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

REPLY BRIEF OF COMMISSION STAFF

NON-CONFIDENTIAL VERSION

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I. Staff reiterates that the Commission should disapprove the proposed sale of the Dex directory business, because it will substantially harm ratepayers and is inconsistent with the public interest. But, contrary to the contentions of Qwest, the Commission can -- and should -- make any approval of the sale subject to the conditions recommended by Staff, if the Commission determines that outright rejection of the sale is not feasible.

1 Staff's opening brief sets forth in detail the reasons why the Commission should not approve Qwest's proposed sale of the Dex directory business. It fails the no-harm test to customers set forth by this Commission, by leaving them with far fewer benefits than they would receive in the absence of the sale. It does not provide fair value to either QC or its customers, as required by the State Supreme Court decision in *US West v. Washington Util. & Transp. Comm'n*, 136 Wn.2d 74, 949 P.2d 1337 (1997). The only reason why this proposed sale is before the Commission at this time is because of QCII's distressed financial situation in 2002. Qwest, in fact, presents the sale, as well as the settlement agreement, as meritorious because without it, "bankruptcy is likely."

2 As Staff has pointed out, Qwest's predictions of imminent bankruptcy are virtually unsupported by anything other than the testimony of its non-expert witnesses. However, if this is the rationale for approving the sale, and if the Commission should decide that, given the coercive situation before it, complete disapproval of the sale is not a feasible option, then the Commission should make any approval of the sale subject to Qwest's acceptance of Staff's recommended conditions. It is critical that steps be taken to ensure that the assets of QC, the regulated company, are protected from being raided

again by QCII to benefit the stockholders and executives of the parent at the expense of the ratepayers.

3 Qwest cannot have it both ways. If bankruptcy is truly the imminent danger that Qwest portrays it to be, because of QCII's risky ventures and corporate mismanagement, then approval of this deal or the settlement agreement will not solve those problems, nor make QC immune from future QCII raids on its assets. Qwest cannot argue that QCII is in dire financial straits and that QCII must have this sale to survive, yet simultaneously argue that the corporate parent's distressed situation poses no real concerns for ratepayers that the Commission need worry itself over. Taking Qwest's arguments at their face value, they lead to the logical conclusion that more must be done to protect ratepayers than the mere offering of a one-time bill credit plus 15 years of unfunded "revenue credits" (no longer backed by the lucrative Dex revenues that currently support imputation), while QC is barred from re-entering the directory business for 40 years.

4 Qwest asserts, however, that the Commission is powerless to make approval of the Dex sale subject to most of Staff's proposed conditions, which would be applied to QC, the regulated telephone company. These conditions include: (1) requiring QCII and QC to enter into a contract in which QCII compensates QC each year for the expected amount that QC could otherwise realize from the directory publishing function, for as long as either the Publishing Agreement or Noncompetition Agreement remain in

place; and (2) prohibiting QC from taking any of the following actions until it obtains a Commission order finding that such action is in the public interest: (a) increasing its debt-to-equity ratio above the October 2002 level of 48.32%; (b) increasing the dividend of QC to its common stock holder from the level paid in 2002, or (c) lending cash or otherwise providing credit to QCII, or any affiliate or subsidiary of QCII other than QC.

5 Qwest's arguments regarding the Commission's authority are without merit. First, the Commission clearly has jurisdiction to approve the sale of the yellow pages directory business under RCW 80.12.020, as it has recognized in the Yellow Pages *Accounting Order*.[1] Read together with RCW 80.01.040, the Commission may approve the sale only if the sale, as presented, is in the public interest. The Commission may, thus, disapprove the sale in its entirety. What Staff is recommending as an alternative – admittedly, a less satisfactory alternative – is approval of the sale, but subject to safeguards that would render the sale consistent with the public interest. The power to disapprove the sale outright logically implies the power to do something *less* restrictive—i.e., approval with conditions. Qwest points out that Washington's statute does not specifically mention approval subject to "terms and conditions," in contrast to the Colorado and Hawaii statutes. (*See Opening Brief of Qwest at* 10-11, ¶ 25.) But this does not mean that the Commission's broad authority to regulate sales of utility

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[1] *In re the Petition of US West Communications, Inc. for an Accounting Order,* Docket No. UT-980948, Fourteenth Supplemental Order; Order Denying Petition (July 27, 2000) ("Accounting Order"), at ¶¶ 164-169.

property in the public interest can be properly viewed as strictly an up-or-down proposition, with no Commission authority to modify any proposal presented before it.

6 In any event, Staff is not recommending that the Commission arbitrarily impose any financial conditions on Qwest, independent of the Dex sale. Rather, these conditions should be presented to Qwest as prerequisites to approval of the Dex sale. If Qwest deemed the conditions so "onerous" as to negate the benefits of the sale, then it could elect not to accept them and forego the sale.

7 The Legislature has also granted the Commission broad power to regulate telecommunications companies such as QC. Under RCW 80.36.140, not only may the Commission directly regulate the rates of QC, but it also expressly may regulate the "practices," and the "practices affecting rates" of QC, and after hearing, "fix" those practices that are unreasonable. This is precisely what Staff's conditions concern. There is no question but that the sale of the yellow pages business, by divesting QC of a lucrative regulatory asset, will affect rates paid by QC ratepayers. There is furthermore, no question that Qwest's current practice of using QC as a source of creditworthiness and cash is an unjust and unreasonable practice, which has increased QC's expenses and financial risk. The placing of restrictions on QC's debt-to-equity ratios, on QC's dividends to QCII, and on QC's lending of cash to QCII, are all appropriate and legally authorized Commission responses to this QC practice -- particularly as conditions to the sale of the yellow pages business, and the loss of its substantial annual revenues. The

Legislature's grant of authority under RCW 80.36.140 is quite broad, and covers the conditions in question here.

8 Qwest cites to selected out-of-state authority to support its contention that the Commission lacks authority to impose conditions on the Dex sale. But other decisions refute Qwest's position. The Michigan Supreme Court, for example, held that the Michigan Public Service Corporation had authority to regulate the securities issuances of a gas storage company that was a wholly-owned subsidiary of a public utility. The Court further held that such regulation did not violate the Commerce Clause of the federal constitution. *Michigan Gas Storage Company v. Michigan Public Service Comm'n,* 275 N.W.2d 457 (Mich. 1979); *Accord, Indiana and Michigan Power Co. v. Public Serv. Comm'n,* 275 N.W. 2d 450 (Mich. 1979).[2] Furthermore, in *Re: Public Service Co. of New Hampshire*, 47 PUR 4th 167, 194 (N.H. PUC 1982), the New Hampshire Commission noted that many other states, including Alabama, Hawaii, Michigan, Ohio, Pennsylvania, and Wisconsin, require PUC approval prior to public utilities' issuance of securities. "Not only is the prerequisite of commission approval of utility securities issuances a hallmark of the modern regulatory scheme, but the authority of state

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[2] In *Schneidewind v. ANR Pipeline Co*, 485 U.S. 293, 99 L.Ed.2d 316, 108 S.Ct. 1145 (1988), the Supreme Court held that the Michigan statute regulating the issuance of securities by public utilities transporting natural gas was preempted by the Natural Gas Act (15 U.S.C. §§ 717 et. seq.), but the Court expressly declined to decide whether such regulation would be consistent with or prohibited by the Commerce Clause. *Id.*, 485 U.S. at 311.

commissions to condition or direct the use of proceeds from such issuances is recognized."

9 Likewise, the Ohio Supreme Court has held that despite claims of management prerogative, the public utility commission has the power to prohibit a regulated utility from paying dividends to its stockholders, where doing so will result in the deterioration of the utility's properties and impairment of its service to the public. *Ohio Central Telephone Corp. v. Ohio Pub. Util. Comm'n,* 189 NE 650 (Ohio 1934). In *Re Jersey Central Power and Light Co.,* 38 PUR 4th 115, 123 (N.J. BPU 1980), the New Jersey Board of Public Utilities concurred: "There is authority under circumstances of financial jeopardy to prohibit dividends, service fees, and the like where such actions could deteriorate utility property or impair service to the public." In *Re: Public Service Co. of New Hampshire,* the commission noted this authority to restrict dividends and added, "Stated another way, a public utility is '. . . an independent corporation and possesses the right to regulate its own affairs and manage its own business, *unless in doing so a situation develops which is inimical to the public interest*.'" 47 PUR 4th at 194, *citing Elyria Telephone Co. v. Ohio Pub Util. Comm'n,* 110 NE2d 59 (Ohio 1953) (emphasis in original).

10 Qwest also takes issue with Staff's recommendation that, as a condition to approving the sale, QCII and QC be required to enter into a contract in which QCII compensates QC each year for the expected amount that QC could otherwise realize from the directory publishing function. Again, this is not a stand-alone requirement;

rather, it should be presented to Qwest as a necessary condition of sale approval. Under the current Dex sale proposal, the cash from the transaction goes to the parent, QCII, and not Qwest. This is not acceptable. If Qwest does not wish to accept a QCII-QC contract for the protection of QC ratepayers, then the Commission should simply reject the Dex sale.

11 Finally, Qwest points out that it operates in several states, and suggests that for this reason, the Commission should not reject the Dex sale or, alternatively, impose conditions on approval. Qwest should not be allowed to use the multi-state nature of its corporate structure – a corporate structure that was and continues to be of the company's own choosing – as a basis to deny the Commission not to exercise its authority under state law. In attempting to do so Qwest is, in effect, saying to the various state commissions, "Because you are many, you are nothing." The Washington Commission has the responsibility to protect Washington consumers. If it can do so without affecting Qwest's operations in other states, that is surely the preferable approach. However, there are some matters where one state commission simply cannot do its duty without affecting other states, and that is precisely the circumstance here. Qwest chooses to operate using a single operating company in all states, and Qwest must accept the practical fact that this creates the possibility that it will have to meet overlapping requirements of several states.

12 The Commission should understand that Qwest's multi-state argument is purely theoretical. There is no evidence whatsoever of any conflict between the conditions that would be impose on QC by the Washington Commission and any requirements imposed on QC by any other state. Indeed, there is not even evidence that other state commissions are concerned that Washington might be usurping their authority. There is no reason to believe such concerns exist, because the recommended conditions in no way advantage Washington at the expense of other states; to the contrary any spillover to other states would be unambiguously positive. However, should Qwest wish to limit the effect of the conditions to Washington only, it is within its control to do so, by arranging its corporate structure accordingly. Qwest's multi-state operations therefore are not a basis for restricting the Commission's authority over the Dex sale.

II. Qwest's statement that "bankruptcy is likely" without the sale is unsupported by the record. Contrary to Qwest's allegations, it is not Staff's duty to "prove" that bankruptcy is unlikely.

13 Qwest declares, "The Sale of Dex is Essential to Avoid a Likely Bankruptcy." *Opening Brief of Qwest* at 56. Staff submits that a more accurate proposition would be, "The Likelihood of Bankruptcy is Essential to the Sale of Dex." Unless bankruptcy is shown to be the realistic alternative to a sale, there is simply no basis to suggest that a sale is in the public interest. Without the bankruptcy scenario, the transaction is nothing more than a ploy by Qwest to cash in a stream of above-the-line revenues in return for a much smaller one-time cash payment to the unregulated parent. On the

other hand, if bankruptcy truly is the result of a no-sale scenario, then there is decidedly more justification for approving the transaction, albeit with conditions. Qwest needs to show that without the sale it will have no alternative but to declare bankruptcy and that, within the bankruptcy scenario, the assets of QC would be raided to pay off the debts of the unregulated enterprises.

14 So does Qwest present the Commission with a record that demonstrates the likelihood of bankruptcy? Hardly. As Staff has previously pointed out, the record is remarkably devoid of evidence supporting this claim. Outside of this case, Qwest's officials have taken great pains to avoid any mention of possible bankruptcy, and the CEO has stated that "the B word" has not been spoken by company executives in his presence. Ex. 370 at 11. Qwest can point to no business plans or formal actions of its directors recognizing any imminent bankruptcy. Ex. 88, Tr. 1055. Qwest has no documents considering the sale of Dex as an alternative to the filing of a bankruptcy petition, and no documents considering the effect of bankruptcy on the operations and financial structure of QCII or its subsidiaries. Exs. 91, 92. The Qwest opening brief makes 94 references to bankruptcy, which is exactly 94 more than the sum of all references made in financial studies, executive briefings, board minutes, and consultants' reports produced by Qwest in the normal course of business.

15 The only references Qwest makes to bankruptcy appear in testimony in this docket, with the specific purpose of justifying the sale of Dex. And these statements are

made not by Qwest's lone bankruptcy expert, Mr. Mabey, but rather by Mr. Reynolds and Mr. Cummings. For his part, Mr. Mabey states that he has not been retained to advise QCII or its subsidiaries on "whether, when, or how to file bankruptcy or to protect themselves from creditors." Ex. 211 at 3. Indeed, the only factual context that he has comes from having sat in the hearing room for several days before he was called to the stand. Tr. 695. One can only speculate about what testimony he would have offered had he been earlier in the batting order.

16 The closest that Qwest ever comes to identifying a credible nexus between the Dex sale and Qwest's solvency is the two-part claim that (a) its agreement to sell Dex was critical to the successful renegotiation of the ARCA, and (b) absent the ARCA, Qwest very likely would have faced bankruptcy in 2002. *Opening Brief of Qwest* at 56-57, ¶ 154. But Mr. Cummings' testimony making this claim is inconsistent with the terms of the agreement itself. The ARCA does not condition the loan in any way on the sale of either the Dexter or Rodney portion of the Dex sale. As Mr. Cummings conceded, failure to sell Dex is not an event of default under the ARCA. Tr. 555-56. If Mr. Cummings is right in suggesting that the bankers would not have loaned the money without the prospect of the Dex sale, they failed to reflect that in the loan documents. Even if the prospect of the Dex sale really did get Qwest the loan, it does not follow that the Commission should now feel obligated to approve the sale because of an unwritten understanding of the bankers.

17 Another near miss for Qwest in its effort to tie the Dex sale to bankruptcy avoidance comes in the rating agency reports. Qwest would have the Commission believe that the ratings agencies are predicting bankruptcy if the sale falls through. *Opening Brief of Qwest* at 57-58, ¶ 156. But one must only read the actual reports to see that neither Moody's nor Standard & Poors has stated that the sale of Dex is necessary to avoid bankruptcy by Qwest. In Moody's view, not only is the Dex sale a non-issue with respect to bankruptcy, it does not even make it on the list of factors relevant to removal of the stigma of a junk bond rating. Moody's has identified four conditions that must be met before the agency will restore the investment grade rating. Selling Dex is not one of those four conditions. Ex. 425; Tr. 1492. For Standard & Poors, the Dex sale seems to carry more weight, but this agency also has not said that bankruptcy is likely if the sale fails. Rather, Standard & Poors says that the Dex sale is necessary to *meet the current schedule of debt repayment*. Ex. 420; Tr. 1492. Qwest has amply demonstrated the willingness of lenders to renegotiate debt terms, as it did with the ARCA, with the "coercive" (S&P's term, Ex. 425) exchange of bonds, and with the repeated postponements in producing audited financial statements as required by various bond covenants. The S&P report demonstrates nothing beyond the proposition that, without the Dex sale, Qwest would have to work with its lenders to restructure its debt. Qwest would have the Commission make the leap of faith that the lenders would prefer bankruptcy over such a restructuring; their own testimony about the

uncertainties of bankruptcy disprove that proposition. In short, neither rating agency has said that bankruptcy is likely without the sale.

18 How then does Qwest deal with the abject lack of support for its proposition that bankruptcy is likely? Attempt to foist the burden onto Staff, of course. Qwest offers the audacious proposition, "Staff Has Not Proven that Bankruptcy is Unlikely." *Opening Brief of Qwest* at 58. This is a proposition with which Staff will readily concur. We have not *proven* that bankruptcy is *unlikely*. If that were the requirement, then Qwest could expect to prevail here, but that clearly is not the legal standard. It is not Staff's duty to "disprove" Qwest's sweeping claims of imminent bankruptcy. The burden of proof is squarely on Qwest, and it has failed to make its case. Staff has thoroughly discredited the Qwest claim that bankruptcy is *likely* without the sale, thereby leaving Qwest with nothing to explain how the sale can possibly pass the test of no harm to customers. Similarly, Qwest's derision of Staff's position as "simply irresponsible" is nothing more than an attempt to deflect the Commission's attention from its own strategy in this case, which is essentially to force the Commission into approving the Dex sale and settlement with unsupported dire predictions and threats of bankruptcy, threats that it apparently has made in no other forums but this one.

19 One can hardly blame Qwest for trying to shift the burden to Staff. Otherwise, it is left with the impossible task of explaining how a company that has just issued $1.75 billion of new debt and has seen its stock price increase nearly five-fold in the last year

is nonetheless on the precipice of bankruptcy. However, it simply is not Staff's obligation to prove that bankruptcy is unlikely. Qwest has the burden and has failed to meet that burden. The record simply does not support approval of the transaction as proposed by Qwest and its allies.

III. Qwest's claim that Staff is seeking "never-ending imputation" is inaccurate, and distorts both Staff's position and the facts of this case.

20 Qwest claims that Staff is seeking "perpetual," "never-ending imputation" in this case and has based its recommendations to the Commission on this premise. *Opening Brief of Qwest* at 31-32, 34, 69. This is nothing more than a caricature of the Staff position and the facts in this case, which is that ratepayers should not receive less from the sale of Dex than they would receive through imputation if the sale is not approved. Dr. Blackmon's Exhibit GB-4C (Ex. 422C) shows that Staff has calculated a projected imputation amount (i.e., the net present value of future anticipated directory imputations) of **CONFIDENTIAL < **************> END CONFIDENTIAL**. As is readily apparent from the exhibit, this amount was calculated based on 40 years of imputation ("Value Over 40 years"). It is not based upon a "growing, never-ending imputation."

21 Qwest did not sell off the directory business and preclude QC's reentry into the business into perpetuity, but rather, did so for 40 years. Staff's calculations carefully match the finite, 40-year term of the Noncompetition Agreement that restricts QC under the terms of the Dex sale. If Qwest and Dex Holdings had been willing to structure this

as a 5-year or 15-year transaction, Staff would have limited its imputation calculations to this same period of time. But Qwest and Dex Holdings did not agree to a 5-year or a 15-year deal. In fact, Mr. Kennard made it quite clear that Dex Holdings would not do so. Tr. 315-316. Staff has responded accordingly. Qwest should not be heard to claim that Staff is somehow seeking perpetual relief when it is actually carefully matching its calculations to the term agreed to by the buyer and seller.

IV. Contrary to Qwest's claims, the revenue credits provided for in the settlement are not guaranteed, and they are not funded by $7.05 billion in sales proceeds.

22 Qwest contends that the settlement provides fair value to QC ratepayers because it contains 15 years of so-called "revenue credits." Qwest further contends that these revenue credits are "guaranteed" under the settlement agreement, *Opening Brief of Qwest* at 64, ¶ 170, and that Qwest "will have an additional $7.05 billion in sales proceeds with which it can 'fund' the revenue credit." *Id.* at 52, ¶ 139. Neither statement is correct.

23 Unlike the present directory imputation, which is backed by actual directory revenues received by Dex, the revenue credits to QC ratepayers under the settlement are not backed by any revenues at all. Furthermore, none of the Dex sales proceeds go to QC – all of the proceeds go to QCII. QCII would leave QC a weak company, with resources well shy of its obligations. Should QCII's situation continue to deteriorate, QC's position becomes even more problematic, with the real possibility that QC will seek rate relief or reductions in service quality. No amount of "revenue credits" can

obscure the fact that QC may simply be without sufficient monies to meet its needs in the future.

24 The error of Qwest's characterization is demonstrated by the vigor with which it opposes Staff's suggestion that QCII actually fund the revenue credits. Even that would not make the payments certain, but it would put a modest amount of reality behind the suggestion that the sale proceeds fund the revenue credits. Qwest's objection makes one wonder just how much of a "guarantee" it is willing to provide to QC ratepayers. Without the protection of a QCII-QC contract or other mechanism to ensure actual dollar payments to QC, QC and its ratepayers will not receive fair value as a result of the transaction, as required by the State Supreme Court decision in *US West v. Washington Util. & Transp. Comm'n*, 136 Wn.2d 74, 949 P.2d 1337 (1997).

V. Staff's recommendation that the Commission disapprove the Rodney sales transaction is supported by Qwest's own information, which demonstrates that the company is worse off with the Rodney transaction than without it.

25 AARP, Public Counsel, and WeBTEC complain that Staff's recommendation to disapprove the Dex Rodney sale is deficient because "Staff offers no independent projections of cash flows" in support of this recommendation." *Opening Brief of AARP, Public Counsel and WeBTEC* at 13 and ¶ 23. These parties cite in support of their criticism the testimony of Mr. Brosch, who has offered no independent projection of cash flows. While there is considerable irony in their argument, the reality is that Staff did not need provide an independent projection. Staff effectively discredited the Qwest

cash flow analysis through its cross of Mr. Cummings and demonstrated that the Company will be worse off with the Rodney transaction than without it.

26 Exhibit 87HC contains tables setting forth Qwest's cash flow projections assuming only "Dex East" [i.e., Dexter] is sold, along with Qwest's cash flow projections assuming both Dex East and "Dex West" [i.e., Rodney] are sold. The net effect of the Rodney transaction – the only one relevant to the Commission's decision in this proceeding – is found by comparing the two scenarios. The exhibit includes both the cash flow projection that Qwest performed in November around the time of the Dexter sale (page 8) and the cash flow projection that Qwest performed in January around the time it pre-filed its direct case in this proceeding (page 10).

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VI. Even if Qwest sells its directory operations in every other state, Washington is still better off retaining the right to publish a directory.

32 AARP, Public Counsel, and WeBTEC would have the Commission believe that bankruptcy is not the only horror story, that Washington customers also lose if Qwest is left with only the Washington directory business. Opening Brief of AARP et al., ¶ 25ff. The Commission should not be persuaded by these arguments, because the evidence in support of this proposition is simply not credible. The evidence cited by AARP et al. is primarily the testimony of Mr. Kennard, who is a principal in one of the firms seeking to buy Dex. It is only natural that he would disparage any alternative to his desired transaction, just as the Ford dealer will dispassionately explain why a Honda is not the right car. The Commission should understand that neither he nor his firm had any experience with the directory publishing business before the Dex transaction.

Moreover, the testimony cited by AARP et al. is clearly off point at times. For example, the discussion of liquidated damages is irrelevant to an analysis of a scenario where Qwest keeps the directory business, because the liquidated damages apply only if Qwest *reenters* the directory business after selling Dex. AARP et al. also point to testimony by Qwest that it would not sell the business in other states if Washington is omitted.[6] It is clear from recent events that the Rodney states are not inseparable as Qwest would suggest.[7]

33 It is notable that AARP et al. do not cite the testimony of Mr. Burnett in support of the proposition that a Washington-only directory business would not be viable. Mr. Burnett, the only witness for any party with actual directory publishing experience, testified that the fundamental unit of the directory business is the directory. Individual directories, not entire states and multi-state aggregations, are managed and operated on their own. Tr. 417-418. The Washington directories have not generated hundreds of millions of dollars of profits because they were published by the same company that publishes directories in Omaha and Salt Lake City and Boise. They have generated such large profits because they were published by the telephone company. That

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[6] AARP et al. cite this Qwest testimony: "I think we're back to the point that I discussed, and it would be that the Rodney sale would not go through, and it has the impact of us not receiving $4.3 billion that I believe we need to stay out of bankruptcy." *Reynolds, Tr. 1202, l. 23-1203, l. 2.*

[7] Staff understands that on July 16, 2003, Qwest contacted one or more commissioners to inform them that the company was in negotiations with the buyers to separate the Rodney transaction into non-Washington and Washington components.

fundamental relationship is not affected if Qwest and the buyers renegotiate their deal to exclude Washington from the sale.

34 The proponents, including AARP et al., suggest that publishing a directory will not be feasible once the Dex employees are no longer part of Qwest. This is a truly remarkable proposition, given that the proponents also argue that there is competition in the directory business. If there are other directory publishers – which is clearly the case – then these other firms constitute a pool of candidates who could handle the publishing functions for Qwest in Washington. RH Donnelley, for example, is already publishing directories in Washington state. Tr. 1470, 1474. The most promising candidate to publish the Washington directories, of course, is Dex Media itself, because it is essentially the same company that is publishing the Washington directories today. It is easy in the heat of the battle for the buyers to say that they would not take a fee-for-service, publishing-only contract, that they would sooner enter the Washington market without the Qwest trademark and designation as official publisher. The Commission should not assume that such an attitude will prevail once the case has ended. Dex Media would see a business opportunity in publishing the Qwest directories in Washington, and there is every reason to believe that it, along with other publishing firms, would seek that job.

35 Staff would not suggest that there will be no transition issues, no risk, or no reduction in profits should Washington be the only state to reject the Dex sale. There is

a level of uncertainty and risk in this approach. However, the Commission can be confident that, at the most fundamental level, telephone companies have found directory publishing to be a very profitable component of their business. The greatest uncertainty comes not from keeping the directory business when other states are selling their but rather from giving up all future directory business in return for a fixed cash payment. That is even more the case when the fixed cash payment accrues to the *owner* of the telephone company rather than the telephone company itself.

VII. The settlement proposal should not be accepted merely because several parties have agreed to it.

36 The settling parties' case, especially Public Counsel, AARP, DOD and WeBTECH, essentially boils down to the argument that the settlement is reasonable because they agreed to it, and that the Commission should respect a compromise among parties who are acting in their self-interest. But this argument alone is not sufficient, especially considering that all of the parties have not agreed to the settlement. In particular, the consumer parties have not offered an adequate explanation for why the entire amount of the Washington share of the gain amount, **CONFIDENTIAL <**************> END CONFIDENTIAL,** should not go to the consumers, and why Qwest should qualify to get approximately **CONFIDENTIAL <****> END CONFIDENTIAL** of the gain. They have offered no explanation of how Qwest's management behavior justifies its receiving this type of reward. The last thing the

Commission should do in this case is reward Qwest management in any way for the decisions that have led it to this point.

VIII. Conclusion

37 The evidence in this case clearly shows that the proposed sale of Dex is not in the public interest, and the Commission should therefore disapprove the sale. The sale fails the Commission's no-harm test, does not provide fair value to QC, and deprives ratepayers of benefits to which they are rightly entitled. If the Commission concludes that rejection of the sale is not a viable option, then it should capture all possible gains for customers and impose the safeguards recommended by Staff to prevent subsequent QCII raids on QC assets.

Respectfully submitted this 18th day of July 2003.

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