

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of

QWEST CORPORATION

Regarding the Sale and Transfer of
Qwest Dex to Dex Holdings, LLC, a
non-affiliate

DOCKET NO. UT-021120

COMMISSION STAFF'S
ANSWER IN OPPOSITION TO
DEX HOLDINGS' MOTION FOR
ADMISSION OF EXHIBIT 408

1 Commission Staff files this answer in opposition to Dex Holdings' motion to admit Exhibit 408 into the record. This constitutes simply another attempt by Dex Holdings to do what the Commission clearly indicated that it would not permit, and that is to look behind a settlement agreement entered into and presented to the Commission for approval sixteen years ago, in a general rate case involving Continental Telephone Company of the Northwest (Contel).

2 The sale of Leland Mast directory publishing company was but one issue involved in that compromise settlement agreement approved by the Commission in Contel. In this case, the Commission has admitted into the record only the Fourth Supplemental Order in Contel and the Settlement Agreement that was attached to that Order (i.e., the first 27 pages of Exhibit 409.) It expressly did not admit the remainder of Exhibit 409 (which contained testimony and workpapers of Merton Lott) nor Exhibits

410 or 411 (Staff's responses to Dex Holdings data requests 006 and 007), because in all of these exhibits, Dex Holdings sought to look behind the settlement, and use the calculations and details that went into that compromise agreement as precedent in this case.

3 Dex Holdings is attempting to do precisely the same thing with Exhibit 408. The data request asked for detailed calculations of the gain on sale that was included in the settlement agreement. Staff's response – which it provided subject to an objection based on settlement privilege – stated that “The calculations can be made *based on the first page of Mr. Lott's workpapers.*” (The italicized portion is replaced in Dex Holdings' motion by an ellipsis.) These are the same workpapers that the Commission specifically did not admit into the record in this case. (See rejected portions of Exhibit 409, especially page 0089).

4 Staff made a blanket discovery objection to all of Dex Holdings Contel-related exhibits at the time it responded to Dex Holdings request, on the grounds that they all violated Evidence Rule 408 and the principle of settlement privilege, and that they were not reasonably calculated to lead to the discovery of admissible evidence. The Commission's ruling during the hearing indicates its clear agreement with Staff on this point.

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The observations of Chairwoman Showalter and Commissioner Hemstad are also significant. As the Chairwoman noted, Dex Holdings' position absolutely discourages settlement, because it would effectively make compromise agreements usable as precedent -- something, notably, that the settling parties in this case have stated shall not be done. Tr. 1435, 1437. See Ex. 2, ¶ D (3), p. 8 ("No Precedent.") The settlement agreement in Contel contained a similar prohibition. See page 0011, ¶ 3 of Exhibit 409:

[I]t is understood that the stipulation of the parties to an overall revenue requirement level does not imply agreement with any individual rate-making adjustment or calculation. Except as specifically detailed in the following paragraphs, all parties specifically reserve the right in any future proceeding to contest any specific adjustment, methodology or approach used by the staff to arrive at the stipulated increase of approximately \$689,000.

This is consistent also with Commissioner Hemstad's observation that the point of a settlement is that the parties make tradeoffs which they wouldn't ultimately be advocating if they were asking the Commission to adjudicate the issue; and that the taken as a whole, it translates into a fair, just, and reasonable result. Tr. 1436.

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Dex Holdings' motion for admission of Exhibit 408 asks the Commission to look into the details of one element of the Contel settlement and use it as precedent in this

case. The Commission has already stated that, for the sound legal and policy reasons noted, only the Commission's order and the attached agreement should be entered into the record. Dex Holdings' motion should be denied.

DATED this 1st day of July, 2003.

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