's go first to page four of Exhibit 271.

18 A. 271.

19 Q. That's your --

20 A. Initial.

21 Q. -- response testimony.

22 A. Yes, right. Let me go to that. Yes.

23 Q. And I'm looking at lines 11 through 16.

24 A. Mm-hmm.

25 Q. But am I correct that your view of

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1 imputation, as we have been doing it, is as a method
2 to deliver benefit to the ratepayers as if the Yellow
3 Pages had not been transferred from the regulated
4 entity outside the regulated entity?

5 A. That's correct. And it's my understanding
6 the Commission has essentially ignored that transfer
7 and treated Yellow Pages as though they were still a
8 component of the regulated entity.

9 Q. And in that sense, as we are using
10 imputation today, isn't imputation an indefinite
11 arrangement until there is an approved sale?

12 A. That's correct.

13 Q. All right. Now, if you could turn to page
14 17 of your response testimony, Exhibit 171.

15 JUDGE MOSS: It's 271.

16 Q. Excuse me, 271. And in lines one through
17 ten, you are saying, in a sale, the ratepayers should
18 receive all of the gain. And let's not focus on all
19 of the gain or what the gain is; just assume there's
20 --

21 A. Just the idea.

22 Q. -- a certain amount of gain that is owed to
23 the ratepayers.

24 A. Yes.

25 Q. And now your proposal is to distribute or

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1 deliver that gain in the form of an upfront cash
2 payment and 15 years, let's say, of imputation?

3 A. That's correct.

4 Q. And on --

5 A. But I wouldn't call it imputation.

6 Imputation implies that there is a revenue stream
7 that we are imputing back into the revenue as an
8 offset to the revenue requirement. This really is a
9 re -- a timed flow-through of the gain to ratepayers
10 in the form of a credit, a revenue credit.

11 Q. Well, and this is the issue I want to talk
12 about, because we are using this word imputation --

13 A. Yes.

14 Q. -- I think in some different senses, but on
15 -- well, on line one, you would say, really, the
16 ratepayers should receive this gain now, but because
17 that would defeat the purpose for selling it, let's
18 work out a stream of benefits over time.

19 A. That's correct.

20 Q. All right. Now, what my question is, how
21 -- how certain is that stream of benefits over time?
22 If the ratepayers were to receive today a cash
23 payment for the whole amount they are due, they would
24 have it. That would be done.

25 A. That's correct.

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1 Q. They would get that benefit.

2 A. Yes.

3 Q. Instead, the proposal is to -- is to let
4 them have the benefit of a regulatory treatment over
5 the next several -- over the next 15 years?

6 A. That's correct.

7 Q. And would you agree that that is less
8 certain, in terms of their ultimate delivery of the
9 benefit, than if they get it all today?

10 A. Absolutely.

11 Q. All right. Now, then, my next question is
12 are there ways that might be more certain than the
13 proposal of -- let's call it post-sale imputation
14 than the proposal in the settlement? That is, why
15 wouldn't there be a contractual obligation to deliver
16 that same stream of benefits, or do you see a
17 distinction between a contract, say, between QCI and
18 QC to deliver this benefit and just our saying and
19 the company saying we will do it?

20 A. Well, if you're talking about a contractual
21 arrangement between QCI and QC, I don't see a whole
22 lot of difference between that and the proposal
23 that's embedded in the settlement.

24 If your objective is to make very sure that
25 ratepayers get this deferred benefit, then you could

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1 cast the deferred benefit as direct bill credits over
2 the coming 15 years, corresponding to the annual
3 amount, which, under the settlement is, I believe,
4 \$110 million for three years and \$103 million for the
5 remainder. That would guarantee that ratepayers do,
6 in fact, receive every cent of the gain and would be
7 a much more forceful regulatory action.

8 I don't think, though, that having a
9 contractual commitment from QCI to QC significantly
10 improves the probability that ratepayers will get a
11 benefit, because, under the existing arrangement,
12 ratepayers get no benefit unless there is a rate
13 case, unless there's a finding of revenue requirement
14 in which this flow-through of benefit is reflected.

15 Q. Under the existing arrangement, you mean
16 today or do you mean the settlement proposal?

17 A. I'm sorry, the settlement proposal.

18 Q. Okay. Well, then, because -- I'm not sure
19 what you just said, because I wasn't sure whether you
20 meant today or --

21 A. I'm sorry, I should have said under the
22 settlement proposal.

23 Q. All right.

24 A. Under the settlement proposal, there's no
25 realistic benefit to ratepayers unless you have a

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1 rate case.

2 Q. Right.

3 A. And if you want to guarantee that
4 ratepayers will, in fact, receive every cent of the
5 gain, then you could cast the deferred payment in the
6 form of a bill credit every year, and that bill
7 credit would be similar to the initial bill credit
8 for \$67 million that's being called for under the --
9 under the settlement.

10 Q. Well, and you say guarantee, and I guess my
11 feeling is even that is not guaranteed. In the event
12 of a bankruptcy of the company, that would be put in
13 question. I'm not saying there will be one; I'm just
14 saying there are -- there's a pecking order of
15 guarantees, that the most certain one would be
16 deliver all the cash now.

17 A. Yeah.

18 Q. Because it would be a done deal. I'm not
19 sure if there's something less certain than
20 imputation, but that strikes me as sort of toward the
21 other end. And then, in between those, I mentioned
22 the contract. That might be one, and a credit might
23 be a different one. I'm not sure how these all play
24 out legally, but it strikes me that would be between
25 imputation and a contract.

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1 We have done credits in the past. That's a
2 normal way to do things if there's a sale of an
3 asset, such as Centralia. We also use credits for
4 Bonneville Power benefits. It comes right in off the
5 top -- it comes on the top.

6 But explain to me again what -- let's say
7 the different options are distribute all the cash
8 now, approve an imputation theory, such like the
9 settlement. Now, what would be -- would there be --
10 would there be -- would a credit have more force than
11 the settlement without any significant disadvantage
12 to the other interested parties in this sale?

13 A. Well, a credit would have an advantage in
14 guaranteeing that ratepayers get green money for this
15 gain. The other parties, namely Qwest, would
16 probably not like that so much, because, assuming
17 they can keep their costs down, they would not suffer
18 any loss by reason of the imputation, which really
19 isn't a revenue credit, through the regulatory
20 process, so long as they don't have to come in for a
21 rate case.

22 This says no matter how profitable the
23 alternative, which is a annual revenue credit, in
24 effect says no matter how profitable Qwest is, and
25 quite regardless of its revenue requirement, it's

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1 going to belly up \$103 million annually to ratepayers
2 for a bill credit, which is essentially the
3 difference between those two arrangements.

4 Q. All right. Now, I'm just trying to think
5 out loud, which is dangerous, but supposing this were
6 characterized as a credit, that would be implicit or
7 silent until the next rate case, but at the point of
8 a rate case, it would be a credit.

9 A. Well, that --

10 Q. Or is that --

11 A. That, essentially, is what the settlement
12 calls for. And the name of it, imputation credit,
13 effectively, it's an offset to the revenue
14 requirement when that revenue requirement is
15 calculated.

16 Q. Okay. Now, what if we talked about a
17 contract and we said this contractual amount is
18 owing, but it is deemed satisfied, so long as there
19 is no rate increase, at the point at which there
20 isn't -- is any general rate case, the contractual
21 amounts kick in as a separate amount?

22 A. You see, I don't see that as being, from
23 the ratepayers' standpoint, any different from what
24 the settlement calls for. Essentially, the
25 settlement says there will be these annual

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1 imputations or revenue credits. The contract is the
2 mechanism whereby you guarantee that Qwest
3 Communications, the regulated entity, derives its
4 money from Qwest International, the parent, but
5 that's within the company, that is within the family
6 of companies.

7 How it affects ratepayers is no different
8 than if you simply say we are going to have a revenue
9 credit of these amounts each year, because none of it
10 comes into play until there is a rate case and a
11 calculation of the revenue requirement.

12 Q. Well, I guess what I'm thinking about is
13 if, down the road, there is a bankruptcy, what is the
14 pecking order or what is the status of this
15 imputation amount versus a credit versus a
16 contractual amount? And you may not be a bankruptcy
17 expert, but that's the question I'm wondering.

18 A. Yeah, I'm not, but my guess is that when
19 there is a bankruptcy, it is the parent company that
20 bankrupts. It is not the regulated company. The
21 regulated -- if you have a contract between the
22 parent company and the regulated company, that would
23 be voided by a bankruptcy. If all you do is say that
24 the regulated company owes each year a revenue credit
25 of \$103 million in any kind of rate of return, I

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1 mean, the revenue requirement calculation, then that
2 is effectively un -- that is unaffected by a
3 bankruptcy, and the reason is that the regulated
4 entity would not be bankrupt. At least that's the
5 presumption.

6 Q. So you would see -- well, first of all, if
7 it were a contractual amount, you said it would be
8 wiped out. Now, do you mean the contract is voided
9 altogether or that contract and the beneficiary of
10 the contracts would become a creditor?

11 A. Yeah, you're getting in line with everybody
12 else.

13 Q. Well, that's what I'm wondering about. If
14 everybody's in line, where are the ratepayers in line
15 if it's imputation credit, contract, or of course, if
16 they got the money up front, they wouldn't be in
17 line, because they would have gotten the money?

18 A. Well, it's not a -- ratepayers aren't
19 creditors under that environment. What you're simply
20 saying is we're going to make an adjustment to the
21 revenue requirement calculation. And it's not money
22 owed in the sense that there's a contract to be paid
23 or a bill to be paid, but when we go to calculate how
24 much revenue the company should recover from its
25 ratepayers, we're going to subtract \$103 million

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1 whenever that happens.

2 That, I don't think, is something that a
3 bankruptcy court has any opportunity to void. Now,
4 again, I'm not a lawyer and I'm not a bankruptcy
5 expert, but I would think that that is perceived as a
6 regulatory decision that is not one that a bankruptcy
7 court could supersede.

8 Q. What about the -- if it is a regulatory
9 decision, what about the ability of the regulated
10 company to deliver on that?

11 A. Well, that's a problem that the Staff has
12 brought up. And we have to assume that there are
13 sufficient resources within the regulated company
14 that would permit it to continue to function,
15 notwithstanding a reduction in revenue of \$103
16 million. The implicit assumption is that the
17 regulated company got some benefit out of the sale of
18 the Dex holding -- Dex operation, but you and I know
19 that that's not the case, that the principal -- the
20 beneficiaries are going to be the parent company.

21 Q. So --

22 A. So I think that's a concern. I don't know
23 how -- I think the conditions that you would be
24 looking at at the time of the rate case, it's
25 possible that you could look at the company's

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1 condition and decide they simply can't afford to fork
2 over \$100 million.

3 Q. Well, I mean, doesn't it -- wouldn't that
4 -- if we did insist on the amount, wouldn't it
5 necessarily have to come directly out of the
6 profitability of the regulated company unless the
7 parent company has some other profits, but I was
8 positing that the parent company, the parent group,
9 is in bad shape.

10 A. The only reason you would not enforce the
11 \$103 million is a cash flow consideration. The fact
12 that it's subtracted from the profits flow up to the
13 parent company is appropriate. After all, it was the
14 parent company who got all the money in the first
15 place. So that properly is where the subtraction
16 comes from.

17 The reason you might want to ease off on
18 the revenue credit would be if the company could
19 demonstrate that the loss of this hundred million
20 dollars effectively inhibits its ability to perform
21 service and to meet ratepayer needs, which is a
22 tougher test to show, but it's possible that could
23 happen.

24 Q. Well, I think that is a nice lead-in to my
25 last question. If you could turn to page three of

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1 your response testimony, Exhibit 271. On line 14 --
2 well, 13 through 15, you say the sale is in the
3 public interest as it appears to be the only way that
4 Qwest's parent company can stave off bankruptcy.

5 And I read the rest of your testimony and
6 there does not seem to be any analysis of why that's
7 the case. I take it you are accepting as a given
8 that it is desirable, or not just desirable, but I
9 gather necessary to protect ratepayer interests that
10 Qwest International -- I can't --

11 JUDGE MOSS: QCI.

12 Q. -- QCI avoid bankruptcy?

13 A. First of all, I accepted the company's
14 contention that it must raise this money to meet the
15 debt that is coming due during the next two years.
16 And the company implied -- I don't think it implied;
17 they stated that, absent this money, they simply
18 wouldn't be able to meet these obligations.

19 Now, we didn't get to the question of is it
20 a terrible thing if QCI goes bankrupt, and the Staff
21 argues that it wouldn't be all that bad. After all,
22 Enron went bankrupt and Portland General Electric is
23 doing fine.

24 My concern is that a bankruptcy judge would
25 take one look at the Dex operation and say this is a

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1 valuable piece of property, and I think I'm going to
2 sell it to pay the creditors, and the bankruptcy
3 court sells Dex and we are left with nothing for
4 ratepayers. That, I think, is the big concern I have
5 with bankruptcy. Again, lawyers and bankruptcy
6 experts may have different views, but -- and I'm not,
7 don't pretend to be an expert, but it does seem to me
8 that there is a real concern that we could lose every
9 penny of benefit that comes from Dex directories.

10 Q. So your view is sell Dex now, maybe you do
11 avoid bankruptcy, and we funnel some of the benefit
12 immediately to the ratepayers, and the rest of the
13 benefit in some way that at least you find
14 satisfactory, the imputation method?

15 A. That's correct. It was my original
16 position, of course, that the amounts should be a
17 little larger than the settlement, but the virtue of
18 the settlement is that it's a done deal and we know
19 it will go through and will not be challenged by the
20 company.

21 I think, when we bail out of the
22 settlement, we increase greatly the risk that, for
23 legal reasons, for financial reasons, the
24 arrangement, whatever it is, simply can't be
25 enforced. The settlement can be enforced, because

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1 the company said they'll accept it.

2 CHAIRWOMAN SHOWALTER: Okay. Thank you.

3

4 E X A M I N A T I O N

5 BY COMMISSIONER HEMSTAD:

6 Q. Well, the Chair really explored much of
7 what I was going to pursue. Just to be clear, on
8 page three of your response testimony, at line 20, or
9 starting at line 19, you state, To the contrary,
10 ratepayers should be assured of some sort of
11 guaranteed compensation, and on.

12 In view of your discussion with Chairwoman
13 Showalter, do I take it you don't really mean
14 guaranteed in the light of the potential of a future
15 bankruptcy of the parent company?

16 A. Well, the \$67 million up front would be
17 guaranteed --

18 Q. Well, I'm sure --

19 A. -- because that would occur. The revenue
20 credits the settlement calls for, I believe, are
21 reasonably guaranteed in the event there is a rate
22 case, because, as I mentioned earlier, I don't know
23 that a bankruptcy court could determine that that is
24 a -- that's a bill that it has access to. That is,
25 it could -- it could cancel the Commission's decision

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1 to make that adjustment in the revenue requirement.

2 Again, these are legal matters, and it's
3 quite possible that I'm just -- well, it is true that
4 I'm just speculating, but I don't see that as a
5 payable by Qwest to its ratepayers in the sense that
6 it would be a payable to any other creditor. Rather,
7 it is a ratemaking adjustment that this Commission
8 has committed to and, under the settlement, the
9 company has committed to as well, and the company
10 would be denying its own settlement if it opposed it.

11 I do believe there is -- in the settlement
12 language itself, the parties all commit to not oppose
13 the implementation of the conditions of the
14 settlement.

15 Q. If there is going to be this continuing
16 arrangement, assuming the sale is approved, along the
17 lines of the settlement, and we simply continue to
18 reduce the amount of revenue that otherwise would be
19 available to the company by the approximate \$100
20 million per year, how do we protect ratepayers from
21 the scenario where Washington ratepayers, for
22 example, on capital improvements, would simply be
23 starved?

24 A. Well, I mentioned that earlier. There is a
25 possibility that the deduction of \$100 million from

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1 the revenue stream to the company could so starve the
2 company of cash availability, particularly given that
3 it's not going to get much from its parent by reason
4 of equity infusions, and it can't -- with no equity
5 infusions, it probably can't raise much more in the
6 way of debt.

7 There is a possibility that the cash flow
8 situation could be so bad that you would not want to
9 impose this hundred million dollar reduction in the
10 revenue requirement. That condition is possible.

11 The more likely condition is that the
12 company can meet its construction obligations, but
13 what happens is that the parent company gets a very
14 low rate of return on its equity investment, and
15 that's as it should be, but I can't sit here and tell
16 you that we can comfortably deduct \$100 million when
17 there is a rate case and not have a problem of cash
18 shortfall.

19 So that your concern is, I think, a valid
20 one, and I just don't know how to get around it.

21 Q. Well, there are two different scenarios. I
22 suppose one is that the company gets the lower rating
23 from the Wall Street rating bureaus, and the result
24 of that is to increase its cost of capital. That may
25 cancel out any benefit from the future credit.

0602

1 That's one problem, isn't it?

2 A. It is a problem. Whether that increase in
3 the cost of capital offsets the hundred million
4 dollars, I don't know. The embedded debt cost would
5 not change even if you downgraded the company's debt.
6 The cost of equity normally is calculated on the
7 basis of a healthy company and would disregard -- in
8 your estimation of the cost of equity, you would
9 disregard the hundred million dollar reduction and
10 presume that that is, in fact, revenue. And --
11 because otherwise you would -- exactly what you say
12 would happen. You would cancel out the benefit of
13 the hundred million dollar rate credit.

14 So I don't think the cost of capital impact
15 is the concern. The concern is the cash flow
16 problem.

17 Q. The second scenario is the company will
18 say, Well, we're earning a higher rate of return in
19 other states than in the state of Washington, so
20 taking that into account, we're simply just not going
21 to invest here, but we'll invest elsewhere.

22 A. Well, I've heard companies say that and --

23 Q. And I believe this company has said that.

24 A. Well, it's altogether inappropriate. The
25 company has a obligation to serve its customers in

0603

1 every state.

2 Q. And -- okay.

3 A. And it should not be attempting to punish
4 one state because it doesn't get the regulatory
5 treatment that it likes. I think any company that
6 says we're going to underinvest intentionally because
7 you're treating us badly from a regulatory
8 standpoint, I think is violating its public utility
9 obligation.

10 Q. And what does the Commission do about that?

11 A. Well, there's a whole string of penalties
12 that the Commission can impose. In fact, this
13 Commission has imposed rather a draconian set of
14 standards, I understand, subsequent to the merger
15 with Qwest of US West, and those are the kind of
16 things that you could impose on the company and make
17 sure that the quality of their service is maintained.

18 Q. To what extent are the federal agencies
19 influenced in the agreement to the settlement by
20 their concern about Blue Pages?

21 A. Well, our problem is this. Everyone says
22 that the directory business is, to some extent, being
23 offset by Internet searches and the fact that you can
24 get Yellow Pages and White Pages on the Internet.
25 That's fine. I have tried to look up a government

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1 agency on the Internet. You can't do it. Because if
2 you look in the Yellow Pages, it says type of
3 business, and of course a government agency isn't a
4 type of business. If you look at a White Page, it
5 says name and address and you try and type in the
6 name and address. I think Blue Pages is the one area
7 in the whole directory where you really do need the
8 directory.

9 Now, I appreciate that, even without Blue
10 Pages, every address is supposed to be listed, so if
11 you want the Fish and Wildlife Service, you can look
12 under F and maybe find it in the business section,
13 but even there, that's cumbersome. It's much better
14 to have a Blue Pages, which organizes telephone
15 numbers of government agencies according to the
16 government entity and then, within that government
17 entity, the various departments. And that is
18 something I think that certainly the federal
19 government, with its many, many, many agencies, needs
20 to have in all directories, if possible, but
21 certainly the majority of them.

22 Q. Okay. I was going to ask one other
23 question back on the earlier discussion. Do you have
24 an opinion on the suggestions of Dr. Blackmon of the
25 -- call it attempting to ring-fence the regulated

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1 utility by such things as requirements for levels of
2 equity ratios, for example?

3 A. In other words, he's going to, yeah, make
4 sure that the parent company does not bleed the -- I
5 think that could be done in a rate case. I don't
6 know that you need to do it as a preliminary -- I
7 mean, as a sort of precondition to approval of the
8 sale.

9 If, for example, the parent company were to
10 use the subsidiary as a source of debt capital
11 because it's got hard assets and the parent company
12 doesn't, this Commission has the power to use a
13 hypothetical capital structure, rather than the
14 actual capital structure in granting a -- calculating
15 a rate of return.

16 Q. But it's the actual capital structure that
17 has the real force, isn't it, rather than the
18 hypothetical?

19 A. It does, but if you use the hypothetical,
20 what you effectively do is require the parent company
21 to bear the burden of the lower capital costs that
22 you're going to find compared to the higher capital
23 cost that you would find if you used the actual
24 capital structure.

25 Bear in mind that stockholders of this

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1 regulated entity are QCI. They're not the little old
2 ladies out in the public who own stock in Qwest
3 Corporation, the regulated entities. And it would be
4 QCI that is bleeding this company. And if it is, it
5 should be -- it should bear the price of it and
6 simply not get paid for its efforts.

7 Now, I don't know the details of Dr.
8 Blackmon's ring fence or his protection. I have read
9 his testimony. I haven't gone into the details of
10 those. Earlier in our settlement discussions, we had
11 proposed such things, but it seems to me the ultimate
12 concern of this Commission is the end product. Are
13 we getting -- we're getting good service at
14 reasonable prices, and that is determined on an
15 ongoing basis. And if the company is being bled by
16 its parent, that will show up in the form of bad
17 service, in the form of higher or attempted higher
18 rates, and that's where I think the Commission comes
19 in, rather than trying to manage the capital
20 structure of or the capital flows between parent and
21 affiliate.

22 COMMISSIONER HEMSTAD: That's all I have.

23 Thank you.

24

25

E X A M I N A T I O N

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1 BY COMMISSIONER OSHIE:

2 Q. Mr. King, I'd like to just test my
3 understanding of the settlement agreement with yours
4 in one area, and that is it's my understanding that
5 the current rates for customers of Qwest in
6 Washington will not change as a result of this
7 settlement agreement. And I guess what I mean by
8 that is, going forward, should this agreement be
9 adopted and approved by the Commission, the current
10 rate of imputation will remain until there is a rate
11 case, and at that point the revenue credit will
12 substitute for the imputed amount currently in rates
13 and, essentially, I believe that the current
14 imputation is \$85 million?

15 A. That's the last one that was found, yes.

16 Q. Yes. And so then it would increase to 103
17 initially, so there would be an \$18 million addition,
18 if you will, to --

19 A. What had been the imputation.

20 Q. -- what had been the imputation, exactly.

21 Do I have it or not?

22 A. I think that's right, yes.

23 Q. All right.

24 A. In other words, nothing really affects
25 rates until we have a rate case. And then the 110

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1 and then \$103 million comes into effect. Now,
2 earlier, Chairwoman Showalter mentioned how could we
3 guarantee ratepayer benefits. That's possible with
4 an annual bill credit. But as the settlement now
5 stands, the only bill credit is the up-front bill
6 credit for \$67 million.

7 MR. OSHIE: Okay. Thank you.

8

9 E X A M I N A T I O N

10 BY CHAIRWOMAN SHOWALTER:

11 Q. Well, just to follow-up on that, I'm not
12 sure there was a meeting of the minds. Commissioner
13 Oshie said that, after the first rate case, there
14 would be a credit. Is it a credit under the
15 settlement or is it an agreed imputation?

16 A. Well, again, we talked about imputation
17 implying that there is a flow of revenue to an
18 affiliated company that we are going to impute to the
19 regulated entity. That condition would not exist
20 subsequent to the sale of Dex.

21 What we have instead is a revenue credit to
22 pay ratepayers back for the enormous gain that the
23 parent company, QCI, realized from the sale of Dex,
24 Dex being determined, repeatedly by this Commission,
25 to be a ratepayer asset.

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1 JUDGE MOSS: Okay. Did Staff have any
2 follow-up before we go to the redirect?

3 MS. SMITH: Yes, Your Honor, thank you.

4

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

6 BY MS. SMITH:

7 Q. Good morning, Mr. King.

8 A. Good morning.

9 Q. I'm Shannon Smith, I'm representing
10 Commission Staff. Under the settlement proposal,
11 will Qwest Corporation record a liability on its
12 financial books to reflect the unpaid future revenue
13 credits that will be owed to customers?

14 A. That's a question I can't answer. It's an
15 accounting question, and I really don't know how to
16 handle it.

17 Q. In a rate case, could Qwest effectively
18 undo the revenue credits by advocating for a higher
19 rate of return?

20 A. I think I discussed that with Mr. -- with
21 Commissioner Hemstad. They could attempt to do so,
22 but were I the rate of return witness, I would say it
23 is altogether inappropriate to do so and I would
24 impute back into the earnings of the company the
25 revenue credit on the grounds that this is a benefit

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1 that this company received and it helped reduce its
2 rate of return, albeit it's the parent company, but
3 by implication, it is the subsidiary, as well.

4 Q. And finally, is your opinion or concern
5 about the forced sale of Dex in a bankruptcy based on
6 an assumption that the bankruptcy court could and
7 would order QC to enter into a long-term
8 noncompetition agreement with the new owner of Dex?

9 A. Don't know that Dex would have much value
10 if it didn't have that noncompetition agreement, so
11 probably the answer is yes.

12 MS. SMITH: That's all we have. Thank you.

13 JUDGE MOSS: Okay. Mr. Melnikoff, did you
14 have any clarification or redirect?

15 MR. MELNIKOFF: Yes, Your Honor. I'd like
16 to clarify several points.

17

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

19 BY MR. MELNIKOFF:

20 Q. Mr. King, you indicated, in a question from
21 the Chairwoman, that imputation would continue
22 indefinitely until a sale of the Yellow Pages. Are
23 there not intervening events and circumstances that
24 could, in fact, terminate -- either actually
25 terminate or effectively terminate imputation?

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1 A. Well, I discuss that in my response
2 testimony, in connection with Mr. Grate's contention
3 that ratepayers bear no risk for Dex's operations.
4 If you never sold Dex and we continued as we are now,
5 it's possible that, over time, the Yellow Pages could
6 lose their value. And if they lost their value, the
7 imputation would decline correspondingly. And it's
8 possible that ultimately there would be no Yellow
9 Pages, that there would continue to be a White Page
10 requirement, and as a consequence, the company would
11 lose money on directory publication.

12 If that happened, the imputation would
13 really reverse. It would become a cost of service,
14 as long as it was required by the -- that is a White
15 Page publishing is required by the Commission. So
16 the answer to your question is yes, under the
17 hypothetical that we continued to keep Dex within the
18 Qwest family.

19 Q. What if the methodology of or the type of
20 regulation imposed upon the regulated Qwest would
21 change?

22 A. Well, it would depend on the nature of the
23 change. The most likely change would be a price cap
24 mechanism, which is in place in many states, whereby
25 the company may earn as much as it likes, provided it

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1 does not exceed caps on prices, and those caps are
2 usually the existing rates.

3 Under those circumstances, you would very
4 rarely, if ever, have a rate case, because, in
5 general, telephone service is a declining cost
6 industry. I've been working with the North Dakota
7 Commission, and I asked them why they did not concern
8 themselves with this Dex sale, and their answer was
9 that they are under price cap regulation and don't
10 regard it as a particularly relevant issue, from
11 their standpoint.

12 Q. If a subsequently sitting Commission or a
13 court in the state of Washington entertained a motion
14 from Qwest to get out from underneath imputation,
15 would that, in effect, stop the imputation if the
16 court --

17 A. Well, under what scenario? Under the
18 continued ownership of Qwest by --

19 Q. Yes.

20 A. If they were successful, obviously it would
21 end it, but --

22 Q. So there are some risks of the imputation
23 continuing?

24 A. Yes, although, fortunately, the courts so
25 far have upheld the Commission's imputation. But the

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1 Commission itself could make -- determine that
2 imputation is inappropriate.

3 Q. And I would refer you to page seven of your
4 response testimony, Exhibit 271, page -- it's the
5 paragraph from -- starting at line 21, page six, that
6 goes over to page seven, line seven.

7 A. Yes.

8 Q. Are there benefits to the ratepayers and to
9 Qwest regulated from staving off a potential
10 bankruptcy?

11 A. I think so, if -- first, the principal
12 benefit is the one that I cited. We save ourselves
13 from the possibility that the bankruptcy court could
14 reach in and sell Dex with no ratepayer benefits
15 whatever.

16 The other advantage to saving the parent
17 company and getting it healthy again is that we once
18 more have an opportunity to raise equity capital from
19 that parent company, which right now is effectively
20 foreclosed because of its perilous condition. And
21 absent the ability to raise equity capital, it
22 becomes then very difficult to raise debt capital.

23 Q. You talked about the impact of the revenue
24 credit or imputation of the gain as only being --
25 impacting ratepayers if there's a rate case.

0614

1 Isn't it true that the settlement speaks to
2 that imputation going to the Washington revenue --
3 intrastate revenue -- let me read it exactly. It
4 would be credited to the intrastate regulated
5 revenues beginning January 1st, 2004?

6 MS. SMITH: I'm going to object to that
7 question, to the form of the question, Your Honor.
8 The question is leading and this is redirect.

9 JUDGE MOSS: This is redirect, Mr.
10 Melnikoff, and you shouldn't suggest the answer to
11 the witness through your redirect questions.

12 Q. Okay. Would you look at paragraph two on
13 Exhibit 2? It's found on page five at line ten,
14 beginning on line ten.

15 A. Paragraph two that says annual revenue
16 credit, yes.

17 Q. What --

18 A. Yes, I see it.

19 Q. Is there a -- does the revenue credit
20 impact the intrastate Washington regulated revenues,
21 beginning in January 2004, onward for 15 years?

22 A. That's correct.

23 Q. If this Commission did an earnings audit,
24 would that -- based upon Washington regulated
25 revenues, would that revenue credit that is

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1 contemplated in the settlement be -- impact to the
2 benefit of ratepayers?

3 A. Yes, because there would then be a rate
4 case. I mean, it would -- effectively, it would be a
5 Commission-initiated rate case.

6 Q. But if they only looked to see whether or
7 not what the earnings were under actual earnings,
8 whether or not there should be a rate case or a rate
9 reduction, would that revenue credit impact to the
10 benefit of ratepayers?

11 A. Yes.

12 Q. Even if there wasn't a rate case?

13 A. Yes, because, in effect, what it would do
14 is stave off -- it could stave off a rate case. In
15 fact, I suspect that maybe one of the greatest
16 benefits, not that we will have a rate reduction of
17 110 million, but we will not have a rate increase,
18 because the Commission -- I mean, the company cannot
19 justify a finding of an adequate revenue.

20 Q. So there is some benefit to --

21 A. Yes.

22 Q. The Chairwoman, followed up by Commissioner
23 Oshie, talked about numerous options of distributing
24 the gain from a up-front cash distribution, a credit
25 distribution, a distribution with revenue credits, as

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1 proposed by the settlement agreement. And you
2 acknowledged that there were all kinds of options
3 available and the advantages and disadvantages of
4 each.

5 Based upon all those options that are
6 available, what is your recommendation as to the best
7 way of distributing that gain?

8 A. My recommendation is to adopt the
9 settlement, and the reason is that the settlement is
10 a -- is a done deal, that there is no hanging risk
11 over the realization of return of benefit to
12 ratepayers. Why? Because the company has accepted
13 the level of ratepayer benefit that is embodied in
14 the settlement. Any more generous offer to
15 ratepayers -- and I will concede that there are good
16 arguments for a more generous flow for ratepayers,
17 certainly I advocated one myself in my response
18 testimony. But any other alternative that flows more
19 money to the ratepayers is likely to encounter the
20 company's opposition, and that immediately puts it at
21 risk.

22 The company, in this case, has accepted the
23 level of -- accepted a level of ratepayer benefit.
24 That, in and of itself, makes the settlement a
25 low-risk proposition, which is why I support it.

0617

1 Q. You mentioned your attempts at accessing
2 Blue Pages, government listings on the Internet.
3 I've been advised, and would you accept for --
4 subject to check, that there is a link on the Dex
5 Internet site to government listings that are
6 equivalent to Blue Pages in the paper --

7 A. Well --

8 MS. SMITH: Objection. Again, Your Honor,
9 I believe that this is a leading question on
10 redirect, and I'm not sure of the propriety of asking
11 one's own witness a question, subject to check, on
12 redirect.

13 MR. MELNIKOFF: Well, I'm trying to clarify
14 the record on a point that may be the result of the
15 witness' narrow experience on the Internet, trying to
16 access something on the Internet.

17 JUDGE MOSS: I think I'll sustain the
18 objection. Go ahead.

19 MR. MELNIKOFF: I have no further.

20 JUDGE MOSS: Oh, did you have something?

21 MS. SMITH: Your Honor, Commission Staff
22 has one follow-up question for Dr. King, based on a
23 redirect question.

24 JUDGE MOSS: All right. Go ahead.

25

0618

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

2 BY MS. SMITH:

3 Q. Dr. King, in response to a question on
4 redirect, you stated that a future Commission could
5 undo imputation. Do you recall that?

6 A. Yes.

7 Q. Do you know whether a future Commission
8 could undo this settlement if it were approved by
9 this Commission?

10 A. Well, that's obviously a legal question. I
11 think it probably could, from a legal standpoint. It
12 certainly would be welshing on a deal. I think it
13 would be inappropriate. It may not be illegal for it
14 to do so.

15 MS. SMITH: Thank you. Nothing further.

16 JUDGE MOSS: Okay. All right. Then I
17 believe, Mr. King, we can thank you very much for
18 your testimony and being with us this week and wish
19 you happy trails as you head to the East Coast.

20 THE WITNESS: Thank you very much.

21 JUDGE MOSS: We now will have Mr. Cummings
22 back for -- hopefully, we can complete his
23 examination.

24 MR. HARLOW: Your Honor, while we're
25 switching witnesses, we can distribute Mr. Kalt's

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1 prefiled surrebuttal testimony, if you'd like.

2 JUDGE MOSS: That will be a good thing to
3 do. Let's get that out. We'll take a five-minute
4 break while we're doing that.

5 (Recess taken.)

6 JUDGE MOSS: All right. Let's come back to
7 order, please.

8 Whereupon,

9 PETER C. CUMMINGS,
10 having been previously duly sworn, was recalled as a
11 witness herein and was examined and testified as
12 follows:

13 JUDGE MOSS: Let's please come to order.
14 All right. Mr. Cummings, welcome back. And of
15 course, you remain under oath.

16 THE WITNESS: Yes, sir.

17 JUDGE MOSS: Ms. Smith, go ahead.

18 MS. SMITH: Thank you, Your Honor.

19

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

21 BY MS. SMITH:

22 Q. Mr. Cummings, I'd like to direct your
23 attention to what has been marked and distributed
24 this morning as Exhibit 87. And do you have that
25 before you?

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1 A. I do.

2 Q. Now, this is -- just to clarify the record,
3 this is a replacement -- do you understand that this
4 is a replacement for the Exhibit 87 that was
5 distributed earlier and that we had begun our line of
6 questioning upon?

7 A. Yes.

8 Q. And the difference between those two
9 exhibits, just, again, to clarify the record, is that
10 the newly-distributed Exhibit 87 includes the
11 company's supplemental response to the data request,
12 which was dated January 21st, 2003?

13 A. That's my understanding, yes.

14 MS. SMITH: Your Honor, perhaps this might
15 be a good time to discuss again, whether on the
16 record or off the record, the fact that this is a
17 highly confidential document. And I had a
18 conversation with Mr. Sherr at the break where he
19 expressed some concern that any questioning on this
20 document may actually be highly confidential, even
21 without mentioning the individual numbers. And you
22 know, perhaps we could discuss for a moment how to go
23 about dealing with that issue.

24 JUDGE MOSS: Well, previously we had
25 discussed the convention of having counsel simply

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1 refer to points in the highly confidential portions
2 of the exhibit by column or row designation. For
3 example, there might be a year identifying a column.
4 Is that somehow problematic?

5 MR. SHERR: No, Your Honor. Strictly
6 speaking, if Ms. Smith is simply going to ask if a
7 particular heading of a column says something and
8 asks the witness to look at a cell between a certain
9 row and a certain column, that doesn't -- that
10 doesn't cause us any issue.

11 But the issue that we have is any type of
12 characterization, not beyond even stating what the
13 number is, any type of characterization of the
14 number, be it a positive number, a negative number,
15 be it higher or lower, anything like that really does
16 reach over into the highly confidential arena, and
17 the discussion that I had with Ms. Smith was based on
18 the desire to make this as easy as possible.

19 MS. SMITH: And Your Honor, Commission
20 Staff will have some questions about whether one
21 number is higher than another number, about one
22 number for a particular year is greater than another
23 particular year, and these are the company's future
24 cash flow projections.

25 JUDGE MOSS: All right. Under the

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1 circumstances, we're going to have to have a
2 confidential session in our hearing, and so I'm going
3 to ask that anyone who is present in the hearing room
4 who is not a signatory to the highly confidential
5 convention under the protective order, if those
6 persons will leave the room.

7 CHAIRWOMAN SHOWALTER: Advisory Staff can
8 stay.

9 JUDGE MOSS: Staff is excepted. Our
10 advisory Staff is excepted from the strictures. I
11 will also turn off the conference bridge line. This
12 is the last thing we're going to do today, so those
13 of you who may be listening in on the conference
14 bridge line probably will not need to be concerned
15 about checking back in. Those who are leaving the
16 room might wish to hang about for any closing
17 procedural matters or whatever, but -- so as far as
18 the transcript is -- whoops. You turned off the P.A.
19 system. Now, as far as the --

20 CHAIRWOMAN SHOWALTER: Wait a second,
21 though. Does this broadcast out to --

22 JUDGE MOSS: No.

23 CHAIRWOMAN SHOWALTER: -- our offices?

24 JUDGE MOSS: Only the P.A. system. Right.
25 It actually goes to 207. So if there's anyone in

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1 Room 207, they should leave.

2 MR. SHERR: Your Honor, thank you for the
3 accommodation.

4 JUDGE MOSS: All right. And the transcript
5 will be marked confidential from this point forward
6 until I indicate otherwise.

7 (The following testimony is contained in a
8 separate, highly confidential record,
9 pursuant to the protective order, contained
10 in Volume VII, pages 624 through 661.)

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0662

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

2 BY MR. SHERR:

3 Q. Hello, again, Mr. Cummings.

4 A. Yes, Counsel.

5 Q. Do you recall yesterday Ms. Smith asking
6 you a series of questions regarding PGE's 10K and a
7 number of legal actions that PGE states it intends to
8 take?

9 A. Yes.

10 Q. And that related to your rebuttal
11 testimony, page seven, if you recall; is that
12 correct?

13 A. That's correct. That's where I laid out the
14 risks that PGE had identified relative to Enron.

15 Q. Thank you. Do any of those actions that
16 Ms. Smith was talking about yesterday, assuming that
17 they are true, they're subject to check at this
18 point, do any of those actions surprise you?

19 A. No, not really. I would expect that, in a
20 disclosure, a company like PGE that was identifying
21 risks would also identify, you know, what it intended
22 to do about those risks or actions that it could take
23 or might take or probably would take.

24 Q. Do any of those potential actions change
25 the conclusion you reach in your testimony about the

0663

1 potential effects of an Enron bankruptcy on PGE?

2 A. No, not at all. The risks are still there.
3 The point of my testimony was to identify the risks
4 and not what management was saying they might do
5 about the risks.

6 Q. Thank you. Do you also recall Ms. Smith
7 asking you a series of questions regarding NRG, Xcel,
8 and several related companies?

9 A. Yes.

10 Q. Do you know if NRG's position within the
11 Xcel family of companies is analogous to QC's
12 position in the QCI family of companies?

13 A. I haven't looked at Xcel or NRG and its
14 subsidiaries in detail, but I would doubt that they
15 would be comparable to the position that QC holds
16 relative to QCII, mainly because of the high degree
17 of integration and the dominance of the QC subsidiary
18 in the QCII structure, and the fact that Xcel and NRG
19 and the NSP and Public Service of Colorado entities
20 are really in a different industry.

21 Q. Okay. Sorry for interrupting. Is the --
22 is an understanding of where the subsidiary fits
23 within the family of companies an important fact in
24 trying to analogize between two different corporate
25 structures, in this case, Xcel and QCI?

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1 A. Absolutely. And I think it would be
2 particularly essential when the analysis is pointing
3 towards what the potential effects of a bankruptcy at
4 the parent or subsidiary level might be amongst those
5 entities.

6 In my view, the bankruptcy, whether it's
7 Chapter 11 or another chapter, is a highly
8 individualized situation and I would not want to make
9 a comparison across industries, nor would I be
10 comfortable with a comparison, even within the same
11 industry, without really looking at the individual
12 company's circumstances.

13 Q. Thank you. I have a couple of questions
14 regarding the ARCA, which is A-R-C-A, the second
15 amended and restated credit agreement. Do you recall
16 Ms. Smith asking you at length about the ARCA
17 yesterday?

18 A. Yes.

19 Q. If you recall, Ms. Smith asked you if the
20 failure to close the Dex sale was an event of default
21 under the ARCA. Do you recall that?

22 A. Yes.

23 Q. And I believe you answered no, it's not; is
24 that correct?

25 A. Yes, it's my understanding there's no

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1 contractual provision in the ARCA which speaks
2 specifically to failure to close.

3 Q. Does that mean, in your opinion, that
4 failure to close the entire Dex sale doesn't make
5 defaulting under the ARCA more likely?

6 A. No, on the contrary. I'd say failure to
7 close the entire Dex sale makes defaulting under the
8 ARCA more likely.

9 Q. And why is that?

10 A. Simply for the reason that QCII needs the
11 cash from the sale of Dex to meet its obligations
12 going forward, and one of those big obligations is
13 the ARCA.

14 Q. Thank you. In your opinion, could the ARCA
15 have been finalized without the Dex sale having been
16 announced?

17 A. No, in my opinion, it could not. In fact,
18 it was not finalized until after the Dex sale was
19 announced. The ARCA negotiations were protracted,
20 they were delayed several times, they were the
21 subject of disclosure on several different occasions
22 that they were still in progress, and actually, they
23 were waiting for the Dex sale to close -- not to
24 close, but to be announced, to be negotiated.

25 Q. Thank you. I'm going to jump subjects on

0666

1 you to see how nimble you are. A couple of questions
2 regarding seller financing.

3 A. Yes.

4 Q. In general, not regarding this deal
5 specifically. Do you have an understanding of what
6 the high yield bond market looks like today as
7 compared to previous periods of time?

8 A. Yes, I do, in general.

9 Q. Can you explain a little bit your opinion
10 of where the market sits today, as compared to last
11 year?

12 A. Certainly. You could look at Exhibit 205
13 or you could look at one of the exhibits in my
14 testimony and you can see that how the spreads on
15 high yield bonds have varied over the last year, year
16 and a half. Right now, the high yield bond market is
17 fairly attractive. There's a lot of money going into
18 the high yield bond market right now relative to
19 other investment opportunities. And what that means
20 is that there's generally attractive financing
21 conditions available right now in the high yield bond
22 market.

23 That wasn't the case at the time that the
24 Dex sale was negotiated and that wasn't the case,
25 really, either, at the time that the buyers sought

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1 financing for the Dex East portion of the sale. The
2 conditions were much more difficult at that time than
3 they are now.

4 Q. If the high yield bond market is less
5 favorable in, say, three months, does that, in your
6 opinion, make it more or less likely that the buyer
7 in this transaction will call on Qwest to supply the
8 seller financing?

9 A. Well, if the market conditions are less
10 favorable in three months than they are now, I would
11 say it would be more likely for the buyer to exercise
12 their option for seller financing than they would at
13 this point in time.

14 MR. SHERR: Thank you. Just one moment,
15 Your Honor. Your Honor, I have no more further
16 questions. Thank you.

17 JUDGE MOSS: All right. Very good.

18 MS. SMITH: Your Honor. Commission Staff
19 has no further questions of Mr. Cummings, but we move
20 the admission of Exhibits 87 through 90, that were
21 originally marked for Mr. Reynolds. We move the
22 admission of Exhibits 186 through 201.

23 JUDGE MOSS: Slow down. Eighty-seven
24 through 90 were previously identified with Witness
25 Reynolds?

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1 MS. SMITH: Yes, Your Honor.

2 JUDGE MOSS: And all right.

3 MS. SMITH: 186 through 201, and 203
4 through 206.

5 MR. SHERR: Your Honor, Qwest has an
6 objection as to some of those.

7 JUDGE MOSS: You're not offering 202?

8 MS. SMITH: No, Your Honor.

9 JUDGE MOSS: Okay. All right. What are
10 Qwest's objections?

11 MR. SHERR: No objection to Exhibits 87
12 through 90. Qwest's objection --

13 JUDGE MOSS: Wait a minute. Let me go
14 ahead. I'm going to admit those as marked, then.
15 I'm not going to remark those, since we've had all
16 the questioning. We'll just go ahead and leave them
17 as numbered. All right. Now, what are your
18 objections?

19 MR. SHERR: Thank you. With regard to
20 Exhibits 187 through 192 and 200, and I believe I'm
21 correct that I heard that that was included?

22 JUDGE MOSS: Yes.

23 MR. SHERR: Qwest objects to those exhibits
24 being introduced for two principal reasons. First is
25 a procedural matter, that many of those documents,

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1 and I could identify them specifically, the date of
2 those documents pre-dates Qwest's -- excuse me,
3 Staff's direct testimony in this case. If Staff
4 deemed this information important to its case, it had
5 every opportunity to attach it to its direct
6 testimony, thus providing Qwest an opportunity,
7 through rebuttal testimony, to respond. It didn't do
8 so, and as a result of that, it's inappropriate to
9 seek admission of those documents at this time.

10 The second objection is a much more
11 substantive one, and that is something that Mr.
12 Cummings was discussing before, so I appreciate him
13 giving you a preview, and that's that these are
14 simply not relevant to this proceeding. The
15 documents 187 through 192 and 200, if I may lump them
16 together, and we can look at them separately if we
17 need to, all focus on how we got here, what bad
18 things QCI or certain individuals did in order to get
19 us to this situation. And as Mr. Cummings said so
20 eloquently, it's simply not relevant. We are where
21 we are. We are before you because we are trying to
22 get out of these particular woods, and how we got
23 here's simply not relevant. With all due respect to
24 Ms. Smith, these documents really do nothing but
25 sling mud at Qwest and they're inappropriate, they're

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1 not relevant to this case.

2 There's a transaction that Qwest has sought
3 approval for and a stipulation that many parties,
4 including several parties that represent different
5 sectors of the public, have agreed to in order to
6 approve the sale without frustrating the purpose of
7 the sale and to flow a tremendous portion of the gain
8 from that sale to ratepayers over a long period of
9 time. That's the issue that's before the Commission.

10 What's not before the Commission is how we
11 got here and whether Joe Nacchio or Phillip Anschutz
12 or anyone else acted improperly. It's really not the
13 issue, and we feel that it's absolutely inappropriate
14 and it's a distraction, and we ask that those
15 documents not be admitted.

16 JUDGE MOSS: Thank you.

17 MS. SMITH: Your Honor, if I may respond?

18 JUDGE MOSS: Yes.

19 MS. SMITH: With respect to Mr. Sherr's
20 initial objection, that these documents were dated
21 before the time that Commission Staff filed its
22 testimony in this case, that objection -- that simply
23 isn't an objection. We can identify
24 cross-examination exhibits as we see fit, whether
25 they were generated a hundred years ago or generated

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1 yesterday. The time line really isn't appropriate in
2 terms of whether these documents are admissible as
3 cross-examination exhibits.

4 With respect to the second point, relevancy
5 of these documents and whether all they do is sling
6 mud at Qwest, I've got two comments. One, relevancy
7 in this case isn't determined just by the request
8 that Qwest is making in its application; it is also
9 determined by the issues that Commission Staff has
10 raised in response to that, and the Commission Staff
11 has raised in its testimony its belief that
12 ratepayers shouldn't suffer for the actions of the
13 parent company.

14 JUDGE MOSS: Let me stop you there. If
15 that's the linkage, then isn't Mr. Sherr's point
16 well-taken that these should have been part of
17 Staff's direct case?

18 MS. SMITH: Well, Your Honor, I suppose
19 they could have been, but that doesn't make it
20 inappropriate to admit them as a cross-examination
21 exhibit in this case.

22 JUDGE MOSS: If the relevance depends on
23 Staff's response case, that's the point.

24 MS. SMITH: Well, it's the relevance of the
25 cross, Your Honor.

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1 JUDGE MOSS: Did you refer to any of these
2 exhibits during Mr. Cummings' cross?

3 MS. SMITH: We did not refer to these
4 exhibits during Mr. Cummings' cross. We could have.
5 We could perhaps reopen the record and do that on an
6 exhibit-by-exhibit basis.

7 JUDGE MOSS: Okay. Go ahead with your
8 argument.

9 MS. SMITH: And Your Honor, many of these
10 documents, as well, aren't just mud-slinging
11 documents; they're government documents. They are
12 documents that have been issued either by government
13 agencies or other state commissions, and so they are
14 not what you would throw -- what you would lump into
15 the mud-slinging type arguments. And we believe that
16 these are proper and that they are admissible and,
17 with respect to the mud-slinging argument, Mr.
18 Sherr's objection goes to the weight, but not to
19 their admissibility.

20 (Recess taken.)

21 JUDGE MOSS: The Bench has had an
22 opportunity to confer and will sustain the objection.
23 Exhibit Number 186 will be admitted as marked.
24 Exhibits Numbers 193 through 199 will be admitted as
25 marked. Exhibit 201 will be admitted as marked. 202

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1 was not offered. 203 through 206 will be admitted as
2 marked. And I think I previously indicated that I --
3 if not, then I'll indicate now that 87 through 90 are
4 all admitted. I believe that takes care of our
5 exhibits.

6 MR. SHERR: Your Honor, just for
7 clarification, I think I beat Ms. Smith to the
8 button. And I apologize. I may not have heard the
9 list completely, and maybe I can ask you to --

10 JUDGE MOSS: Objection was sustained as to
11 187 through 192 and 200.

12 MS. SMITH: But then, Your Honor, you said
13 they were admitted as marked; is that correct?

14 JUDGE MOSS: No, I said the objection is
15 sustained as to those exhibits. 186 is admitted, 193
16 through 199 are admitted. 201 is admitted, 203
17 through 206. I may have misspoken, but that's what I
18 meant to say.

19 MS. SMITH: Thank you, Your Honor.

20 MR. SHERR: Thank you, Your Honor.

21 JUDGE MOSS: And then 87 through 90, thank
22 you, are admitted.

23 MR. SHERR: Thank you, Your Honor.

24 JUDGE MOSS: So I apologize if I misspoke
25 and misled. I believe, then, that completes

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1 everything that we need to do with this witness, and
2 Mr. Cummings, we thank you very much for being here,
3 and sorry to have put you through the ordeal of
4 having to wait overnight, but we finished you today,
5 at least.

6 MR. CUMMINGS: Thank you.

7 JUDGE MOSS: And we will be in recess until
8 9:00 tomorrow morning, at which time we will want to
9 take up -- I think the focus we need to seek is to
10 get Dr. Selwyn and Dr. Kalt up and off, if we can,
11 because they have both traveled from distant
12 locations. And then, if we have additional time, we
13 talked about having Mr. Mabey.

14 MR. HARLOW: I assume that Dr. Kalt will go
15 before Dr. Selwyn?

16 JUDGE MOSS: That would be sensible to me
17 in the order of things, so if there's no -- yeah,
18 okay. That's what will then --

19 MS. SMITH: Your Honor, I'd just like to
20 state that it's Staff's preference, if at all
21 possible, that Dr. Selwyn be on and off the stand
22 tomorrow, so he can leave.

23 JUDGE MOSS: Right, that's our goal.

24 MS. SMITH: Thank you, Your Honor.

25 JUDGE MOSS: That was our goal, and we'll

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1 do what we can. But of course, you never know how
2 things --

3 MR. SHERR: Your Honor, sorry to interrupt.
4 We have the same request for Mr. Mabey. We actually
5 understood that he was going to be going first
6 tomorrow, given the limit of the time estimate for
7 cross-examination.

8 JUDGE MOSS: Now, Mr. Mabey's out of Salt
9 Lake; right?

10 MR. SHERR: That's correct.

11 MS. SMITH: Mr. Selwyn's out of Boston, if
12 I could just throw that in, Dr. Selwyn.

13 MR. HARLOW: Maybe we could compare street
14 addresses, because Dr. Kalt's also from Boston.

15 JUDGE MOSS: All right. Let's be off the
16 record.

17 (Discussion off the record.)

18 JUDGE MOSS: Let's be back on the record
19 just briefly. We have resolved our order of
20 witnesses for Friday, and we'll start with Mr. Mabey,
21 and then we'll have Dr. Kalt, and then we'll have Dr.
22 Selwyn. So with that, unless there's any further
23 business, and there does not appear to be for today,
24 we'll be in recess. Thank you.

25 (Proceeding adjourned 11:42 a.m.)