

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 In the Matter of the)Docket No. UT-021120
4 Application of)Volume XI
)Pages 1258-1515
5 QWEST CORPORATION)
)
6 Regarding the Sale and Transfer)
 of Qwest Dex to Dex Holdings,)
7 LLC, a non-affiliate.)
)
8

9 A hearing in the above matter was
10 held on May 30, 2003, at 9:43 a.m., at 1300 Evergreen
11 Park Drive Southwest, Olympia, Washington, before
12 Administrative Law Judge DENNIS MOSS and Chairwoman
13 MARILYN SHOWALTER and Commissioner RICHARD HEMSTAD
14 and Commissioner PATRICK J. OSHIE.

15 The parties were present as
16 follows:

17 QWEST CORPORATION, by Lisa Anderl
18 and Adam Sherr, Attorneys at Law, 1600 Seventh
 Avenue, Suite 3206, Seattle, Washington 98191.

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

21 AARP, by Ronald Roseman, Attorney
22 at Law, 2011 14th Avenue East, Seattle, Washington,
 98112.

23
24

25 Barbara L. Nelson, CCR
 Court Reporter

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

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

10 THE COMMISSION, by Shannon E.
11 Smith and Gregory J. Trautman, Assistant Attorneys
12 General, 1400 Evergreen Park Drive, S.W., P.O. Box
13 40128, Olympia, Washington 98504-0128.

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1 JUDGE MOSS: Why don't we come to order,
2 please. Let me do a couple of housekeeping matters
3 first, and then we'll swear Mr. Brosch. I've been
4 handed some paper this morning.

5 MS. ANDERL: Surprise.

6 JUDGE MOSS: Surprise. One piece of paper
7 I've been handed is for Mr. Brosch's
8 cross-examination, handed to me by Staff. And it is
9 actually a photocopy, I suppose, of Exhibit MLB-2C,
10 which we have identified as Exhibit 292-C. However,
11 my understanding is that it has a blocked notation in
12 the right-hand column that is not in Exhibit 292, so
13 we can talk about that if we need to, but in
14 addition, it has a second and third page, Adjusted A
15 and Adjusted B, which apparently is new material. In
16 any event, that exhibit will be marked for
17 identification as -- I'm sorry, marked for
18 identification as Exhibit 308.

19 And then, in addition, I was handed by
20 Qwest two documents that they may use with -- in the
21 cross-examination of Dr. Blackmon, and so we have
22 marked for identification Exhibit 423, 423, which is
23 a prior version of Dr. Blackmon's prefiled testimony
24 in this proceeding with some redline, as I understand
25 it. Mr. Sherr's looking up at me expectantly, so

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1 perhaps I should ask him if that's an accurate
2 description.

3 MR. SHERR: It's close. It's basically a
4 red-line comparing Dr. Blackmon's March 18 testimony
5 and his May 14 testimony.

6 JUDGE MOSS: Okay. Then Exhibit 424 for
7 identification is an excerpt from the transcript in
8 this proceeding. I jotted down pages 676 through
9 880. I think that's probably accurate. So we have
10 those three new documents identified.

11 I have provided you all with updated
12 exhibit lists that are current through yesterday, and
13 I will provide you a further update on Monday via
14 electronic mail, and I do ask, and you can get
15 started over the weekend if you have nothing better
16 to do with yourself, that at some point I would like
17 you to check and bring to my attention any assertions
18 of error, and I will make corrections if I find them
19 to be appropriate.

20 With that, Mr. Brosch, I believe we can ask
21 you to stand and raise your right hand.

22 Whereupon,

23 MICHAEL L. BROSCH,
24 having been first duly sworn by Judge Moss, was
25 called as a witness herein and was examined and

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1 testified as follows:

2 JUDGE MOSS: Thank you. Please be seated.

3 Mr. Cromwell.

4 MR. CROMWELL: Thank you, Your Honor.

5

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

7 BY MR. CROMWELL:

8 Q. Good morning, Mr. Brosch.

9 A. Good morning.

10 Q. My name is Robert Cromwell, I'm an
11 Assistant Attorney General on behalf of Public
12 Counsel. Could you please state for the record your
13 name and business address?

14 A. Michael L. Brosch.

15 Q. You may have to push the button on that.

16 A. Michael L. Brosch, 740 N.W. Blue Parkway,
17 Suite 204, Lees Summit, Missouri, 64086.

18 Q. Thank you. And do you have in front of you
19 what has been marked as Exhibits 291-C, your direct
20 testimony; 292-C, the gain on sale allocation to
21 Washington; Exhibit 306, your supplemental testimony
22 in support of the settlement; and 307-C, the
23 confidential exhibit to that supplemental testimony?

24 A. Yes, I do.

25 Q. And were they prepared by you or under your

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1 direction?

2 A. Yes.

3 Q. And do you have any corrections to make at
4 this time to those -- to any of those four exhibits?

5 A. Yes, I am aware of a correction needed to
6 the direct testimony at page 35. You call that
7 291-C, Counsel?

8 Q. I believe we did.

9 A. At page 35 --

10 Q. Let's give folks a chance to get there.

11 A. -- line nine, I would change the word
12 "ratepayer" to "shareholder."

13 Q. Confirming, in case everyone hasn't quite
14 gotten there, we're at page 35 of your direct
15 testimony, what has been pre-marked as Exhibit 291-C,
16 line nine, the word "ratepayer" should be
17 "shareholder?"

18 A. Yes, that's correct.

19 Q. Thank you. Are the exhibits that are
20 before you true and correct, to the best of your
21 knowledge?

22 A. Yes, they are.

23 Q. And if I asked you the same questions today
24 that were posed in your testimony, would your answers
25 be the same?

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1 A. They would, yes.

2 MR. CROMWELL: Your Honor, at this time I
3 would move the admission of Exhibits 291-C, 292-C,
4 306 and 307-C.

5 MR. TRAUTMAN: No objection.

6 JUDGE MOSS: There being no objection,
7 those will be admitted as marked.

8 MR. CROMWELL: Thank you, Your Honor. Mr.
9 Brosch is now available for cross-examination and/or
10 questions from the Bench.

11 JUDGE MOSS: Does Staff have
12 cross-examination for Mr. Brosch?

13 MR. TRAUTMAN: We do.

14 JUDGE MOSS: Okay, proceed.

15 MR. TRAUTMAN: Thank you.

16

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

18 BY MR. TRAUTMAN:

19 Q. I'd like to start with some questions on
20 Exhibit 2, and that is the stipulation and settlement
21 agreement, and --

22 JUDGE MOSS: Mr. Trautman, perhaps you've
23 previously met Mr. Brosch, but you might identify
24 yourself to the witness.

25 Q. I'm sorry. Yes, I'm Greg Trautman,

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1 Assistant Attorney General, for Commission Staff.

2 MR. CROMWELL: Your Honor, may I inquire if
3 the witness has that document in front of him?

4 JUDGE MOSS: Do you have that, Mr. Brosch?

5 THE WITNESS: I believe I do. The document
6 I have bears a date and time at the top, 5/19/2003,
7 11:07 a.m. I trust that's the same version of that
8 document that's been marked as an exhibit?

9 CHAIRWOMAN SHOWALTER: Ours has a different
10 time, but --

11 MR. CROMWELL: I believe that is the same,
12 Your Honor.

13 JUDGE MOSS: Okay.

14 MR. CROMWELL: I think the one in the
15 record is dated and time stamped 5/16/2003, 2:49
16 p.m.; is that correct?

17 CHAIRWOMAN SHOWALTER: 4:42.

18 MR. CROMWELL: It depends on printing.

19 JUDGE MOSS: There's only been one
20 stipulation and settlement filed, so I feel fairly
21 confident that we're on the same document.

22 MR. CROMWELL: Thank you. I apologize for
23 the interruption.

24 THE WITNESS: I'm with you.

25 JUDGE MOSS: Mr. Trautman, go ahead.

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1 Q. Does the settlement require that if Qwest
2 sells all or part of its Washington telephone
3 operation, that the purchaser must be bound by the
4 terms of the settlement?

5 A. At page nine, I see reference to a
6 successor's provision numbered eight that says, This
7 agreement applies to, inures to the benefit of, and
8 is binding upon the parties and their successors.

9 Q. And so you believe this would apply to a
10 purchaser of the Qwest telephone operation?

11 A. I'm not in a position to give you any legal
12 opinion or interpretation, but it's my belief that
13 successors to any of the parties would be bound by
14 the agreement.

15 Q. Now, at paragraph C-1, on page three?

16 A. Yes, I'm there.

17 Q. The settlement says that Qwest will provide
18 \$67 million in bill credits. In your understanding,
19 which Qwest entity is being referred to in that
20 provision?

21 A. The bill credits would appear on bills
22 rendered to customers by Qwest Corporation, the
23 regulated telephone company.

24 Q. All right. So QC would be paying the bill
25 credits?

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1 A. Yes, most directly, although, as I'm sure
2 you're aware, the results of QC are consolidated with
3 the financial results of QCII.

4 Q. Now, are they consolidated for regulatory
5 purposes?

6 A. The entity subject to regulation is QC, but
7 the financial reality of the bill credits is that
8 they represent an application of resources to the
9 benefit of customers by the consolidated business.

10 Q. So was that a yes or a no?

11 A. The bill credits --

12 Q. No, no, on whether they're consolidated for
13 regulatory purposes?

14 A. The entity subject to regulation is QC.

15 Q. Are its financial statements consolidated
16 with QCI?

17 A. Yes, for public reporting purposes, they
18 are.

19 Q. But for regulatory purposes?

20 A. No, again, the entity subject to regulation
21 is QC, a wholly-owned subsidiary of QCII.

22 Q. Now, in light of the fact that on page one
23 of the settlement the term "Qwest" is defined to
24 include QC, QSC, and QCII, which are then termed
25 collectively Qwest --

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1 JUDGE MOSS: I'm going to interrupt you
2 there, Mr. Trautman, because we went through this the
3 other day, and I'm now concerned that perhaps there
4 is more than one copy of this document floating
5 around, because we've had a series of questions about
6 this very point, both from you and from the Bench
7 previously, and one thing that sticks out in my mind
8 here is that the definition of Qwest includes four
9 corporations, not three, one of which is Qwest Dex,
10 Inc., and that one keeps being omitted. And I'm
11 concerned that we're looking at a different document.

12 CHAIRWOMAN SHOWALTER: We must be, because
13 --

14 MR. TRAUTMAN: You're correct, Your Honor.
15 I stand corrected.

16 MR. CROMWELL: Your Honor, if I may?

17 CHAIRWOMAN SHOWALTER: Oh, yeah.

18 MR. CROMWELL: Your Honor, if I may, with
19 Mr. Trautman's permission, I believe Mr. Reynolds,
20 during his testimony, did point out at one point that
21 there were four entities, but people just kept
22 talking about the three.

23 CHAIRWOMAN SHOWALTER: Well, we started out
24 with two.

25 JUDGE MOSS: I just want to make sure we're

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1 all working on the same documents here and that there
2 hasn't been some previous version of this that
3 somehow slipped into the mix.

4 MR. TRAUTMAN: We are, Your Honor, and it
5 does include Dex.

6 JUDGE MOSS: All right. Well, I apologize
7 for the interruption, but I know you recognize the
8 importance of ensuring that we have the right
9 documents.

10 MR. TRAUTMAN: Yes.

11 CHAIRWOMAN SHOWALTER: Thank you.

12 Q. But, now, in light of the definition of
13 Qwest to include other entities besides QC, all
14 right, now, looking at the terms of the bill credit
15 provision, would it be equally reasonable to read the
16 bill credit provision as committing either QCII or
17 QSC as being the party committed to provide the funds
18 necessary for the bill credit?

19 MR. CROMWELL: Objection, Your Honor.
20 Misstates facts in evidence. The paragraph one
21 introduction clearly identifies all four Qwest
22 corporate entities utilizing the -- if it's a
23 conjunctive "and", it does not use the "or" in
24 indicating that all four entities are collectively
25 considered by the document to be Qwest.

1 I believe Mr. Trautman's question went to
2 whether either could be considered when the document
3 itself clearly states that all four are considered to
4 be Qwest in terms of the document itself.

5 CHAIRWOMAN SHOWALTER: You know, maybe this
6 is just injecting something at the wrong time, but
7 we're trying to have questions here, but it's clear
8 that Qwest is defined collectively as four entities,
9 one of which is going to be sold and won't be there
10 later, so I guess questions are all right, but
11 depending on what those questions are assuming, the
12 answers can be different, and so if the questioner is
13 assuming something different than the answerer, we
14 may not have an actual answer to the question.

15 I'm not -- I'm just saying -- I don't know
16 how to get around this issue, but it is one of
17 dealing with the literal language of the beginning of
18 the contract and what is meant by settling parties,
19 really, and the promises made in the bulk of the
20 contract, the very purpose of which is to rid the
21 Qwest family of one of those collective members.

22 JUDGE MOSS: If I may interject here, I
23 think the Bench's concern that our questions be clear
24 with respect to the entity or entities being referred
25 to is, of course, an important one, and if the

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1 question is clear in that regard, then the witness
2 will be responding with respect to the specific
3 entity or entities identified in the question.

4 Insofar as the current objection that needs
5 to be ruled on is concerned, it seems to me, if I
6 understand the question correctly, Mr. Trautman, that
7 it is whether, within the group of companies
8 identified as Qwest, the four entities within that,
9 whether the \$67 million might actually come out of
10 the coffers of one or another of the group, members
11 of the group. Is that essentially the question?

12 MR. TRAUTMAN: That was the question. I
13 specifically asked with respect to either QCII or
14 QSC, because -- following up on the witness' response
15 to the original question that his understanding was
16 that Qwest, in paragraph C-1, referred to QC, and I
17 said is it equally possible that it could refer
18 either to QSC or QCII. He selected one entity; I'm
19 selecting two others. I'm asking whether those are
20 equally reasonable conclusions.

21 JUDGE MOSS: I think that's a reasonable
22 question, and we'll allow it.

23 THE WITNESS: In my earlier response, I
24 meant to indicate that the entity doing the billing
25 and in a position to provide the bill credits to

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1 customers is QC, the regulated telephone company.
2 The obligation to do so, as I understand the
3 agreement, extends to the Qwest parties collectively.
4 And the economic reality of the circumstances we have
5 before us is that the resources being distributed to
6 customers are the collective resources of the Qwest
7 family of companies, because if QC credits customers
8 with \$67 million, that means that the consolidated
9 group of companies has 67 million fewer dollars to
10 apply elsewhere in the business, either retired debt
11 or to invest in capital assets or to invest in
12 financial assets.

13 Q. To your understanding, does QCII intend to
14 reimburse QC for the cost of the one-time credit or
15 the annual revenue credits?

16 A. I'm not sure I understand what you mean by
17 reimburse. Cash generally is managed collectively.
18 A treasury function of a corporation like QCII tends
19 to centralize and consolidate cash management, so a
20 \$67 million disbursement by any subsidiary would be
21 considered in the overall cash management of the
22 business.

23 Q. So are you saying there wouldn't be a
24 reimbursement per se?

25 A. What I'm saying is the word reimbursement

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1 may be too specific. If there is a \$67 million cash
2 outflow in the form of a bill credit, I would expect
3 the QC entity to collect from customers approximately
4 67 million fewer dollars than it might have in the
5 ordinary course of business over a one or two or
6 three-month time frame.

7 Since cash management tends to be a
8 centralized function, that might mean that dividends
9 upstream to the parent are lower than they would
10 otherwise be or equity infusions into QC by the
11 parent are higher than they would otherwise be,
12 depending upon all the other variables influencing
13 the amount and timing of cash flows within the
14 consolidated group.

15 Q. I believe you indicated that this tends to
16 be a centralized function. Do you know that for a
17 fact?

18 A. I know that it was when I last looked at US
19 West, Inc. And I think I recall, in looking at
20 centralized administrative services, that treasury is
21 still a centralized administrative service. I'm not
22 absolutely certain. I don't know if I have the
23 information with me to confirm that.

24 Q. If you could turn to page five?

25 A. Are we still on the settlement agreement?

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1 Q. Yes, we are, of Exhibit 2.

2 A. I'm there.

3 Q. And paragraph C-2, under annual revenue
4 credit, states in part, on lines five through six,
5 that the annual revenue credits will be included,
6 quote, for purposes of reporting intrastate financial
7 results to the Commission for these or any other
8 purposes. Do you see that language?

9 A. Yes, I do.

10 Q. To your understanding, will QC include the
11 revenue credit amounts as revenue for purposes of
12 calculating the regulatory fee that it pays to the
13 Commission?

14 A. I don't know.

15 Q. And if you could turn to Appendix One of
16 the same exhibit. And I'm looking on the first page
17 of Appendix One in the very lower left-hand corner,
18 the reference to ISDN-PR-TRK-connection. Do you see
19 that?

20 A. I do.

21 Q. Does this service provide more than one
22 connection to the network?

23 A. I'm not sure.

24 Q. If you could turn now to your supplemental
25 testimony in support of the settlement, which was

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1 marked as Exhibit 306, and I'm starting on page four.

2 A. I'm there.

3 Q. And beginning at line eight, you refer to
4 the display of, quote, nominal amounts in Exhibit
5 MLB-4C. By nominal amounts, do you mean that they
6 have not been discounted to reflect their present
7 worth?

8 A. Yes, that's correct. The column in the
9 bottom half of Exhibit MLB-4C, captioned nominal, is
10 the actual dollar amount set forth in the
11 stipulation.

12 Q. What weight do you believe that the
13 Commission should give to the comparison of the
14 nominal amounts?

15 A. I don't think I understand your question.
16 What do you mean, weight? Relative to what or
17 considering what?

18 Q. What significance?

19 MR. CROMWELL: Objection, vague.

20 JUDGE MOSS: I think the witness can
21 attempt to answer the question.

22 THE WITNESS: The stipulation provides for
23 revenue crediting of these amounts in each of the
24 years for the purposes stated in the stipulation,
25 including rate cases, earnings reviews, earnings

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1 reports to the Commission.

2 Q. All right. Let me give you a hypothetical.
3 Let's assume that Qwest came back to your clients and
4 said it wanted to increase its offer, and instead of
5 the schedule of revenue credits in the proposed
6 agreement, which you say has a nominal value of
7 \$1.644 billion --

8 MR. CROMWELL: Your Honor, I think that is
9 a confidential number. Is it?

10 MR. TRAUTMAN: No, I don't think so.

11 MR. CROMWELL: Is it in the --

12 MR. TRAUTMAN: It's the settlement. It's
13 --

14 MR. CROMWELL: I'm perhaps being overly
15 sensitive, but I don't know that we -- I think that
16 number can easily be derived, but we didn't, I
17 believe, say it in the settlement document.

18 JUDGE MOSS: There seems to be a consensus
19 that it is not a confidential number.

20 COMMISSIONER HEMSTAD: The exhibit as filed
21 is not confidential.

22 JUDGE MOSS: 307 is confidential.

23 MR. CROMWELL: I believe it is.

24 JUDGE MOSS: But for other reasons, I
25 believe.

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1 MR. CROMWELL: I would agree, Your Honor.
2 I think the number can be derived. I was just trying
3 to be sensitive to concerns that Qwest may have.

4 MS. ANDERL: A number of the supporting
5 documents are confidential, but I think if what we're
6 talking about here is adding up 110 million for four
7 years and 103.4 for 11 --

8 JUDGE MOSS: Even I can do that math.

9 COMMISSIONER HEMSTAD: I'll withdraw my
10 remark. My exhibit was improperly marked.

11 Q. All right. So back in the hypothetical.
12 Assuming that Qwest came back to your clients and
13 said it wanted to increase its offer, and instead of
14 the schedule of revenue credits in the proposed
15 agreement, which you state have a nominal value of
16 \$1.644 billion, let's assume that Qwest wanted to
17 round that number up and give the customers \$1.7
18 billion and provide the entire amount in year 15.
19 Would your clients consider that to be a better
20 offer, since it has a higher nominal value?

21 A. My advice to them would be that it is an
22 inferior offer.

23 Q. And why is that?

24 A. Because the present value of a sum many
25 years into the future is a fraction of the nominal

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1 value due to the time value of money, not to mention
2 considerations surrounding the potential benefit of
3 any of these values given one's expectations
4 regarding the timing of a case in which the value
5 becomes of interest to customers.

6 Q. Would you accept, subject to check, that at
7 a discount rate of 9.367 percent, that a single
8 payment of 1.6 -- or \$1.7 billion in year 15 would
9 have a present value of less than \$450 million?

10 MR. CROMWELL: I'm sorry, Your Honor.
11 Could I get Mr. Trautman to restate that? I need to
12 make a note of the subject to check, and I didn't get
13 all those numbers.

14 JUDGE MOSS: He's asking him to check
15 whether -- or to accept, subject to check, whether
16 the nominal value of \$17 million paid 15 years from
17 now at a discount rate of 8.75 percent is less than
18 \$450 million.

19 MR. CROMWELL: I don't think that's what he
20 asked for, Your Honor.

21 JUDGE MOSS: Maybe I said that wrong.

22 CHAIRWOMAN SHOWALTER: Why don't we have
23 Mr. Trautman say it again slowly.

24 MR. TRAUTMAN: Okay. The figures were --

25 JUDGE MOSS: 1.7 --

1 Q. The discount rate was 9.367 percent, and
2 then it was a single payment of \$1.7 billion in year
3 15, and the question was, subject to check, would you
4 agree that that has a present value of less than \$450
5 million?

6 A. I expect it would have. If I look at the
7 values on line 28 of my schedule, I can see that
8 103.4 million is worth approximately 23.6, so one can
9 see that a 22 or 23 percent rate applied to 1.7
10 billion would return a number in that ballpark, yes.

11 Q. Now, the parties to the proposed settlement
12 have said, more or less, that the settlement splits
13 the difference between their respective litigation
14 positions. The up-front payment is between Qwest's
15 amount of zero and your client's litigation position
16 amount of \$147 million. The duration of the revenue
17 credits is between Qwest's 10-year length and your
18 20-year length. However, the amount of the revenue
19 credit in years one through four is higher than
20 either you or Qwest proposed. Can you explain why
21 the parties agreed to go outside the boundaries of
22 their litigation positions on this item?

23 A. I would respond by first saying that each
24 of the parameters or element of customer relief that
25 you mentioned represents areas of negotiation and

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1 compromise.

2 With specific reference to the up-front
3 credit and the higher revenue credits in the first
4 four years, it's my recollection that there was some
5 interplay between the size of the former and the size
6 of the latter. The idea being that additional
7 revenue credits to customers in the early years have
8 the highest probability of directly impacting the
9 most customers, and in lieu of larger up-front
10 credits, the next best and most probable place to put
11 customer benefits for them to be realized is in the
12 early years of the annual revenue credits.

13 There also was consideration of a potential
14 for a modest deterrent effect. If Qwest were
15 considering the filing of a rate case near term and
16 evaluating its intrastate earnings in Washington with
17 the obligation to increase the revenue credit to 110,
18 the corresponding impact would be a lower potentially
19 asserted revenue requirement with the idea that that
20 might be enough to help discourage the company from
21 filing a case sooner.

22 Q. Turning to page five, at line ten, and this
23 is also of Exhibit 306.

24 A. All right.

25 Q. You state that a high percentage of the

1 Washington share of the Dex gain is credited to
2 customers. Do you see that?

3 A. I do.

4 Q. Why is it acceptable to Public Counsel,
5 AARP and WeBTEC that some portion of the gain is
6 given to Qwest Corporation and its owner?

7 A. It is obvious, from a review of the
8 evidence submitted by company witnesses and Staff
9 witnesses and by me, that there are a number of
10 disputed issues surrounding how one quantifies the
11 gain: how and if one allocates gain to new ventures,
12 secondary directories, non-Qwest listings, how one
13 calculates the percentage to allocate the gain to the
14 state of Washington and the extent to which it's
15 appropriate to provide for any sharing of the
16 residual Washington gain between shareholders and
17 customers for equitable reasons or under the
18 principles of the Democratic Central Committee or
19 Illinois Pay Telephone cases cited by Mr. Grate.

20 The stipulation is the result of a process
21 where I believe the parties considered those
22 positions, the litigation risks attendant to them,
23 and reached a compromise.

24 Q. Do you believe that by providing a portion
25 of the gain to Qwest Corporation and its owner, that

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1 this provides a reward to Qwest for its management of
2 the nonregulated activities of its business?

3 A. I'm not sure I understand your question.
4 Certainly, there was no intent to reward. Rather,
5 there was an intent to capture a reasonable share of
6 benefits for customers, at least from our side of the
7 table.

8 Q. What do you understand to be the cause of
9 the situation last summer where Qwest was unable to
10 access capital markets and decided to raise cash by
11 selling its directory operation?

12 MR. CROMWELL: Objection, relevance.

13 JUDGE MOSS: Overruled.

14 THE WITNESS: It's my impression that much
15 of the financial difficulty now faced by QCII is the
16 result of a combination of aggressive investment in
17 non-regulated global fiber network assets, support
18 systems, in the face of a market situation where
19 others were building similar networks and creating
20 something of a capacity glut where the value of those
21 networks declined rather precipitously, the income
22 streams generated by them declined, at the same time
23 the investment was continuing and the ability to
24 service the related debt was suffering. In general,
25 relatively poor economic conditions contributed to

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1 those difficulties, both on the non-reg side of the
2 business and, to some extent, on the regulated side
3 of the business.

4 Q. And so are you saying that the situation
5 last summer, did you say it was caused by the
6 non-regulated activities?

7 A. I believe that much of it was. Probably
8 most of it would be a fair characterization. Let me
9 respond this way. My review of the free cash flows
10 of QC relative to the consolidated business indicated
11 that the regulated business, Qwest Corporation, has
12 been either modestly cash flow positive or modestly
13 cash flow negative, depending on the year one looks.
14 There was fairly substantial increase in capital
15 investment in the QC business in the 2000-2001 time
16 frame.

17 But if you shift the focus and look at
18 consolidated results, it's obvious that the
19 consolidated business was substantially cash flow
20 negative, indicating that if the phone company is not
21 substantially positive or negative, but the
22 consolidated business is considerably cash flow
23 negative, that the cash flow problems are arising in
24 the non-regulated portions of the business.

25 Q. On line 11 of page five, staying on the

1 same exhibit, you state that the customer credits are
2 front-loaded. Do you consider that to be a positive
3 element of the proposed schedule of revenue credits?

4 A. Yes, I do. I think, as one looks forward
5 in time, it is more difficult to predict the form of
6 regulation and the scope of regulation that will be
7 in place. There are customers today who do not pay
8 tariff rates and may benefit only by the up-front
9 bill credits. There are classification issues that
10 may effectively remove larger groups of customers
11 from the scope of traditional regulation as time
12 passes. Those considerations cause there to be more
13 value, in my opinion, by front-loading benefits.

14 Q. In the next line, line 12, you continue
15 saying that, after 15 years, a traditional ratemaking
16 may no longer provide a vehicle to attribute any
17 further credits to customers. You describe that in
18 part. Would you like to amplify on that any more?

19 A. Well, the tradeoff, if one looks at what to
20 do with the ratepayers' share of value from the Dex
21 transaction, is to concentrate the benefits in the
22 early years or spread them out over an extended
23 period of years, but if you look at the string of
24 numbers and work with the math, you can see that the
25 more you stretch the benefits into the future, the

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1 smaller the benefits can be in any given year. And
2 if one were to attempt to provide firm benefits for
3 40 or 50 years, the implication of that would be a
4 relatively small revenue credit in each year, even
5 under present value terms, one that could conceivably
6 lead to a conclusion by the company that it should
7 file a rate case sooner, rather than later. And as I
8 said before, that was something we sought to
9 discourage.

10 Q. Do you believe it is good public policy to
11 front-load customer benefits based on the possibility
12 of future deregulation?

13 A. If one is interested in capturing the value
14 from the Dex gain for customers, yes, I do. Because
15 there's a growing probability that value assigned to
16 distant future years may never be realized by
17 customers.

18 Q. As a general principle of regulation, do
19 you believe it's a good public policy?

20 A. The front-loading of benefits?

21 Q. Based on the possibility of future
22 deregulation?

23 A. I guess I struggle a little bit with gross
24 generalizations. Under these circumstances, I
25 believe it's good public policy. And I guess I'm

1 thinking of instances where regulators grapple with
2 gain on sale issues. And in my experience, the
3 normal situation is one in which those benefits are
4 distributed to customers rapidly, either through an
5 amortization period of only a few years or perhaps an
6 inclusion in the single rate case.

7 One might, for example, conclude that part
8 of the value being sold with the Dex business is
9 indicative of customers having been insufficiently
10 compensated in the past for the growth in that
11 business. And if you were interested in
12 intergenerational equity kinds of questions, there's
13 a real concern over the appropriate timing of
14 distribution of the gain. I think the settlement
15 agreement strikes an appropriate balance, and at the
16 same time minimizes the potential for general rate
17 increases as a result of declines in imputation
18 credit.

19 Q. All right. I believe -- so you've -- I
20 believe you stated that you do believe it's good
21 public policy to front-load the customer benefits
22 based on the possibility of future deregulation for
23 the reasons you've stated?

24 A. For this transaction, yes, I do.

25 Q. Now, if the Commission were prescribing new

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1 depreciation rates today, would you recommend that it
2 adopt artificially low depreciation rates so as to
3 back-load the expenses until a time when traditional
4 ratemaking might no longer provide a vehicle for the
5 company to recover its investment?

6 A. I've not given consideration to
7 depreciation rates in this matter, but generally I
8 think the Commission should consider and approve
9 reasonable depreciation accrual rates under the facts
10 and circumstances presented to it at any particular
11 point in time. I have seen instances where
12 consideration was given to alleged reserve deficiency
13 amortizations with a sensitivity to the timing of
14 those accruals given the regulatory environment and
15 the termination of a price cap plan or the ability to
16 set rates based upon recorded expenses.

17 Q. So in that instance, you would not take
18 into account the possibility of future deregulation
19 or an end of traditional ratemaking?

20 A. I guess I would need more information to
21 answer your question. What do you want me to assume
22 about the scheme of regulation today and deregulation
23 tomorrow?

24 Q. I'm simply asking whether you would
25 consider that as a factor, as you've indicated that

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1 you do consider it a factor in the case of the
2 front-loading of the revenue credit?

3 A. I think that the Commission needs to be
4 mindful of the scheme of regulation in considering
5 issues such as the Dex transaction, as well as any
6 unusual depreciation recovery issues it might face.

7 Q. At this point, I'd like you to refer to the
8 exhibit -- okay. I guess two references. First, go
9 back to your testimony, which is 291-C, and turn to
10 page eight.

11 A. I'm there.

12 Q. And I'm starting on line four, and you
13 state, I recommend using the intrastate Washington
14 portion of the realized gain on sale of Dex to secure
15 a long-term annual revenue credit to replace existing
16 imputation so that no rate increases are required as
17 a result of the Dex sale. The excess of the
18 Washington portion of the Dex gain, above what is
19 needed to provide these annual revenue credits,
20 should be directly bill credited to customers upon
21 closing of the Dex sale transaction.

22 Now, if you could turn to the three-page
23 exhibit that's been marked as Exhibit 308?

24 A. I'm sorry. Everyone has one but me.

25 JUDGE MOSS: And I gather portions of this

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1 are confidential?

2 MR. TRAUTMAN: Yes, I believe they are.

3 JUDGE MOSS: But those are not indicated --
4 is the witness going to be familiar with the
5 confidential portions or --

6 MR. TRAUTMAN: Well, the first page is his
7 exhibit with the exception of the box, and that's
8 part of his Excel exhibit, but it did not show up on
9 the printout that was included in --

10 JUDGE MOSS: Give us an exhibit number.

11 MR. TRAUTMAN: 292-C, I believe.

12 JUDGE MOSS: Okay. So that whole page is
13 to be treated as confidential; is that what you're
14 telling me?

15 MR. TRAUTMAN: I don't --

16 THE WITNESS: I think I understand
17 generally the top half of the page to contain
18 confidential information, and perhaps the regulatory
19 liability number carried to the bottom half of the
20 page, although Qwest would have to tell me if that
21 remains a confidential number.

22 JUDGE MOSS: Does that remain a
23 confidential number?

24 MS. ANDERL: I haven't done that analysis
25 specifically, but I think, since it seems to derive

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1 and flow out of the post-tax gain, yes.

2 JUDGE MOSS: Okay. Then let's be cautious
3 in questioning with respect to those portions.

4 Q. Is the bottom -- is the number on the
5 bottom right-hand corner confidential?

6 CHAIRWOMAN SHOWALTER: Mr. Trautman, can
7 you use row and column descriptions, like row four,
8 column, difference at issue?

9 MR. TRAUTMAN: Yes, yes, Your Honor.

10 Q. It would be line 40 on the far right-hand
11 side.

12 A. Your question to me is whether that number
13 is confidential?

14 Q. Well, and I'd like to know if Qwest
15 considers that confidential?

16 MS. ANDERL: Well, Your Honor, I guess,
17 rather than having, you know, to be asked on a
18 number-by-number basis on the fly to make these
19 decisions, I wonder if we can just ask the questions
20 without disclosing the numbers, as we've been
21 successful in doing so far.

22 JUDGE MOSS: Is that a possibility, Mr.
23 Trautman?

24 MR. TRAUTMAN: I can do my best. I will
25 try to do it that way, yes.

1 JUDGE MOSS: All right.

2 Q. Could you -- okay, Mr. Brosch, could you
3 briefly explain how Exhibit 308, which -- the first
4 page of which is the same as your Exhibit 292-C,
5 could you explain how this exhibit goes --
6 accomplishes what you state in the testimony that I
7 just referred to you on page eight?

8 A. Yes, without stating the numbers, the
9 general flow of calculations here, which is explained
10 through a section of my testimony that steps through
11 it line-by-line, is to start with the negotiated
12 selling price of the Dex business, calculate a
13 pre-tax and post-tax gain on that amount, and then
14 allocate, through a series of steps at lines eight
15 through 16, the Washington intrastate share of the
16 Dex gain on a post-tax basis.

17 That value, appearing in Column D at line
18 16, is carried down to the bottom half of the
19 schedule. And in the bottom half of the schedule,
20 the proposed one-time up-front bill credits and
21 annual revenue credits are calculated in pre-tax
22 dollars and equivalent post-tax values so that they
23 can be used to calculate a running unamortized
24 balance of Washington benefit not yet credited to
25 customers.

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1 That process also applies a 9.367 percent
2 carrying charge on that initially large unamortized
3 balance to reflect the fact that Qwest is allowed
4 most of the Washington share of the gain in cash to
5 satisfy its obligation to creditors, and only
6 gradually applies those benefits to customers over
7 the 20-year time frame shown here. So that at the
8 end of the process, we've exhausted the Washington
9 share of the value and the interest accrued thereon.

10 Q. All right. So how does one tell from
11 Exhibit 308, the first page, that the entire amount
12 of gain is distributed to customers?

13 A. By looking at the starting value on line
14 19, that's carried down from the calculation of the
15 gain in the top half of schedule, and then working
16 through that column in the series of one-time and
17 annual revenue credits to see that we ultimately
18 fully amortize and exhaust that amount at the end of
19 last year.

20 Q. All right. On the right-hand side of
21 Exhibit 308, there's a box that says diagnostics. Do
22 you see that?

23 A. I do.

24 Q. And one of the diagnostic items is a
25 percent of the MRI allowance. Do you see that?

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1 A. I do.

2 Q. And what is the MRI?

3 A. There is a provision in the Rodney
4 agreement that defines material regulatory impacts,
5 and to the extent the cumulative effect, the economic
6 value of regulatory commitments made to secure
7 approval of the Dex sale exceed that amount, it's my
8 understanding that the Qwest parties have the right
9 to terminate the agreement, if they choose to do so.

10 Q. All right. So your original credit amount,
11 which is under column reference B and line 20, and
12 this is a public number, is \$147 million; correct?

13 A. It is, yes.

14 Q. And so is it correct that that amount
15 equals the percentage of the diagnostic allowance of
16 the MRI allowance you have in the diagnostic box?

17 A. I think so. I'm not absolutely certain
18 without opening the spreadsheet and looking in the
19 cell. As you can tell by comparing Exhibit 308 to my
20 prefiled confidential exhibit, these diagnostics were
21 once outside the print range, and I haven't paid much
22 attention to them since the time I created them, but
23 that looks about right.

24 MR. TRAUTMAN: Now, the MRI -- Lisa -- or I
25 would like to ask Counsel, the MRI amount is not

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1 confidential; correct?

2 MS. ANDERL: That's correct.

3 Q. Okay. So 147 divided by 500 would be
4 approximately what percent?

5 A. Probably that 29 percent.

6 Q. Now, you've stated, I believe -- well, let
7 me ask. Does the MRI provision apply only to the
8 Rodney sale?

9 A. I think so. I don't recall a provision
10 like that in the Dexter contract. Was that your
11 question?

12 Q. Yes.

13 A. As compared to Dexter?

14 Q. Yes. And is the \$500 million amount
15 specific to the Rodney states?

16 A. I don't know that it is limited. I'd have
17 to look. I just don't recall.

18 Q. Would you agree that Washington State has a
19 share of the Rodney transaction only as approximately
20 30 percent?

21 A. I'm not sure what you're calculating.

22 MS. ANDERL: Mr. Brosch anticipated my
23 objection, that the question was simply vague.
24 Thirty percent based on what?

25 MR. TRAUTMAN: Okay. I'll withdraw that

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1 question.

2 Q. If you could turn to the second page of
3 Exhibit 308, which, at the upper right-hand corner,
4 has handwritten in Adjusted A, and then in the lower
5 left-hand corner, from lines 19 to 40, under credit
6 to customers, do you see there are different numbers
7 than there were on page one of Exhibit 308? Do you
8 see that?

9 A. I do. I think the numbers within the
10 penciled box of the credits to customers column is
11 now intended to indicate the stipulation values.

12 Q. So it would be correct that this replaces
13 your original schedule of credits with the schedule
14 of credits in the proposed settlement, both the
15 up-front credit and the 15 years of revenue credits;
16 correct?

17 A. It appears to do that, yes. It appears to
18 be doing in a different way what I've done in my
19 Exhibit MLB-4C, attached to my supplemental
20 testimony.

21 Q. Is the ending balance still zero?

22 A. What are you pointing to as the ending
23 balance?

24 Q. It would be the ending balance at the end
25 of the last revenue credit.

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1 CHAIRWOMAN SHOWALTER: Can you --

2 Q. Which would be line 35, and line 35 on the
3 far right-hand column under post-tax regulatory
4 liability?

5 A. That number is not zero, and that number is
6 not meaningful, in my opinion.

7 Q. And looking to, if you could turn to the
8 next page, which is Adjusted B in the upper
9 right-hand corner, and again, in the lower left-hand
10 corner, from lines 19 to 40, under credits to
11 customers, there is -- there are the -- there are the
12 same numbers as on Adjusted A, except for the number
13 on line 19, and that, for purposes of this exhibit,
14 changes the one-time customer bill credit from the
15 \$67 million to 231 million.

16 CHAIRWOMAN SHOWALTER: That would be line
17 20?

18 THE WITNESS: I see that on line 20.

19 Q. Line 20. Yeah, line 19 is blank. You're
20 correct, Your Honor. Line 20?

21 A. Yes, it appears that Adjusted B has the
22 stipulation annual revenue credit values for 2004
23 through 2018, but with a much larger one-time bill
24 credit in year one.

25 Q. And with this change, is the ending

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1 balance, which would be the balance that would be on
2 line 35, in the far right-hand column, under post-tax
3 regulatory liability, would that number now again be
4 zero?

5 A. I see a zero there, although this
6 calculation compares the negotiated credits and the
7 new one-time bill credit you suggest to the consumer
8 groups' litigation position on the Washington share
9 of the gain, ignoring the compromises made to that
10 position and stipulation.

11 MR. TRAUTMAN: That's all we have, Your
12 Honor. At this point, I'd move for admission of
13 Exhibit 308.

14 JUDGE MOSS: Apparently there's no
15 objection. 308 will be admitted as marked. I think,
16 before we go to our questions from the Bench, we'll
17 take our morning recess for 15 minutes until 11:00.

18 (Recess taken.)

19 JUDGE MOSS: All right. Let's come back to
20 order, please. And we are at that point where we
21 have questions from the Bench.

22 CHAIRWOMAN SHOWALTER: Commissioner
23 Hemstad's going to go first.

24

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

1301

1 BY COMMISSIONER HEMSTAD:

2 Q. Good morning, Mr. Brosch.

3 A. Good morning, sir.

4 Q. First I want to pursue just a matter that
5 was taken up by Staff counsel with regard to the
6 interpretation of the stipulation. And that's back
7 to the stipulation, Exhibit 2, page nine, in Section
8 Eight, and your reading of that language.

9 Perhaps this can ultimately be clarified,
10 but it's not your -- or is it your view that if the
11 company sells one or more or say several exchanges
12 again as a part of its process of trying to raise
13 cash, that the sale of those capital assets will
14 carry with it the obligation to meet the duties under
15 the settlement agreement to the buyer?

16 A. I believe that this provision of the
17 stipulation pertains to the parties, rather than
18 discrete assets owned by the parties. So said
19 differently, it's not my view that an obligation with
20 respect to the revenue credits in the stipulation
21 would be sold with the exchanges or the lines in an
22 exchange. Is that responsive?

23 Q. Yeah. It seemed to me what this is getting
24 at is the parties and their successors are talking
25 about their corporate structure or -- but it's not

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1 talking about asset sales.

2 A. My understanding is that the parties are
3 referenced as corporate entities, rather than
4 specific assets, yes, sir.

5 Q. And I would think successors would -- say
6 that QC ultimately were sold, say, to another RBOC,
7 that the obligation would be imposed upon that
8 successor utility in contrast to where given
9 exchanges are sold.

10 A. My understanding is that if substantially
11 all of the business were sold, that the successor
12 entity owning the business would continue to have
13 that obligation.

14 Q. Well, again, that's interesting. It may be
15 able to be clarified, but normally, for example, when
16 the sale of an asset is a sale of a stock in the
17 company, the successor owner of the assets doesn't
18 carry with it contractual obligations. For example,
19 like labor contracts.

20 A. Well, clearly the interpretation of this
21 provision would be of interest in your review of a
22 sale of substantially all the assets of QC. It would
23 be my understanding that this obligation is
24 associated with the regulated entity and if that
25 entity, either the corporate entity itself or

1303

1 substantially all of the assets were transferred,
2 this obligation should go with it.

3 Q. But not if less than substantially all of
4 the assets? In other words, if QC over time is
5 substantially reduced, as I think QC and its
6 predecessor, US West, over time has sold exchanges in
7 its 14-state area and probably will continue to sell,
8 say, rural exchanges piecemeal.

9 A. As it stands now, there is no mechanism
10 that I am aware of that would convey with the sale of
11 a specific exchange a fraction of the directory
12 imputation obligation. At some point, I would think
13 the Commission would be quite interested in whether
14 it would be equitable to partition this obligation in
15 its consideration of a fairly substantial exchange
16 sale transaction.

17 Q. All right. Now, switching topics, this
18 issue has come up and been presented to other
19 witnesses. I'd like your view on the issue of the
20 relative merits of using up-front bill credits as
21 against some form of rate-based reduction.

22 A. It's my view that the up-front bill credits
23 are a critically important part of the stipulation
24 for several reasons. First, the up-front bill
25 credits provide a certain benefit to customers that

1 may ultimately not be the recipients of annual
2 revenue credits or your alternatives, the rate base
3 offset.

4 The bill credits provide for a remedy that
5 is comparable to what is often done with the sale of
6 material assets of a public utility or a business
7 segment of a public utility where there is often a
8 one-time crediting to customers or a very short
9 amortization period over which that gain is conveyed,
10 the benefit of that gain is conveyed to customers.

11 The rate base offset is problematic in a
12 number of ways. If one were to, for example, take
13 the Washington share of the gain and establish it as
14 a rate base offset, in simplest form, we could call
15 it a regulatory liability. The question first would
16 be are we going to amortize that regulatory
17 liability, and if so, over what period of time.

18 If the regulatory liability is amortized,
19 the revenue requirement pattern of the benefit would
20 be quite high in the early years and decline rateably
21 towards zero in the year the amortization ceases. So
22 you would have a pattern of benefit that's wholly
23 inconsistent with the pattern of benefit that has
24 been realized historically through directory
25 imputation with gradual growth through the years and

1305

1 a pattern of benefit that's inconsistent with the
2 levelized benefit with a slight increase in the first
3 four years that's in the stipulation.

4 On the other hand, if you established a
5 regulatory liability without the amortization, you
6 would not -- you would have a levelized benefit, you
7 would have to have a quite large regulatory liability
8 balance to achieve parity with what you think
9 ratepayers are entitled to. The amount of the
10 benefit in a particular year would be a direct
11 function of the authorized rate of return applicable
12 to rate base in future rate cases.

13 But without amortization, you are never
14 returning any of the principal amount of the
15 Washington share of the Dex gain to customers. You
16 create a perpetuity and a perpetual regulatory
17 liability that, from the company's perspective, would
18 never extinguish.

19 You could construct a rate base offset
20 scenario that was not a regulatory liability, but if
21 you did so, you would encounter a number of
22 other practical issues and concerns.

23 For example, one might take a rate base
24 offset in attempt to assign it to the company's
25 depreciation reserve, thinking that that would create

1306

1 long-term customer benefits in the form of a reduced
2 rate base. What I suspect would actually happen is
3 there would be a need to attribute those additional
4 depreciation credits to specific plant asset
5 accounts. There's no obvious rational way to do
6 that. There would be a fair amount of judgment
7 involved in that exercise.

8 And then I fear what would happen is there
9 would be a distortion introduced into future
10 depreciation rescription proceedings, where now we
11 have a much larger depreciation reserve in certain
12 plant accounts that would give rise to a
13 rescription of lower accrual rates. Without a
14 coincident rate case to pass the benefit of reduced
15 depreciation expense to customers, you would create a
16 timing issue or problem.

17 Another alternative might be to attempt to
18 identify specific plant assets to write down. That
19 could be problematic to the company if it triggers an
20 empowerment obligation and accrual entries on the
21 company's books that would suggest that there would
22 be a further reduction in the company's consolidated
23 equity balances as a result of that adjustment.

24 So I just caution you, there are
25 complications in almost any alternative I can imagine

1307

1 where we try to specify a rate base offset, either in
2 terms of the intended versus actual pattern of
3 benefits, the timing of rate proceedings to capture
4 those benefits to customers, and specifying exactly
5 how the accounting would work to accomplish the
6 intended regulatory objectives.

7 Q. Okay. Thank you. I was interested in your
8 responses to several questions from counsel. Going
9 to the point that one of the motivations of the
10 consumer interests would be to discourage a rate case
11 filing or to postpone it or defer it, why is that
12 necessarily in the public interest? For example, if
13 the company is in need of revenues, then a rate case
14 filing is appropriate, or alternatively, if costs are
15 falling, then it's in the interest of ratepayers that
16 there be a rate case. Isn't that a relatively
17 neutral issue?

18 A. Well, I meant by my response to indicate
19 that I was addressing the issue in a mechanical
20 sense. In other words, how we sequence in time the
21 crediting of the Dex benefits to customers may
22 influence the timing of rate cases. I didn't intend
23 any philosophical view as to whether there should be
24 or need be a rate case sooner versus later, but very
25 mechanically, if the company's reported revenues in

1308

1 its intrastate jurisdiction are higher than they
2 would otherwise be because of these Dex revenue
3 credits, any revenue requirement the company could
4 assert before you would be reduced, and that has the
5 effect of naturally influencing the company's
6 judgments as to when to file a case and assert a need
7 for increased revenues.

8 Q. In the questions and your responses to
9 Exhibit 308-C, I just want to pursue -- allow you to
10 pursue a bit further your response. I'm looking at
11 the second page, referencing Adjusted A. And the
12 inquiry of you in there was at line 35 in the final
13 column, and I think the number's now been used.

14 CHAIRWOMAN SHOWALTER: No, it hasn't.

15 Q. No, no, not that number, but the number
16 zero was used on the prior page. And this number is
17 not zero and I think your response was that that fact
18 is, quote, not meaningful, end quote. What did you
19 mean by that?

20 A. What I meant is the comparison being made
21 here is the consumers' litigation position to the
22 schedule of credits to customers after compromising
23 that position. The presentation here greatly
24 distorts that difference that is, I think, displayed
25 in a better and more meaningful way on Exhibit 307.

1309

1 The distortion comes about because if you
2 start with the consumers' litigation position and
3 compare it to the reduced benefits to customers after
4 compromising that position, the difference existent
5 at year one becomes subject to compound interest on
6 the Staff's cross-examination interest -- excuse me,
7 exhibit, in every year thereafter, at 9.367 percent.

8 So effectively, the full value of what was
9 compromised in settlement becomes amplified over a
10 15-year period by applying nine percent interest to
11 it in a compound fashion in each year, and that's why
12 I think it's unfair to prepare the valuation and
13 comparison in this way.

14 If you refer to Consumers' Exhibit 307, you
15 can see, I think, a more meaningful comparison.
16 Where I look at the total value due Washington
17 ratepayers under the Qwest litigation position as
18 modified in Mr. Reynolds' latest testimony, and the
19 prefiled position that was asserted as Consumers'
20 litigation position there at line five of Exhibit
21 307, and then scheduling out by year at the bottom
22 half of that schedule the benefits to customers under
23 the stipulation discounting under two different
24 discount rates, the one preferred by the company
25 witness Grate and the one included in my original

1310

1 exhibit, you can see, carrying the present value of
2 all the benefits up to lines seven and eight and
3 comparing them with the latest litigation positions
4 of the parties, I think a more balanced comparison of
5 what compromises were made, and that's the purpose of
6 that exhibit.

7 Q. Okay. Thank you. Both the filed testimony
8 and the cross-examination and the discussion I think
9 abundantly makes clear that the motivation for this
10 sale is the financial difficulties of QCII. If QCII
11 were not in financial difficulties, would it still be
12 your view that the sale of this asset, as has now
13 been proposed, would be in the public interest and
14 meets a no-harm standard?

15 A. It could be. I haven't really thought
16 through all of the implications of that, but in a
17 sense, I view the sale of Dex, regardless of
18 circumstances, to represent both risk and opportunity
19 to consumers. The sale represents the monetization
20 of an income stream, the conversion of an income
21 stream into a large lump sum of cash that can be used
22 by the company to resolve some of its financial
23 difficulties. The opportunity arises from the fact
24 that the transaction lets us look at this large gain
25 and deal with issues that have been quite

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1 controversial in the past, issues associated with
2 directory imputation, ratepayer entitlements to
3 directory imputation, any subsidies that arguably are
4 implied by directory imputation, and it allows us to
5 fix and limit the risk to ratepayers that, if we were
6 to continue to impute, the directory publishing
7 business, while consistently profitable in the past,
8 is subject to some risk of business decline or
9 reversal in the future.

10 As I think about the delivery of a paper
11 publication and the increased usage by the public of
12 alternative information sources, such as the
13 Internet, it occurs to me that there is some risk of
14 displacement of usage and value associated with
15 published directories in the future. I was present
16 when Mr. Kennard testified about the buyers'
17 perceptions of revenue trends and value, and I recall
18 him saying that, from the buyer's perspective, the
19 expectations regarding growth in revenue were more
20 favorable in the nontraditional portion of the
21 directory publishing business that was being
22 acquired.

23 So I think it's important to keep in mind
24 what the stipulation brings you is a firm, fixed,
25 known stream of customer benefits, including a very

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1 tangible up-front benefit in return for a
2 increasingly at-risk imputation, business-as-usual
3 regulatory situation.

4 Q. My final question is a quite generalized
5 one. And I'd like you to offer your comments on the
6 position of Staff, which is in opposition to the
7 settlement. And I preface it with the comment I find
8 the posturing in this proceeding, at least in my ten
9 years of experience on this Commission, to be really
10 unique.

11 Here consumer interests have joined the
12 settlement and the Staff is arguing that the
13 settlement doesn't adequately protect consumer
14 interests. Normally, it is not uncommon to find
15 those positions the other way around. Staff, with
16 the role of balancing interests of shareholders and
17 ratepayers, and whereas, for example, Public Counsel
18 having the responsibility to advocate the interests
19 of consumers. And you're representing Public Counsel
20 and AARP and WeBTEC here, I believe collectively
21 consumer interests in opposition to the Staff
22 position, so -- and you're the principal witness for
23 those interests, so what is your general reaction to
24 that and your comments about the Staff position?

25 A. I believe that, first and foremost, the

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1 consumer interests that I represent are balanced and
2 satisfied by the settlement agreement that's before
3 you. I think that the Staff position, as I
4 understand it, is attempting to preserve the
5 regulatory status quo and not take advantage of the
6 opportunity to resolve a historically contentious
7 issue in a way that's beneficial to customers.

8 I believe that concerns about the
9 reservation of cash or the funding of the revenue
10 credits to customers, be they imputation or fixed
11 revenue credits per the settlement agreement, are
12 somewhat misplaced in that, as I said earlier, the
13 corporate cash and treasury management function is a
14 centralized function at Qwest, and it is at least
15 impractical to assume that financial difficulties in
16 one part of the business can be isolated to that part
17 of the business and not pervade dividend policy or
18 investment decisions made on behalf of and for the
19 regulated business.

20 So I guess I'm not fully appreciative of
21 Staff's concerns with regard to funding the
22 regulatory liability that we were talking about. I
23 think that the Commission's reliance upon a
24 ratemaking remedy that's firmly within the ratemaking
25 jurisdiction is an appropriate response to the

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1 circumstances we see here.

2 Q. Assuming, going forward, that QCII
3 continued to have financial difficulties, and I asked
4 this question of others, also, are there -- and then,
5 with I think an obvious incentive, as has occurred
6 elsewhere with utilities in trouble today, of
7 bleeding the regulated utility to support the
8 unregulated activities of the parent, do you see any
9 steps that this Commission can take to try to
10 minimize that kind of scenario?

11 A. Well, I think the first step to take is to
12 approve the transaction to give the company every
13 opportunity to improve its financial circumstances.
14 On a going forward basis, I think it's very important
15 to monitor the financial performance of the business,
16 to pay particular attention to service quality and
17 investment concerns so that you can observe
18 performance and results and take appropriate steps
19 such as are preserved in the settlement agreement to
20 extend some of the service quality protections that
21 now exist.

22 As to the imposition of financial
23 constraints, I think if the financial circumstances
24 of the company deteriorate, that might be taken up as
25 a result of monitoring those circumstances in any

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1 perceived problems with service quality or investment
2 levels.

3 So I would encourage you to approve this
4 transaction, give the company the opportunity to
5 better its financial standing, and then monitor and
6 observe and respond to problems if they arise in the
7 future.

8 Q. One of the problems I see, in looking at
9 the circumstances that other commissions have found
10 themselves in around the country, is the financial
11 deterioration of not exclusively parents in the
12 circumstances I've described, because it could be the
13 other way around, also, of a subsidiary, that's the
14 unregulated part of the regulated parent, but the
15 same result is that the commissions are almost
16 invariably playing catch-up in trying to respond to
17 circumstances, closing the barn door after the horse
18 is gone.

19 A. That's right, and --

20 Q. And your description, seemed to me, is
21 exactly that.

22 A. Well, if we knew, upon reviewing the merger
23 of Qwest and US West, what we know today, I'm sure
24 the outcome would likely have been different.
25 Obviously, in these circumstances, the horse is way

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1 out of the barn and we are reacting. I don't have a
2 prescription for financial restrictions that might be
3 imposed that would prevent a recurrence in the
4 future. There are no answers to that question that
5 can anticipate the direction problems may arise from.
6 I do see this company as one that is doing what it
7 can to weather the storm and find improving trends in
8 the business.

9 Q. And you think that some form of
10 ring-fencing or some aspects of it, as suggested by
11 Staff, are not effective?

12 A. I've not examined them in great detail.
13 They can be effective, but I just am not in the
14 position to respond as to the particulars.

15 COMMISSIONER HEMSTAD: Thank you. That's
16 all I have.

17 COMMISSIONER OSHIE: I just have one
18 question.

19 CHAIRWOMAN SHOWALTER: Go ahead.

20

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

22 BY COMMISSIONER OSHIE:

23 Q. I'd like to follow-up, Mr. Brosch, on the
24 question that was asked by Commissioner Hemstad. And
25 that's the -- and my issue is really the spread, if

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1 you will, of the benefit from the revenue credit over
2 time in the event of a competitive classification of
3 services that were offered by Qwest and, as a result,
4 a reduction in the cost of service-based regulatory
5 customer body.

6 Now, is there any issue in the settlement
7 agreement as to whether the entire revenue credit
8 would enure to the benefit of those customers that
9 remain under the cost of service regulation umbrella?

10 A. The answer to your question -- let me
11 respond this way. If there is progressive
12 reclassification of services outside of cost-based
13 tariff regulation, the question becomes are the
14 reclassified services to be accounted for as
15 jurisdictional and above the line in determining
16 revenue requirement.

17 If reclassified services are -- remain
18 within the jurisdiction and the revenues, investment
19 and expenses to provide those services remain within
20 the jurisdiction, then the general body of ratepayers
21 will participate in the economic results of those
22 business segments. On the other hand, if, upon
23 reclassification, the revenues, expenses and
24 investment are determined to be moved below the line,
25 you have a redefinition of what is jurisdictional,

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1 and the revenue requirement becomes a smaller set of
2 numbers as reclassification occurs.

3 But irrespective of the scope of
4 jurisdiction, this stream of stipulated revenue
5 credits is to apply in the calculation of the
6 company's revenue requirement.

7 COMMISSIONER OSHIE: Thank you.

8

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

10 BY CHAIRWOMAN SHOWALTER:

11 Q. My little stickies. Thank you. Turning to
12 the settlement agreement, Exhibit 2, at page one.

13 A. All right.

14 Q. There has been discussion of the meaning of
15 the phrase collectively, quote, Qwest, close quote.
16 Would it be a reasonable interpretation of this
17 settlement agreement that the settlement agreement is
18 among parties, including the four who are identified
19 collectively as Qwest, but the performance of the
20 agreement, should the Yellow Pages be sold, would be
21 left to the three entities that would remain with
22 Qwest when the word Qwest is used in later parts of
23 the documents?

24 A. I think so. I suppose so. I'm not real
25 clear on the distinction you're making.

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1 Q. Well --

2 A. As to the status of the Dex business as
3 included in Qwest parties? For example, I don't --
4 are you referring to a specific obligation to perform
5 that relates to the Dex business in the agreement
6 that might be affected?

7 Q. Well, let's turn to page three, line 17,
8 where it says that a bill credit would be provided 45
9 days following the sale, Qwest shall provide the bill
10 credits. If the sale goes through, would you agree
11 that, at that point in time, Qwest comprises QCI,
12 QSC, QC, but not Dex?

13 A. I don't know if the legal entity Dex will
14 become nonexistent at that point. I understand that
15 collectively Qwest would perform this part of its
16 obligation through the QC entity.

17 Q. Although it does not state QC, it just
18 says, one way or another, whoever makes up Qwest will
19 deliver on these credits; is that correct?

20 A. I don't know how it would be possible for
21 anyone but Qwest to provide credits to customers of
22 the listed services in the appendix, since they have
23 the relationship with those customers.

24 Q. As long as at least one of those entities
25 did provide bill credits, that would satisfy the

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1 provision on line 17, wouldn't it?

2 A. I'm not clear on the distinction,
3 Commissioner. As I said, I believe the telephone
4 company has the customer relationship and the ability
5 to provide the bill credits. Cash is fungible, and
6 one way or the other, QC will provide those bill
7 credits to perform.

8 Q. Okay. I'll move on to a different area.
9 You talked about a pattern of benefits and you
10 described different scenarios when you were comparing
11 the tool of a offset to rate base versus credits?

12 A. Yes.

13 Q. And I'm not sure I followed every bit of
14 your answer, particularly with respect to when
15 different possibilities cause different problems.

16 A. Sure.

17 Q. However, the one I'm interested in I think
18 you mentioned at the beginning, which is -- I believe
19 you said that you could have a write-down of rate
20 base, or you use the word offset of rate base, but if
21 you amortized it, it would decline over time --

22 A. Yes.

23 Q. -- to zero, and you presented that as a
24 problem insofar as it would not be a constant level
25 of -- a constant level as imputation is today?

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1 A. That's right.

2 Q. And I'm wondering why that is a problem.

3 If you had a declining amount of credit or rate base,
4 gradually the ratepayers would be weaned off of it,
5 whereas the settlement proposal is a cliff. You go
6 so long and then, boom, after 15 years, it's gone.
7 And it would seem to me that, absent all the other
8 problems you were raising, it would make more sense
9 to gradually wean the system off it than to have a
10 cliff. Now, it might mean more up-front payments,
11 but that too might have an advantage.

12 So I'm wondering if you could address that
13 issue and also whether any of these other problems
14 you were recounting apply to a situation where you
15 have a offset of rate base declining over, let's say,
16 15 years?

17 A. Certainly the regulatory liability scenario
18 I think is the one you're speaking to, and that would
19 create, in the initial year, a large rate base offset
20 value by applying the rate of return to the balance,
21 and also an amortization value. The amortization
22 values, in 15 years, would be constant in every
23 year. The amortization would serve to gradually
24 reduce the rate base so that you would have a
25 high-low pattern of customer benefits that would go

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1 to zero at the termination point.

2 The problem with that is a practical one in
3 the sense that, first of all, you set up a cliff that
4 would dramatically reduce revenue requirements in
5 year one, and then, if you processed a rate case,
6 presumably, it would be brought by Staff or an
7 intervenor party, since the company would have little
8 interest in filing that case. You would fix the
9 revenue requirement at a point in time, and then,
10 moving forward, rates would be fixed at that level,
11 but there would only be a weaning by a series of
12 regular rate cases thereafter to capture the
13 declining value of the rate base.

14 Q. I'm not sure what word -- there would only
15 be a what?

16 A. I said weaning.

17 Q. A weaning?

18 A. Yeah, your -- that that pattern I
19 described, that was high and then gradually declining
20 to zero, presumes continual regulation. So if you
21 have a test period in year one, there would be the
22 potential for a very large rate base offset and rates
23 to be fixed at that level for a period of time until
24 Qwest filed a rate case to capture that declining
25 regulatory balance in the out years.

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1 Q. Why would that necessarily be the case?

2 We've had cases where we approved stepping stone
3 rates over time.

4 A. I submit to you that an interest in
5 levelizing was thought to be advantageous to
6 consumers to try to avoid a scenario of major rate
7 changes as a result of the Dex sale, which I think
8 that high-low pattern might yield, along with the
9 potential for consistently increasing revenue
10 requirement because of the decline in that offset.

11 Q. So you would rather just deal with the
12 cliff at the end of the 15 years?

13 A. If we're all here still talking about
14 traditional regulation, yes.

15 Q. All right. You say in your testimony -- I
16 don't know if you need to turn to the page, but I'll
17 give it to you. Page 22 of Exhibit 291-C, at line
18 14, you say, Shareholders should not be allowed to
19 retain a large share of the gain on sale when they
20 have not been at risk for the operations of the
21 directory publishing business. And of course, the
22 company's position is the ratepayers should not get a
23 great share because they were not at risk.

24 I recognize you have a settlement of those
25 two positions, but each side has said the other guys

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1 didn't have any risk, so they shouldn't get any. And
2 either that means all of the risk went elsewhere or
3 maybe there wasn't very much risk to begin with, and
4 I'm just wondering what your view is.

5 In your view, did the ratepayers bear the
6 risk of the business all these years, and if they
7 did, what kind of risk is it or was it or has it
8 been?

9 A. The -- it's my position, and elsewhere in
10 my testimony I describe that, by treating the
11 directory publishing business as jurisdictional, as
12 effectively we have here for many years, either
13 because it was part of PNB or because all of the
14 profits above a return deemed reasonable were
15 imputed, that environment has the effect of capturing
16 all of the risks, opportunities, improvements and
17 declines in business trends, and passing them through
18 to ratepayers. Whenever there's a rate case,
19 whatever that profitability happens to be, that level
20 of profitability was built into rates. Prospectively
21 --

22 Q. Well, actually, can I just stop you? I'm
23 just --

24 A. Sure.

25 Q. At this point, I just want to get a little

1325

1 more sense of what the actual risk has been.
2 There's, I think, what one might call a legal risk,
3 that is, that you bear the risk of the costs and
4 therefore the potential benefits of the profits.

5 A. Mm-hmm.

6 Q. In a practical sense, what's the ultimate
7 downside of the risk and the ultimate upside of the
8 benefits and compare it, for example, to putting a
9 coal plant in rate base.

10 A. Sure.

11 Q. Basically, the worst that can happen is the
12 ratepayers have to pay for the entire coal plant,
13 which could be a very large amount of money, and
14 maybe the best that happens is that the plant is in
15 the money at some point when the market's pretty good
16 and there's some profits --

17 A. Sure.

18 Q. -- that are realized. In the case of the
19 Yellow Pages, I'm trying to understand what the
20 comparable range is and whether it makes any
21 difference, but isn't it more or less that the
22 downside is paying for the publishing of the White
23 Pages because the Yellow Pages went away, and the
24 upside is the income from the Yellow Pages?

25 A. I think your comparison to the coal plant

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1 might be helpful. The good news about the directory
2 publishing business is that it's not capital or asset
3 intensive, so we don't have the traditional ownership
4 risk that is associated with coal plant or a
5 telecommunications network.

6 It's been said that most of the assets of
7 the telephone -- or excuse me, of the directory
8 business ride up and down the elevators every day.
9 It's relationships with customers, relationships with
10 the phone company, the perception of official
11 publisher status, those linkages that I talk about in
12 my testimony. The principal assets being sold here
13 are intangible assets, so it's difficult to apply
14 traditional thinking about risk and return, risk of
15 capital loss or gain. Really, the way that risk
16 translates into economic reality is through the
17 achieved returns of the business.

18 Again, we have a lot of good news
19 historically, in that the business has been
20 consistently profitable, directory advertising
21 revenues have persistently exceeded the direct costs
22 of publishing and distributing the books, and that
23 revenue stream has grown historically.

24 As we look forward, we can wonder what
25 risks there are, that at some point, directory

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1 imputation may begin to flatten out or decline. My
2 point in earlier testimony was that the settlement
3 agreement takes ratepayers out of that risk or
4 concern by fixing the revenue credits.

5 Q. Well, and that seems like a slightly
6 different issue. You may say, Well, it's best to
7 sell the Yellow Pages now because we don't know what
8 will happen to the profits, so, you know, sell high
9 if it happens to be high today. But that's different
10 than risk, I think. Maybe not, but there's maybe the
11 risk of losing more profit.

12 A. Well, let me --

13 Q. What's the worst -- if the Yellow Pages
14 were not under consideration for being sold right
15 now, isn't the worst that happens to the ratepayers
16 is that they lose the benefit of the Yellow Pages,
17 but they aren't forking out money to save something
18 comparable to a moribund coal plant?

19 A. Well, there's a lot wrapped up in that
20 question. Do you want to talk about the risks to the
21 ratepayers associated with further declines in the
22 financial standing of the consolidated business or
23 not? That's kind of a threshold question. If you
24 view the sale of Dex as essential to the financial
25 recovery of QCII and believe that ratepayers have a

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1 stake in the financial viability of QCII, I find that
2 fairly compelling and I think that's a threshold
3 issue.

4 Q. Actually, I recognize that issue. I was
5 really speaking more of the kind of Democratic
6 Central type of analysis and what kinds of risks
7 either ratepayers or shareholders have undertaken for
8 purposes of distributing the gain if it's sold.

9 A. Okay.

10 Q. Which is a different question --

11 A. It is.

12 Q. -- as to whether it ought to be sold
13 because there are risks to QCII and QC and the
14 ratepayers.

15 A. I view that risk as being one of is the
16 value of this business properly sold or not, is
17 monetization of that income stream appropriate today
18 or not, and the risk that is associated with that is
19 the risk that the value of the business will be less
20 tomorrow.

21 Q. Okay. That sounds to me like you were just
22 talking about the second type of risk, which is
23 should this be sold. But assuming it's sold --

24 A. Okay.

25 Q. -- and assuming we then have to determine

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1 how to distribute the gain --

2 A. Okay.

3 Q. -- then, traditionally, anyway, you look at
4 who was at risk --

5 A. Okay.

6 Q. -- in the operation of the entity. And so
7 in a coal plant situation, the analysis is somewhat
8 clear, and what I was asking you to compare is that
9 more traditional approach to the Yellow Pages.

10 A. Okay.

11 Q. Because the nature of the business is
12 different.

13 A. That's right. And I maintain and, as I
14 describe in my testimony, the value of the business
15 is closely linked to it's the official publisher
16 status that the Yellow Pages business has had
17 historically. That value has grown as the directory
18 advertising business has grown over the years within
19 the jurisdiction. Money spent by PNB, US West Direct
20 and Dex to improve directories, to expand the scope
21 of directories, to deliver to more customers, to sell
22 more features in the book, the costs of developing
23 all of that benefit were captured, because those
24 expenses over time were recognized as jurisdictional
25 for ratemaking purposes.

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1 So by my analysis and in my testimony, I
2 make the case that it's a regulatory asset that's
3 consistently been fully jurisdictional, and the gain
4 should go to customers. The assets are intangible
5 assets largely, so it's difficult to draw a
6 comparison to fixed or tangible plant assets, like a
7 coal plant, where we could look back and see whether
8 it was or not in rate base, who paid for the
9 maintenance, who paid for the insurance, those sorts
10 of more obvious questions.

11 CHAIRWOMAN SHOWALTER: I have a few more
12 questions, but I think it would probably be best to
13 break for lunch, because I think we have a meeting.

14 JUDGE MOSS: Is Staff going to have follow
15 up?

16 MR. TRAUTMAN: Not at this point, no.

17 MR. CROMWELL: I do have some redirect,
18 Your Honor.

19 JUDGE MOSS: How much?

20 MR. CROMWELL: Fifteen, 20 minutes.

21 JUDGE MOSS: So we'd be looking at
22 finishing this witness by about 12:30, perhaps.

23 CHAIRWOMAN SHOWALTER: We have a meeting
24 that's about an hour long.

25 JUDGE MOSS: Oh, then we need to break.

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1 CHAIRWOMAN SHOWALTER: That's what I said.
2 I think we had better say 1:30. I don't know, but I
3 think I'm booked every minute.

4 JUDGE MOSS: We'll recess until 1:30.

5 MR. CROMWELL: Thank you, Your Honor.

6 (Lunch recess taken.)

7 JUDGE MOSS: Let's be back on the record,
8 come to order, please. All right. While we're
9 getting a few things organized here at the bench, let
10 me go ahead and take care of a housekeeping matter,
11 and that is simply to identify what's been
12 distributed as exhibit for identification Exhibit
13 425.

14 I'm informed this may be a redirect exhibit
15 in response to one of the potential cross exhibits
16 for Dr. Blackmon, and it's a Moody's report regarding
17 Qwest Communications International that apparently
18 was issued on 5/29/03.

19 MR. CROMWELL: Your Honor, have we
20 identified a number for the bench exhibit this
21 morning?

22 JUDGE MOSS: No, I'll do that during the
23 break between witnesses. Okay. We'll resume our
24 questioning of Mr. Brosch, and of course you remain
25 under oath.

1332

1 THE WITNESS: Yes, sir.

2 Q. I think, in part of your questioning by
3 Commissioner Hemstad, you pointed out that, with the
4 settlement, the benefits are known?

5 A. Yes.

6 Q. And you've contrasted that with a similar
7 uncertain future if the Yellow Pages are not sold.
8 Do you agree, however, that the ability of the
9 company to deliver on those benefits is not known?

10 A. The ability of the company to have
11 available resources is uncertain, yes, and that is
12 true independent of the way the Commission deals with
13 the sale of Dex, but the ability of the company to
14 provide the resources to perform, I think, is
15 directly linked to the Commission approval or
16 disapproval of the sale.

17 Q. So if you compare the ability of the
18 company to deliver the settlement benefits with the
19 ability of the company to deliver or continue with
20 imputation if there is no sale, from a ratepayer
21 point of view, do you think the ratepayers are better
22 off in the first scenario, that is, the settlement
23 scenario?

24 A. I think you said if there is no sale, and
25 my concern would be heightened as to the company's

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1 ability to deliver benefits either with fixed revenue
2 credits to customers or imputation prospectively if
3 the ability to sell Dex prevents the company from
4 improving its financial condition.

5 Q. And you spoke of giving the company a
6 chance to improve its financial condition and get its
7 house in order.

8 A. Yes.

9 Q. And some of that sounded a little bit to me
10 like deja vu all over again. That is, when we were
11 here at the merger, the proposition was that the
12 merger would bring quite a bit of benefit to the
13 company and there were various predictions, and we
14 also in that merger tried to secure some certain
15 benefits, standards, and rate protection, and I think
16 you could say that we have observed the company and
17 monitored the company in the way that you are
18 advising us to do in the future.

19 A. Yes.

20 Q. And yet here we are today, with the company
21 in the shape it's in. To some degree our ability to
22 monitor the company is only as good as the company's
23 books, which, as we all know, in general, have not
24 been accurate, although they're being made more
25 accurate. So I recognize what you're advising us to

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1 do, but it seems to me we did more or less that a
2 couple of years ago and got to this state of affairs.

3 A. No, I understand, and I alluded to that
4 previously when I said if we had known at merger
5 review time what we know now, the outcome might have
6 been quite different. My comments about monitoring
7 and observing were responsive to questions about
8 financial protections. And we weren't real specific,
9 but I was thinking about restrictions on dividends or
10 requirements that might limit the ability of funds to
11 flow into and out of the regulated entity.

12 I recognize that there was an effort to
13 secure some rate stability with the moratorium
14 provisions and to secure some customer service
15 assurances to deal with some of the uncertainties
16 that came with the Qwest merger. But as far as
17 financial limitations with a desire toward insulating
18 the regulated QC entity from the financial pressures
19 on the consolidated business, my point was that if we
20 put up the fence now, the horses apparently have
21 already gotten away and it's difficult to do more
22 than respond to the current situation and position
23 the company with an ability to improve its financial
24 circumstances going forward while at the same time
25 remaining vigilant, monitoring results of operations,

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1 and doing what you can to regulate the entity that's
2 within your jurisdiction.

3 Q. The company has a new CEO, Mr. Notebaert,
4 or at least he's relatively new relative to the
5 troubles that the company has gotten into. Do you
6 place any weight on the change in CEO from Nacchio to
7 Notebaert, in terms of your comfort with the
8 settlement agreement and the prospect for the company
9 delivering on its part of the -- its promises in the
10 settlement agreement?

11 A. I certainly believe the change in senior
12 management is a reflection of a renewed emphasis on
13 the traditional core business, and I view that as a
14 positive thing.

15 Clearly, the accounting problems,
16 disclosure issues, investigations of accounting
17 matters, those are fairly recent developments that
18 became known after the merger with Qwest. The
19 decline in the company's financial circumstances, as
20 I said earlier, can be observed in the negative cash
21 flow results outside the regulated core business.

22 So to the extent senior management of the
23 holding company is more dedicated to and committed to
24 rebuilding the financial integrity of the company
25 with emphasis on the core business and maintaining

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1 service quality and all that goes with that business,
2 I think that's a positive development.

3 CHAIRWOMAN SHOWALTER: I have no further
4 questions. Thank you.

5 COMMISSIONER HEMSTAD: If I could just
6 pursue one point.

7

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

9 BY COMMISSIONER HEMSTAD:

10 Q. All right. Take the scenario and your
11 description of what we're supposed to do, assume
12 that, going forward at some reasonably foreseeable
13 point, QCII continues to be in trouble and their
14 financial environment is rapidly deteriorating and
15 we're monitoring that. As a consultant for consumer
16 interests, what would you recommend that we would do
17 at that point?

18 A. I would recommend that you look very
19 carefully at actual performance in terms of service
20 quality and availability of services to consumers,
21 and if you're not seeing adequate performance there,
22 you strengthen the remedies to directly affect
23 customers and you consider sanctions that are
24 significant enough to cause severe pain if
25 performance is not assured.

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1 As to the financial constraints, I think
2 you would be sure that, from a regulatory
3 perspective, the rates of the company are established
4 based upon normalized conditions and indicate either
5 a resistance to depart from traditional ratemaking
6 measures in response to financial circumstances or,
7 at some extreme, perhaps actual limitations that have
8 been imposed by other commissions on dividend levels,
9 for example.

10 Q. But you wouldn't advocate restrictions on
11 dividends to the parent or requiring now current
12 approval of such?

13 A. I've not considered that because I am
14 comfortable that the company will perform relative to
15 the agreement that we have before us. There's not at
16 this point an indication that, with the net proceeds
17 available to the company, there would be a
18 significant likelihood that there would be an
19 inability to repay scheduled debt maturities.

20 If you reflect on -- I think it's the
21 testimony of Mr. Cummings, there's a fairly detailed
22 year-by-year chronology of debt maturities and
23 repayment obligations. Given the proceeds from this
24 transaction in projections of financial performance,
25 it appears that Qwest Corporation, QCII, is in a

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1 position to perform relative to creditor expectations
2 for at least through the 2005 time frame.

3 COMMISSIONER HEMSTAD: That's all I have.

4 JUDGE MOSS: Okay. Nothing?

5 MR. TRAUTMAN: No.

6 JUDGE MOSS: Okay, thank you. Any
7 redirect?

8 MR. CROMWELL: Yes, Your Honor, briefly.

9

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

11 BY MR. CROMWELL:

12 Q. You just mentioned -- and a few of these
13 are just for the record, but you just mentioned Mr.
14 Cummings' testimony. Would you have been referring
15 to Table B on page 20 of his testimony, if you have
16 it in front of you? I believe that's Exhibit 171
17 that's been admitted in this proceeding.

18 A. Yes.

19 Q. I'd like to direct you back to Exhibit 2,
20 the stipulation agreement, and the appendix thereto,
21 and the Table One on that appendix, which lists -- is
22 titled Access Line/Channel Services, and lists a
23 variety of services. What is your understanding
24 regarding the intent of the parties to the settlement
25 in listing those access line/channel services?

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1 A. The intent was to provide the bill credit
2 to customers based upon access lines and the derived
3 channels for connections that imply multiple line
4 equivalentents.

5 Q. And those derived channels were the
6 channels that are actually in use, not potential
7 channels?

8 A. I'm not sure I understand that distinction.

9 Q. I'm sorry, I'm probably not articulating it
10 carefully enough. Let me -- is it your understanding
11 that the table in Appendix One seeks to provide a
12 bill credit to customers based upon their use of an
13 access line or their actual use of an activated
14 channel of one of the multi-channel services? And
15 I'm distinguishing it from a multi-channel service
16 where some of those channels are, in fact, not being
17 used.

18 A. Yes, and that, I believe, is the reference
19 to activated channel basis in the first sentence of
20 that appendix.

21 Q. Thank you. Mr. Brosch, is it fair -- let
22 me state this. In the direct testimony filed by the
23 different parties to this proceeding, were there
24 numerous differing opinions on numerous different
25 matters?

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1 A. Yes, there are a number of allocation steps
2 and percentages that require some interpretation.
3 Clearly the matter of sharing or not sharing the gain
4 once it's allocated to Washington, those would be
5 some of the moving parts in determining customer
6 entitlement, yes.

7 Q. And to use your phrase, would one of those
8 moving parts include the discount rate?

9 A. Absolutely.

10 Q. And would that also include the method of
11 calculating an MRI impact or value?

12 A. Yes, there's a degree of interpretation
13 involved in determining what an MRI is or how it
14 would be quantified.

15 Q. One other matter for the record. You
16 testified earlier regarding testimony of Mr. Kennard
17 that you had heard. Were you hearing that testimony
18 over the bridge line here in Washington or did you
19 hear him testify live in Arizona?

20 A. I was referring to his live testimony in
21 Arizona earlier this week.

22 Q. In your discussion with the Chairwoman, you
23 discussed the regulatory liability scenario. Do you
24 recall that?

25 A. Yes.

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1 Q. And in discussing that, I believe it was
2 the amortization approach, which I could characterize
3 as high to low, you discussed the incentives that
4 different parties would have to file a general rate
5 case.

6 A. I did, yes.

7 Q. And was it your testimony that there would
8 be an incentive in that scenario for the company to
9 file rate cases in a sequential or repetitive fashion
10 in order to capture that change in amortization?

11 A. What I meant to say is, with that high-low
12 pattern of customer benefit, there would be little
13 incentive for the company to bring a case, but a
14 requirement or at least an incentive for a consumer
15 interest to bring a case to capture that much higher
16 than current imputation early value to customers.

17 In the initial few years, those early
18 benefits to customers could significantly exceed the
19 combined effect of the up-front customer credits in
20 the stipulation, as well as the scheduled annual
21 payments provided for in the stipulation.
22 Unfortunately, if, in those early rate proceedings or
23 that initial rate proceeding, some customer groups
24 may have been or services may have been reclassified
25 and removed from traditional ratemaking, it would be

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1 difficult or impossible for them to participate in
2 any of those benefits.

3 After the initial rate cases to capture the
4 high years of customer benefit, then there would be
5 something of an incentive for Qwest to file recurring
6 cases thereafter to track downward the ever declining
7 directory contribution due to that high-low pattern
8 of benefits.

9 MR. CROMWELL: Your Honor, if I could have
10 a moment? I think I'm done, but I just need to
11 review something.

12 Q. Referring to what was marked as Exhibit
13 308-C, three pages with sort of a variation on your
14 initial Attachment 292-C, and then the Adjusted A
15 page and then the Adjusted B page, the MRI impact, or
16 I think it's actually titled MRI allowance on the
17 side that -- the right side of the pages, is that a
18 consensus view of either the settling parties or all
19 parties to this proceeding?

20 A. I don't believe it is. In fact, even the
21 word allowance would probably be disputed. I think
22 that there's a provision for Qwest to escape
23 performance under the Rodney agreement if it chooses
24 to exercise those rights should there be an MRI event
25 cumulatively exceeding the \$500 million amount, but

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1 there's, to my knowledge, not a reserve or a set
2 aside of that amount for any particular purpose.

3 MR. CROMWELL: Thank you, Mr. Brosch. I
4 have nothing further, Your Honor.

5 JUDGE MOSS: It appears there's nothing
6 further for Mr. Brosch, so we thank you very much for
7 your testimony --

8 THE WITNESS: Thank you.

9 JUDGE MOSS: -- and being here today. You
10 may step down and we'll call Dr. Blackmon, I guess,
11 as our last witness.

12 CHAIRWOMAN SHOWALTER: He just stepped out.

13 JUDGE MOSS: He just stepped out? Well,
14 while he's out of the room, we may have to wait for
15 his return, but I understand, from an off-the-record
16 discussion with Mr. Trautman, that there may be a
17 preliminary matter concerning some exhibits and their
18 designation as confidential. And we can take that up
19 if it promises to save time in the examination of
20 this witness, but if it's a matter that is not going
21 to save time, then I want to put off taking it up
22 until later, so tell me if it's going to save time
23 examining this witness if we resolve this controversy
24 now.

25 MS. ANDERL: Your Honor, I don't think our

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1 cross-examination or Mr. Sherr's cross-examination of
2 Dr. Blackmon is going to be affected at all by that.

3 JUDGE MOSS: All right. Then I think we
4 should take the matter up -- how about you, Mr.
5 Harlow?

6 MR. HARLOW: I'm sorry, I was having an
7 aside with Mr. Sherr when you started your question,
8 so --

9 JUDGE MOSS: Apparently there's some
10 controversy with respect to the confidential
11 designation with a couple of Dr. Blackmon's exhibits,
12 and my concern is whether it will save time during
13 cross-examination to resolve that controversy now.
14 If it will save time to do that, then we'll take the
15 issue up now. If it doesn't promise to save time,
16 then I don't see any point in taking it up now.

17 MR. HARLOW: None of my cross will get into
18 the confidential areas. At least I don't expect that
19 it would.

20 JUDGE MOSS: All right. Well, it does seem
21 to make sense that we take it up later.

22 MR. TRAUTMAN: All right.

23 MR. CROMWELL: Your Honor, just for the
24 Bench's information, I do not believe we would have
25 any cross for Dr. Blackmon at this point, but that

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1 would be conditioned on what we hear.

2 JUDGE MOSS: I see. I suppose you might
3 have to have that option. Okay, all right. There's
4 another matter we can take up while Dr. Blackmon is
5 getting his things organized, and that is I
6 previously distributed and I will now identify for
7 the record what -- a Bench Exhibit Number 18. I
8 suppose we're taking administrative notice of this
9 news article from the New York Times dated Friday,
10 May 20 -- I'm sorry, May 30th, 2003, entitled Qwest
11 Finances Improve, But Investigations Widen. And
12 Chairwoman Showalter has a comment about that.

13 CHAIRWOMAN SHOWALTER: Yes. We don't
14 ordinarily put into the record newspaper articles,
15 since they're a matter of general circulation, but I
16 felt, reading this this morning, it was so close to
17 the discussion that was had yesterday on a couple of
18 questions that my reading it has some effect on my
19 insights to those questions, so I felt it was
20 appropriate to put it into the record and let
21 everyone else have the benefit of it, as well.

22 JUDGE MOSS: Dr. Blackmon, are you settled
23 there?

24 THE WITNESS: I'm ready.

25 JUDGE MOSS: Stand up.

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1 Whereupon,

2 DR. GLENN BLACKMON,

3 having been first duly sworn by Judge Moss, was

4 called as a witness herein and was examined and

5 testified as follows:

6 JUDGE MOSS: Thank you, please be seated.

7 Ms. Smith, your witness.

8 MS. SMITH: Thank you, Your Honor.

9

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

11 BY MS. SMITH:

12 Q. Good afternoon, Dr. Blackmon.

13 A. Good afternoon.

14 Q. Could you please state your name and spell

15 your last name, please?

16 A. My name is Glenn Blackmon, B-l-a-c-k-m-o-n.

17 Q. And your business address?

18 A. 1300 South Evergreen Park Drive, S.W., P.O.

19 Box 47250, Olympia, Washington, 98504.

20 Q. Do you have before you what has been marked

21 for identification in this proceeding as Exhibit 370?

22 A. Is that GBT-1?

23 Q. Yes, it is.

24 A. Yes.

25 Q. Is that your direct testimony in this case?

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1 A. Yes.

2 Q. Do you have any changes to make to your
3 testimony?

4 A. On page five, line six, the sentence that
5 begins on line six should read, "It is the
6 incumbent," so it would be to insert the article
7 "the" before "incumbent."

8 Q. Do you have any other changes or
9 corrections to make to your direct testimony?

10 A. No.

11 Q. Was that testimony prepared by you or under
12 your direction?

13 A. Yes.

14 Q. If I were to ask you the questions that are
15 in your direct testimony today, would your answers be
16 the same?

17 A. Yes.

18 Q. Did you also prepare what's been premarked
19 in this docket as Exhibit 371? And that was marked
20 in your testimony as Exhibit GB-2C?

21 A. Yes.

22 Q. Was that exhibit prepared by you or under
23 your direction?

24 A. Yes.

25 Q. Did you also prepare testimony with respect

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1 to the settlement presented by the other parties in
2 this proceeding?

3 A. Yes.

4 Q. And that's before you, what's been
5 premarked Exhibit 421; is that correct?

6 A. Yes.

7 Q. And was that prepared by you or under your
8 direction?

9 A. Yes.

10 Q. Do you have any changes or corrections to
11 Exhibit 421?

12 A. No.

13 Q. If I were to ask you the questions in
14 Exhibit 421 today, would your answer be the same?

15 A. Yes.

16 Q. And finally, Dr. Blackmon, did you prepare
17 what has been marked as Exhibit 422 in this
18 proceeding?

19 A. Is that GB-4C?

20 Q. Yeah, that's correct.

21 A. Yes.

22 MS. SMITH: Your Honor, I move the
23 admission of Exhibits 370, 371-C, 421-C and 422.

24 MR. SHERR: No objection.

25 JUDGE MOSS: Those will be admitted as

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1 marked.

2 MS. SMITH: Dr. Blackmon is available for
3 cross-examination.

4 JUDGE MOSS: Mr. Sherr, would you be going
5 first?

6 MR. SHERR: I would be.

7

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

9 BY MR. SHERR:

10 Q. Good afternoon, Dr. Blackmon.

11 A. Good afternoon.

12 Q. I am Adam Sherr of Qwest. As a preliminary
13 matter, I'd ask you to look at what's been marked as
14 Exhibit 423.

15 A. I have that.

16 Q. Okay. And I just really want to explain to
17 you what this is and make sure we're on the same
18 page. I'll represent to you that what this document
19 is is a properly red-lined version comparing your
20 March 18 and May 14 testimony showing, as
21 strike-throughs and underlines, the changes you made
22 on May 14th.

23 But I do want to point out to you that --
24 those parts of this which are not a pure mechanical
25 red-lining, and those are, on the cover page, I typed

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1 in the words "red-lined version," as you had not done
2 so, and also the page numbering is different than
3 either of your versions. I took out the 16A and the
4 26A, B and C, which you had included in order -- I
5 assume to preserve the rest of the page numbering.
6 So this goes 1 through 30 something. I just wanted
7 to make sure that's clear to you. Do you understand?

8 A. Yes.

9 Q. Okay. And just, if you could please look
10 as an example at page 27. What I want to make sure
11 you understand is that if there is -- where text in
12 this document appears as plain text, meaning it's
13 neither underlined or crossed out, that that text
14 derives from your March 18 testimony and it did not
15 change in your May 14 testimony; is that clear?

16 MS. SMITH: Your Honor, at this point I'm
17 going to interpose an objection as to this document.
18 The Commission Staff has not offered in this docket
19 Dr. Blackmon's March 18th testimony as it was on
20 March 18th. We have offered the May 15th testimony
21 in this proceeding. And I guess, quite frankly, I
22 don't see where we're going with this document. And
23 it just looks to me like it's a repeat of his May
24 15th revised testimony, but in a little bit different
25 format. I don't see the relevancy of this.

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1 JUDGE MOSS: Mr. Sherr, why don't you tell
2 us where we're going with this?

3 MR. SHERR: Sure. First of all, this is an
4 illustrative exhibit. I'm not trying to put any
5 words into Dr. Blackmon's mouth. This document
6 allows, unlike the version that has been admitted as
7 Exhibit 370, this document allows the Commission to
8 see what changed between May 14 -- between March 18
9 and May 14.

10 As we talked about long ago in this
11 hearing, at the very beginning, there are substantive
12 changes made to the testimony, and those were not
13 completely reflected as --

14 JUDGE MOSS: Oh, go ahead, I'm listening.

15 MR. SHERR: Okay. Those changes were not
16 reflected completely as changes in the May 14
17 version. There were strikeouts made for some of the
18 testimony, and I'm talking about the alternate
19 recommendations here, but there were not underlines
20 showing which text was new and which text had
21 preexisted. So all this document does is show you
22 the changes between old and new.

23 I'd also add that Staff left, when they did
24 revise the testimony, so what has been admitted as
25 Exhibit 370 does show the March 18th testimony. It

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1 shows it stricken, just as it shows it here. So
2 literally, all that's different about this document
3 is it shows what's new as underlined, as opposed to
4 plain text, which gave the impression that it was the
5 same testimony as existed from March.

6 MS. SMITH: Your Honor, we didn't intend to
7 give any impression that it was the same testimony in
8 March. It was revised testimony. And what we did,
9 from what I understand, is Dr. Blackmon changed his
10 five points and he now has four points. He deleted
11 the five points and put the four points in, and
12 that's our testimony.

13 And to the extent that there could possibly
14 be any prejudice to Qwest with respect to the
15 formatting of this testimony, I am certain that was
16 cured by Qwest's opportunity to file surrebuttal on
17 this testimony. So again, I don't see -- I don't see
18 the need to have another version of testimony when
19 we've put one in the record and that's the one we're
20 standing by.

21 CHAIRWOMAN SHOWALTER: I just have a
22 question. Are the portions of this exhibit that are
23 stricken through, stricken, are they -- are those
24 words in evidence anywhere in front of us?

25 MR. SHERR: Yes.

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1 CHAIRWOMAN SHOWALTER: In the form of what?

2 MR. SHERR: In the form of stricken
3 testimony.

4 CHAIRWOMAN SHOWALTER: No, no, are the
5 unstricken words in front of us in evidence?

6 MR. SHERR: Yes.

7 CHAIRWOMAN SHOWALTER: And where is that?

8 MR. SHERR: In Exhibit 370.

9 CHAIRWOMAN SHOWALTER: 370.

10 MR. SHERR: 370, the --

11 CHAIRWOMAN SHOWALTER: So 370 has been
12 admitted and, in unstricken form, it has words, and
13 now you are showing those same words stricken?

14 MR. SHERR: No, let me clarify. Exhibit
15 370 shows -- well, first of all, there are two
16 sections of changes. There's a section of change up
17 front that is really not of interest in my
18 cross-examination, and that's regarding the number of
19 shares held by shareholders, or by Qwest employees.

20 CHAIRWOMAN SHOWALTER: Actually, can I just
21 --

22 MR. SHERR: Sure.

23 CHAIRWOMAN SHOWALTER: I'm sorry to cut you
24 short, but I can just make this easier for you. On
25 page 27 --

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1 MR. SHERR: Sure.

2 CHAIRWOMAN SHOWALTER: -- if you look at
3 lines 10 and 11, and it's stricken through. It says,
4 As Dr. Selwyn explains, the sale price, et cetera;
5 right? Do you see those words?

6 MR. SHERR: I do.

7 CHAIRWOMAN SHOWALTER: Okay. Are those
8 words unstricken somewhere in evidence in front of
9 us?

10 MR. SHERR: No.

11 CHAIRWOMAN SHOWALTER: Well, so in other
12 words, you are purporting to show us language
13 stricken through that is not in front of us anywhere
14 in evidence?

15 MR. SHERR: I'm not sure I understand your
16 question. Maybe I can cut to the chase a little bit.
17 What is different is that there is text in Exhibit
18 370 that is shown as plain text --

19 CHAIRWOMAN SHOWALTER: Right.

20 MR. SHERR: -- as giving the impression
21 that it has been the same testimony all along. This
22 version that I've handed as Exhibit 423 shows which
23 of that plain text is new and which of it is old,
24 because it was all -- if you look at 370 now, it's
25 all in plain text.

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1 So all I'm trying to do with this is to be
2 able to walk through the evolution of recommendations
3 in this case. We received Dr. Blackmon's new and
4 improved testimony the day before a prehearing
5 conference, after we'd done discovery on his original
6 testimony. So we haven't done any discovery on his
7 new testimony, and I'd like the opportunity to
8 explore what is different, why it's different, why --
9 you know, and questions along that line, because I
10 think it bears on the weight of his testimony.

11 MR. HARLOW: Your Honor?

12 JUDGE MOSS: Let me interject a point here,
13 too. Mr. Sherr, you said a moment ago, if I heard
14 you correctly, that Exhibit 370 is all plain text,
15 but I don't see -- it seems to me that Exhibit 370
16 includes strike-through portions.

17 MR. SHERR: It does. But what it doesn't
18 --

19 JUDGE MOSS: What you're saying is that
20 Exhibit 370 is not complete in terms of its
21 red-lining efforts vis-a-vis the March 18th
22 testimony, and your exhibit or proposed Exhibit 423
23 is complete in terms of the red-line treatment of
24 March 18 relative to May 14?

25 MR. SHERR: That's exactly right.

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1 JUDGE MOSS: That's the only difference
2 between Exhibit 370 and Exhibit 423?

3 MR. SHERR: That's correct. And I can show
4 you an example on --

5 JUDGE MOSS: That's all right. I don't
6 need an example. I think we understand. Does the
7 Bench understand the difference?

8 CHAIRWOMAN SHOWALTER: I think the only
9 thing -- I don't understand exactly what these do,
10 but what I'm trying to understand is are there words
11 stricken through that we essentially should not be
12 reading because they're not in front of us, they're
13 not in evidence, versus some kind of comparison? I
14 can imagine a red-line document that compares one set
15 of language that is in evidence to another set of
16 language that is in evidence, and that might be
17 interesting.

18 MS. SMITH: This is, I guess from my
19 understanding, this is a formatting issue. When
20 Staff submitted the revised testimony of Dr.
21 Blackmon, we went in and put four paragraphs in and
22 took four or five paragraphs out. And what we took
23 out, we don't intend to offer into evidence.
24 Everything with lines through it, whether it's in
25 Exhibit 371 or in proposed Exhibit 423, Staff doesn't

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1 offer. That's not our testimony.

2 Now, the strike-through is in there because
3 it's a change from our original testimony and, in
4 fairness to parties, we should let them know where
5 the changes appear, but we don't offer what was
6 changed. That's not in evidence.

7 JUDGE MOSS: Okay. Let me stop you right
8 there, then. Let me go back to the line of questions
9 I was asking Mr. Sherr a moment ago and ask Staff the
10 same thing. As I understand the issue here, Exhibit
11 370 is a strike-through, a legislative format version
12 of the March 18 testimony, as revised on May 14th.
13 Isn't that what it purports to be?

14 MS. SMITH: That's what Qwest purports it
15 to be. I have not gone through to see if that, in
16 fact, is correct in every instance. That's what
17 Qwest purports it to be.

18 JUDGE MOSS: Well, I'm looking at it. Look
19 at page 15, for example. If I look at page 15 of
20 Exhibit 370, I see there that there is struck-through
21 language and underlined language. What that suggests
22 to me is that the struck-through language was
23 included in the March 18th version, and that is no
24 longer Dr. Blackmon's testimony.

25 MS. SMITH: That's correct.

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1 JUDGE MOSS: And the underlined portion
2 represents what his new testimony is.

3 MS. SMITH: That's correct.

4 CHAIRWOMAN SHOWALTER: And that absent
5 anything else, this Commission should not be taking
6 into account testimony that has not been offered into
7 evidence. And my concern is I don't want to focus on
8 what is not in evidence, and so I don't want to have
9 a discussion, or at least I don't -- that's the
10 question I have, I suppose.

11 MR. SHERR: If I can respond to that
12 briefly. That is, you know, one of the lines of
13 questioning that Qwest believes is critical for you
14 to hear is why did this change at the last moment.
15 What was the evolution and the thought in this
16 process. You know, why has it changed so many times.
17 Should you give as much weight to the evidence as you
18 would have otherwise had it not changed. So that's
19 one issue.

20 Another issue is that we're prejudiced by
21 not having been able to do discovery fully on the
22 original testimony. The only way we can --

23 COMMISSIONER HEMSTAD: The revised
24 testimony.

25 MR. SHERR: Excuse me, thank you, on the

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1 revised testimony. All of our rebuttal testimony, of
2 course, also focuses on the March 18 version of this
3 testimony. So at the last moment, there was wholly
4 new testimony added and one of -- this is not going
5 to be the majority of my cross-examination, but one
6 of the lines of questioning is to explore why it
7 changed and to find out if there are issues of weight
8 that need to be given, and I think we should be given
9 that opportunity.

10 Just to correct something, I'm not sure if
11 it was a mistake on your part, Judge, but I want to
12 be clear. When you were looking at page 15 of
13 Exhibit 370, you are correct that there is stricken
14 out and underlined text. I was starting to go down
15 that road before. But if you contrast that to -- if
16 you flip forward in the same document, Exhibit 370,
17 to page 24, starting at line 18, if you look at that
18 line 18 and 19, that's new, but it doesn't show as
19 underlined, so you can't appreciate what's changed
20 there or what hasn't. And it's not entire
21 paragraphs; it's parts of paragraphs. If you look at
22 the Exhibit 423, you can see that.

23 JUDGE MOSS: And 423 purports to be -- or
24 you purport 423 to be a version that is -- that
25 accurately depicts, in legislative format, as we

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1 sometimes call it, the March 18 and the May 14
2 overlay on the March 18?

3 MR. SHERR: That's right, with the caveat
4 that I added the word "red-lined version" and changed
5 the page numbers.

6 JUDGE MOSS: Right.

7 MR. HARLOW: Your Honor, if I may, briefly?

8 MS. SMITH: If I may be heard.

9 JUDGE MOSS: Do we want to hear from Mr.
10 Harlow?

11 MR. HARLOW: Very briefly.

12 JUDGE MOSS: Ms. Smith also has something
13 further she wants to say. Let's hear from Mr. Harlow
14 first.

15 MR. HARLOW: It won't shed any light, but I
16 will go on record as supporting the admission of this
17 exhibit. It may shed some light in that I believe
18 that Exhibit 370, the stricken-through portions are
19 in evidence not as the witness' testimony, but
20 they're in evidence and offered by Staff, indeed, to
21 show what the prior -- what the March testimony was,
22 and so Staff has offered a partial red-line. They've
23 shown the Commission what they took out, but they
24 haven't shown the Commission what they put in.

25 And we don't know why they showed us, for

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1 the record, what they struck out and submitted this
2 version, but fairness, we think, requires that the
3 converse be shown, as well, that the Commission be
4 shown what was added in between March and May. It
5 was, you know, it was unusual and I think we all were
6 as flexible as we could be to accommodate these
7 last-minute changes, but recognize there are some
8 fairness issues here because both Dex and Qwest
9 submitted rebuttal testimony that had to respond to
10 the March 17, which then has not been offered.

11 There's the discovery issue Mr. Sherr
12 already mentioned. And we think, in the interest of
13 a complete record as well as one that's not
14 misleading or confusing, that the new exhibit ought
15 to come in to show the full red-line.

16 JUDGE MOSS: Thank you, Mr. Harlow. Ms.
17 Smith.

18 MS. SMITH: Thank you, Your Honor. It's
19 not correct to say that Staff didn't show what
20 changed. And I would say, from a proper formatting
21 standpoint, sure, it should have been underlined like
22 it was back on page 15. That, if anything, was an
23 oversight in the word processing. But if you look at
24 the bottom of the page --

25 CHAIRWOMAN SHOWALTER: What page?

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1 MS. SMITH: -- of page 24 on Exhibit 370,
2 you'll see that it says revised on the bottom.
3 Revised 5/14/03, and if you compare that with the
4 bottom of page 26A, which also says revised, you can
5 see where the Staff deleted the testimony that it is
6 no longer offering and it begins -- the deleted
7 testimony begins on page -- on line 18 of page 26A.
8 All of that testimony has been stricken through.
9 That has been replaced by the testimony that begins
10 on line 18 of page 24, where it says first. And
11 those are the recommendations that the Commission
12 Staff is making in this docket.

13 The Commission Staff is not making the
14 recommendations that begin on line 18 of page 26A of
15 the testimony. And all of the places where new
16 testimony appears at the bottom of the page, it says
17 revised.

18 And finally, with respect to prejudice of
19 parties, that prejudice was cured at the beginning of
20 this proceeding when the motion of Dex Holdings and
21 Qwest Corporation, their motions were granted to file
22 surrebuttal testimony specifically on these changed
23 recommendations. And in anticipating the line of
24 questioning that Mr. Sherr has proposed, oftentimes
25 folks go through a lot of iterations of

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1 recommendations. Sometimes it ends up in prefiled
2 testimony and sometimes it didn't. Here it did.

3 He filed -- Dr. Blackmon filed testimony in
4 March, he changed his recommendation. Other parties'
5 experts may have had recommendations that they were
6 kicking around back in December. We don't know that,
7 because the prefiling date wasn't until later. So
8 we're not offering this testimony. We don't think
9 that it's fair to Staff that Staff has to be
10 cross-examined not only on the testimony it's
11 offering in this case, but on the testimony it's not
12 offering. And that would be prejudicial to Staff.

13 JUDGE MOSS: Let me ask you two questions,
14 Ms. Smith. One, do I understand you correctly that
15 it was Staff's intention in Exhibit 370 to offer a
16 full, complete and accurate red-lined version of the
17 prior testimony, and that any failure to reflect
18 underlining where there is new language was simply a
19 typographical or word processing oversight?

20 MS. SMITH: That's my understanding, Your
21 Honor.

22 JUDGE MOSS: So in that sense, why would
23 you have an objection to Exhibit 423, which purports
24 to be at least an accurate one, without typographical
25 or word processing errors, doing exactly what you

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1 intended to do with 370?

2 MS. SMITH: Well, we may not have intended
3 to do it in this particular format. I think what we
4 would have done is we would have gone through,
5 beginning on line 18 of page 24, and underlined all
6 of the text from line 18 of page 24 to line 17 of
7 page 26A. We would have done it that way to show our
8 recommendations as a whole, as opposed to bits and
9 pieces of the recommendations. It's much easier on
10 the eye to read it the other way.

11 CHAIRWOMAN SHOWALTER: Also, isn't actually
12 the deeper question not what is a red-lined version
13 and isn't and what's been admitted, but what is the
14 evidence that's being submitted? So the real
15 question is whatever red-lined version we have in
16 front of us, is it appropriate for Dr. Blackmon to be
17 cross-examined on the stricken portions of his
18 earlier testimony that has not been admitted?

19 MS. SMITH: It is not.

20 JUDGE MOSS: It's a little like asking did
21 you do it -- I'd like to see your prior drafts. And
22 actually, we've had arguments like this before on
23 prior drafts of testimony and -- but that is, I take
24 it, where you're going, that you want to
25 cross-examine Dr. Blackmon on the language that is

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1 stricken.

2 MR. SHERR: Sort of, but only in relation
3 to how it's changed. I understand it is not Dr.
4 Blackmon's position anymore, and that's actually my
5 point, that he's moved from A to B to C or to
6 wherever, and I want to explore with him, since we
7 couldn't do this in discovery, because it was filed
8 three business days before the hearing, how he got
9 from A to B, why it took him until May 14th to get to
10 B.

11 It seems to me that while I understand it
12 is not his recommendation anymore, that we can't hold
13 them to that being his recommendation, it bears on
14 the weight of his evidence why the ball moved so many
15 times and in so many ways. So that's really the line
16 of questioning. It's not about trying to pin him to
17 his earlier testimony. If we wanted to do that, we
18 would have moved to strike.

19 JUDGE MOSS: Okay. I think we have a full
20 understanding of the matter and the Bench wants to
21 recess briefly to discuss it among ourselves.

22 MS. SMITH: Your Honor, one more point, if
23 I may?

24 JUDGE MOSS: Ms. Smith, I think we've had
25 enough argument. Thank you.

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1 MS. SMITH: Thank you.

2 (Recess taken.)

3 JUDGE MOSS: Let's get back to order. All
4 right. We're back on the record. The Bench has had
5 an opportunity to deliberate on the matter at issue,
6 which is the question of whether Qwest should be
7 allowed to use what's been pre-marked for
8 identification as Exhibit Number 423 in the course of
9 its examination of Dr. Blackmon, and the Bench's
10 decision is that that will not be allowed. That is
11 not intended to suggest limitation on the scope of
12 the cross-examination, but merely the fashion in
13 which it may occur.

14 The Bench also wishes to make clear that
15 insofar as Exhibit 370 is concerned, the Bench does
16 not consider the stricken-through language to be part
17 of Dr. Blackmon's testimony in this proceeding as
18 admitted, and so -- are there any questions about the
19 ruling?

20 MR. SHERR: Yes, I have a couple. Perhaps
21 you just answered the question that I'm going to ask.
22 That is, am I permitted, then, is Qwest permitted to
23 examine Dr. Blackmon about the stricken-through
24 testimony?

25 JUDGE MOSS: You are permitted to examine

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1 Dr. Blackmon with respect to the testimony that he
2 has filed, which does not include the
3 stricken-through portions. Now, you may inquire of
4 him with respect to any portions of that testimony,
5 and we're not meaning to limit your cross-examination
6 with respect to that, but the stricken-through
7 portions are not his testimony. And so if you want
8 to ask him about the evolution of his thinking on
9 some point, you certainly, assuming the question is
10 otherwise proper, may do that, but not by tying it to
11 something that was prefiled but has not been offered.

12 CHAIRWOMAN SHOWALTER: Judge Moss, you said
13 earlier that Dr. Blackmon may be cross-examined on
14 the testimony he has filed, and I think it's the
15 testimony that is admitted.

16 JUDGE MOSS: As Exhibit 370, which does not
17 include the stricken-through language.

18 MR. SHERR: One other point of
19 clarification, and I hate to do this, which is that
20 perhaps I can suggest that we take a break now,
21 because every reference I have in my notes is to
22 Exhibit 423, so I need to convert those.

23 JUDGE MOSS: Are there any other
24 preliminary matters before we have the
25 cross-examination of Dr. Blackmon?

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1 MS. SMITH: There may be. The matter that
2 you discussed with Mr. Trautman and Ms. Anderl before
3 we began, with respect to whether a certain exhibit,
4 I believe it's 471 -- no, 422-C is confidential. And
5 that matter may be taken up in the interim, and then
6 I had a statement that I wanted to make to clarify
7 the record with respect to the revised testimony.

8 JUDGE MOSS: Well, my understanding is
9 there wasn't going to be any cross-examination with
10 respect to Exhibit 422-C, and therefore we didn't
11 need to resolve the confidentiality issue at this
12 point in time. So unless I hear something different
13 from Qwest or Dex Holdings at this juncture, I will
14 have to ask why would we need to take that up now?

15 MR. SHERR: Just to be clear, I think Ms.
16 Anderl pointed out that the confidentiality or
17 nonconfidentiality of that exhibit may not hinder or
18 lengthen the examination. I may have questions about
19 this exhibit, but they won't touch on the
20 confidentiality.

21 MR. HARLOW: We don't have any cross on
22 that exhibit, Your Honor.

23 JUDGE MOSS: Okay. So it would not seem to
24 be important to take up that issue now.

25 MS. SMITH: That's fine, Your Honor. I

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1 just heard that as something that was perhaps
2 lingering until later today, and I thought maybe we
3 could use the time now to deal with that.

4 JUDGE MOSS: Right. We've got certain
5 other constraints on our time that cause me to want
6 to press forward with the cross-examination as
7 expeditiously as possible. I do think it is
8 appropriate that we give an opportunity to counsel to
9 revise his notes. Mr. Sherr, how long do you think
10 that will require?

11 MR. SHERR: Fifteen minutes.

12 JUDGE MOSS: All right. Let's be in recess
13 until 3:00.

14 MS. SMITH: Your Honor, if I may, I had one
15 point I wanted to make on the record with respect to
16 the revised testimony. In the argument regarding
17 Exhibit 423, Mr. Sherr referred to many changes or a
18 lot of changes in Staff's testimony, and I would like
19 the record to reflect that the Commission Staff
20 revised the testimony one time, and that was in the
21 revised testimony May 14th, 2003, and it was one and
22 only revised testimony submitted.

23 JUDGE MOSS: I don't think we need anything
24 more on that. Is there anything else?

25 MS. SMITH: That's all, Your Honor.

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1 JUDGE MOSS: All right. Then we'll be in
2 recess until 3:00.

3 (Recess taken.)

4 JUDGE MOSS: All right. Let's come to
5 order. Mr. Sherr, if you're ready, you may proceed.

6 MR. SHERR: I will.

7 Q. Good evening Dr. Blackmon. I'll try to
8 pick up the pace just a little bit. You were in the
9 hearing room last Friday and this Wednesday when Dr.
10 Selwyn testified?

11 A. Yes.

12 Q. Do you recall last Friday when Dr. Selwyn
13 testified that he didn't think you had suggested a
14 one-time bill credit in your May 14 revised alternate
15 recommendation?

16 A. I wouldn't characterize his testimony in
17 that way, no.

18 Q. Could you please take a look at Exhibit
19 424, which is an excerpt from last Friday's
20 testimony?

21 A. I have that.

22 Q. If you'd look to page ten, I'm looking at
23 the lower right-hand corner, and if you see on the
24 left-hand side, down the left-hand margin, the number
25 0875?

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1 A. Yes.

2 Q. Okay. I believe that reflects it's page
3 875 of the transcript. If you could look to lines 16
4 through 25 of page 875, could you read that to
5 yourself, please?

6 A. Sixteen through what? I'm sorry.

7 Q. Sixteen through 25 of page 875.

8 A. Okay. I've read that.

9 Q. Is it still your testimony that he did not
10 -- that he did not testify -- let me try that again.
11 Is it still your testimony that Dr. Selwyn testified
12 that he did not believe you had suggested a one-time
13 bill credit?

14 A. I'm sorry, there were too many nots in
15 there for me to unknot it.

16 Q. Fair enough. Did Dr. Selwyn testify that
17 he didn't think you had suggested a one-time bill
18 credit?

19 A. I believe he testified that you should ask
20 me, but that he did not interpret my testimony as
21 necessarily suggesting that the entire amount of the
22 bill credit be paid out as a single payment, and then
23 he went on over to page 876, as well.

24 Q. Is it part of your recommendation, your
25 alternate recommendation to this Commission that the

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1 Commission order Qwest to issue a bill credit in
2 connection with approval of a sale?

3 A. Yes.

4 Q. Looking again at the passages that I just
5 asked you to read, does that refresh your
6 recollection or do you recall -- let me ask it that
7 way. Do you recall Dr. Selwyn testifying last Friday
8 that he didn't think a bill credit was necessarily a
9 good idea?

10 A. I think he testified that it's not
11 necessarily a good idea, and I know that he and I
12 both feel that the amount of money to be provided to
13 creditors should affect that decision. In my
14 testimony, I was referring to a specific amount of
15 money. And at that level, Staff's recommendation is
16 that it be paid as a one-time credit. We've also
17 identified in our criticism of the proposed
18 settlement a larger amount of deficiency in that
19 settlement, and he and I have discussed whether it's
20 reasonable to try to essentially remedy the
21 settlement by increasing the amount of the up-front
22 payment, and it's in that context, I think, that he
23 and I both have concerns about simply crediting a
24 larger amount of money to customer bills.

25 Q. Is that concern reflected in your May 21

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1 testimony, which is Exhibit 421?

2 A. I'm sorry, which concern do you mean?

3 Q. Well, let me try to restate what I think
4 you just said, and you can tell me if I'm correct.
5 That if the bill credit is as you suggest in your
6 Exhibit 370, that is, a ten percent payment up front,
7 that you would be comfortable with that being a bill
8 credit.

9 But I believe you just expressed that if
10 the bill credit were larger, as you suggest on page
11 nine of Exhibit 421, your May 21 testimony, that you
12 are -- you would be concerned if that entire amount
13 would be paid to ratepayers through a bill credit.
14 Did I accurately reflect what you said?

15 A. I think you did, yes.

16 Q. Okay. So is that concern about the larger
17 amount being transferred to ratepayers through a bill
18 credit, is that specific concern reflected
19 specifically in your May 21 testimony?

20 A. No, it's not, it's been a topic that has
21 tended to come up more during the cross-examination
22 of the witnesses, rather than being presented in the
23 testimony on the settlement.

24 The concerns that I've expressed in the
25 settlement and this testimony about the settlement

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1 are the concerns about the settlement. And so what I
2 said here was that, in order to essentially remedy
3 the problem about the amount of money being credited
4 to customers, I named a number that -- how it could
5 be increased to that amount, but I think it's --
6 while that would then address the problem of the
7 insufficiency in terms of the overall amount, the
8 Commission should consider whether they wanted to
9 provide that much money in the form of a one-time
10 credit to customers.

11 Q. Okay. But my question was, is that concern
12 you just raised reflected in your written testimony,
13 and I believe you answered no; is that correct?

14 A. I did, I did.

15 Q. Okay. Is that a concern that arose before
16 you submitted your May 21 testimony or since?

17 A. I think it existed before and since. This
18 testimony is the testimony that we were asked by the
19 Commission on Tuesday to file on Wednesday, so I will
20 readily admit that there are other concerns that
21 could have been addressed in this supplemental
22 testimony.

23 CHAIRWOMAN SHOWALTER: I think it was
24 Monday.

25 MR. SHERR: I wasn't going to point that

1375

1 out.

2 THE WITNESS: I stand corrected. Thank
3 you.

4 Q. Did you prepare an earlier version of your
5 direct testimony than the one that was admitted today
6 as Exhibit 370?

7 A. I'm not sure. What do you mean by an
8 earlier version?

9 Q. Okay. Did you prepare or have prepared at
10 your direction a version of your direct -- of direct
11 testimony that was filed on March 18?

12 A. I'm sorry, could you ask that again?

13 Q. Sure. Did you prepare or have prepared at
14 your direction direct testimony that was filed on
15 March 18?

16 A. Yes.

17 Q. And did you submit revisions to that
18 testimony on May 14?

19 A. I didn't, but the Attorney General's office
20 did, yes.

21 Q. On behalf of Staff?

22 A. Yes.

23 Q. Going back to the document, if you could
24 keep in your mind the document that you filed on
25 March 18th, do you have that in mind?

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1 A. I have in mind that I filed a document on
2 March 18th.

3 Q. Fair enough. Did that document reflect
4 your opinion on this case at the time that it was
5 filed?

6 MS. SMITH: Your Honor, I'm going to
7 object. I think we're getting into that realm where
8 the Bench has instructed that cross-examination will
9 not be allowed. It appears to be going to the
10 portion of the testimony that has been stricken and
11 not offered by Staff.

12 MR. SHERR: May I respond, Your Honor?

13 JUDGE MOSS: Yes.

14 MR. SHERR: I believe that Your Honor's
15 instruction was not to directly examine this witness
16 on the specifics of what was in the March 18
17 testimony to the extent it has not survived until
18 today. I'm simply laying a foundation and have not,
19 I believe, breached the boundary that you set up.

20 JUDGE MOSS: I don't know that the
21 foundation regarding the testimony is really
22 necessary, Mr. Sherr. You can ask him the questions,
23 substantive questions concerning the evolution of his
24 thinking that led to his ultimate testimony without
25 having to make reference to anything that might have

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1 previously been prepared, so as far as the substance
2 is concerned, you can ask the substantive questions,
3 but I think if we stay away from references to the
4 prior filing, it will probably save a lot of
5 objections and argument.

6 MR. SHERR: Well, Your Honor, this will be
7 the last reference I have in this line of
8 questioning. I simply want to know if it was his
9 opinion at the time.

10 JUDGE MOSS: You can ask him what his
11 opinion was at some prior point in time. Go ahead.

12 MR. SHERR: Thank you.

13 Q. Would you agree with me, Dr. Blackmon, that
14 Staff's ultimate recommendations in this case have
15 changed in a number of ways?

16 A. Changed from when to when? I'm not sure
17 what you mean.

18 Q. Okay. Would you agree with me that Staff's
19 alternate recommendations in this case have changed
20 in a number of ways during the course of this case?

21 A. I'm a little unclear on what you mean by
22 alternate recommendations. Over the course since --
23 oh, I was going to say last August, but actually,
24 before last August, we have explored many different
25 mechanisms that might enable Qwest to achieve its

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1 stated purposes and still protect the ratepayers.
2 And so there have been numerous ideas that came up
3 that may have seemed to be a good idea for quite a
4 while and ultimately didn't make it in terms of being
5 something that we were comfortable recommending to
6 the Commission.

7 Q. And I asked not about the evolution about
8 your ideas, but simply the evolutions of your actual
9 recommendations to the Commission in the form of
10 testimony.

11 MS. SMITH: Your Honor, I think this is
12 crossing the line from the earlier ruling and I
13 object.

14 MR. SHERR: I'm sorry, Your Honor. You're
15 waiting for a response from me. Again, I'm simply
16 trying to ask the witness if the recommendations to
17 the Commission have changed. I haven't asked the
18 specifics, I haven't read his March 18th testimony
19 that has changed. I've simply asked him if his
20 recommendations have changed. And I believe --

21 JUDGE MOSS: I believe he responded to that
22 part and said that Staff has made various
23 recommendations at various times and that sometimes
24 they seemed like a good idea, but ultimately they
25 didn't make it. Did I essentially capture what you

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1 said, Dr. Blackmon, or did I -- if I misstated it, I
2 want you to correct it.

3 CHAIRWOMAN SHOWALTER: Because what I heard
4 was that there were lots of ideas that were
5 ultimately not recommended to this Commission. We
6 have one recommendation or set of recommendations or
7 alternate recommendations in front of us. Why don't
8 you focus on the substance of what is in front of us
9 and what could have been different under a different
10 circumstance, but focus on the substance.

11 MR. SHERR: I will move on then, Your
12 Honor.

13 Q. Is your primary recommendation in this case
14 that the Commission should disapprove the sale of
15 Dex?

16 A. Yes, it is.

17 Q. And when I refer to your alternate
18 recommendations, I'm referring to the other
19 recommendations that exist in your testimony that I
20 believe start with a reference to if the Commission
21 decides to approve the sale, then these following
22 conditions should apply. Do you understand that?

23 A. Yes.

24 Q. If you could look at Exhibit 370, starting
25 at page 24, do I understand correctly that the first

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1 point of your alternate recommendation or the first
2 condition that you would ask the Commission to impose
3 is a QCI, QC contract?

4 A. Yes.

5 Q. And that contract would require QCI to make
6 annual payments to QC?

7 A. Yes, just to be clear, you're referring to
8 QCI, and in the testimony it's QCII, but I think -- I
9 have them Qwest Communications International,
10 Incorporated. I believe you do, too. I just want to
11 make sure --

12 Q. QCI, to me, means QCII. I find it easier
13 to say QCI.

14 A. Aye-aye.

15 Q. So did I correctly describe the contract
16 you have suggested?

17 A. Yes.

18 Q. Now, this concept of a QCI/QC contract, as
19 the bottom of page 24 indicates, is part of a
20 revision to your testimony that was filed on May 14;
21 is that correct?

22 A. Yes.

23 Q. And the earlier version of your testimony,
24 which is not in the record, did not contain this
25 provision; is that correct?

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1 MS. SMITH: Your Honor, once again, I
2 believe that the witness is now being cross-examined
3 on his testimony that he's no longer offering.

4 JUDGE MOSS: Well, I think the objection
5 must be to the form of the question.

6 MS. SMITH: It's an objection, I believe,
7 to the substance. I believe the question is leading
8 to what this witness is no longer testifying to,
9 what's been stricken through.

10 CHAIRWOMAN SHOWALTER: He never did testify
11 in front of us.

12 MR. SHERR: Right.

13 CHAIRWOMAN SHOWALTER: Mr. Sherr, is there
14 some reason -- say let's talk about -- you're
15 focusing on the contract provisions. Is there a
16 reason you can't cross-examine Dr. Blackmon about his
17 opinions on the contract provisions and how he
18 arrived at them? For example, in other words, what
19 has gone into the testimony that has been admitted,
20 and perhaps some cross-examination on it.

21 MR. SHERR: Sure, and I think I'm trying to
22 follow two different sets of instructions, quite
23 frankly, because Judge Moss has, I believe, permitted
24 me to talk about the evolution of the idea, and I'm
25 trying to simply, in one question, just clarify that

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1 this is a new -- that this is a new recommendation,
2 so that I can follow up and ask.

3 JUDGE MOSS: I think you might properly be
4 able to put to the witness the sort of question along
5 the lines of is this the first time that you have
6 advanced that idea in this proceeding, and then
7 perhaps go on from there to explore the basis for his
8 recommendation that he has actually made through his
9 testimony.

10 It's the form of the question, tying it
11 back to the previously submitted but unoffered
12 testimony, that is leading to counsel's objections
13 and our constrained rulings with respect to that.

14 So I think the point is to focus on what he
15 is actually proposing today, and certainly you may
16 ask him if this was the first time he proposed it or
17 if this is the only means by which he proposed that,
18 if there's something else he's put in the record that
19 makes this proposal, and then ask about the substance
20 of it or the basis for it, and that would be proper.

21 MR. SHERR: Fair enough.

22 Q. Dr. Blackmon, when did you develop the
23 recommendation that there should be a QCI/QC
24 contract?

25 A. Several -- it's one of several mechanisms

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1 that we have considered and discussed over the last
2 year, and we ultimately decided that this was the
3 best of the second best, in terms of all of this
4 being a second level recommendation, shortly before
5 May 14th.

6 Q. Can you be a little more clear as to what
7 you mean by shortly before May 14th?

8 MS. SMITH: Your Honor, I'm going to object
9 to this. The testimony was filed on May 14th.
10 Whether the witness thought about it in May or June
11 or -- well, that's later, but in March or April or
12 anything else, it's not relevant. The testimony is
13 in the record, the date it was filed is in the
14 record, and when -- what precise moment in time Dr.
15 Blackmon decided to make that recommendation isn't
16 relevant. We've got it in the record and we've got
17 the date.

18 JUDGE MOSS: I'm going to overrule the
19 objection and suggest that we might move things along
20 more quickly if we keep ourselves focused on the
21 substance and moving along and not worry too much
22 about some of the foundation type points.

23 So go ahead. If you have a specific point
24 in time, Dr. Blackmon, when you came up with this
25 idea that you advanced in your testimony, then tell

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1 us what it is, and if there is no such time, then you
2 certainly can testify that you have no specific point
3 in time that you would tie it to.

4 THE WITNESS: The question, as I understand
5 it, was not when I came up with the idea, but when we
6 decided to recommend this to the Commission.

7 JUDGE MOSS: Okay.

8 THE WITNESS: And that, I think during the
9 day on May 13th, I prepared the testimony. And as I
10 recall, I asked that the legal secretary allow me to
11 think about it overnight and so -- because I then
12 didn't tell her, Don't file that, then the morning of
13 May 14th must have been when I decided that this was
14 the best recommendation we could come up with.

15 JUDGE MOSS: Thank you.

16 Q. Is it true that at the time that you came
17 up with it, you decided that this was the right way
18 to go on May 13th, that you were aware that the
19 settling parties had reached settlement in principle?

20 A. I don't recall the dates, I'm sorry. If
21 you could remind me of when some various things
22 occurred, I might be able to answer that question.

23 Q. Okay. Well, isn't it true that on Monday,
24 May 12th, Mr. Reynolds, of Qwest, and Mr. Cromwell
25 telephoned you to inform you that the settling

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1 parties had reached a settlement in principle?

2 A. When did the -- when was the settlement
3 filed?

4 Q. It was filed on May 16th.

5 A. And that's a Friday?

6 Q. It is.

7 A. I believe that it was on Monday that they
8 called me.

9 Q. Did your decision to revise your testimony
10 -- strike that, please.

11 Was your decision to revise your testimony
12 based on becoming aware of the settlement in
13 principle?

14 A. My decision to offer the recommendations
15 that I did on May 14th was not affected by the
16 settlement, which in fact I didn't see until a couple
17 days after that.

18 Q. But you were aware of the settlement in
19 principle?

20 A. I was aware that they had represented that
21 they had a settlement. At the time, I told them that
22 I looked forward to seeing it in writing and until I
23 did -- I mean, I didn't say this, but I thought this
24 -- that until I did see it with the signatures, that
25 there wasn't a lot of import to me of that

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1 settlement. And in fact, as it turned out, there
2 were statements made during that conversation that
3 turned out not to be a correct prediction of future,
4 so I think I was right to basically wait and see what
5 was actually filed before I started to evaluate the
6 terms that were being proposed.

7 Q. As we discussed, the second point, and this
8 begins on Exhibit 370 at page 25, the second
9 condition that you have suggested is an up-front bill
10 credit equal to ten percent of the net proceeds from
11 the Washington portion of the Dex sale; is that
12 correct?

13 A. Yes.

14 Q. And the dollar amount of that ten percent
15 recommendation is confidential, and it's shown in
16 Exhibit 371-C, page two; is that correct?

17 A. It's shown there. I believe that it's
18 actually no longer confidential, because, as I
19 understand it, the line three amount is no longer
20 confidential, and so ten percent of that would not be
21 a confidential number.

22 Q. But that is the -- that is the real dollar,
23 actual dollar amount reflected on Exhibit 371, page
24 two, under bracket four?

25 A. Could you just clarify for me whether it is

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1 a confidential number or not?

2 JUDGE MOSS: I think that would be helpful
3 to know whether that's a confidential number or not.

4 MS. ANDERL: Your Honor, I'm not aware that
5 it's not at this point.

6 JUDGE MOSS: All right.

7 MS. ANDERL: I know the Staff has -- and I
8 don't think it impacts the cross-examination. All
9 the parties and the Bench can see the number. I'm --
10 we're working with Staff on that issue right now.

11 JUDGE MOSS: Okay. Well, for the moment,
12 let's treat it as confidential, then. So we're all
13 looking at the number under the column that's labeled
14 amount, row four.

15 THE WITNESS: And that is the number that
16 would tie to -- we're at page 26, line three. The
17 specific amount is set out in Exhibit Blank GB-2C.

18 Q. And does your written testimony, as has
19 been admitted as Exhibit 370, does it assign any
20 reasoning or rationale to why ten percent is a
21 reasonable level?

22 A. Well, it's intended to compensate the
23 customers for the additional risks that QCII has
24 created for the customers of QC.

25 Q. Again, I'm asking about your written

1388

1 testimony. Can you point me to where you
2 specifically describe why ten percent is a reasonable
3 level?

4 A. Why ten percent, as opposed to any other
5 amount? I think that, except for that part that I
6 just read up there at line one on page 26, I think
7 that would be it.

8 Q. And we discussed a moment ago that you were
9 aware, as of May 12, of the settlement in principle.
10 Do you recall that?

11 A. Yes.

12 Q. At that time, were you aware of the
13 up-front bill credit portion of the settlement in
14 principle?

15 A. Yes, at the time, as of May 14th, I would
16 have been aware of the amount proposed in the
17 settlement, the amount proposed by Qwest in its
18 rebuttal testimony and the amount proposed by Public
19 Counsel, AARP and WeBTEC in their direct testimony.

20 Q. And in your May 21 testimony, this is
21 Exhibit 421, if you look at page nine, you provided
22 the Commission with yet -- oh, I'm sorry, Exhibit
23 421, page nine. You provide the Commission with
24 another significantly higher up-front bill credit
25 recommendation to consider; is that true?

1389

1 A. It is another one. It would be inaccurate
2 to simply compare that side-by-side against the ten
3 percent number that was in Exhibit 370.

4 Q. If you could go back to Exhibit 370,
5 please, your direct testimony, and page 26.

6 JUDGE MOSS: And I have page 26, 26A, 26B,
7 26C. Which one?

8 MR. SHERR: Twenty-six.

9 JUDGE MOSS: Okay. No letter.

10 MR. SHERR: No letter.

11 Q. Beginning on line 13, and then carrying
12 over to page 26A, you recommend here that the
13 Commission impose three safeguards, as you call them,
14 should the Commission agree to approve the sale of
15 Dex; is that true?

16 A. Yes.

17 Q. if the Commission rejects your contract
18 proposal, your QCI/QC contract proposal, and for
19 instance accepts the stipulation, would you still
20 recommend that the Commission impose the three
21 safeguards identified on -- specifically on page 26A?

22 A. Yes, I would. I think it would be even
23 more important to consider those safeguards if the
24 settlement is the approach that the Commission
25 ultimately adopts.

1390

1 Q. I'm going to ask you some questions now
2 about the Commission's no harm public interest
3 analysis. You were in the hearing room today when
4 Mr. Brosch testified; is that correct?

5 A. Yes.

6 Q. Did you hear earlier when Commissioner
7 Hemstad was asking Mr. Brosch questions and stated
8 that the Commission Staff's role is to balance the
9 interests of both shareholders and ratepayers, or
10 something to that effect?

11 A. I can't say I recall that specific question
12 being asked.

13 Q. Okay. Well, assume for me, then, that
14 Commissioner Hemstad did make that statement.

15 A. I have that assumption in mind.

16 Q. Okay. Would you agree with that
17 assumption?

18 A. That the Commission has the -- or that the
19 Commission Staff?

20 Q. Commission Staff.

21 A. The Commission Staff needs to balance the
22 interests of ratepayers and the company; is that the

23 --

24 Q. Ratepayers and shareholders.

25 A. Is that the hypothetical? Shareholders. I

1391

1 wouldn't say it quite that way. I would say that we,
2 like the Commission, need to make sure that this
3 transaction is in the public interest and that, when
4 we do that, we end up balancing those interests, but
5 it's not simply balancing those interests. That is a
6 means by which we try to protect the public interest.

7 Q. And I'm not sure I understood your answer.
8 Do you consider -- do you believe Commission Staff's
9 role is to consider and balance both the interests of
10 ratepayers and shareholders of the company?

11 A. Yes, I do.

12 Q. I'd like to take a look at some of the no
13 harm analysis that's set out in your testimony. If
14 you could please take a look at Exhibit 370, page
15 three. Starting at line 16, and I'm looking at lines
16 16 through 18. Am I correct that it says, even with
17 the so-called remedies proposed by Qwest, the
18 transaction fails the test of no harm to customers
19 because it will lead to higher rates for customers?

20 A. I see that.

21 Q. And if you could look at the same Exhibit
22 on page 27, starting at line 13, and carrying over to
23 page 28 at line 11?

24 A. Yes.

25 Q. Could I fairly summarize that you have

1392

1 stated that refusing to -- the Commission refusing to
2 take every remaining dollar out of the MRI would
3 constitute a harm to customers?

4 A. No, and if you got that from my testimony,
5 then obviously I wasn't clear enough, but no, we have
6 not proposed that the Commission suck the MRI dry.
7 What we've said is that if you need to dip into that
8 in order to hold customers harmless in this
9 transaction, that the Commission should do that.

10 Q. So on page 28, starting at line nine, you
11 say, That leaves \$478 million remaining in the
12 regulatory set aside, with only Washington and
13 Arizona remaining. Since Qwest is willing to pay
14 this amount, refusing to accept it would constitute a
15 harm to customers. Do you see where I read?

16 A. Yes, I do.

17 Q. Are you saying that it is something other
18 than \$478 million?

19 A. Yes, I am. And I think I can see the
20 source of the confusion here. That statement is
21 maybe a little too shorthand in terms of what we're
22 recommending, because we're certainly not
23 recommending that we take the -- you know, whatever's
24 left out of the MRI and award it to customers. Our
25 specific recommendations certainly don't lead to that

1393

1 result.

2 Q. If you could look at your supplemental
3 testimony, which is Exhibit 421, at page eight. If
4 you could read to yourself lines 10 through 13?

5 A. I've read those.

6 Q. Do I understand this testimony correctly
7 that you state a presumption that a hundred percent
8 of the gain from the sale of a utility asset should
9 go to ratepayers and that you don't see anything
10 different in this case to indicate otherwise?

11 A. Well, I didn't use the word presumption,
12 but I was stating the general practice that, in
13 general, it is appropriate to do that.

14 Q. Is that a presumption?

15 A. I don't know.

16 Q. Are you familiar with the Centralia Coal
17 decision?

18 A. Yes, I am.

19 Q. And specifically I mean the second
20 supplemental order in Docket UE-991409?

21 A. I'll accept that that's the Centralia Coal
22 decision.

23 Q. Are you familiar -- have you read that
24 order before?

25 A. Yes.

1394

1 Q. Is it your understanding that that order
2 discusses the no harm standard the Commission applies
3 when considering whether the sale of a utility asset
4 is in the public interest?

5 A. Yes.

6 Q. Is it your understanding that, in that
7 decision, the Commission identified four guiding
8 principles for making that determination?

9 A. Yes.

10 Q. And among those four principles is the
11 balance of interests among customers, shareholders
12 and the broader public?

13 A. That sounds familiar. I don't have it in
14 front of me, but yes.

15 Q. I can furnish you with a copy, if you would
16 like?

17 A. Sure, that would be great.

18 MR. SHERR: May I approach, Your Honor?

19 JUDGE MOSS: Yes. Thank you.

20 MR. SHERR: Chairwoman, I'm glad you didn't
21 take it, since that was my copy.

22 Q. If you could please look to page six of
23 this document. And I'm looking specifically at pages
24 21, starting at page 21 of the order itself, under
25 Roman numeral III, big A, it says Commission

1395

1 discussion, standard of review. Do you see where I'm
2 reading?

3 A. Yes.

4 Q. And there's some highlighted text there, is
5 there not?

6 A. Mm-hmm.

7 Q. If you look towards the bottom of the
8 highlighted portion, it says, The four principles
9 address. Do you see where I'm reading?

10 A. Yes.

11 Q. And is the second point, the second
12 principle, the balance of interests among customers,
13 shareholders and the broader public?

14 A. Yes.

15 Q. Looking back at Exhibits 370 and Exhibit
16 421, your two pieces of testimony that have been
17 admitted, can you point me to any specific reference
18 to this case?

19 A. No, Dr. Selwyn did that for Staff.

20 Q. Is there any reference explicitly to the
21 Colstrip case?

22 A. In Dr. Selwyn's testimony?

23 Q. In your testimony?

24 A. No, not in my testimony.

25 Q. Or the Democratic Central Committee case?

1396

1 A. In Dr. Selwyn's testimony?

2 Q. In your testimony?

3 A. In my -- no.

4 Q. In your testimony, is there any explicit
5 reference to the second factor I highlighted for you,
6 the balancing of ratepayers, shareholder and the
7 broader public interests?

8 A. Yes, it's discussed there where you were
9 just reading in Exhibit 421, starting at page eight,
10 line 17. That shows how, in fact, the interests of
11 the stockholders are factored in and protected in its
12 proposal.

13 Q. Is there any reference in your Exhibit 370?

14 A. I don't recall.

15 Q. Is it your testimony that you understand
16 the Centralia Coal decision to establish a
17 presumption that a hundred percent of the gain from
18 the sale of a utility asset goes to ratepayers?

19 MS. SMITH: Your Honor, I'm going to object
20 to this question. I think it calls for a legal
21 conclusion on the meaning of the Commission order,
22 and we have the Commission order before us.

23 JUDGE MOSS: Overruled.

24 THE WITNESS: I'm sorry, could you repeat
25 the question?

1397

1 Q. Again, is it your testimony that you
2 understand the Centralia Coal decision to establish a
3 presumption that a hundred percent of the gain from
4 the sale of a utility asset goes to ratepayers?

5 A. No, I don't believe I've testified to any
6 presumption.

7 Q. Is it your testimony that you understand
8 the Centralia Coal decision to establish or reflect a
9 practice that a hundred percent of the gain from the
10 sale of a utility asset goes to ratepayers?

11 JUDGE MOSS: Mr. Sherr, I'm going to
12 interject here, because the form of your question is
13 such that I'm not sure our record is going to be
14 entirely clear. Are you asking Dr. Blackmon if he
15 has testified to that effect in something that he has
16 previously filed in this proceeding that's been
17 admitted into evidence, or are you asking him if that
18 is, in fact, his view?

19 MR. SHERR: I'm asking if that's his
20 understanding.

21 JUDGE MOSS: Okay. Well, then, you
22 probably better leave off the part about is that your
23 testimony, then, and just ask him whether he believes
24 that's the standard. Do you understand my confusion?

25 MR. SHERR: I do, and I thought I did.

1398

1 JUDGE MOSS: Just shorten the question a
2 little bit in that fashion and I think it will be
3 clearer what we're asking.

4 Q. Is it your understanding that the Centralia
5 Coal decision establishes a practice or reflects a
6 practice that a hundred percent of the gain from the
7 sale of utility assets should go to ratepayers?

8 A. No, not as an absolute matter, but I do
9 think that it establishes in general that, in the
10 absence of evidence as to why the utility should
11 receive part of the gain, that in general it will be
12 allocated in some fashion or the other to the benefit
13 of the customers.

14 Q. I'm going to ask you some questions about
15 your understanding on the limitations of Commission
16 -- this Commission's authority. Would you agree with
17 me that the Commission does not have unbounded
18 jurisdiction over all matters of possible interest to
19 citizens of this state?

20 A. Yes.

21 Q. And would you -- is it your understanding
22 that the Commission's jurisdiction is limited to
23 regulating in the public interest the provision of
24 utility service within Washington?

25 A. In general, that sounds like a pretty fair

1399

1 statement, yeah. I don't know that I would adopt it
2 absolutely as my statement of the Commission's
3 jurisdiction.

4 Q. Is it your understanding that this
5 Commission is not permitted to enter an order
6 compelling behavior outside of its statutory
7 jurisdiction?

8 A. I guess I'm not sure what you mean by that.

9 Q. Well, you've testified that there are
10 limits to the Commission's jurisdiction?

11 A. (Nodding.)

12 Q. So let's take an example. Do you think the
13 Commission could order me to paint my house green,
14 lawfully?

15 A. No.

16 Q. Do you believe that the Commission is
17 permitted to enter an order compelling me to paint my
18 house green?

19 A. Is that different in some way from the one
20 you asked me before?

21 Q. That's my question.

22 A. What's your question?

23 Q. Is it your understanding that the
24 Commission can enter an order compelling me to paint
25 my house green?

1400

1 A. I guess I don't understand that. If you're
2 just asking me the same question again or is this a
3 different question?

4 Q. Well, it's a different question.

5 A. It's a different question. I don't think
6 that the Commission could order or enter an order
7 compelling you to paint your house green.

8 Q. Is it your understanding that the
9 Commission may not enter an order compelling a
10 utility in another state to take actions unless those
11 actions impact conduct taking place in Washington?

12 A. What do you mean by a utility in another
13 state? Do you mean Qwest in Denver?

14 Q. I mean a utility acting in another state.

15 A. But do you mean Qwest Corporation that does
16 business both in Washington and in Colorado, or do
17 you mean Ute Electric Company doing business only in
18 Colorado? I don't understand the question.

19 Q. I mean either.

20 A. I think the answer would depend on which of
21 those two.

22 Q. So let's take the Qwest example. Do you
23 believe that this Commission can -- is it your
24 understanding that this Commission can enter an order
25 compelling Qwest to take actions in Colorado?

1401

1 A. Yes, in fact, I think most of the orders of
2 this Commission, with respect to Qwest, actually get
3 done in Colorado.

4 Q. Do you believe that this Commission can
5 order Qwest to take certain service-related actions
6 in Utah?

7 A. In some circumstances, yes.

8 Q. Would those circumstances include how Qwest
9 provides service to its Utah customers?

10 A. It could affect how Qwest provides service
11 in Utah. I would think that if the Commission did
12 something that affected service in Utah and had no
13 nexus to operations here in Washington, that I don't
14 know if it would be illegal for them to do that, but
15 it would be a bad use of its resources to do that.

16 Q. Do you believe that Commission Staff's
17 recommendation to the Commission should consist only
18 of actions that the Commission can lawfully take?

19 A. Well, in general, yes, I do. And in fact,
20 one of the reasons why Staff has the primary
21 recommendation that it does is because of questions
22 about whether the conditions that we've recommended
23 would actually be sustainable on appeal or something
24 like that, and I think that's something that the
25 Commission ought to consider in terms of evaluating

1402

1 those set of recommendations.

2 Q. So are you saying that you have concerns
3 that your alternate recommendations may be outside
4 the scope of this Commission's authority?

5 MS. SMITH: I would object to that, Your
6 Honor.

7 JUDGE MOSS: On what basis?

8 MS. SMITH: On the basis that it's asking
9 this question for a legal conclusion as to this
10 Commission's ultimate authority. And a lot of these
11 questions have asked this witness for legal
12 conclusions, and I didn't object to them because we
13 have some leeway in these proceedings on our
14 witnesses talking about what this Commission can or
15 can't do. I think he is asking an ultimate legal
16 question. This witness is not a lawyer, and I
17 object.

18 JUDGE MOSS: Well, I agree that Dr.
19 Blackmon is not a lawyer. On the other hand, he is
20 well-versed in the Commission's regulatory authority
21 in his position as a director of the
22 telecommunications, and so -- and of course, he is
23 the Staff's chief witness putting on the Staff's
24 proposal in this case.

25 So I think to the extent Qwest wants to

1403

1 examine Dr. Blackmon with respect to Dr. Blackmon's
2 understanding about the legality or enforceability of
3 the proposals that Staff has advanced, Dr. Blackmon
4 ought to be -- ought to answer that to the best of
5 his ability to do so, and if it calls for a level of
6 legal sophistication that is beyond his comfort
7 level, he'll say so. So the objection is overruled.

8 THE WITNESS: What was the question?

9 Q. The question was do you have concerns that
10 Staff's alternate recommendations in this case may
11 not be within the scope of the Commission's authority
12 to implement?

13 A. Yes, I have that concern. I would like to
14 say that I don't -- by saying that, I'm not saying
15 that I think that we're proposing that the Commission
16 do something it doesn't have the authority to do. I
17 believe that if you look at the alternative
18 recommendations, they appear to me to be things that
19 the Commission has the authority to do. Even though
20 they affect Qwest outside of the state of Washington,
21 because they affect Qwest within the state of
22 Washington, the Commission has the authority to do
23 that.

24 I also think that the Commission may have
25 some leeway here in that if it can disapprove the

1404

1 sale, that it may also be able to approve the sale
2 with conditions, where those conditions might be
3 things that normally the Commission wouldn't consider
4 doing. But ultimately, after the briefs are filed
5 and all that, if the Commission decides that, Well,
6 those recommendations might be good recommendations,
7 but we can't do them, if the Commission reaches that
8 decision, then we would not recommend that they go
9 forward with those recommendations.

10 Q. Did you express any concern about the
11 lawfulness of your recommendations in your testimony
12 that's been filed?

13 A. No, as I said, I think, you know, on their
14 face, they appear to be within the Commission's
15 authority. And the way I have envisioned this coming
16 up is that if other parties have that concern,
17 they'll say so when they file their briefs, and we
18 will respond to that in reply briefs.

19 Q. Do you think that the Commission needs its
20 Staff's guidance as to whether it has explored the
21 legal viability of its recommendation?

22 MS. SMITH: I'm going to object to this
23 question. Once again, this is pretty much beyond the
24 scope of a witness' understanding of the Commission's
25 authority and the legality of the actions it takes,

1405

1 and also it's encroaching upon privileged
2 conversations that this witness may have had with its
3 attorneys. I object to it.

4 JUDGE MOSS: What was the question again,
5 Mr. Sherr?

6 MR. SHERR: The question was, excuse me.
7 Don't you think the Commission needs its Staff's
8 guidance as to whether it has explored the legal
9 viability of its recommendations?

10 JUDGE MOSS: I think that question's
11 allowable. We'll overrule the objection on that one.

12 CHAIRWOMAN SHOWALTER: Mr. Sherr, I'm just
13 going to inject a point of personal privilege, I
14 guess. That may be a relevant question or an
15 admissible question, but we do allow leeway to
16 discuss orders and statutory issues because the
17 witness here and many witnesses are regulatory
18 experts. But the more detailed that you get and the
19 finer you get, you are crossing over into what is
20 generally reserved for legal briefs afterwards.

21 And your particular question was even a
22 meta level up about whether this witness thinks it's
23 important to advise us of legal issues. Well, the
24 entire proceeding we have in front of us will
25 ultimately do that with all the parties.

1406

1 Generally speaking, what's in front of us
2 here is substantive testimony, factual testimony,
3 expert testimony, policy testimony, recommendations.
4 It's your prerogative to ask admissible questions,
5 but if you want to advance the discussion that's in
6 front of us now, you will focus on the substance of
7 the recommendations in front of us.

8 There is a lot of time to go over the
9 legalities and the lawyers' arguments at another
10 stage, but these aren't the lawyers. These are the
11 policy and the regulatory witnesses. And if we need
12 oral argument by the lawyers, we can do that, too.

13 THE WITNESS: Am I supposed to answer now?

14 JUDGE MOSS: Yes, go ahead and answer the
15 question, and then let's move on.

16 THE WITNESS: Okay. Yes, the Commission
17 deserves the benefit of our analysis of those
18 questions. At the testimony level, we shouldn't
19 bring forward things that we think the Commission
20 couldn't do. It would be a waste of the Commission's
21 time to consider things that we know not to be within
22 its authority. But ultimately, the best advice that
23 the Commission will get from us on those points will
24 be in our brief.

25 Q. I'd like to move on to the subject of

1407

1 bankruptcy. And at the risk of something being
2 thrown at me, I'd like to ask you a few questions
3 about your bankruptcy credentials, but I promise not
4 to mention Mr. Mabey, if I can help it.

5 Do you recall that Qwest served data
6 requests on Staff regarding your bankruptcy-related
7 credentials and the bankruptcy research you did prior
8 to filing your testimony?

9 A. Yes.

10 Q. Can I correctly summarize those responses
11 as follows: That you claim you haven't provided
12 expert testimony in this case regarding bankruptcy
13 law or procedure? And I'm looking at Exhibit 386 for
14 your reference.

15 A. I have an Exhibit 400.

16 Q. Four hundred is a follow-up to 386?

17 A. I'm sorry, I don't have Exhibit 386. I
18 apologize.

19 MS. SMITH: Your Honor, I have a copy for
20 the witness, if I may approach.

21 JUDGE MOSS: Sure. Okay. We're all set.

22 Do you have a question in mind, Dr. Blackmon?

23 THE WITNESS: I think he asked me if
24 Exhibit 386 says that Dr. Blackmon has not offered
25 expert opinion testimony regarding bankruptcy law or

1408

1 procedure, and that is what it says.

2 Q. And slipping to Exhibit 400, which was a
3 follow-up data request, am I correct that there you
4 state that you have provided expert testimony
5 regarding the impact of the bankruptcy on interested
6 persons?

7 A. Yes, with the interested persons being sort
8 of a strange term. It was the one used in the
9 request.

10 Q. Is it your -- strike that.

11 Do you consider yourself to be qualified to
12 provide expert testimony on bankruptcy law or
13 procedure?

14 A. No.

15 Q. I'm sorry?

16 A. No.

17 Q. Do you believe that a person who's not
18 qualified to provide expert testimony on bankruptcy
19 law and procedure can nevertheless provide expert
20 testimony on the impact of bankruptcy on interested
21 persons?

22 A. Yes.

23 Q. Moving on to a little more substantive
24 bankruptcy discussion, you were here when Mr. Mabey
25 testified in the hearing room last week?

1409

1 A. I was here generally. I don't know that I
2 was in the hearing room the entire time.

3 Q. Okay. Did you read his prefiled testimony?

4 A. Yes.

5 Q. And given that testimony, do you still
6 believe, as you state in your direct testimony, that
7 if QCI files bankruptcy, it is neither automatic nor
8 even likely that QC would also declare bankruptcy?

9 A. Yes.

10 Q. Even though, as Mr. Mabey discussed, QCI
11 and QSC, if they were both in bankruptcy, might wish
12 to place QC in bankruptcy in order to consummate the
13 Dex sale?

14 A. Yes, because I understood from his
15 testimony that that was the basis for his opinion,
16 was that, you know, he was asked why he thought it
17 was highly likely, and he said that they would do it
18 in order to consummate the sale, and I think that's
19 -- it was -- that was inconsistent with my own
20 understanding of the situation and I think it was
21 also inconsistent with the testimony that Mr. Kennard
22 offered earlier in the week.

23 He said that since Qwest was planning the
24 sale when it was outside of bankruptcy, that it would
25 do it within bankruptcy, too. And I think the logic

1410

1 of that just is wrong. That right now, outside
2 bankruptcy, Qwest is planning to pay off \$20 billion
3 of debt. If it goes into bankruptcy, the plan is not
4 to pay off \$20 billion of debt. The plans change
5 when you go into bankruptcy, and just because Qwest
6 is planning to sell Dex now, it does not follow at
7 all that they would do so once they're in bankruptcy.

8 Mr. Kennard said that a healthy telephone
9 company would not be selling its directory business,
10 and Mr. Mabey said that a company comes out of
11 bankruptcy healthy. So I think, based on that, his
12 testimony about it being highly likely is just -- I
13 cannot agree with that.

14 Q. Do you recall Mr. Mabey testifying that a
15 company goes into bankruptcy healthy financially?

16 A. Oh, no, he certainly didn't say that.

17 Q. So at the point that it files -- a company
18 files bankruptcy, you can presume it's financially
19 unhealthy?

20 A. Well, I think you can presume that. He
21 actually didn't say that, but I think you can.

22 Q. Isn't it true that you stated in your
23 testimony that QC would likely not file bankruptcy
24 because QC is financially strong?

25 A. I said that. I said that the creditors,

1411

1 specifically the creditors of QCII, would not find it
2 to be in their interest to bring the operating
3 company in the bankruptcy, and they would be the ones
4 calling the shots once QCII filed for bankruptcy.

5 Q. Even to maximize the value of the sale of
6 the Dex operation if that's the way the bankruptcy
7 was going?

8 A. That's right. The way I understood Mr.
9 Kennard's testimony is that you get the most value
10 when you have your utility with -- your telephone
11 utility with a directory operation. So the creditors
12 would look at these two pieces that they would see
13 there. They would see a directory business and they
14 would see a telephone business, and they would see
15 that the sum of the two is greater than the parts.

16 Q. Do you have an opinion about whether this
17 Commission would have any authority to approve or
18 condition the possible merger with or purchase of QC
19 in the event that QCI and QSC file bankruptcy?

20 A. I'm sorry, I didn't get that one.

21 Q. Do you have an opinion about whether this
22 Commission will have the authority in a bankruptcy to
23 approve the sale of QC? And this is assuming you
24 have a QCI/QSC bankruptcy.

25 A. My best guess, and I really can't say that

1412

1 I know this, but my best guess is that, within a
2 bankruptcy setting, this Commission would probably
3 not have the authority to disapprove a certain owner
4 if the bankruptcy court decided that some specific
5 group of creditors should receive the stock in QC. I
6 doubt that we would be able to prevent that.

7 Q. Do you believe the Commission's role in
8 controlling, approving and conditioning possible
9 takeovers of a utility like QC is an important
10 regulatory function?

11 A. I think that it is important that we can
12 add value in doing that. I don't think we have a
13 particularly good track record of spotting bad
14 management buying a company, and so I think there are
15 other things we need to focus on, too.

16 MR. SHERR: Your Honor, can I have one
17 moment?

18 JUDGE MOSS: Sure.

19 MR. SHERR: Your Honor, I have no further
20 questions at this time.

21 JUDGE MOSS: Thank you, Mr. Sherr. Mr.
22 Harlow, do you have questions for this witness?

23 MR. HARLOW: Yes, Your Honor.

24

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

1413

1 BY MR. HARLOW:

2 Q. Good morning, Dr. Blackmon.

3 A. That's not funny.

4 Q. If you would please turn to Exhibit 417.

5 Do you recognize that document, once you get there?

6 A. Yes, I recognize this. It's a continuing
7 legal education seminar that you invited me to.

8 Q. And you prepared it or downloaded it from
9 the Internet, I take it?

10 A. Yes, I got it from the Yahoo.com Web site.

11 Q. And I take it this document represents some
12 cross-section of the segment or perhaps the entire
13 North American telecommunications industry?

14 A. Yes, it includes not just
15 telecommunications carriers like Qwest, but also
16 equipment manufacturers, wireless companies, things
17 like that. It's rather ironically called the XTC
18 Index.

19 Q. Kind of like the same effects of Ecstasy, I
20 take it?

21 A. Yes.

22 Q. Would you agree that an entire industry,
23 the telecom industry, invested hugely in facilities
24 that are now not generating revenues sufficient to
25 cover debt in many cases?

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1 A. That's not true of every company, but the
2 industry taken as a whole has invested far more than,
3 in retrospect, was necessary to meet demand.

4 Q. So certainly Qwest is not alone in
5 experiencing financial difficulties that might not
6 have been expected in 1999 or 1998?

7 A. No, in fact, one of our points has been
8 that the comparable companies, if you were to look,
9 say, in 1999, you would see a company like Global
10 Crossing or WorldCom as comparable to Qwest, and
11 they're in bankruptcy and Qwest is not.

12 Q. And I take it we don't have any real
13 foresight as to what this comparable curve is going
14 to look like five or six years from now; is that
15 correct?

16 A. If I did, I would not be here.

17 Q. Okay. So the same investment that looks
18 very bad today could look good again in 2006, or
19 maybe 2008; isn't that possible?

20 A. I'm sorry, say that again.

21 Q. So the same investment that maybe looks
22 very bad today in hindsight, if we looked back in
23 2006 or 2008, it could potentially look like a good
24 investment again; isn't that possible?

25 A. I think that an investment that looks bad

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1 today could turn out to be a good deal later. I
2 think that's the -- there's a whole school of
3 investment, the Contrarian Theory, that tries to work
4 off that principle.

5 Q. Would you please turn to Exhibit 412, Dr.
6 Blackmon?

7 A. I have that.

8 Q. And this document is a copy of a data
9 request that Staff provided to Dex Holdings; is that
10 correct?

11 A. Yes.

12 Q. And I take it from the response that it
13 reflects that Staff doesn't have any particular
14 public interest concern in the approval or
15 disapproval of the sale relating to the identity of
16 the buyer in this transaction; is that correct?

17 A. No, we don't have any particular concern.
18 The buyer is a sort of a transfer entity, and so
19 there's not much there to look at, in our opinion.

20 Q. There's no reason to believe that Dex
21 Holdings, as the owner of the Dex operation, can't do
22 at least as good a job as Qwest Corporation
23 International, is there?

24 A. I didn't say that, no. I mean, they may
25 not be as good an operator of the directory business

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1 as Qwest.

2 Q. Well, that wasn't my question, Dr.
3 Blackmon. My question was do you have any reason at
4 this time to believe that they won't be as good an
5 operator as Qwest Corporation International?

6 A. No, I don't have any opinion on that one
7 way or the other.

8 Q. Dr. Blackmon, are you aware of any other
9 Washington Utilities and Transportation Commission
10 case that has dealt with the disposition of a gain on
11 the sale of a Yellow Pages publisher? In other
12 words, disposition between the owners and the
13 ratepayers?

14 A. I think it has come up over time. I know
15 there's been a lot of documents going back and forth
16 about Continental Telephone and General Telephone.

17 Q. May I refer to Continental Telephone as
18 ConTel for short?

19 A. Sounds good to me.

20 Q. Okay. Indeed there is a Commission order
21 in the public records dealing with the issue of
22 disposition of gain on ConTel's sale of the Yellow
23 Pages publisher known as Leland Mast. Are you aware
24 of that?

25 A. Am I aware that there's a Commission order

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1 in the public domain?

2 Q. No, a Commission order dealing with
3 ConTel's sale of the Leland Mast Yellow Pages
4 Publishers?

5 A. I remember that you supplied me with an
6 order. I haven't checked to see whether it deals
7 with the Leland Mast publisher or not.

8 Q. If you need to refer to related exhibits,
9 we're looking at Exhibit 409.

10 A. I think -- did I leave it over there? It's
11 very thick. It's got a binder clip on it.

12 MS. SMITH: I have it here, Your Honor.
13 May I approach?

14 JUDGE MOSS: Sure. And just perhaps to
15 save a moment, the witness is being furnished with a
16 copy of what's previously been identified as Exhibit
17 409, the Fourth Supplemental Order in Commission
18 Cause Number U-87-640-T. It's dated October 26th,
19 1987.

20 Q. Do you have Exhibit 409 in front of you
21 now, Dr. Blackmon?

22 A. Yes, I do. Is it more than just an order
23 or is it --

24 Q. It is, and I'll refer you to page numbers
25 as necessary and related to my questions.

1418

1 A. Okay, thank you.

2 Q. You're welcome. Dr. Blackmon, Dex Holdings
3 served a number of data requests on Staff regarding
4 this docket; isn't that correct?

5 A. Yes.

6 Q. And Staff responded to those, and I believe
7 on each of those you were listed as the witness
8 associated with the responses; is that correct?

9 A. That's correct.

10 Q. And Mr. Lott, another Staff member, is
11 listed as the responder; is that correct?

12 A. I haven't checked to make sure that's true
13 on all of them.

14 Q. It's not necessary that it be true for all
15 of them.

16 A. Okay. I know he did respond to some of
17 them, at least. I see four-fourteen.

18 Q. And the reason is the follow-up question is
19 I just want to know, did you have discussions with
20 Mr. Lott regarding these data request responses
21 before they were served on Dex Holdings?

22 A. In some instances, I discussed them with
23 him. In other instances, I reviewed them before they
24 were submitted, but we didn't discuss them.

25 Q. Have you had general discussions with Mr.

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1 Lott regarding the ConTel case as relates to the
2 disposition of the gain on the sale of Leland Mast?

3 MS. SMITH: Your Honor, I'm going to
4 interpose an objection in anticipation of a line of
5 questioning that I believe is both delving into
6 privileged matters with respect to a settlement that
7 are not admissible under Evidence Rule 408, and that
8 aren't relevant in this proceeding.

9 And the Exhibit 409 is a Commission order
10 approving a settlement. And Staff doesn't object to
11 this order in and of itself coming into the record,
12 because it's a Commission order and it says what it
13 says. But to the extent this line of questioning is
14 going to delve into the reasons why Staff agreed to a
15 particular treatment of gain on sale in the context
16 of a rate case settlement is inappropriate. It goes
17 into settlement discussions, there's a lot of quid
18 pro quo that goes into a settlement that's not
19 reflected in the settlement, and that's just the way
20 settlements are. And it's inappropriate to delve
21 into a line of questioning about gain on sale that's
22 reflected in a settlement in a rate case.

23 JUDGE MOSS: I assume, and I may be wrong,
24 but I assume that you have probably not had a
25 conversation with Mr. Harlow about his line of

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1 questioning, so I'll put the question to him, whether
2 that is indeed what he intends to delve into, because
3 your objection at this juncture is just anticipating
4 that line of cross.

5 MR. HARLOW: Yes.

6 MS. SMITH: It is, Your Honor.

7 MR. HARLOW: We've had several discussions
8 over the course of the last two weeks, and I believe
9 the objection's premature. Anticipating Staff's
10 objection, I'm trying to lay a foundation that will
11 enable the Commission to make a reasoned and
12 fully-informed ruling on the Staff's objection.

13 JUDGE MOSS: I'll just inform you at this
14 juncture that, in the Bench's view, we would be -- we
15 would have to be very careful not to be delving into
16 privileged settlement discussions, the basis for
17 Staff's agreement to a settlement in the case or what
18 have you. The order captures the ultimate
19 disposition of the matter, and that, of course, is a
20 proper matter for inquiry, a proper subject for
21 inquiry, but the underlying bases for a settlement
22 would not be. So if you're going there, we can
23 anticipate what our rulings will be.

24 MR. HARLOW: Well, I totally agree, Your
25 Honor. The problem is that this order is extremely

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1 cryptic on the Yellow Pages issue, and there are --
2 with the proper foundation, I think we can
3 demonstrate what, in fact, the Commission approved.
4 But if you simply read the order, it would be very
5 difficult for the Commission to determine exactly
6 what that Commission approved.

7 JUDGE MOSS: Well, I don't know that Dr.
8 Blackmon's testimony as to how he interprets the
9 order will be particularly illuminating. The order
10 says what it says, and to the extent it's going to be
11 relied on as authority in the briefs, that is what
12 the Commission will rely on. And the counsel, the
13 attorneys, can argue, within the limits of the page
14 limitation, all they want to about what it says or
15 doesn't say or where it is or is not clear, but I
16 don't think you can expect to be allowed to examine
17 this witness in order to illuminate the meaning of
18 the order. That would not be an appropriate line.

19 MR. HARLOW: Your Honor, there are some
20 standard kind of ratemaking adjustments that are
21 attached to the order and incorporated through the
22 order and the settlement agreement, and I think based
23 on Dr. Blackmon's general experience with those kind
24 of ratemaking adjustments, that it will make it
25 easier for the Bench to understand what exactly

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1 happened in this decision.

2 MS. SMITH: Your Honor, if I may make
3 another point, that's precisely where Staff has a lot
4 of the concern, because the order says what it says,
5 and there is a brief accounting list, or whatever you
6 might call it, that went along with this settlement,
7 but it was a settlement.

8 And we are concerned that what the
9 Commission Staff agreed to do with respect to
10 treatment of a gain on sale to settle a rate case 16
11 years ago is not a proper line of inquiry in this
12 case, in 2002, with respect to an entirely different
13 company. And we're concerned about going too deep
14 into something where there was a lot of quid pro quo,
15 and if Staff were to take a litigation position, then
16 or now, it may be very different.

17 MR. HARLOW: I guess at this point, Your
18 Honor, I'd like to finish laying my foundation,
19 because we're kind of getting into the objection that
20 I think's premature.

21 JUDGE MOSS: Well, we don't really have the
22 questions yet, so it is really, I think, impossible
23 to rule in the abstract. I think I have made some
24 cautionary statements to Mr. Harlow, and we may end
25 up spending a great deal of time going through this

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1 agonizing question-by-question and objection, but I
2 don't know any other way to do it than to hear the
3 question and then see if it is in itself
4 objectionable.

5 But I -- as far as your last statement, Ms.
6 Smith, I think, again, that's the sort of thing that
7 can be argued, whether the decision has any relevance
8 to our current problems and decisions -- issues, I
9 should say, not problems, but issues that have to be
10 resolved in this case, is something that counsel will
11 argue on brief.

12 MS. SMITH: Thank you, Your Honor.

13 JUDGE MOSS: So Mr. Harlow, I've lost the
14 question.

15 Q. Yes, I'll try to recapture it. I think the
16 question was did you have other discussions with Mr.
17 Lott outside the context of responding to data
18 requests about the ConTel case?

19 A. No.

20 Q. You understand, do you, that as your
21 counsel has just represented, that the company,
22 ConTel in that case, and Staff did propose a
23 settlement to the Commission?

24 A. Yes, I do.

25 Q. And do you understand or would you accept,

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1 subject to check, that the Yellow Pages issue was
2 resolved by a revenue credit?

3 A. No, that's not my understanding. I'm not
4 saying it's not, I just don't really understand one
5 way or the other.

6 Q. All right. Do you have an understanding
7 that the effect of the Yellow Pages disposition was
8 to reduce ConTel's rates from what they otherwise
9 would have been?

10 A. No. My understanding is that the Staff and
11 the company agreed to a resolution of the case, and
12 that one simply can't point to individual items and
13 say, Well, it was because of this or because of that.

14 Q. Do you have an understanding that the
15 settlement and the order approving the settlement did
16 finally resolve the issue of disposition of gain on
17 the sale of Leland Mast Directory Publishers with
18 regard to ConTel?

19 A. Is there anything specific you could point
20 me to in the order of the settlement, because I'm not
21 aware of anything like that, but --

22 Q. If you wish to turn to page -- in Exhibit
23 409 -- ConTel-0033?

24 A. I'm sorry, where is --

25 Q. Page numbers are at the bottom right hand

1425

1 of each page.

2 A. Right where I put the binder clip.

3 Q. Yeah.

4 A. Okay, sorry. ConTel --

5 Q. 0033.

6 JUDGE MOSS: Was it 0003 or 0033?

7 MR. HARLOW: Two zeroes, two threes, Your

8 Honor.

9 JUDGE MOSS: Okay.

10 Q. For simplicity, I can probably simply refer

11 to the last two or three digits.

12 A. I believe that's Mr. Lott's testimony.

13 It's not the settlement or the order.

14 Q. But Mr. Lott is, on lines 10 through 12,

15 referring to Adjustment RA-4. Do you see that?

16 A. Yes, I do.

17 Q. And if you will turn to page 18 in Exhibit

18 409.

19 A. Is this the 0018 number, like that?

20 Q. Yes.

21 A. Okay.

22 Q. Bottom right-hand corner still. You see a

23 spreadsheet, do you not?

24 A. Yes, I believe that's the spreadsheet that

25 is referred to as the Exhibit A to the settlement,

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1 which is supplied for illustrative purposes and -- or
2 for informational purposes.

3 Q. Yes, and the settlement agreement, in turn,
4 was attached to the Commission's order; is that
5 correct?

6 A. Right.

7 Q. And if you look at page 18, you'll see
8 there's a column headed RA-4, sale of directory
9 company. That's column E.

10 A. I see that, yes.

11 Q. Okay. So do you understand, then -- I'll
12 repeat the question with that background -- that
13 ultimately the Commission's order in the ConTel case,
14 Exhibit 409, dealt with, once and for all, the
15 disposition of the gain on ConTel's affiliate sale of
16 the Leland Mast directory?

17 A. No, I don't agree with that. I mean, I
18 would agree that, at least to the best of my
19 knowledge, that issue has never come up in any other
20 case since then, and I would agree that it was raised
21 by the Staff in its testimony.

22 Q. Do you not agree with that because you
23 don't know or do you not agree with that because you
24 actually have some fact upon which to disagree?

25 MS. SMITH: Your Honor, I'm going to

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1 object. I believe the witness was still answering
2 the question and the question interposing was a bit
3 argumentative, so I object on two grounds.

4 MR. HARLOW: If the witness isn't complete,
5 I'm sorry. I wish the witness to complete his
6 answer.

7 JUDGE MOSS: And I wish the counsel to be
8 cautious that one person speak at a time, so our
9 court reporter's job is manageable. So let's be
10 cautious about that, please. And Dr. Blackmon, if
11 you weren't finished with your answer, please do
12 finish.

13 THE WITNESS: If I wasn't finished, I don't
14 remember what else I was going to say, so --

15 MR. HARLOW: Can the court reporter read
16 back the question, please?

17 (Record read back.)

18 THE WITNESS: My opinion is based on my
19 understanding of the order and the way a settlement
20 works and so even though I know that the sale of the
21 directory was an issue that was raised by Staff in
22 that case, the way I understand settlements to work
23 is that the parties agreed not to seek a blow-by-blow
24 resolution of all the issues, so therefore I don't
25 believe that this order resolved that issue one way

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1 or the other.

2 Q. Will you accept, subject to check, that
3 there's no other order of this Commission dealing
4 with the disposition of gain on the sale of the
5 Leland Mast directory publishing business by an
6 affiliate of ConTel?

7 A. No, I will not. I testified a minute ago
8 that I'm not aware of any order where it's come up
9 since then, but I'm not going to accept a subject to
10 check about every order issued since 1987.

11 Q. Do you -- have you reviewed documents or
12 would you accept, subject to check, to reflect that
13 Staff member Merton Lott was cross-examined by the
14 Commission in the docket reflected in Exhibit 409
15 specifically on the issues relating to the sale of
16 Leland Mast?

17 MS. SMITH: Your Honor, at this point I am
18 going to object to the relevancy of this. This was a
19 settlement almost 16 years ago, if I can do the math
20 correctly, and Staff's position in supporting this
21 settlement all those years ago really isn't relevant
22 to this case.

23 JUDGE MOSS: I'm going to sustain the
24 objection on the grounds of relevance, and I, in
25 fact, was on the verge of raising that objection from

1 the Bench. To the extent counsel wishes to argue the
2 relevance and significance of a prior Commission
3 order, counsel may do so on brief. And I don't see
4 any point pursuing further with Dr. Blackmon trying
5 to prove up up the strength, validity or weight this
6 order might be given.

7 MR. HARLOW: Your Honor, given that you're
8 cutting off my line of questioning, apparently, on
9 foundation, at this time, I offer Exhibit 409 based
10 on the foundation that's been laid.

11 JUDGE MOSS: I think, for convenience,
12 unless there's an objection, we can probably have
13 that as part of the record because it can be referred
14 to anyway.

15 MS. SMITH: Your Honor, there are parts to
16 Exhibit 409 that the Commission Staff does not object
17 to. We don't object to the Commission order itself.
18 We believe the fact that this is a settlement goes to
19 its weight and not to its admissibility. We don't
20 object to the settlement agreement for Commission
21 decision or, going with it, the Exhibit A that was
22 attached to that for informational purposes. And for
23 that matter, I suppose we wouldn't object to Exhibit
24 B that's attached to that, as well, which is
25 Continental Telephone Company of the Pacific

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1 Northwest's tariffs.

2 We do, however, object to the admission of
3 the transcript of settlement testimony in that case
4 because it's not relevant. The settlement speaks for
5 itself, it stands on its own, and this Commission
6 doesn't need to go back to the extrinsic evidence,
7 even though it exists, to understand what it was
8 approving in that settlement. It's just not
9 relevant.

10 MR. HARLOW: Your Honor, may I respond
11 before the Bench confers?

12 JUDGE MOSS: Go ahead.

13 MR. HARLOW: There's an important fact that
14 I think needs to be brought to the Commission's
15 attention, which is that in Docket UT-980948, which
16 we've referred to many times in this docket as the
17 accounting order dealing with US West's imputation
18 effort, Staff argued, at page 58 of their reply
19 memorandum in support of motion for partial summary
20 judgment, that US West's characterization of
21 imputation as compensation for the fair market value
22 of assets transferred is inconsistent with the
23 calculation on sale of the Mast Publishing that was
24 imputed to ratepayers, and then there's -- that's the
25 heading, and then there's substantial discussion of

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1 this case. So the Staff itself has given this case
2 precedential value.

3 The Commission found, in the Leland Mast
4 order, that the resolution of the issues, which
5 include the resolution, I think, in spite of the
6 witness' lack of knowledge, I think we can argue very
7 effectively on brief that it's clear that the
8 Commission did a final resolution of the
9 ConTel/Leland Mast Yellow Pages gain sharing in that
10 docket, and it's critically important that the
11 Commission have that -- all of that record in front
12 of it. As far as we know, that is the only case that
13 we have been able to locate where the Commission has
14 decided an issue that is extremely close. It's the
15 closest case on point to the case we're dealing with
16 here today.

17 And it has precedential value, it was
18 incorporated into a Commission order that found the
19 resulting rates, including the pass-through of the
20 gain, to be fair, just, reasonable and sufficient.
21 So for the Commission, first of all, for the Staff to
22 take the position that a settlement that's accepted
23 has no precedential value, we think is a very
24 dangerous precedent to establish.

25 Commission, in the settlement rule,

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1 encourages settlements, and so if you have a
2 situation where you can enter into settlements, but
3 then the Commission, in taking testimony and hearing
4 briefing and arguments, takes away the precedential
5 value, then you have either one of two problems:
6 either you chill settlements because you don't want
7 to create a situation where you don't develop
8 precedent over the years as you settle cases, or
9 alternatively, you have a situation where the
10 Commission takes a settlement and evaluates it like
11 the Commission is very closely and carefully
12 evaluating and weighing the proposed settlement in
13 this case and you don't develop any precedent, so
14 there's no guidance for future parties and future
15 commissions.

16 So the particular Staff work papers, what
17 we need to do in order to make the argument and to
18 show what, in fact, the Commission's disposition was,
19 because the order's very perfunctory, is we need to
20 tie the mathematical calculations and the work
21 papers. They're very straightforward, you can do the
22 math, and the numbers match up to the dollar. If we
23 lose the work papers, this Commission will be totally
24 in the dark as to what the 1987 Commission did with
25 the disposition of the gain in the Leland Mast case.

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1 So we're not delving into the negotiations; we're
2 simply showing the math that was behind the
3 Commission's order approving that disposition.

4 COMMISSIONER HEMSTAD: Mr. Harlow, if I can
5 -- in the proposed -- in the partial settlement
6 agreement that we have in front of us, in this
7 proceeding today, at page eight, paragraph three, the
8 caption is, No precedent, which seems to describe the
9 fact that no party can cite it.

10 MR. HARLOW: That's a very good point, Your
11 Honor. And the same language appears in the Leland
12 Mast settlement, as well as in the order itself. But
13 the way I think you have to interpret that is that
14 it's not precedent as between the parties themselves.
15 In other words, the parties themselves can't go back
16 in a future rate case, if you look at the ConTel
17 stipulation, the ConTel order, it says in a future
18 rate case; not a future Yellow Pages, you know,
19 petition case like we're faced here. And so what
20 it's doing is it's tying the parties' hands and the
21 ability to undo their own settlement.

22 COMMISSIONER HEMSTAD: Are you suggesting
23 it should be read that way, but then can be cited for
24 the merits of the decision itself --

25 MR. HARLOW: Yes.

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1 COMMISSIONER HEMSTAD: -- that's
2 incorporated into the settlement?

3 MR. HARLOW: Yes, I mean, it has res
4 judicata effect as among the parties. I think that's
5 really the intent there. But in issuing an order,
6 because you must find in every case, even if we have
7 all parties agreeing to settlement, you must find
8 that it meets the statutory requirements of fair,
9 just, reasonable, sufficient and in the public
10 interest. It's inherent that such an order has
11 precedential value to the extent that it relates to
12 the subsequent case.

13 And the objection here may well go to the
14 weight, and Staff will have their arguments, I'm
15 sure, about why ConTel is different than this case.
16 And we'd agree, in some ways it is different, but it
17 has very significant precedential value for this
18 Commission. And to be excluded simply because it was
19 based on a settlement, I think would create some very
20 dangerous problems going forward for public policy
21 and settling cases and the Commission accepting
22 settlements.

23 CHAIRWOMAN SHOWALTER: So are you saying
24 that if the Commission accepts the settlement in this
25 case, that the -- every element of it then is our own

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1 precedent that can be cited to us later, even though
2 it is obviously a compromise of litigated positions?

3 MR. HARLOW: Well --

4 CHAIRWOMAN SHOWALTER: And what would that
5 tie us to?

6 MR. HARLOW: No, I wouldn't take that. I
7 think that would be --

8 CHAIRWOMAN SHOWALTER: Well, then, isn't
9 that the same thing? You want us -- if we were going
10 to take that settlement as precedent, and not just
11 the language of the Commission itself, but testimony
12 prior to the Commission's order on it, doesn't it
13 follow that we are now, should we approve your
14 settlement, going to tie ourselves to all of the
15 testimony that has gone on in support of the
16 settlement?

17 MR. HARLOW: I think the distinction I
18 would make would be if we were to try to argue for a
19 specific exact mathematically identical result, that
20 that would be inappropriate. We would like to get
21 the ConTel case in for the broader principles and the
22 broader issues, and I think the same thing would
23 apply if you accept the settlement in this case, that
24 you wouldn't necessarily achieve the same percentages
25 as Mr. Brosch has set forth in his analysis of the

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1 settlement, that you wouldn't be tied to that
2 specific percentage, but in terms of general
3 principles, it would be more like the Centralia case.
4 For example, you know, you're not going to
5 necessarily follow Centralia.

6 CHAIRWOMAN SHOWALTER: That was not a
7 settlement.

8 MR. HARLOW: I know it wasn't a settlement,
9 but it's the same principle. Stare decisis is
10 different than res judicata.

11 COMMISSIONER HEMSTAD: Isn't the point of a
12 settlement that the parties make tradeoffs, which
13 they wouldn't ultimately, as in this proceeding here,
14 be advocating if they were asking us to adjudicate
15 the issue?

16 MR. HARLOW: That's the point of the
17 settlement, but when the Commission accepts a
18 settlement, it's saying, Well, those tradeoffs are
19 within a range of what's reasonable.

20 COMMISSIONER HEMSTAD: Taken as a whole,
21 collectively translates into a result that is fair,
22 just, reasonable or in the public interest.

23 MR. HARLOW: Yes.

24 COMMISSIONER HEMSTAD: But not necessarily
25 any individual element of that settlement.

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1 CHAIRWOMAN SHOWALTER: It seems to me --

2 MR. HARLOW: That's correct.

3 CHAIRWOMAN SHOWALTER: -- your position
4 absolutely discourages settlement. It discourages
5 the parties from settling because they're bound by
6 the specific terms, it discourages the Commission
7 from accepting the settlement because they would be,
8 too, as distinct from fully litigating the issues and
9 getting a clear resolution on each and every issue
10 where the Commissioners make the policy, as opposed
11 to accepting a compromised proposal.

12 MR. HARLOW: Well, and I think that the
13 parties will argue, assuming we consider ConTel,
14 parties will argue differently as to what import that
15 should be given, but what we have here available to
16 us is a decision that provides some guidance to this
17 Commission as to what in the past has been found to
18 be reasonable.

19 And again, we're not arguing for a specific
20 mathematically identical result. We're arguing for
21 broad policies. Just for example, in the Leland Mast
22 situation, the exhibit shows that there was no
23 adjustment to rate base. You can see that on the --
24 on page two, because there's a zero in the rate base
25 row. It shows that there was an amortization over a

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1 period of time.

2 JUDGE MOSS: Mr. Harlow, you don't need to
3 go into the details of what it shows.

4 MR. HARLOW: I understand.

5 MS. SMITH: Your Honor, assuming that Mr.
6 Harlow is done with his comments, I have a comment to
7 make that was prompted to make by his citation of the
8 Commission Staff brief in the accounting order
9 docket. And in that case, in the brief, the
10 Commission Staff did not raise the Leland Mast case
11 as precedent. The Commission Staff, in its brief,
12 responded to an argument that US West made in its
13 brief with respect to the Leland Mast case.

14 And when you look back to the transcript of
15 that case to the affidavit of Staff witness Paula
16 Strain and to any of her testimony, it all relates
17 back to it being a settlement. I mean, Ms. Strain
18 was very careful on the stand to say yes, this is
19 what happened in this case, but it was a settlement.
20 Qwest then gave its interpretation of what that case
21 was about and how the gain was distributed to
22 ratepayers, and Commission Staff referenced that only
23 in response to the arguments made by US West.

24 So Commission Staff is not trying to play
25 both sides of the card here. We didn't raise that as

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1 precedent. We responded to an argument made by US
2 West.

3 JUDGE MOSS: All right. And as stimulating
4 as this conversation is, I think the Bench is
5 prepared to confer and make a decision.

6 Okay. Our ruling is that, in light of
7 Staff not objecting to the order itself and its
8 attachments being made part of the record for
9 convenience, we will allow that much of Exhibit --
10 I've lost the number. Is it 409?

11 MR. HARLOW: Yes, Your Honor.

12 JUDGE MOSS: 409. But the balance of that
13 exhibit, and I believe --

14 MS. SMITH: It would start at page 0028.

15 JUDGE MOSS: Yeah, from 0028 on is not part
16 of the exhibit.

17 Q. Mr. Blackmon, would you please, before you
18 turn to that, you're familiar with the rating firm
19 Standard and Poor's?

20 A. Yes.

21 Q. And you've indicated in some of your data
22 responses, for example, Exhibits 391 and 400, that
23 you regularly review publicly available information
24 about the financial condition of companies such as
25 Qwest Corporation?

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1 A. Yes, I do.

2 Q. And is Standard and Poor's reports,
3 analyses and statements part of what you review?

4 A. I almost always read those. I get them
5 from the library.

6 Q. And would you briefly describe what it is
7 Standard and Poor's does?

8 A. They rate the credit worthiness of
9 publicly-traded or generally offered securities.

10 Q. And so a big part of what Standard and
11 Poor's does is evaluate the financial condition of
12 companies such as Qwest Corporation and Qwest
13 International?

14 A. Well, I think more specifically they would
15 evaluate the ability of the borrower to repay the
16 money.

17 Q. And are they considered generally reliable
18 and one of the best available sources for that
19 information?

20 A. I think they are one of the best available
21 sources.

22 Q. If you would please turn to Exhibit 320,
23 excuse me, 420?

24 A. I have that.

25 Q. And if you'll turn to page three of Exhibit

1441

1 420, three of five, you'll see a listing at the top
2 of certain Qwest maturities, i.e., debts of -- that
3 are coming due for Qwest?

4 A. Are you referring to the first two lines?

5 Q. Actually, it's, yeah, the first two lines.

6 Let me just read it into the record. Qwest
7 Communications has more than \$6 billion of debt
8 coming due through 2005. Do you see that?

9 A. Yes.

10 Q. And then, just below those bullets, do you
11 see the sentence that says, To meet these maturities,
12 Qwest must complete the sale of its directories
13 business in 2003?

14 A. Yes, I see that.

15 MR. HARLOW: Thank you. Your Honor, we
16 offer Exhibit 420.

17 JUDGE MOSS: Hearing no objection, it will
18 be admitted as marked.

19 Q. If you would turn to Exhibit 370, your
20 prefiled testimony, in particular pages 29 to 30.

21 A. Did you say page 29?

22 Q. Pages 29 to 30. At the bottom of page 29,
23 you refer to the new owner's status as an affiliated
24 interest. Do you see that testimony?

25 A. Yes, I do.

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1 Q. Okay. And is that based on the provisions
2 of RCW 80.16.010? And if you need me to, I can
3 provide you with a copy to refer to.

4 A. I would appreciate that. Thank you.

5 MR. HARLOW: May I approach, Your Honor?

6 JUDGE MOSS: Yes.

7 MS. SMITH: Your Honor, may I have the
8 statutory reference again?

9 MR. HARLOW: RCW 80.16.010.

10 MS. SMITH: Thank you.

11 Q. And if you'll look at the sixth paragraph
12 down, which is the second one from the bottom of that
13 section, where it states, every corporation or person
14 with which the public service company has a
15 management or service contract. Do you see that
16 phrase?

17 A. Yes, I do.

18 Q. Is that the basis on which you assume the
19 that the new owner would be an affiliated interest?

20 A. I wouldn't use the term assume, but yes,
21 that's the basis.

22 Q. And in this instance, the public service
23 company would be Qwest; is that correct?

24 A. It would be Qwest Corporation.

25 Q. And the -- thank you for that

1443

1 clarification. And the affiliate, in your belief,
2 would be Dex Holdings or perhaps one of its
3 subsidiaries?

4 A. Exactly, and I don't really know which
5 corporate entity that is, but it's one of the Dex
6 media companies.

7 Q. And it would be correct, would it not, that
8 Dex media companies or Dex Holdings would not be a
9 public service company?

10 A. As far as I know, they would not be. I
11 can't say that I really know everything that they do.

12 Q. Okay. At the top of page 30, in line
13 three, you contend that since the buyer would be an
14 affiliate, the Commission could examine its books and
15 records. Do you see that testimony?

16 A. Yes.

17 Q. And do you have in mind a statutory basis
18 for that assertion?

19 A. I think that I had in mind 80.16.020.

20 Q. Any particular provision of 020?

21 A. Well, I think the -- it would be the
22 section read in its entirety, but the particular
23 sentence that I would think is most on point is the
24 second to the last sentence that says, Any time after
25 receipt of the contract or arrangement, the

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1 Commission may institute an investigation and
2 disapprove the contract arrangement, et cetera.

3 Q. Is there any provision in there that -- in
4 particular that grants the Commission direct
5 jurisdiction over affiliates of public service
6 companies?

7 A. I'm not sure one way or the other.

8 Q. Would you please turn to the excerpt I've
9 provided you for RCW 80.04.070?

10 A. I see that.

11 Q. And you see that it gives the Commission
12 the power to inspect the books and papers and so
13 forth of public service companies?

14 A. Yes, it does.

15 Q. There's no mention of affiliates in that
16 section, is there, Dr. Blackmon?

17 A. No, there's not, either way.

18 Q. Would you turn to RCW 80.04.100?

19 A. I've got that.

20 Q. And this section generally permits the
21 Commission to require production of out of state
22 books and records. Do you see that that also refers
23 to public service companies?

24 A. Yes, I do.

25 Q. And once again, there's no mention of

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1 production of out of state books and records by
2 affiliates; is that correct?

3 A. That's right, no mention either way.

4 MR. HARLOW: Your Honor, we offer Exhibits
5 410 through 413, and 417.

6 JUDGE MOSS: Any objection to any of those?

7 MS. SMITH: Yes, Your Honor. I don't
8 believe we object to 417.

9 JUDGE MOSS: Well, I need to know one way
10 or the other.

11 MS. SMITH: Yes, I'm trying to find them,
12 as well, in my book so I can articulate my objection.
13 I have no objection to 417. I believe I heard Mr.
14 Harlow offer Exhibit 410. That relates to the ConTel
15 Leland Mast sale. We object to 410 on grounds of
16 relevancy, on grounds of settlement privilege. We
17 object to 411 on the same grounds. We do not object
18 to 412. We object to 413 on the basis that it calls
19 for a legal conclusion.

20 MR. HARLOW: When you're ready, Your Honor.

21 JUDGE MOSS: Okay. We have objections to
22 -- I guess we can probably take 410 and 411 together,
23 since the objection in both instances is that the
24 Staff responses to data requests in these instances
25 relate to settlement privilege and -- was relevance

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1 the other part of your objection?

2 MS. SMITH: That's correct, Your Honor, and
3 I believe the Commission Staff had made a blanket
4 objection on the grounds of both not calculated to
5 lead to the production of or the discovery of
6 admissible evidence and the settlement privilege. I
7 believe we had a blanket objection to that when we
8 responded to the data requests.

9 JUDGE MOSS: Okay. Mr. Harlow, did you
10 have some argument to make with respect to the
11 objections that are relevance and violation of
12 settlement privilege?

13 MR. HARLOW: Before I do, Your Honor, I
14 didn't catch for sure whether there's an objection to
15 412.

16 JUDGE MOSS: No, no objection to 412.

17 MR. HARLOW: Yes, Your Honor, as to the --
18 I'll just lump the ConTel objections together. 410,
19 the response provides, in part, In response to the
20 second sentence, no up-front cash was provided to
21 ratepayers in the settlement agreement approved by
22 the Commission. Cash was returned to the ratepayers
23 through a reduction in rates relative to what
24 otherwise would have been justified. So the response
25 specifically incorporates the provisions of the

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1 Commission's order and helps shed some light on that.
2 That's already been admitted.

3 As to 411, again, the response starts out,
4 Staff believes that the Commission order approved a
5 five-year amortization period. So again, this
6 specifically reflects the Commission's order for
7 whatever guidance it might provide this Commission in
8 this case.

9 As to 413, that calls for a legal
10 conclusion. This was simply, if you will, a
11 contention interrogatory, and we were attempting to
12 determine what Staff's contention was with regard to
13 the Commission's ability to impose regulatory
14 requirements relating to directories in the future.
15 So we think it's an appropriate exhibit. Have I
16 covered all the objections that were raised? I think
17 so.

18 MS. SMITH: Your Honor, I have more
19 argument with respect to the ConTel exhibits, if the
20 Bench would like to hear it.

21 JUDGE MOSS: Okay. With respect to 410 and
22 411, to the extent these relate to and purport to
23 illuminate potentially our understanding of the order
24 in the ConTel proceeding, the Bench finds the order
25 will speak for itself and the objection therefore is

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1 sustained with respect to 410 and 411. 412 will be
2 admitted as marked, there being no objection. 417
3 will be admitted as marked, as will 420. Again,
4 there being no objection to either of those.

5 That leaves us with 413, where the
6 objection is that the question calls for a legal
7 conclusion, and I haven't even had an opportunity to
8 read it yet, so I'd like to have that opportunity.

9 413, the objection is sustained. And I
10 take it, you having moved your exhibits, that that
11 completes your cross?

12 MR. HARLOW: Yes, Your Honor.

13 JUDGE MOSS: Okay, thank you. That brings
14 us to questions from the Bench, and so I need to
15 pause, and we'll go off the record momentarily.

16 (Discussion off the record.)

17 JUDGE MOSS: We're thinking we'll take a
18 15-minute break and push on. Let's see where we are
19 at this juncture. We'll have questions from the
20 Bench, I don't know how extensive that might be, then
21 we have an opportunity for follow-up, then we'd have
22 an opportunity for redirect.

23 MS. SMITH: At this point, I have very
24 minimal redirect.

25 JUDGE MOSS: Okay, so that's --

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1 MS. SMITH: So far.

2 JUDGE MOSS: -- that's encouraging,
3 considering the hour of the day.

4 COMMISSIONER HEMSTAD: Do any other parties
5 have cross?

6 MR. CROMWELL: I do not, Your Honor. I
7 would like -- if we could get a rough time estimate
8 in toto?

9 JUDGE MOSS: From the Bench? I never ask,
10 Mr. Cromwell.

11 MR. CROMWELL: I'll be impertinent enough
12 to ask, just so that I know to cancel plans that I
13 have this evening if I'm not going to be able to meet
14 them.

15 JUDGE MOSS: That's a fair question.

16 CHAIRWOMAN SHOWALTER: I think it's really
17 hard to predict that. I really do.

18 MR. BUTLER: Right now, my effective
19 billable rate per question asked is infinitely large,
20 and I wouldn't dare jeopardize it.

21 COMMISSIONER HEMSTAD: I'd surely say a
22 minimum of 20 minutes.

23 JUDGE MOSS: Well, we have that, and then
24 of course I understand there's the need to have some
25 discussion concerning the briefing schedule, we have

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1 some other housekeeping matters to take care of. Of
2 course, the Commissioners can be off the Bench for
3 that sort of thing, but the parties will need to be
4 present to the extent they wish to have their views
5 represented in those procedural matters and some
6 substantive matters concerning exhibits I'm going to
7 move from the Bench.

8 So I'd say if we take a 15-minute break
9 now, we'll be at least a half hour, that will take us
10 to 6:00, and more likely 45 minutes is reasonable.
11 So that would be my guess. Okay. Let's do take our
12 15-minute recess.

13 CHAIRWOMAN SHOWALTER: I just want to say
14 one thing. I'm very sensitive that the last witness
15 of a case get his or her fair time on the stand. If
16 you look at all of the other witnesses, lots of time
17 was spent by lots of people with them, which is good.
18 We learn a lot as we go along, but --

19 JUDGE MOSS: This is off the record.

20 (Recess taken.)

21 JUDGE MOSS: Let's see if we can dispense
22 with some of these housekeeping matters, if they
23 don't raise controversy. Which exhibits, Mr. Sherr?

24 MR. SHERR: Sure. We'd move for the
25 admission of cross exhibits 372 through 377, 372

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1 through 377, 381 through 383, 385 through 387, 390
2 and 391, 393 and 394, 396 through 398, 400, 403, 423
3 and 424.

4 JUDGE MOSS: Any objection to any of those?

5 MS. SMITH: Yes, Your Honor. Commission
6 Staff objects to Exhibit 423 on the grounds that I
7 stated earlier when I objected to this exhibit being
8 used in the cross-examination of Dr. Blackmon. I
9 don't know if you want me to restate those grounds or
10 not.

11 JUDGE MOSS: No.

12 MS. SMITH: No objection to -- well, I'll
13 just state those that I have an objection to.
14 Commission Staff objects to Exhibit 390. We believe
15 that that data request and response -- the data
16 request is beyond the scope of Dr. Blackmon's
17 testimony. We object to 396. We find that that
18 calls for a legal conclusion. And I apologize, I
19 don't recall if Mr. Sherr moved for 405.

20 JUDGE MOSS: He did not.

21 MS. SMITH: Then I don't have an objection
22 to that.

23 JUDGE MOSS: As to the balance, you have no
24 objection?

25 MS. SMITH: That's correct, Your Honor.

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1 JUDGE MOSS: All right. We'll admit 372
2 through 377. We'll admit 381 through 383. We'll
3 admit 385 through 387. We'll admit 391. 393 and 394
4 will be admitted. 398 and 400 will be admitted. 403
5 will be admitted. 423 will not be admitted for --
6 consistent with the Bench's prior determinations.
7 Did -- I circled 424. Did you move 424?

8 MR. SHERR: I did.

9 JUDGE MOSS: That's an excerpt from our
10 transcript?

11 MR. SHERR: It is.

12 JUDGE MOSS: I don't think we really need
13 that as an exhibit. You can refer to the transcript.
14 We'll have it as part of our record. I don't think
15 we need it as a separate exhibit, so I'll go ahead
16 and deny 424 for that reason. It's duplicative.

17 That brings us back to the objections to
18 390, objected to as being beyond the scope. Give the
19 Bench a minute to locate that and take a look at it.

20 MR. SHERR: Your Honor, I withdraw 390.

21 JUDGE MOSS: Withdraw 390. What about 396?
22 It's argued that it calls for a legal conclusion.

23 MR. SHERR: Yes, and Your Honor, the
24 objection is that it calls for a legal conclusion,
25 and what the question was calling for was Dr.

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1 Blackmon's opinion or understanding. It says, Does
2 Dr. Blackmon agree that the Commission would lose
3 authority to control, et cetera. So the question is
4 trying to test his understanding or his belief as to
5 that matter.

6 JUDGE MOSS: Well, these types of questions
7 are a little bit problematic perhaps in the sense
8 that the law is what the law is. To the extent it's
9 argued on brief, the Commission will make its
10 determinations as to the appropriate outcomes.

11 On the other hand, persons in positions
12 such as Dr. Blackmon, as a member of the regulatory
13 agency, are in frequent position of having to
14 interpret and apply the law and testify with respect
15 to its requirements, and so when they do so,
16 questions related to their views on the subject is
17 fair game, I think, so I think that understanding
18 that the objection goes more to the weight in that
19 sense, we'll admit that 396.

20 Does that -- I think that takes care of it. No,
21 no. Yes, it does.

22 MR. SHERR: Thank you, Your Honor.

23 MR. BUTLER: Is 397 admitted? I'm sorry.

24 JUDGE MOSS: 397 was not offered.

25 MR. SHERR: Your Honor, it was. I offered

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1 396 through 398.

2 JUDGE MOSS: I'm sorry. For some reason,
3 it was not reflected in my notes. 397, I think there
4 was no objection, then. Sure, I might have missed it
5 once, but not twice. Okay. That will be admitted,
6 then. 397 will be admitted as marked. Thank you for
7 catching that.

8 Anything else on exhibits? Then I believe
9 we are ready for our questions from the Bench.

10

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

12 BY CHAIRWOMAN SHOWALTER:

13 Q. Okay. Dr. Blackmon, I have just a few
14 preliminary questions, the answers to which are
15 probably somewhere in the record, and I'm looking for
16 magnitude and proportion. If you can tell me, what
17 percent of Dex West's revenues are attributable to
18 Washington?

19 A. In general terms, I could tell you it's in
20 the range of 17 to 19 percent.

21 Q. And I am only interested in general.

22 A. I'm sorry, I misstated, because I answered
23 for all of Dex. It would be about 30 percent.

24 Q. And do you know the comparable percentages
25 for Arizona?

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1 A. No, I don't.

2 Q. Then I'm also trying to get a feel for the
3 relative magnitude of Dex revenues -- or excuse me,
4 of the importance of Dex to the profitability of
5 either QCII or -- well, yeah, QCII. In other words,
6 if you look at profits, maybe we could limit this
7 question to if you looked at QC plus Dex, do you have
8 a meaningful way to relate how important the Dex
9 revenues are to the profitability of those two
10 entities combined? And I'm not looking at Washington
11 only at this point.

12 A. I don't have those numbers in my head, but
13 they are quite easy to get to. I think Dr. Selwyn
14 has some evidence on that in some of his exhibits.

15 Q. All right. And another financial question.
16 The books of Qwest keep getting revised, and
17 obviously we don't know until a final report is in,
18 but I'm wondering, for purposes of this hearing and
19 this decision, do you feel that we have sufficient
20 information of Qwest's financial status prior to
21 getting final audited books, if that's the right
22 term? What is the right term, an unqualified opinion
23 or --

24 A. That sounds good to me. I think I know
25 what you mean, the auditor --

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1 Q. The thing that's being revised continually?

2 A. Right. It is prepared to certify the books
3 without stating any exceptions or concerns about
4 them. Sort of like how Arthur Andersen did before --
5 have to have a different auditor do it now.

6 Q. I think people are a little more careful
7 nowadays.

8 A. I hope that's true. The -- I believe that
9 you are put at a disadvantage in being asked to make
10 this decision when Qwest's financial statements are
11 not verified. And when they are being revised over
12 and over, so to speak, to some extent, those are --
13 you know, have to do with the recognition of revenues
14 for fiberoptic capacity sales and things like that
15 that don't directly relate to this transaction one
16 way or the other.

17 But to the extent the Commission is being
18 asked to make a decision based on the claim that
19 without the Dex sale, bankruptcy is likely, those
20 financial statements would help the Commission
21 understand that, as well as they would also help the
22 company reduce that likelihood. If it had good
23 financial statements, it would be in better financial
24 shape in and of itself.

25 Q. You mean the mere filing of financial

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1 statements increases the viability of the company?

2 A. Yes, that's correct. The likelihood of
3 bankruptcy, in part, depends on their access to the
4 capital markets, and their access to the capital
5 markets depends on their ability to tell investors
6 where the money's going to come from, and they look
7 at the current books of the company in making that
8 judgment.

9 CHAIRWOMAN SHOWALTER: All right. We could
10 take this up later, but I think we should probably
11 have a bench request that asks for the updated
12 reports or -- as they come in pending completion of
13 our case, and we can handle that administratively
14 later if you like.

15 JUDGE MOSS: I would like to know through
16 what date, through the close of the record or through
17 the briefing period or --

18 CHAIRWOMAN SHOWALTER: Well, that's a good
19 question. I don't know. I guess the close of the
20 record.

21 JUDGE MOSS: All right. Bench Request
22 Nine, and I'm sorry, yes, it will be actually Bench
23 Request Nine will be updated financials for which
24 entities?

25 CHAIRWOMAN SHOWALTER: Well, I believe it's

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1 QCI that has had the revisions, but I suppose if
2 there are other ones that come in, and I don't mean
3 to call for everything that happens every day, but I
4 think if there are revised financial reports that
5 change what we otherwise see in our record, we should
6 have those revisions.

7 JUDGE MOSS: And since this will be part of
8 our record and will have to be relied on for briefing
9 purposes, my recommendation would be that we say
10 through the end of today.

11 CHAIRWOMAN SHOWALTER: Oh, well, all right.
12 That won't do much good, then.

13 MS. ANDERL: Well, Your Honor, to the
14 extent that we have them audited -- restated audited
15 certified financials, they may come out subsequent to
16 today, but they may cover a period that's relevant up
17 to today or something like that.

18 CHAIRWOMAN SHOWALTER: That's my concern.

19 MS. ANDERL: That's what I understood Judge
20 Moss to be saying. We don't have anything that we
21 could file right now.

22 JUDGE MOSS: My other concern, though, is
23 that I don't want to see these filed with the reply
24 briefs, because that's then going to precipitate a
25 motion to have further briefing.

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1 CHAIRWOMAN SHOWALTER: Well, I guess my
2 concern is that if we're actually relying in our case
3 and on briefs on information that is later revised,
4 then our information is no longer accurate, I think
5 that's a problem. I suspect this won't happen, but
6 if we're going to base our decision on something that
7 we actually know is going to be revised and we have
8 that revision, I would say, at least prior to
9 briefing, that seems as if it should occur. I'm
10 willing to discuss this at a later time.

11 JUDGE MOSS: Through initial briefs
12 perhaps?

13 CHAIRWOMAN SHOWALTER: That will be okay.

14 JUDGE MOSS: We'll issue a written Bench
15 request.

16 MS. ANDERL: Thank you, Your Honor.

17 Q. All right. Turning to your primary
18 recommendation, which is that we deny the sale?

19 A. Yes.

20 Q. First, we are now at the end of the
21 hearing, and you have heard all the witnesses. Is
22 that still your first recommendation?

23 A. Yes, it is.

24 Q. And I'd like to follow through what the
25 consequences of that would be, so assume that we

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1 accept your recommendation, we deny the sale, our
2 approval of the sale.

3 Based on your understanding of financial
4 incentives on the part of a company and the buyer and
5 maybe other states, do you think the most likely
6 consequence of that would be that the sale of Dex
7 West simply does not occur and it stays with the
8 company, or do you think the parties and other states
9 would be motivated to renegotiate the sale around the
10 state of Washington?

11 A. First I would say that I don't think the
12 other states would, in terms of state commissions or
13 whatever, would have much of an interest in it one
14 way or the other. And I believe that I really can't
15 say which is more likely, but the two likely
16 scenarios are that Qwest, QCI, decides not to pursue
17 the sale based on this decision.

18 The other one is, as you suggested, that
19 they renegotiate or at least attempt to renegotiate
20 with the current buyer for a six-state deal. I know
21 that there was some talk about doing that earlier at
22 points when it looked like the timing of the
23 different states might be significant and not talk in
24 the form of Qwest officially saying that, but a lot
25 of the financial analysts wondered about that

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1 possibility and asked us about it.

2 So I think either one of those is possible,
3 and to some extent Qwest would want to look at the
4 financials again, give that a fresh look, and they'd
5 want to go look at the contract and see what sort of
6 liability they would face, if any, from not
7 attempting to renegotiate without Washington.

8 Q. And I thought I heard you say you felt the
9 other states wouldn't have much of an interest one
10 way or the other, and wouldn't that interest, in
11 part, turn on their views of whether no sale would
12 put QCII into potential bankruptcy and their further
13 view of how -- of what that would mean for their
14 regulated utility?

15 A. Well, it might, and I may be wrong about
16 the attitude of the Utah Public Service Commission or
17 the Arizona Corporation Commission. Those are really
18 the only two that seem to have had much of an
19 involvement in it at all, but that's just my
20 impression.

21 Q. So now I want to ask you a little bit about
22 if there were no sale, is it your view that QCII
23 could survive that financially? In other words,
24 there would not -- there would -- it would be more
25 likely than not that no bankruptcy filing would

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1 occur?

2 A. I believe that at this point, even if the
3 sale does not close, the Rodney sale, that Qwest
4 Corp. Communications International will not end up
5 seeking bankruptcy protection, not within the
6 foreseeable, you know, one to two to three-year
7 future.

8 Q. And I want to ask you ultimately why, but
9 one of the things that occurs to me is the ARCA
10 agreement was a renegotiation of various financial
11 obligations in which the company and the creditors of
12 some sorts felt that that was a good way to keep the
13 company alive enough to pay those extended terms, and
14 it includes the provision of the sale. Am I right so
15 far?

16 A. Yes, but that's a very inexact statement.
17 It is correct, but to say that it includes the sale
18 --

19 Q. Well --

20 A. -- it's not conditioned on the sale. It
21 is, like, say a -- if you borrow money against your
22 income tax refund, where you want the money now for
23 something you're going to get in the future, the ARCA
24 lenders have said that, to the extent you get money
25 from selling Dex, we want you to use it to pay this

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1 debt, but the two -- it's not conditioned on that.
2 And if Qwest doesn't sell Rodney, they are not in any
3 way in violation of the ARCA. It doesn't cause the
4 ARCA lenders to be able to foreclose on the company
5 or anything like that.

6 Q. And without the sale, do you think that
7 QCII is in a position to make the payments that it is
8 required to make to avoid creditors foreclosing?

9 A. In general, yes, I do. And it's not --
10 sometimes the way they make the payments is that they
11 renegotiate the loan or they refinance the loan. For
12 instance, Qwest has -- Qwest Corporation has a one
13 billion dollar maturity coming up here in a couple of
14 weeks. They will essentially refinance that.
15 Actually, they'll improve the interest rate from
16 seven and five-eighths to seven percent, still not a
17 very good interest rate, but they will refinance that
18 loan, carry it forward to 2007. The ARCA was a sort
19 of a refinance of an earlier agreement.

20 The company may not necessarily pay down
21 debt as fast without the sale as it would with the
22 sale, but it does not follow from that that they will
23 default on those loans without the sale of Dex.

24 Q. What is your explanation of -- well, if you
25 have one, of why, for example, Mr. Brosch has a

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1 different view of the financial vulnerability of QCII
2 and what that means to the ratepayers? I mean, where
3 does the difference of opinion lie? Is it in how
4 vulnerable the company is or even if the company's
5 vulnerable, goes bankrupt, it's -- your position is
6 it's not so very worrisome? Where do you see the
7 main tension point between you and the selling
8 parties being? And aside from the value of the gain.
9 That's a sort of separate question.

10 A. Right. And I, in testifying on the
11 settlement, I discuss the different approach that
12 we've had from the settling parties, and I believe
13 that we have looked more thoroughly at the bankruptcy
14 scenarios than the other parties have. I mean, I'm
15 not trying to be critical, but I believe that that is
16 the distinction.

17 And I believe that we have looked very
18 carefully at the corporate structure issues. For
19 instance, Mr. Brosch and Mr. Reynolds both have
20 testified about cash management activities that I
21 believe there is more separation and more protection
22 of the regulated company than either of those
23 witnesses stated in their testimony.

24 And so I think -- you know, and I can't
25 really say what they thought about and what they

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1 haven't, but I do know that we have thought and
2 analyzed very carefully the bankruptcy scenario, both
3 in terms of the likelihood and the effects. And
4 based on that, we've concluded that Qwest has
5 overstated the consequences of that path, and that
6 has caused us to be more willing to take the chance
7 on that path than the other parties have been.

8 Q. But now, it's the case, isn't it, that you
9 think there's less of a -- a lower chance of filing
10 bankruptcy than the settling parties would seem to
11 think, as well as a lower chance of truly adverse
12 consequences should there be a bankruptcy; am I
13 right?

14 A. I'm not sure, because I'm not sure if the
15 non -- well, if the settling parties, the consumer
16 parties, if their decision to enter the settlement is
17 based on the risk of bankruptcy or another theory
18 would be that they've concluded, under the State
19 Supreme Court decision, that they don't really have
20 any say or that this Commission doesn't really have
21 any say in the transfer itself, that the Commission
22 is limited to questions of the disposition of the
23 gain. So I'm just not sure.

24 Q. In response to some cross-examination, I
25 believe you said that you had heard Mr. Kennard say

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1 that a healthy company would not be selling the
2 Yellow Pages. I heard him say that, too. And then I
3 thought you suggested that because the goal of
4 bankruptcy is to have a company emerge in a healthy
5 manner, that therefore also the Yellow Pages would
6 not likely be sold in bankruptcy, and it didn't seem
7 to me Mr. Kennard actually said that, unless I just
8 missed it.

9 Isn't there a distinction between what a
10 generally healthy company would choose to do and what
11 a bankruptcy judge decides to do in order to satisfy
12 the creditors when you have an unhealthy company?
13 And it's really that question that I think is the
14 most relevant. That is, would a judge or would the
15 creditors urge the sale of the -- separate sale of
16 the Yellow Pages in that situation? And you were
17 saying no, because you think the whole is worth more
18 than the parts.

19 A. And I agree that Mr. Kennard did not say
20 that, in bankruptcy, the two would go together. What
21 I said was that if you put his testimony about what a
22 healthy company does together with Mr. Mabey's
23 testimony about what the creditors will do in
24 bankruptcy and the bankruptcy judge will do, but
25 ultimately, or effectively, it really is the

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1 creditors who are making that decision in the
2 bankruptcy.

3 He said that the goal, the objective of the
4 creditors is to have the company emerge as a healthy
5 company that has similar characteristics to the other
6 companies in the industry, things like their level of
7 debt, items like that, that they will come out as a
8 viable company, one that will not be making a U-turn
9 a few months later back into bankruptcy.

10 And so I believe that if you put those two
11 pieces of testimony together, that you conclude, you
12 should conclude that, within bankruptcy, their
13 creditors will look at Verizon and SBC and BellSouth,
14 and they will say we need to structure a company that
15 looks like that, one that has a directory publishing
16 operation as a stable, strong source of revenue.

17 Q. I'm going over ground again, but I didn't
18 really understand it. In the ARCA agreement -- or
19 not the agreement, but part of the plan that Qwest
20 has includes the ARCA agreement and the Dex sale.
21 Why wasn't it in either -- in someone's interest,
22 either Qwest's or the creditors, to keep Dex together
23 with the utility in the current situation?
24 Obviously, a different choice was made, so what
25 motivated that choice and why is that a different

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1 motivation than the creditors in a bankruptcy?

2 A. The creditors in a bankruptcy have a clean
3 slate to work with. They will be -- they will not be
4 constrained by the levels of debt and the repayment
5 schedules that the company would face without
6 bankruptcy. And so with that clean slate, that's
7 where I think they will decide if having the
8 publishing business with telephone business is the
9 way to get the most amount of their money back.

10 Before you get to bankruptcy, you get to
11 likelihoods of bankruptcy. And I believe that last
12 summer Qwest did face the likelihood of bankruptcy.
13 It was more likely then than it is now. And when a
14 company is -- as their risk of bankruptcy increases,
15 the executives at the company who owe their duty to
16 the stockholders will not necessarily take the same
17 actions or make the same decisions that they would in
18 a bankruptcy -- you know, it's -- you can take --

19 Q. Because the shareholders get wiped out
20 altogether?

21 A. Exactly, because they get wiped out
22 altogether.

23 Q. In a bankruptcy.

24 A. At that point last year, there was maybe
25 only a billion dollars of market capitalization left

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1 in Qwest, but the stockholders of Qwest and the
2 executives who worked for them felt that they were
3 more likely to be able to keep their billion by
4 selling Dex, even if they sold it under what would
5 not seem to be good terms, than they would if they go
6 into bankruptcy or even take the risk of going into
7 bankruptcy.

8 Q. All right. Now I want to go down a
9 different path. Supposing that we deny our approval
10 of the sale and the result is that there is a
11 negotiation around the -- a renegotiation around the
12 state of Washington and Dex minus Washington is sold.
13 First, I think you said you didn't think that was the
14 most likely probability, possibility?

15 A. I think I said that the two -- I didn't
16 really see one as more likely than the other.

17 Q. Okay. Well, let's say that is what
18 happens.

19 A. Mm-hmm.

20 Q. If that is the result, do you think that
21 the -- as you play out the consequences of that
22 result, do you think that Washington and Washington's
23 -- Qwest's ratepayers are better off?

24 A. Better off than what?

25 Q. Than if we approve -- I'll have to take one

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1 choice here -- the settlement. And what I'm
2 specifically getting at, I think, is what it would
3 mean to have a Yellow Pages operation on a kind of a
4 stand alone basis and how viable it would be and how
5 much benefit it would provide to the Washington
6 ratepayers?

7 A. I believe that the ratepayers, you know,
8 the telephone company ratepayers would do fine in a
9 scenario where Qwest Corporation in Washington
10 fulfills its directory publishing function without
11 being -- without this 50-year contract that is
12 proposed here.

13 I believe that -- I mean, I doubt that they
14 would do it by hiring the employees to do it
15 themselves. I think it's more likely that they would
16 enter into a publishing agreement with someone else,
17 R.H. Donnelly, Verizon. There are many choices that
18 would be there. And that they would not do it on a
19 50-year schedule; they would do it for a more finite
20 period of time and they would receive a very
21 reasonable level of publishing fees for the access
22 that they get through the telephone company and the
23 designation of the official publisher.

24 Q. Wouldn't the new Dex, that is, the sole Dex
25 or any other Yellow Page publisher be in a pretty

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1 good position simply to compete? That is, the
2 question is what is the real value that is left?
3 Certainly you get to say, This is the official book.
4 That would be left. Anybody can put -- tack on the
5 White Pages to the Yellow Pages, so that's not much
6 value, so what do you see as the way that the QC
7 operation could maintain the benefit for the
8 ratepayers, as opposed to having it competed away
9 somehow?

10 A. Well, I think it -- it's the same old way
11 that it's always been, that the telephone company's
12 book commands higher advertising rates; it commands
13 higher market share as far as the number of
14 advertisers who choose to advertise there. Because
15 it is the telephone company's book, it's seen as the
16 most reliable source of information. Even if it's
17 not the most reliable, it is seen as the most
18 reliable, and that designation Qwest can -- will be
19 able to hold on to. I think the bigger question is
20 whether it's transferrable to Dex media. Obviously
21 Dex media thinks that it is transferrable, that
22 market leader position. They bet a lot of money on
23 the fact that they can transfer it.

24 But I also think that if Qwest Corporation
25 decides not to transfer it, that they can hold on to

1 it and get significant value by doing that.

2 Q. So how much stock do you put in to the
3 testimony of others that what really matters is the
4 relationships of the marketers to the ad people, and
5 that people recognize the marketers that call them up
6 or they recognize a big huge fat Yellow Pages book,
7 but not so much this is the official version. Sort
8 of like a restaurant under new management. People go
9 to the restaurant, but then they get on to the idea
10 this is not the same chef.

11 A. Right.

12 Q. And by the way, the old chef said, I'm the
13 famous chef and now I'm in a different restaurant?

14 A. Well, I guess, in that analogy, it's Qwest
15 Corporation that's the famous chef, and they might
16 say, you know, we used to be in the mall and now
17 we're over here downtown, but we are still the one
18 that's associated with, in this case, with the
19 telephone company.

20 And the association with telephone company,
21 I think, is very important, in terms of the
22 advertisers -- as far as I know, most businesses feel
23 an imperative to advertise in the official phone
24 book, and maybe one of these days somebody else will
25 come along and knock that imperative off its

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1 pedestal, but it hasn't happened yet and I don't see
2 it happening soon.

3 Q. And you don't see this situation as
4 possibly being that opportunity because so much of
5 the operations necessary to compete would have been
6 sold off? That is, you say the chef is QC, but maybe
7 the chef is these marketers and employees and the
8 know-how?

9 A. I don't -- you know, there have been some
10 questions about the sales and service, the master
11 sales agreement between Qwest Corporation and Qwest
12 Dex today, Dex media in the future. I think once you
13 get that, you'll have a better understanding of how
14 Qwest Corporation is involved in the sales, the
15 billing, and the collection of directory advertising.
16 It's not just Qwest Dex employees who engage in that
17 business.

18 Also, the national advertisers operate
19 these CMRs that they deal with large national
20 companies on behalf of all the directory publishers.
21 I believe that the publisher who publishes the Dex
22 Washington book would participate in the same way in
23 that, and so I think that that sales function is one
24 that, just as Dex media can do it, so could Donnelly
25 or Verizon. Donnelly has a sales office in

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1 Toppenish, so they can sell directory advertising
2 here in Washington, too.

3 Q. All right. My last area of inquiry is if
4 we do approve the sale, I'd like to ask you a little
5 bit more about the conditions that you think are
6 advisable or not, and is -- one of the problems, I
7 suppose, with a contract is that -- with contractual
8 obligations is that in a bankruptcy they may not be
9 honored or that you might not get enough on the
10 dollar. Is the reason -- is one of the reasons that
11 you recommend the contract that you're not very
12 concerned about the bankruptcy happening?

13 A. Well, that's not the reason. I mean, the
14 reason is we're trying to line up the money with the
15 corporations so that if Qwest Communications
16 International is going to get the check for \$4.3
17 billion, that they need to be the one that funds the
18 customer benefits, whatever they are, that go forward
19 into the future. So really that's the reason for the
20 contract. And it was not proposed because we thought
21 that it was more secure than the revenue credit
22 approach. It was trying to line up the corporations
23 with the money.

24 So I guess I would say that to the extent
25 that we have less concern about bankruptcy, we would

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1 be, you know, any weaknesses in the contract approach
2 would be of less significance to us, I think.

3 Q. And if you are more concerned about
4 bankruptcy, do you see the advantages of the credit
5 and imputation that Mr. Mabey, I guess it was,
6 emphasized?

7 A. It's not clear to me that one of those is
8 superior to the other in terms of bankruptcy. I
9 certainly think that, under either approach, to
10 structure it carefully with bankruptcy possibilities
11 in mind, to have Qwest Corporation represented
12 separately from QCII in developing a contract, if the
13 contract approach were used, I think would be
14 advisable. It should be done very carefully with the
15 independent interests of those two companies
16 protected.

17 Q. And then now, turning to the concept of
18 writing down rate base, I think you -- that you --
19 that you did have some discussion on that. I'm
20 trying to understand, part of the problem with doing
21 an offset to rate base seems to be that the beginning
22 amount is so large that it triggers, in essence, too
23 large of a rate decrease or an interest in a rate
24 decrease; is that right?

25 A. I know that some of the witnesses that

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1 you've heard have expressed that concern, yes.

2 Q. Do you have that concern?

3 A. To some extent, I do. I think it's a more

4 viable option than has been suggested to you so far.

5 To some extent, it depends on the amount. If we were

6 talking about a billion and a half dollars of rate

7 base reduction, that would have a very large effect

8 on revenue requirement calculations and things like

9 that.

10 If you were talking about, you know, a

11 multiple approach involving customer credits up

12 front, revenue credits over time, and an offset to

13 rate base in order to achieve some total amount that

14 you decided was the appropriate amount, then the

15 effects of the rate base adjustment would not be as

16 pronounced and it would be, I think, more viable as a

17 component of a package than as the one and only

18 solution.

19 Q. Then I think Mr. Brosch said that if you

20 had a -- if there were a amortized decrease in rate

21 base over 15 years, there would be a motivation for

22 the company to keep coming in for rate case after

23 rate case in order to adjust to the lower amounts.

24 Supposing we started off with a rate case

25 to find out from what base -- what base we were

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1 offsetting, and the rate base reduction were a
2 stairstep over 15 years, that is, a certain amount
3 for five years, another amount for another five years
4 and a lower amount for another five years, and then
5 zero, would that have the same or would that solve
6 the incentive to come in for rate cases frequently,
7 that is, wouldn't it be every five years in that
8 case?

9 A. I think you could probably set something up
10 like that. I also think that that concern is
11 overstated. There are lots of factors going both
12 directions there, you know, the depreciation tends to
13 cause investment rate base to go down over time. On
14 the other hand, additional investments cause rate
15 base to go up over time. Amortizations will go down,
16 they may be replaced by other things over time, too.
17 I don't think it's -- in isolation, it can look
18 significant, but when you throw it in to, you know, a
19 billion dollar annual revenue requirement
20 calculation, it will not be much of a factor, I don't
21 believe.

22 Q. But this idea of an offset to rate base or
23 reducing rate base didn't seem to be in any of the
24 parties' first choices or second choices even, and
25 why is that? Speaking for yourself?

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1 the mechanics of it turned out to be difficult. To
2 truly embed it into the books of the company, it
3 would require writing off actual physical plant, and
4 that would affect the depreciation lives or the
5 depreciation rates that are used under the remaining
6 life calculation.

7 We worked hard on it, we got lots of good
8 advice on that from the various parties in this case,
9 in fact, and ultimately decided that in terms of
10 something that we could present to you that would be
11 clean and clear, that it needed to be something that
12 was simpler than that. I would say that if you end
13 up deciding that you want some sort of approach like
14 that, that you ought to name the amount and then tell
15 the parties to go back and figure out if there's a
16 way to do it or not, and if possible don't -- you
17 know, let us, if necessary, come back to you and say
18 we just can't do it that way, we need to find some
19 other way.

20 Q. All right. I think this is my last
21 question. There's a fair amount of testimony in the
22 Staff's case that seems to suggest that, you know, if
23 a settlement is only over 15 years, but the
24 publishing agreement and other agreements are over 40
25 years, there's something wrong with that. Can you

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1 just -- I mean, my initial reaction anyway was, well,
2 the price could have been all at one time. I mean,
3 you could have -- you could have a sale where there's
4 a one-time payment of \$1.2 billion and a 40-year
5 agreement on the other end. It's that the sale price
6 needs to be fair in relation to what is being given
7 up, but they need not, for that purpose, be aligned.
8 And I'm wondering, are you suggesting that that
9 demonstrates that sale price is wrong or you feel
10 that somehow the whole sale and transaction ought to
11 be somewhat aligned, and I'm not sure why, but do you
12 at least get the gist of my question?

13 A. Yes, I think so. And that term, the 40
14 years and 15 years, comes up in several pieces of the
15 dispute here. In one way, it has to do with the
16 source of value, and our belief that it is Qwest
17 Corporation and essentially the franchise that it
18 provides to the directory publisher, that that is the
19 source of value, and to the extent that Qwest
20 Corporation, 30 years from now, is creating value
21 through its association with directory publishing,
22 that the benefits of that really ought to be flowed
23 through to customers out there in that year, not
24 today, but out there in the future, when they're
25 actually being generated.

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1 Q. So you feel that the way that the gain is
2 distributed over time ought to reflect or reward the
3 ratepayers who are giving value at that time; is that
4 what you're saying?

5 A. Yes, let the ratepayers who would
6 otherwise, but for this long-term contract, their
7 telephone company would be generating advertising
8 revenues out there in year 30, and those would be
9 used to fund the cost of operating the business. So
10 we see it as a mismatch issue. And I think that if
11 in some way, if the value were historical in nature,
12 that, you know, somehow over the years, and there is
13 this element to the arguments on all sides, but, you
14 know, over the years, through the blood, sweat and
15 tears of the phone company, we have a highly valuable
16 business in front of us.

17 If that were really the accurate, you know,
18 story about what you have in front of you, then you
19 might want to say, Well, okay, they sold off this
20 business that somebody -- I think maybe Mr. Brosch
21 said, if anything, you'd want to go back in time and
22 give the customers back then the money from the gain,
23 but -- so in that case, you ought to just allocate it
24 all out right now as quickly as possible.

25 But we don't really think that the value is

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1 really so much through the past. I mean, the value
2 is there in the past in that there's this continuous
3 relationship of the phone company with the directory
4 business that has allowed it to have its dominant
5 position in the directory publishing business, but
6 that value can be -- you can see from the fact that
7 the sale has this necessary component of the
8 noncompetition agreement. From that, we can know
9 that the value is being derived from the future
10 operation and the future association with the phone
11 company, and so that ought to be a guide to you in
12 passing through the benefits to the customers.

13 Q. But you do agree, I would guess, that that
14 value is much more definite and known in year one
15 than year 40?

16 A. Oh, I think it's more definite and known
17 now, but the uncertainty out there in year 40 is not
18 one-sided. That uncertainty is symmetrical in that
19 the 2.25 percent growth rate going out into the
20 future for what it's expected to escalate over time,
21 it has uncertainty about it on both sides. In fact,
22 I think that's really nothing more than an inflation
23 adjustment that's been used to project out those
24 future directory revenues, so I think it could well
25 be that the business grows faster than the rate of

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1 inflation. It certainly has in the past.

2 CHAIRWOMAN SHOWALTER: Thank you.

3 JUDGE MOSS: Okay. We're ready.

4

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

6 BY COMMISSIONER HEMSTAD:

7 Q. Chairwoman Showalter has really covered
8 much of what I might have pursued, so I'll try to
9 make this brief. First, assuming a sale, do you see
10 any negative or positive view as to whether -- do you
11 have a negative or positive view as to whether some
12 kind of fairly rapid or prompt rate case would be
13 desirable?

14 A. The practical reality, Commissioner
15 Hemstad, is that in the near term a rate case is not
16 feasible. We don't have books, you know, financial
17 books of Qwest Corporation that we could rely on for
18 something like that.

19 Q. I assume that will -- maybe this is an
20 optimistic assumption that, say in the next few
21 months, it's going to be put to bed?

22 A. I will think that it will be, but I would
23 also imagine that it will be put to bed in a way that
24 will still leave questions about the 2002 results of
25 operations. You know, I may be wrong about that, but

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1 I have that concern.

2 Apart from that, I guess I feel that a rate
3 case is not a good thing in and of itself. If it
4 appears from whatever events that we have that the
5 company's profits are either too high or too low,
6 then I think that a rate case is a good thing. So I
7 don't view any sort of external effort to forestall a
8 rate case that would otherwise be a good trueup of
9 the company. You know, I don't think you should go
10 to extraordinary means to avoid rate cases per se.

11 Q. On your -- again, on the assumption of the
12 sale, your description of the kinds of conditions
13 that you would, at least in your testimony, recommend
14 that we impose, did you hear the responses to my
15 questions about cash management and what -- I was
16 left with the impression that however often, the
17 money is now swept from QC into QCII systematically.
18 As a practical matter, how would we compel a change
19 in that kind of an arrangement?

20 A. I think that you would order the company
21 that you regulate not to do it.

22 Q. And could that be done limited to
23 Washington activities of QC only?

24 A. Well, I think it could be done with respect
25 to the Washington activities. To the extent the

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1 company, for its own reasons, chooses to provide
2 those functions in combination with similar functions
3 for other states, if it ended up affecting the other
4 states, then that would be the result of the
5 company's business decision and one that, you know,
6 you shouldn't not do it because of the company's
7 choices like that.

8 I also -- I mean, I said that you could do
9 that, but I'm not sure that there is as much of a
10 mixing of the two companies' finances as has been
11 suggested to you. There was testimony that the
12 treasury functions are consolidated. That does not,
13 at least to me, mean that the accounting of the
14 companies is commingled. I mean, the state of
15 Washington, the treasury function is consolidated at
16 the office of the state treasurer, and as you well
17 know, we have our own account that, if we were to run
18 out of money, we couldn't just have the treasurer put
19 some money into it from the Apple Commission. That's
20 a bad example, actually, but Labor and Industries.

21 You know, Qwest can buy services from its
22 parent company, it can pay dividends to its parent
23 company, it can loan money to its parent with the
24 Commission's approval, I believe, but it can't simply
25 consolidate the books and the finances of those two

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1 companies. It couldn't do that and stay within
2 compliance of our accounting rules and things like
3 that. So anyway, I think if it turns out that the
4 testimony you've heard before is accurate about the
5 level of commingling, then the safeguards that I've
6 recommended, I would recommend those to you with
7 renewed vigor, because the situation, if that's true,
8 the situation is worse than I imagine it to be.

9 Q. Could we order the company set up a
10 Washington subsidiary?

11 A. I'm not sure.

12 Q. Just a comment on that question from the
13 Chair with regard to the relative earnings of the Dex
14 Washington and Dex -- and QC Washington. I looked
15 back in my notes and I believe it was Mr. -- Dr.
16 Selwyn, on cross or a question from the Chair, he
17 said approximately half of the current earnings of
18 the total earnings of QC Washington. Do you have any
19 reason to doubt that?

20 A. No, I don't. I mean, I know that in the
21 last time we had our rate case for Qwest, when -- I
22 was looking at the revenue requirement calculations
23 there, and it appeared to me that about half of the
24 company with the increase would then achieve its
25 authorized return and about half of that, one could

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1 attribute to the imputed directory revenues.
2 However, that is for the regulated portion of the
3 company. So you would need to add in the unregulated
4 activities, too. So that would tend to make Dex
5 something less than half, but still significant.

6 CHAIRWOMAN SHOWALTER: Unless you have a
7 lot of debt.

8 THE WITNESS: I'm sorry?

9 CHAIRWOMAN SHOWALTER: Well, I'm sorry.
10 Well, I mean, I guess my first reaction was it's all
11 the more important if the unregulated part has a lot
12 of -- hasn't got profits at all. That is, it's
13 negative, I believe.

14 THE WITNESS: Well --

15 CHAIRWOMAN SHOWALTER: Or was?

16 THE WITNESS: What I was talking about was
17 the unregulated activity of Qwest Corporation.

18 CHAIRWOMAN SHOWALTER: Oh, I see.

19 THE WITNESS: The phone company. That
20 would be things like voice mail and --

21 CHAIRWOMAN SHOWALTER: I see.

22 THE WITNESS: -- Internet access. And I
23 should also add the interstate operations would be in
24 there, too, and so that would make the Dex portion
25 smaller even again.

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1 Q. There's been testimony here with respect to
2 the issue of the amount of competition that Yellow
3 Pages currently faces. Do you have an opinion as to
4 whether print Yellow Pages in Washington faces
5 effective competition?

6 A. I do. I think that the directories that
7 are published by the incumbent telephone companies do
8 not face effective competition.

9 Q. Mr. Brosch, I think both in his testimony
10 and in response to questions here, suggested an
11 advantage to the sale or the settlement to end a
12 historically contentious issue. Do you see that as a
13 significant factor here?

14 A. I think I do more than I did at 2:30 this
15 afternoon.

16 CHAIRWOMAN SHOWALTER: You're not caving
17 now, are you?

18 THE WITNESS: I just meant all the
19 contention that we saw this afternoon. I guess I
20 don't believe that this will end the fight. I could
21 be wrong, but, you know, the concerns that Dr. Selwyn
22 and I both expressed about the economic viability of
23 the revenue credit approach, those concerns about
24 whether it's sustainable to always have Qwest
25 Corporation, or for 15 years, always have Qwest

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1 Corporation asking for and earning less money than it
2 really needs because, way back in '03, its parent
3 company sold the phone directory, I think we will see
4 a lot of controversy going forward about the bind
5 that that puts Qwest Corporation in, the effect that
6 it has on the economy of the state to have its main
7 phone company in that condition. So sure, we'll end
8 this fight, but we'll create another one, I suspect.

9 COMMISSIONER HEMSTAD: Thank you. That's
10 all I have.

11 COMMISSIONER OSHIE: I don't have any
12 questions. I think the areas that we have discussed
13 thus far from the Bench has really covered the issues
14 that I had in mind, as well, so --

15 JUDGE MOSS: Okay. Nothing further from
16 the Bench. Is there any follow-up from Qwest?

17 MR. SHERR: Your Honor, may I have one
18 moment?

19 JUDGE MOSS: Sure.

20 MR. SHERR: Your Honor, my moment has
21 passed. Thank you. Qwest has no further questions
22 at this time.

23 JUDGE MOSS: All right. Mr. Harlow, did
24 you have any follow-up before we go to redirect?

25 MR. HARLOW: Just a moment, Your Honor.

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1 No, Your Honor.

2 JUDGE MOSS: Thank you. Redirect, Ms.
3 Smith?

4 MS. SMITH: Yes, Your Honor. Thank you.

5

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

7 BY MS. SMITH:

8 Q. Dr. Blackmon, in response to a question
9 from Mr. Harlow, you were asked about your
10 familiarity with ratings agencies. Do you recall
11 that line of questioning?

12 A. Yes.

13 Q. And do you recall questions specific to
14 what's been marked and admitted in this docket as
15 Exhibit 420?

16 A. Yes, Mr. Harlow pointed me to this
17 statement. Standard and Poor's said that, to meet
18 these maturities, Qwest must complete the sale of its
19 directories business in 2003.

20 Q. Are you familiar with any other rating
21 agencies, other than Standard and Poor's?

22 A. Yes, I am. Moody's is probably the other
23 of the most often consulted rating agencies.

24 Q. Do you have any opinion with respect to the
25 reliability of the Moody's rating agency?

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1 A. Yes. I think it's at least as reliable as
2 the Standard and Poor's.

3 Q. Could I direct your attention to what's
4 been marked in this docket --

5 MR. HARLOW: Your Honor, if it would move
6 things along, we would stipulate to admissibility of
7 Exhibit 420.

8 MS. SMITH: 420?

9 MR. HARLOW: Excuse me, what's the number
10 here, 425.

11 MS. SMITH: If --

12 MR. HARLOW: That would avoid the need for
13 further foundation.

14 MR. SHERR: Qwest would have no objection
15 to that.

16 JUDGE MOSS: 425, previously identified, I
17 assume you're going to move its admission. We're
18 getting ahead of ourselves here.

19 MS. SMITH: Yes, Commission Staff moves
20 425.

21 JUDGE MOSS: All right. There's apparently
22 no objection, so 425 will be admitted as marked. You
23 may now refer to it simply as an exhibit.

24 MS. SMITH: Thank you, Your Honor.

25 Q. Dr. Blackmon, in Exhibit 425, is there

1 anything in that article that you believe is of
2 significance to the proceeding today?

3 A. Yes, yes, I do. The Standard and Poor's, I
4 believe, has consistently, over the last -- maybe not
5 quite the last year, but since last summer, placed
6 more importance on the Dex transaction than has
7 Moody's. Though I would also note that it's easy to
8 read too much into the Standard and Poor's statement.
9 Really, all they are saying there is that to meet the
10 schedule of debt repayment that is currently in
11 place, the Dex sale needs to happen. They are not
12 saying anything more than that about some other, you
13 know, renegotiated schedule of debt. They're not
14 saying that bankruptcy will occur without the sale.

15 And Moody's, I believe, has concluded that
16 the sale of Dex is not significant one way or the
17 other in terms of Qwest and its bond ratings. The
18 Moody's statement, which was released because of the
19 refinancing of the one billion dollars in a couple
20 weeks that I was talking about, has Qwest ratings on
21 review for possible downgrade until -- and then it
22 lists four conditions that need to be resolved before
23 it can take Qwest off the list of suspect companies,
24 and the sale of the Dex business is not one of those
25 four conditions.

1493

1 So my understanding is that Moody's really
2 does believe that, one way or the other, that the
3 impacts on Qwest are essentially a wash as to whether
4 the second half of the Dex sale occurs.

5 MS. SMITH: That's all the redirect we
6 have, Your Honor.

7 JUDGE MOSS: Okay. Appreciate your
8 brevity. All right. It appears there's nothing
9 further for Dr. Blackmon, and so with that, we thank
10 you for your testimony.

11 THE WITNESS; You're welcome.

12 JUDGE MOSS: You may step down. That does
13 complete our witnesses. Now, it's ten minutes to
14 7:00. We have some brief business to attend to in
15 terms of some exhibits. I understand there needs to
16 be some discussion concerning briefing. For my part,
17 I'm willing to stay. Mr. Trautman, is there some
18 other piece of business?

19 MR. TRAUTMAN: Your Honor, we did have one
20 motion pertaining to the confidentiality of Exhibit
21 422-C by Dr. Blackmon that I think was deferred.

22 JUDGE MOSS: Yes.

23 MR. TRAUTMAN: That we would like to bring
24 now, if that's --

25 JUDGE MOSS: All right. Well, let's do

1 that while the Commissioners remain on the Bench, and
2 the other stuff we can let them go and take care of
3 or we can reconvene on Monday, as the parties wish.

4 MR. TRAUTMAN: The only other matter is,
5 after that, I would like to move for admission of the
6 record requisitions that have not been admitted.

7 JUDGE MOSS: Right. We'll take that up,
8 too. Let's go ahead and have the argument on the
9 challenge to confidentiality of exhibit number which?

10 MR. TRAUTMAN: It is on some of the numbers
11 in Exhibit 422-C, which was Dr. Blackmon's Exhibit
12 GB-4C.

13 JUDGE MOSS: All right. State your case.

14 MR. TRAUTMAN: All right. There are two
15 numbers in particular. And the motion stems from the
16 -- I should back up. Dr. Blackmon filed this on May
17 21st, and then, subsequent to that, on May 27th, Mr.
18 Reynolds filed supplemental rebuttal testimony that
19 reveals a number -- I was going to say a number of
20 numbers, but many numbers that are relevant here.

21 Now, looking to Exhibit 422-C, there is a
22 number in the line that says Washington gain amount,
23 there are actually two numbers. They are a value
24 over 15 years, value over 40 years. Under that
25 column, on Washington gain amount, there are two

1495

1 numbers. We would submit that those numbers, they
2 are, in fact, the same number, those numbers are now
3 clearly not confidential, because in Mr. Reynolds'
4 testimony of May 27th, and that was Exhibit 94 --

5 JUDGE MOSS: Got a more specific reference?

6 MR. TRAUTMAN: Page five of the exhibit,
7 there are -- first of all, there's a -- on line 11,
8 in the middle of the table, there's a line that says
9 percentage of sales price, and I think -- and that's
10 taken, if one looks at Footnote 11, from Exhibit
11 GB-2C, and I think Mr. Reynolds clarified that that,
12 in fact, is the percentage of the gain on sale for
13 Washington, so it's Washington's share of the gain on
14 sale, and that can be verified by looking at GB-2C.
15 Mr. Reynolds has, by backing out, he said that 81
16 percent of that number is \$928.5 million. Well, one
17 can easily take the calculation in reverse, take
18 928.5 million, divide it by 81 percent, and arrive at
19 the number, which is in GB-2C, but is now a public
20 number.

21 JUDGE MOSS: So in brief, you're arguing
22 that any claim of confidentiality has been waived?

23 MR. TRAUTMAN: Correct.

24 JUDGE MOSS: All right. Ms. Anderl.

25 MS. ANDERL: Your Honor, might I inquire if

1496

1 that's the only number that's --

2 MR. TRAUTMAN: The other number is the
3 number --

4 MS. ANDERL: Well, I mean, if Your Honor
5 wants to hear us go back and forth on it, that's fine
6 with me, but I was thinking I could respond all at
7 once to Staff's entire motion.

8 MR. TRAUTMAN: We have one motion on a
9 different number, but for different reasons. Okay.
10 The other number, going back to GB-4C, Exhibit 422-C,
11 is in the line that says projected imputation. Both
12 of the numbers that are in that line, and it was --
13 now I believe Qwest had argued that the reason for
14 the confidentiality of those numbers was to protect
15 confidential growth rates, but, again, reviewing Mr.
16 Reynolds' testimony, which was Exhibit 94, he had
17 attached to his testimony Exhibit 95, which was
18 labeled as exhibit -- a confidential exhibit MSR-4C,
19 and there are several figures on there, purported to
20 be confidential.

21 However, in his testimony, Exhibit 94, on
22 page -- there are three numbers, Exhibit 94, on page
23 five, he has disclosed the number that he has
24 entitled sum of nominal payments, \$10.728 billion.
25 He has also, on page six, disclosed on lines six and

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1 seven, he's disclosed the numbers from year one and
2 year 50, which also come from MSR-4C, of \$113.73
3 million and \$338.17 million. Now, by having simply
4 those three numbers, and by having in particular the
5 number in year one and the number in year 50, one can
6 do a calculation and achieve an overall growth rate,
7 and that, in fact, was the growth rate that Dr.
8 Blackmon referred to at 2.25 percent.

9 The only growth rates that would --
10 remaining, and I should add, that growth rate, if one
11 looks at Exhibit 95, in the column under pre-tax
12 revenue credit, the 2.25 percent would not be
13 constant down that column. It would change from year
14 to year.

15 However, one's knowledge of the projected
16 imputation amounts that are found in Exhibit 422-C on
17 the projected imputation line cannot enable anyone to
18 ascertain those individual growth rates, and so since
19 the -- if the objection was to revelation of growth
20 rates, the overall growth rate can already be
21 ascertained from the numbers that Mr. Reynolds has
22 chosen to reveal it had been marked as confidential.
23 And the overall growth rate cannot, and Staff would
24 also take some objection to having an exhibit that
25 has been marked as confidential by Qwest, but then

1498

1 Qwest's witness selectively pulls out, for instance,
2 the \$10.728 billion figure, which can now be put out
3 for public consumption. But, on the other hand,
4 Staff is precluded from putting out for public
5 consumption the projected imputation number that's in
6 Exhibit 422-C, and Staff does not believe there is
7 any more validity anymore for that claim of
8 confidentiality.

9 JUDGE MOSS: Okay. Ms. Anderl.

10 MS. ANDERL: Thank you, Your Honor. First,
11 with regard to the sum of the nominal payments
12 number, we've never claimed that to be confidential.
13 That is in Mr. Reynolds' testimony at Exhibit 94,
14 page five, line 12. In the stipulation, it
15 calculates out at 1.644 billion. In Mr. Reynolds'
16 calculation of Staff's proposal, it calculated to the
17 10.3 billion. We had never asserted a claim of
18 confidentiality as to that number, and so just to
19 kind of put that aside.

20 However, with regard to the other numbers
21 that Mr. Trautman is talking about on Exhibit GB-4C
22 or 422-C, let me address the Washington gain amount
23 first. It was never our intent to disclose that
24 number. That number is not disclosed anywhere in Mr.
25 Reynolds' testimony, and we believe that it ought to

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1 remain confidential.

2 And really my argument is the same with
3 regard to the projected imputation numbers. We've
4 never revealed any of those numbers in Mr. Reynolds'
5 testimony. It was not our intent to reveal them.
6 Frankly, I believe that what happened was in our
7 desire to not overdesignate things as confidential
8 and in our haste to file this testimony, we failed to
9 take into consideration the either simple or
10 elaborate calculations that one might be able to do
11 to back into numbers. And that's simply the way it
12 happened. I think disclosing the numbers on the
13 public record here in the transcript, just kind of
14 saying this is what they are, is though different
15 from if a person were familiar with this record and
16 wished to go to all of the trouble of obtaining the
17 necessary exhibits and making the calculations.

18 So I think that to the extent that a
19 sophisticated person with knowledge of this case
20 might be able to back into or calculate some of these
21 numbers, I understand Staff's claim that we have
22 waived the confidentiality, I disagree with it, and I
23 offer for you my explanation with regard to that.

24 JUDGE MOSS: Okay.

25 CHAIRWOMAN SHOWALTER: Just remind me

1500

1 briefly on the merits of why it was confidential to
2 begin with. What was that reason?

3 MS. ANDERL: Oh, Your Honor, we filed, I
4 think, a fairly long pleading with regard to the
5 confidentiality of all the sale numbers. Most of it
6 really boils down to the fact that this transaction
7 isn't complete yet, and having sensitive transaction
8 numbers in the public domain might come back to haunt
9 us to the extent the transaction does not complete.

10 CHAIRWOMAN SHOWALTER: Okay.

11 JUDGE MOSS: Let's have some conference on
12 this one.

13 (Discussion off the record.)

14 JUDGE MOSS: All right. Back on the
15 record. Come to order, please. The Bench has had an
16 opportunity to confer and concludes that the
17 confidentiality should be maintained. So with that,
18 I believe we are to the point where we have a few
19 bench exhibits and records requisitions to move, some
20 discussion regarding the procedural schedule for
21 briefs, and so the Commissioners I think, if they
22 wish, could leave at this point or stay, as they
23 choose.

24 CHAIRWOMAN SHOWALTER: Well, then, in that
25 case, let us say this has been a really most

1501

1 interesting and engaging hearing, and all the counsel
2 and the witnesses have done an outstanding job and I
3 also appreciate members of the audience, some of whom
4 -- one of whom, anyway, stuck it all the way through.

5 MR. HARLOW: Thank you. We appreciate the
6 Bench's patience with this difficult case.

7 MR. BUTLER: Your Honor, frankly, I'm
8 worried if you're enjoying this stuff.

9 JUDGE MOSS: All right. With that, let us
10 move to the business at hand. I've previously
11 identified most of the record requisitions and bench
12 request numbers to exhibit numbers. I think I can
13 safely pick up to make sure that's all covered.

14 We identified this bench illustrative
15 exhibit, the matrix that Chairwoman Showalter
16 prepared for cross-examination purposes, as Number
17 14. And then Bench Request 7 is Number 15. Record
18 Requisition 7 is Number 16. Bench Request 8 as
19 Number 17. The Bench -- I'll just call it the Bench
20 exhibit, the New York Times article that was
21 distributed earlier today as 18, and then we have
22 Bench request 9 as Number 19, although I'm going to
23 supplement that Bench request with a written note.

24 So those are the numbers that are reserved.
25 I would, assuming no objection from the parties, move

1502

1 from the Bench for the admission of the various bench
2 exhibits, including the response to 19 and any other
3 outstanding response. I think 8 is still
4 outstanding. By that, I mean Bench Request 8.

5 MS. ANDERL: Your Honor, you just
6 referenced 19. Did you misspeak there?

7 JUDGE MOSS: No, Exhibit Number 19 is Bench
8 Request Number 9.

9 MS. ANDERL: I'm sorry.

10 JUDGE MOSS: With the caveat that those
11 that have not yet been furnished, parties could file
12 supplemental material if they thought it was
13 necessary after seeing the response, because I don't
14 want to shut somebody off from an objection, for
15 example, if it's something they haven't seen or if
16 they want to supplement.

17 By the way, my standing practice with
18 respect to bench requests, while they are typically
19 directed at a individual party, if other parties wish
20 to provide a response, I will look at that, too. So,
21 you know, if that's the case with respect to -- I
22 think these were all pretty targeted, so I don't
23 imagine there is anything like that, but --

24 MS. ANDERL: Your Honor, just -- I might
25 just note that the record requisitions, our practice

1503

1 in the past has been to not provide them, as I think
2 I told you, to the Bench, but I have issued
3 instructions that the ones that are still outstanding
4 ought to be served -- filed with the Commission, as
5 well as served on the parties, consistent with what I
6 think your desire was.

7 JUDGE MOSS: That's my practice. I like to
8 have a copy. But let's focus on the bench requests
9 first and get that piece of it done. So if there's
10 no objection, we're going to admit the bench request
11 responses --

12 MS. ANDERL: No objections.

13 JUDGE MOSS: -- with the numbers to which
14 they're identified as exhibits. And again, if
15 there's something that comes in post today, parties
16 are free to contact me by appropriate means served on
17 all parties with respect to any proposals or
18 objections.

19 As to the records requisitions, my sense is
20 that perhaps things have been a little different on
21 the telco side than they have been on the energy
22 side. I typically have treated those as bench
23 requests in the past, but my understanding is you all
24 are accustomed to having parties offer those for
25 admission if they wish to have them admitted. So I

1504

1 think -- all these, I think, came from Staff. So are
2 there ones that you wish to move?

3 MR. TRAUTMAN: Well, yes. The Record
4 Requisition 1, I note has already been admitted
5 through Mr. Kennard.

6 JUDGE MOSS: Yes.

7 MR. TRAUTMAN: We would move for admission
8 of 2, 3, 4 and 6, with the caveat that we have not
9 yet received 5 and 7, but have been informed that
10 they are on their way.

11 MS. ANDERL: They are.

12 MR. TRAUTMAN: We may move their admission
13 upon receipt.

14 MS. ANDERL: But 4 is not moved?

15 MR. TRAUTMAN: Two, 3, 4 and 6 are all
16 moved. Are there any objections to the admission of
17 any of these?

18 MS. ANDERL: No.

19 MR. HARLOW: No.

20 JUDGE MOSS: Okay. That was simple.
21 They'll all be admitted, then, with the exhibit
22 numbers I've previously indicated. It's up to you
23 all whether you want to reserve on 5 and 6. I have a
24 sense of what you're going to be responding to, but
25 you want to go ahead and move the admission of 5 and

1505

1 6 and take care of that now?

2 MR. TRAUTMAN: Five and 7?

3 JUDGE MOSS: Oh, 5 and 7, quite right.

4 It's a small amount of surplus -- in the worst case,
5 it's a small amount of surplus to the record that is
6 already six shelf feet, so don't be concerned about
7 that.

8 MR. TRAUTMAN: Oh.

9 MS. ANDERL: I think it's unlikely in the
10 extreme that our responses to those would prejudice
11 you.

12 MR. TRAUTMAN: I wouldn't think they would.
13 I think we can probably move their admission.

14 JUDGE MOSS: All right. Let's just go
15 ahead and do that. Without objection, those will be
16 marked as admitted. This just saves time later,
17 everybody. I appreciate it. All right.

18 I believe that completes our record, and
19 subject to the things being submitted, of course. I
20 will provide the parties with an updated exhibit list
21 on Monday by electronic mail, and I'll ask you to
22 check and see if I've made mistakes, and if I have,
23 you bring them to my attention and if I agree they're
24 mistakes, I'll correct them.

25 Is there anything else with respect to our

1506

1 record or can we move to our discussion of briefing
2 and post-hearing?

3 MS. ANDERL: Nothing.

4 MR. TRAUTMAN: Nothing.

5 JUDGE MOSS: Okay. Good. Well, let's talk
6 about briefing. We currently have a schedule that
7 calls for simultaneous initial briefs. If memory and
8 Ms. Anderl's jogging of my memory off the record
9 earlier today serve, the initial simultaneous briefs
10 were scheduled for June 20th and the reply briefs for
11 July 2nd. Is there any suggestion that we should
12 change that schedule?

13 MR. TRAUTMAN: Yes, Your Honor. Commission
14 Staff would request that the initial briefs be
15 extended for two weeks, one week to accommodate
16 simply the extension of the hearings that were
17 anticipated to go until May 23rd, and they now have
18 gone until May 30th. And second, for the shear
19 complexity of the case that I don't know whether --
20 and the immense volume of paper and testimony and
21 evidence that I don't know have been anticipated at
22 the outset.

23 So we would ask that the June 20th date be
24 moved to -- wouldn't be July 4th -- July 3rd, and
25 then that the reply briefing be three weeks after

1507

1 that date. There currently, I believe, was a 12 or
2 13-day period between the two briefs, and in light of
3 the, again, the complexity of the case, Staff
4 believes the further extension is warranted.

5 Staff would also note, in reference to the
6 extension of the initial briefs, that due to some
7 previously scheduled commitments, a one-week
8 extension will not -- while certainly better than
9 none, will not be of as much use to Staff.

10 JUDGE MOSS: And to what date did you
11 propose the reply briefs?

12 MR. TRAUTMAN: Three weeks from July 3rd
13 would be July 24th.

14 JUDGE MOSS: Okay. Anybody else want to be
15 heard?

16 MS. ANDERL: Yes, Your Honor. We would
17 oppose an extension of the magnitude suggested by
18 Staff. We believe that when the briefing schedule
19 was originally established, it took into account the
20 amount of time the parties would reasonably need
21 after the close of the record and receipt of
22 transcripts. In this case, because the buyer and the
23 seller have requested expedited daily transcripts,
24 the lag time in waiting for your transcripts has been
25 eliminated. So we think that that more than really

1508

1 makes up for any additional -- any time we might have
2 lost because of the additional hearings.

3 And we, as I'm sure you're aware, have an
4 urgency with regard to this transaction. I
5 understand that two weeks in the briefing schedule
6 may or may not make a difference in when the
7 Commission issues an order, but it is not our desire
8 to see any delay at all.

9 MR. HARLOW: If I could add to that, Your
10 Honor, that the buyer would consider any delay in the
11 ultimate decision in this case, which I think would
12 probably arise out of a briefing delay of this
13 magnitude, would be very prejudicial, potentially
14 very costly for the buyer due to the favorable bond
15 market that you heard about from Mr. Kennard and
16 perhaps other witnesses.

17 You know, just to be more helpful than just
18 simply saying no, the Reagan approach of just say no
19 didn't work very well in the drug use, either, but
20 Ms. Anderl's point is well-taken that we can start
21 right away on the main briefs, and what I would
22 suggest is that maybe we should shorten the interval
23 between the initial briefs and the reply briefs
24 somewhat and --

25 MR. BUTLER: No.

1509

1 MR. HARLOW: -- try to keep our ultimate
2 final brief, you know, within a week of the initial
3 date, because, you know, we've had the exhibits for a
4 long time, we have the transcripts, we ought to be
5 able to say about 95 percent of what we need to say
6 in our opening briefs and our reply should truly be
7 limited to replies, and so they should take a little
8 less time.

9 JUDGE MOSS: Let me raise this point, and
10 that is that one of the factors that sometimes makes
11 briefing in complex cases challenging is that you
12 have multiple parties filing multiple briefs. Now,
13 in this case, I presume that the parties who have
14 filed the settlement stipulation will be all arguing
15 for its adoption as the Commission's resolution of
16 the case. So has there been any discussion among you
17 about filing a joint brief?

18 MR. BUTLER: No, and I seriously doubt
19 whether that will work for us.

20 MS. ANDERL: Your Honor, I think that our
21 brief would be much more extensively opposed to
22 Staff's position, and I'm not sure that Public
23 Counsel, WeBTEC or AARP would be willing to join in
24 that, you know, so I -- we're going to need to say
25 what we're going to need to say, and we're going to

1510

1 need to address all the other issues. I'm not sure
2 that the other kind of joint settling parties want to
3 do that.

4 JUDGE MOSS: What about Dex Holdings?

5 MR. HARLOW: Well, we're going to be
6 coordinating quite closely with Qwest, and I imagine
7 we'll be sharing drafts of our briefs in advance to
8 try to certainly harmonize them and avoid needless
9 repetition. We have our own, you know, obviously
10 point of view and approach to things that's somewhat
11 different from Qwest, but we're approaching the whole
12 case on a cooperative basis.

13 MR. BUTLER: And Your Honor, we appreciate
14 keeping the interval between the initial briefs and
15 reply briefs. That is really necessary to be able to
16 handle these briefs and the complexity of the issues.

17 JUDGE MOSS: Current interval is 13 days.

18 MS. ANDERL: And I was going to mention,
19 Your Honor, still Staff's burden is lightened
20 somewhat in that they won't be responding to Public
21 Counsel or DOD briefs, except to the extent that they
22 support the settlement, which our brief will, as
23 well, so their complexity that they face in writing a
24 reply brief at least is minimized to some extent, I
25 think.

1511

1 MR. HARLOW: If we move the initial brief
2 out a week, that would leave Staff an entire month,
3 leave all of us an entire month to draft the brief.
4 And then, if we kept the interval 13 days, we could
5 actually increase that to 14 days, have the briefing
6 done on July 11th, and I don't think that would be
7 unduly prejudicial for proponents of the transaction.

8 MR. TRAUTMAN: I would not call Staff's
9 task as light or the burden as light or minimal. I
10 don't think that the intervals that Staff has
11 suggested are at all out of line with briefing
12 schedules in cases of this magnitude in which I have
13 participated in the past. And again, for the initial
14 -- the initial extension, I mean, a seven-day
15 extension simply reflects the fact that the hearings
16 have gone seven days longer than scheduled. And as
17 to simply having one additional week, again, due to
18 some prior scheduled commitments that did not
19 anticipate the extension of the hearings, Staff
20 firmly believes that an extension until further July
21 is necessary.

22 JUDGE MOSS: How do we get to July 3rd with
23 a seven-day extension? I come up with June 27th.

24 MR. TRAUTMAN: That's correct. And that
25 was simply -- and the other week was because Staff

1512

1 feels that the magnitude of this case and the
2 complexity has exceeded what was originally
3 envisioned, and also due to the fact that, due to
4 some prior commitments, an extension of only one week
5 will not be nearly as useful for the Staff.

6 And the other point I would mention, in
7 terms of the need for speed, obviously we don't want
8 to delay this infinitely into the future, but we do
9 have a closing date for the Rodney sale that would
10 not -- that the dates suggested for briefing are not
11 going to in any way run up to that date, and we also
12 don't have the type of nine or the ten-month
13 suspension period that we often have in a rate case
14 that would further constrain the briefing.

15 MR. BUTLER: Your Honor, if I just might
16 add my understanding that Public Counsel's
17 unavailable from the 11th through the 14th, so
18 whichever schedule proposal is adopted, if we could
19 avoid a due date in that period, we would appreciate
20 it.

21 JUDGE MOSS: Eleventh through the 14th of
22 what?

23 MR. BUTLER: July.

24 JUDGE MOSS: So you would favor an
25 extension of the reply briefing?

1513

1 MR. BUTLER: Either an extension of the
2 reply briefing or having it due before the 11th.

3 MR. HARLOW: How about the 27th and the
4 10th? I don't see how the case has become more
5 complex when a whole set of parties won't be briefing
6 against each other due to the settlement. It seems
7 less -- much less complicated.

8 MR. TRAUTMAN: It's complicated from
9 Staff's point of view.

10 JUDGE MOSS: Let's be off the record.

11 (Discussion off the record.)

12 JUDGE MOSS: Let's be back on the record.

13 We've had some off-the-record discussions about the
14 dates for our post-hearing process, and I've
15 indicated informally that I will make a final
16 determination and announce that on Monday, but that
17 tentatively I'm inclined to allow for an extra week
18 relative to what was previously planned for the
19 initial briefs, and that would put them due on June
20 27th. And then we will maintain the interval between
21 initial and reply briefs so that the reply briefs
22 would be due on July 10th, and that would be subject
23 to some further review by me on Monday.

24 As I recollect, our procedural rules impose
25 a 60-page limit on briefs, which I have always

1514

1 thought to be exceedingly generous. Do we want to
2 impose any guidelines with respect to the length of
3 briefs?

4 MR. TRAUTMAN: I can't say at this time
5 that I would ask for an extension.

6 MS. ANDERL: You might hear from us a week
7 before the briefs are due indicating that it will
8 take us nine more days to cut seven pages out and
9 asking for some sort of a page length extension, but
10 I wouldn't necessarily expect that that would happen,
11 nor would it be very much over 60 pages if it did.

12 JUDGE MOSS: I believe it was in a
13 proceeding in California recently that it was
14 reported that one of the parties filed a brief of 854
15 pages, and the Commission rejected that brief and
16 ordered it to be refiled at a reasonable length. So
17 if you're five pages over and it would take you nine
18 days to cut the five pages, that would be something
19 we might entertain, but no 854-page briefs.

20 MR. TRAUTMAN: I was thinking the same
21 thing. I was thinking, if it were anything, it would
22 be five or ten pages at most.

23 JUDGE MOSS: Okay. You all can make an
24 appropriate motion if that becomes an issue. Short
25 is better. All right. Anything -- is there any

1515

1 other matter, any other business we need to take up
2 before we close our record?

3 Hearing nothing, I would like to add my
4 comments to those of the Chairwoman and say I
5 appreciate the fine job you have all done in this
6 proceeding. It has been a most interesting
7 proceeding and so well-presented, I really do
8 appreciate the professionalism that you've all
9 displayed throughout. And with that, our record will
10 be closed.

11 MR. HARLOW: Thank you, Your Honor.

12 MS. ANDERL: Thank you.

13 MR. TRAUTMAN: Thank you.

14 (Proceedings adjourned at 7:28 p.m.)

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