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**

POST HEARING REPLY BRIEF OF DEX HOLDINGS LLC

July 18, 2003

NON-CONFIDENTIAL version

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

1 Staff's opening brief[1] opposing the Settlement and the underlying sale of Dex ignores myriad complicated and intricate issues involved in this proceeding. Instead, Staff narrowly rests its opposition to the Settlement upon a singular flawed contention, summarized as follows: Qwest Corporation, Inc. ("QC") and its parent company, Qwest Communications International, Inc. ("QCII") have manufactured claims of financial distress and bankruptcy solely to support the proposed sale of Dex and invented the risks to the public interest that such a bankruptcy carries. Staff's contention fails not only because it is contradicted by the substantial testimonial and documentary evidence presented in this proceeding, but also because it is belied by Qwest's actions. Even Staff notes that Qwest would not have sold Dex but for the financial imperative that it do so. *Staff Brief* at 20. Qwest's actions speak louder than all the words in this record.

2 The record demonstrates that (**i**) both QCII and QC face a very real risk of bankruptcy unless the proposed sale is approved, and (**ii**) several additional factors (which Staff conveniently overlook) weigh in favor of the Settlement. **First**, as detailed below, the Commission must factor the possibility of a QCII and/or QC bankruptcy into its decision-making calculus because any such bankruptcy will have a profound impact upon the economy (local and regional), ratepayers, and the general public. The Commission simply cannot, as Staff suggests, discount this risk and gamble on the chance that a bankruptcy may not occur and, even if it does, that it might not have grave consequences.

3 **Second**, the record in this proceeding unequivocally establishes that financial distress and the risk of bankruptcy are not the sole factors militating in favor of the proposed sale. In particular, the Settlement reasonably balances <u>all</u> of the risks (financial, regulatory, market,

[1] *Opening Brief of Commission Staff*, (July 3, 2003) [hereinafter *Staff Brief*].

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and technological) associated with the Dex business and confronting ratepayers, QC, QCII, and the public at large. Under the Settlement, ratepayers receive the vast majority of the resulting gain on sale Moreover, as an independent company, Dex will be better able to innovate, enhance its services, launch new products, and evolve to meet new challenges.

4 The various other criticisms Staff levels against the Settlement are legally and economically unsound, inadequately supported, and internally inconsistent. Staff unsuccessfully attempts to play both sides of the proverbial field in advancing many of its arguments. In addition, Staff misapplies the Commission's decision in *Application of Avista Corp. for Authority to Sell Its Interest in the Coal-Fired Centralia Power Plant*, WUTC Consolidated Docket Nos. UE-991255, UC-991262, UE-991409, Second Supplemental Order, Order Approving Sale With Conditions (Mar. 27, 2000), the Washington Supreme Court decision in *U S West Communications, Inc. v. Washington Utilities & Transportation Commission*, 134 Wn.2d 74, 949 P.2d 1337 (1997), and the D.C. Circuit's opinion in *Democratic Central Committee of D.C. v. Washington Metropolitan Area Transit Commission*, 485 F.2d 786 (D.C. Cir. 1973). Finally, the economic analysis in Staff's Brief – like its legal reasoning – is flawed. In sum, rather than facilitating the Commission's effort to undertake a careful, reasoned, and balanced analysis of the proposed Dex sale, Staff's Brief invites the Commission to act based on a jumble of wholesale speculation and faulty reasoning.

II. ARGUMENT

A. Staff Ignores a Substantial Body of Evidence of the Risks Ratepayers Face.

5 As detailed below, Staff overlooks the substantial evidence of the risks associated with a Qwest bankruptcy, threats to the current imputation scheme, the host of regulatory, market, and technical changes surrounding the directory publishing business, and the significant benefit to the public inherent in the Settlement.

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1. Staff Ignores Substantial Evidence Demonstrating the Likelihood of a QCII and Possible QC Bankruptcy

6 In opposing the Settlement, Staff claims that a singular contention motivates the sale of Dex: a purportedly unsubstantiated claim of financial distress and impending bankruptcy. *See Staff Brief* at 1-2. Even more audaciously, Staff claims an absence of any evidence of financial distress or impending bankruptcy. *See Staff Brief,* at 32-42.[2] Staff not only ignores the evidence of financial distress, but it also dismisses the consequences associated with bankruptcy.

7 As summarized below, and as detailed in *Post Hearing Brief of Dex Holdings LLC* (hereinafter *Dex Holdings Brief*) and Qwest's Opening Brief, the record in this proceeding contains substantial documentary and testimonial evidence of QC's and QCII's precarious financial condition. This evidence, and the concomitant risk of bankruptcy it suggests, must be taken seriously because of the serious consequences that insolvency entails.

a. Staff Ignores Overwhelming Evidence Regarding the Possibility of a QC Bankruptcy

8 Throughout this proceeding, witness after witness testified regarding QCII and QC's deteriorating economic status. Staff dismisses these claims of financial hardship, characterizing them as unsubstantiated.[3] More strategically, Staff points to the absence of

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[2] As detailed in Section II.B.1, *infra*, Staff advances inconsistent and often contradictory arguments throughout its Opening Brief. For instance, Staff criticizes Qwest's claims of financial distress, characterizing these claims as illusory. Simultaneously, however, Staff criticizes the Dex sales price as below fair market value, claiming that the proposed transaction is a product of a distress sale. *Compare Staff Brief*, at 32-42 (claiming an absence of evidence regarding financial distress) *with Staff Brief*, at 18-20 (claiming that the sales price is a distress price).

[3] While Staff claims that there is absolutely no evidence of financial hardship or the possibility of bankruptcy, it (at least during the proceeding) acknowledged that Qwest witnesses submitted extensive testimony regarding these facts. *See* TR at 562 (Cummings) ("Q: There are *many references* in your testimony about the possibility that Qwest, the parent company, would declare bankruptcy without the Dex sale.") (emphasis added).

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1 any evidence regarding a QC bankruptcy while neglecting to address the very real
2 possibility that a ***QCII bankruptcy*** might trigger a ***QC bankruptcy***. In evaluating the
3 Settlement and the proposed sale, the Commission cannot afford to speculate the way
4 Staff's witnesses—none of whom have any real bankruptcy training or experience—are
5 willing to do. The evidence on this point is overwhelming. *See, e.g., Qwest Brief* at 56-62;
6 *Dex Holdings Brief* at 4, 15-16, 22, 27-28. Moreover, even Staff acknowledges the
7 strongest evidence of the bankruptcy risk, which was that Qwest decided to sell Dex to raise
8 cash to pay its debts.

9 *9* Even information from the public domain reveals the fallacy of Staff's claim that the risk of
10 bankruptcy is unsubstantiated. For example, the credit rating agency Standard & Poor's
11 ("S&P") recently stated that for Qwest to meet its maturities through 2005 it "must
12 complete" the sale of Dex. Exh. 420 at 3. Dr. Blackmon agreed that S&P was "one of the
13 best sources" for that type of information. TR at 1440 (Blackmon). As another example, in
14 November 2002, a federal court denied a request for an injunction prohibiting the proposed
15 sale of Dex, and explicitly found that "[t]he proposed injunction would, in essence, likely
16 cause Qwest's current financing structure to collapse. That, in turn, would cause major
17 disruption of the entire Qwest operation and possibly trigger a bankruptcy filing by Qwest."
18 *In re Qwest Communications Int'l, Inc. Sec. Litig.*, 231 F. Supp. 2d 1066, 1070 (D. Colo.
19 2002) (concluding that the possibility of a Qwest bankruptcy poses a significant threat of an
20 adverse effect on the public interest).[4]
21
22

23 [4] Newspapers across the country have reported on the possibility of a Qwest bankruptcy. *See*, *e.g.*, Kris Hudson, Rumor Wallops Qwest Stock, Denver Post (Aug. 8, 2002), at A1 ("'The pivot point [in
24 determining whether Qwest will declare bankruptcy] is the directory sale. If they get that done, they live. If they do not get that done, they die . . . .'") (quoting Kaufman Brothers Telecom Analyst Vik Grover);
25 Jeff Smith, Qwest Says Dex Sale Is On Track, Rocky Mountain News (May 13, 2003), at 3B ("Standard & Poor's reported recently that Qwest must complete the sale of Dex this year to meet its debt-repayment
26 terms."); Geoff Nairn, Telcos Find Funds Every Which Way, Financial Times (April 16, 2003), at P1
(FOOTNOTE CONT'D)

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1 *10* Even while conceding, as it ultimately must, that QCII may declare bankruptcy absent the
2 Dex sale (*see Staff Brief* at 33), Staff clings to the hope that such a QCII bankruptcy would
3 not affect QC. In doing so, Staff fails to acknowledge the very real *incentive* that QCII has
4 today to place QC in bankruptcy in the event that it is unable to consummate the sale of
5 Dex at the conclusion of this proceeding. As Mr. Mabey testified, "the greatest incentive
6 that QCII has to place QC in bankruptcy would be to effect the Dex sale and the entry into
7 . . . the publishing and non-competition agreements that are part of it." TR at 729 (Mabey);
8 *see also* Exh. 211 (Mabey Rebuttal) at 18 ("[T]here is the real possibility that QC would
9 join QCII in a bankruptcy filing. If it does, virtually anything could happen."). That
10 incentive is removed if the sale is approved. TR at 354-55 (Kennard) ("I think it becomes
11 very remote that Qwest goes into bankruptcy if this deal is approved, because I think that
12 they're basically out of the woods.").
13
14 *11* Inexplicably, in the face of overwhelming evidence that Qwest has determined that its road
15 to financial health must include the sale of Dex and that it is doggedly pursuing that goal,
16 Staff's brief asserts that QC would not be included in the bankruptcy or that creditors would
17 desire to separately sell Dex." *Staff Brief* at 33. Making this assertion, Staff relies on its
18 unsubstantiated claim that it would be in the interests of creditors to keep QC and Dex
19 under common ownership to maximize the value available for the benefit of creditors. *Staff*
20 *Brief* at 40-41. This is a *non sequitur*.
21
22 *12* As with this sale, a sale of Dex in bankruptcy would maximize the value of that asset in the
23 market by including long-term publishing and non-competition agreements, generating
24 substantial liquidity that could be used to satisfy creditor claims. Staff's assertion,
therefore, silently assumes that there is some substantial synergy associated with housing an

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25 ("Qwest last year raised $7bn though the sale of Qwest Dex, its directory publishing arm, to help stave off bankruptcy.").
26

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1 ILEC and a directory publisher under one roof that would entice creditors to endure the
2 long road back to financial health. Such evidence exists neither in the record nor in the real
3 world. **First**, while there may be some increased operational costs associated with running
4 Dex as a standalone company, Staff has made no attempt to show that these costs offset the
5 substantial unlocking of value that Mr. Kennard identified as a result of the liberation of
6 Dex from the control of a large integrated (and financially-challenged) RBOC that is
7 focusing its attention on its core businesses. TR at 336 (Kennard). **Second**, Staff has made
8 no attempt to show, even if it were a close call, that the creditors would not prefer to be
9 compensated up front, rather than waiting to see whether the Qwest enterprise ultimately
10 becomes more financially successful again. **Third**, staff ignores substantial real-world
11 evidence that many ILECs, under no compulsion to do so, choose to outsource their
12 directory publishing functions to third-party publishers like L.M. Berry or others.[5] If
13 separation of the ILEC and directory publishing business arms were harmful to the values
14 of the respective business functions, it would not be such a common occurrence.
15
16 *b. Staff Unreasonably Minimizes the Risks Associated with a QCII or QC Bankruptcy.*

17 *13* The financial impacts and risks of a QCII or QC bankruptcy cannot be seriously disputed:
18 (**i**) customers would lack access to new and improved services; (**ii**) employees and retirees
19 would be at risk for reductions in healthcare and some pension benefits; (**iii**) suppliers and
20 vendors of goods and services utilized by Qwest would experience decreased sales and
21 increased risks associated with general unsecured creditor status; (**iv**) competitors would
22 encounter interconnection complications; and (**v**) Qwest shareholders would likely lose
23
24
25 [5] The Web site of the L.M. Berry Co., for example, lists many dozens of ILECs for which it performs directory publishing functions. *See* http://www.lmberry.com/profiles3.cfm?ID=53&pn=Telco%20Services (visited July 16, 2003).
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their entire investment. *See, e.g.,* Exh. 178 (Cummings Rebuttal) at 4-5; *see also In re Qwest Communications Int'l, Inc. Sec. Litig.*, 231 F. Supp. 2d at 1070.

14 In addition to these financial impacts, bankruptcy would have significant regulatory impacts. For instance, bankruptcy could deprive this Commission of jurisdiction over the sale of Dex. *See FCC v. Nextwave Personal Communications, Inc.,* 123 S.Ct. 832, 839 (2003) ("[w]here Congress has intended to provide regulatory exceptions to provisions of the bankruptcy code, it has done so clearly and expressly"); *Dex Holdings Brief*, at 28; *see also* TR at 353-54 (Kennard); TR at 597-98 (King). As Former Bankruptcy Judge Mabey testified: "[I]f QCII files bankruptcy and the bankruptcy court takes jurisdiction over the sale of Dex, it will have its broadest jurisdiction and will trump I believe most other actions." TR at 720 (Mabey). Mr. King, on behalf of some of the ratepayers that staff supposedly seeks to protect, also highlighted this major concern as a reason for supporting the Settlement. TR at 598 (King) ("[t]he bankruptcy court sells Dex and we are left with nothing for ratepayers . . . [w]e could lose every penny of benefit that comes from the Dex directories").

15 Unlike Staff, other public utilities commissions take the risk of bankruptcy very seriously. For instance, in *Tariff Filing of Green Mountain Power Corp.*, Docket No. 6107, 2001 Vt. PUC LEXIS 15, at *130-48 (Jan. 23, 2001), the Vermont Public Service Board ("PSB") acknowledged the grave hazard posed by even the possibility that a public utility could file for bankruptcy. In approving the utility's negotiated rate increase application, the PSB explained that – consistent with its mandate to protect the public interest – it was obliged to take into account the risk of bankruptcy:

> The costs to ratepayers and, more importantly, the risks for ratepayers associated with such a bankruptcy outweigh these potential benefits and lead us to conclude that a [utility] bankruptcy under these circumstances is not in the public interest. . . . *We recognize that this chain of events [triggering a bankruptcy filing] is not a certainty, but it presents risks to*

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1 *Vermont's electric ratepayers that can not be ignored.* Reinforcing this conclusion is our skepticism that bankruptcy would be an effective way
2 to reduce the [utility's] above-market power costs associated with long-term purchase power obligations.
3
4 *Id.* at *149 (emphasis added). The Vermont commission rejected arguments that
5 bankruptcy would serve the public interest, explaining that bankruptcy imposes direct and
6 indirect costs, consumes administrative resources, causes deterioration of service, and leads
7 to loss of operational control by existing management. *Id.*

8 *16* Similar to Vermont, in *Proceeding on Motion of the Commission as to the Rates, Charges,*
9 *Rules & Regulations of Long Island Lighting Co. for Electric Service*, Case 29029, 1985
10 N.Y. PUC LEXIS 155, at *48 (Oct. 28, 1985), the New York Public Service Commission
11 stated: "It is clear that the bankruptcy of LILCO is not in the public interest and it is
12 equally clear that rate relief in the amount requested is required in this instance if LILCO's
13 financial status is to be preserved and enhanced." Likewise, the Florida Public Service
14 Commission in *Application of South Palm Beach Utilities Corp. to Amend its Service*
15 *Availability Rules & Main Extension Policy in Palm Beach County, Florida*, Docket No.
16 750477-WS, 1977 Fla. PUC LEXIS 111, at *10-11 (Dec. 1, 1977), noted: "the alternatives
17 to increasing service availability charges - bankruptcy chaos, and resultant service loss or
18 deterioration - are contrary to the public interest."

19 *17* Staff ignores – and asks the Commission to ignore – the risks to which other commissions
20 routinely and wisely give careful consideration. Because of the dangers posed by a QC or
21 QCII bankruptcy, the Commission must factor the possibility of such a bankruptcy into its
22 determination regarding the Settlement and proposed sale. Staff's rationale for ignoring or
23 minimizing the adverse bankruptcy impacts is poor, at best. Staff claims that the
24 bankruptcy of the parent corporation (QCII) may not significantly impact the regulated
25 entity (QC). In support of this speculative claim, Staff contends that Enron's bankruptcy
26 has not had an adverse impact on PGE or its customers. *See* Exh. 431 (Folsom Direct) at 4-

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6. However, under examination from Chairwoman Showalter, Staff's own witness effectively conceded that the Enron bankruptcy and PGE's current condition offer little insight into the consequences for QC in the event of a QCII bankruptcy. TR at 1248-49 (Folsom). The Enron/PGE example is of little precedential value in this proceeding because of the significant and substantive differences in context. *Qwest Brief* at 59-60, fn. 88.

2. Staff Ignores the Risks to the Imputation Revenue Stream.

18 In addition to unjustifiably minimizing the Qwest bankruptcy risks, Staff completely ignores myriad other factors militating in favor of the Dex sale. Characterizing the risk of bankruptcy as an illusory threat, Staff contends that "[w]ithout that sword, it becomes readily apparent that the Commission should disapprove the sale." *Staff Brief* at 2. This contention – the basis of Staff's opposition strategy – fails.

19 The record in this proceeding confirms that – in addition to the very real possibility of a QCII and/or QC bankruptcy – a multitude of other factors militate in favor of the Settlement and proposed sale. *See Dex Holdings Brief*, at 9-13. Staff ignores these factors, the concomitant risks, and the sea of regulatory, technological, and market changes engulfing the directory publishing business. Amidst this flood, Staff advocates a naive approach, claiming that the Commission should simply pursue the *status quo* indefinitely. Obviously, the Commission cannot adopt such a simple conclusion for an issue which necessarily demands a reasoned and balanced analysis. Rather, such an analysis necessarily requires the Commission to consider the very real risk that the current imputation regime cannot continue in perpetuity.

20 The Commission cannot, by simply rejecting the Settlement and denying the proposed sale, preserve indefinitely the imputation scheme that has existed for the last twenty years because such an action could propel QC into bankruptcy. In its opening brief, Dex

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Holdings identified numerous legal, technological, financial, and market risks that are well documented in the record, *see, e.g., Dex Holdings Brief* at 9-13, 16-22, and explained that the *status quo* has vanished irrevocably, *see, e.g., id.* at 3, and will not repeat this analysis here. Suffice to say, Staff completely ignores these risks, naïvely believing that the current imputation stream can continue indefinitely. The ratepayers are not so sanguine, recognizing that at the extremes the risks are huge. As Mr. King noted:

> It's possible that, over time, the Yellow Pages could lose their value. And if they lost their value, the imputation would decline correspondingly. And it's possible that ultimately there would be no Yellow Pages, that there would continue to be a White Page requirement, and as a consequence, the company would lose money on directory publication.
>
> If that happened, the imputation would really reverse. It would become a cost of service . . . .

TR at 611 (King).

3. Staff Fails to Acknowledge, or Even Discuss, the Competitive Auction Process That, by Definition, Produced Fair Market Value

21 Staff's claim that the proposed sales price is below fair market value ignores the fact that Dex was auctioned through a competitive arms' length transaction process. *See Dex Holdings Brief, at* 41-42. The nature of the sale process ensured that fair market value was obtained, in both a real sense and based on sound economic theory. *See, e.g.,* Exh. 261C (Kalt Rebuttal) at 8-9 (highlighting characteristics of the Qwest Dex sale that are indicative of a fair market value transaction); Exh. 221C (Taylor Rebuttal) at 10-14 (describing Qwest Dex sale process).[6]

[6] In fact, Lehman Brothers and Merrill Lynch, renowned investment banks acting as the Company's advisors in connection with the sale of Qwest Dex, confirmed that the sale of the directory publishing was financially fair. *See*, *e.g.,* Exh. 178 (Cummings Rebuttal) at 12-13 (explaining that the sale was a fair market transaction which engaged multiple competitive bidders).

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22 In contrast to overwhelming fact evidence and sound economic opinion testimony, Staff offered testimony that was contrived, at best. Staff's witness on valuation improperly used the midpoint of valuation ranges prepared by others. *See* TR at 858-859 (Selwyn). Even he admitted that he was not offering his analysis as an opinion of a single point valuation number. For example:

> Q. Do either of the analysts ever state anywhere on these documents or on any of the other documents that you reviewed that the mid point was the business enterprise value?
>
> A. No, and I'm not stating it either as such.

TR at 851 (Selwyn). Later, Dr. Selwyn clearly agreed that he was not offering an opinion of a specific value:

> Q. As we discussed on Friday last week, you were not retained by Staff, nor did you, in fact, undertake to prepare a point estimate of fair market value on this asset; isn't that correct?
>
> A. That's correct.

TR at 892 (Selwyn).

23 Moreover, Dr. Selwyn ascribed motives to the bidders (Exh. 311 (Selwyn Direct) at 16) in an effort to overcome the presumption of a fair market price even though he admitted had had never spoken to any of those bidders. Exh. 354; TR at 954 (Selwyn). Mr. Kennard's description of his frantic call from an Applebee's in Louisiana to Dick Notebaert yelling, "you've got your $50 million,"[7] is not just an amusing anecdote. It is a real-world and concrete fact – in contrast to Staff's unfounded speculation – that demonstrates how successful Qwest was in incenting the bidders to offer the highest possible prices for Dex.

[7] TR at 348 (Kennard).

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1 *24* The shortcomings and flaws in Dr. Selwyn's valuation testimony were numerous. *See, e.g.,* 2 TR at 828, 846-59 (Selwyn). Indeed, Dr. Selwyn's testimony was so confusing it was not 3 clear whether he was even offering an opinion of fair market value at all, as opposed the an 4 amorphous opinion on future "business enterprise value," which Dr. Selwyn characterized 5 as unknowable except in 20/20 hindsight. *See, e.g.*, TR at 838-39 (Selwyn). There is 6 simply no competent or credible evidence to support Staff's argument that the proposed 7 sale is not for a fair market value price.

8 9 4. <u>Staff Fails to Acknowledge the Public's Interest in Approval of the Settlement.</u>

10 *25* Staff also fails to address the substantial public interest benefits that will flow from the 11 Settlement and the proposed sale. Because the Settlement promotes competition between 12 local exchange carriers and reflects an arms' length transaction that resulted in a fair market 13 value price for the Company's directory publishing business, the Commission's ratification 14 of it will necessarily benefit the public interest for several reasons, which are outlined in 15 *Dex Holdings Brief* at 15-42. These advantages – unlike those advanced in Staff's short- 16 run assessment of the public interest – not only benefit all Washington consumers, but also 17 take into consideration the dynamism of regulatory and technological change. *Compare* 18 Exh. 311 (Selwyn Direct) at 5 *with* Exh. 261C (Kalt Rebuttal) at 12-13. Moreover, Staff 19 incorrectly focuses its public interest analysis solely on Qwest's ratepayers, rather than all 20 Washington telecommunications consumers and residents. *See Dex Holdings Brief,* 21 at 15-17.

22 23 **B. Staff Employs Faulty Legal, Economic, and Financial Analysis, Erroneously Concluding That Ratepayers Will Be Harmed by the Sale of Dex.**

24 *26* Throughout its Opening Brief, Staff takes logically inconsistent positions that demonstrate 25 the unsupportable nature of its positions. Rather than advance substantive arguments that 26 address the real world situation faced by Qwest, Staff formulates hypothetical, legally

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insufficient, and economically unsound theories advocating rejection of the Settlement. In doing so, Staff's Brief misapplies the controlling cases on the subject and miscomprehends the economic analysis that the parties have performed.

1. Staff Takes Logically Inconsistent Positions Throughout Its Brief

27 The credibility of Staff's opposition to the sale of Dex and the resulting Settlement are undercut by the inconsistent positions taken throughout its Brief. **First**, at the drop of a hat, Staff alternately rejects, then accepts the risk of a QCII bankruptcy. Throughout its Brief, as discussed above, Staff vociferously contends that there is no evidence that QCII is in danger of filing for bankruptcy. *See Staff Brief* at 3, 32-38, 43. Indeed, this argument is central to the Staff's brief. Despite this position, Staff then claims that the sale price of the directory publishing assets was lower than fair market value because "bidders were aware of QCII's rapidly worsening financial crisis, and would have factored the nature of the Dex sale into their offers." *Id.* at 19. Staff rests its argument about fair value on the idea that QCII was in dire financial straits, but then inexplicably cannot contemplate the notion that such a crisis might lead to bankruptcy.

28 **Second**, Staff takes inconsistent positions on the term over which the gain on a sale should be shared with ratepayers. Opposing the settlement, Staff argues that the 15 years of revenue credits are in danger because Qwest's financial situation may be in jeopardy. *Staff Brief* at 42. Arguing its own position, however, Staff suggests that ratepayers actually deserve 40 years of revenue credits. *Id.* at 21-22. Staff never explains, however, how the 15-year stream or revenue credits contained in the settlement is fraught with such risk, while its own 40-year stream tied to Dex's financial performance is what is reasonable and due.

Third, while Staff contends that Qwest has not presented evidence sufficient to support its predictions of the future, Staff has engaged in fortune telling of its own. For instance, Staff

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has asserted that if the Rodney transaction were to close without the state of Washington, the Dex business in this state would persevere. *Staff Brief* at 45. While this is merely optimistic speculation, Staff goes further to assert that not only could "QC-Washington" enter an agreement with another publisher, but the "associated rights in exchange for an ongoing license fee . . . would likely exceed the 'revenue credit' proposed under the settlement." *Id*. Staff and its witnesses cannot credibly value the rights for a newly created stand-alone entity paired with a phantom partner in a hypothetical market. The argument that in fact that those rights are "more" than the amount offered by the current Settlement is both an impressive and convenient feat of prophecy.

2. Staff Misapplies the *DCC* Precedent When Allocating Gain On The Sale.

29 Staff agrees with Dex Holdings and Qwest that the proper determination of the allocation of the gain from the sale of a utility asset is governed by *Democratic Central Committee of D.C. v. Washington Metropolitan Area Transit Commission*, 485 F.2d 786 (D.C. Cir. 1973) ("*DCC*"). *See Staff Brief* at 23. Once Staff embraces this case however, it then proceeds to misinterpret its central holding and misapply its two-step test, erroneously concluding that Washington ratepayers are entitled to nothing less than 100% of the gain on the Dex sale. As demonstrated below, proper application of the *DCC* standards generates a different outcome.

30 The argument in favor of an allocation of 100 percent of the gain to ratepayers begins with the assertion that because the "directory publishing business" has been referred to as an "asset" and a "regulatory asset" (*see Staff Brief* at 25), the question of allocation has already been resolved. Nowhere does Staff link the phrase "regulatory asset" to the *DCC* test involving risk of loss and financial burdens. Staff seems to suggest that the terminology used to describe the asset somehow trumps the risk of loss analysis, without acknowledging that the *DCC* test applies exclusively to "regulatory assets." Indeed, the *DCC* test very

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specifically walks through the treatment of the gain on the sale of an asset that as already been determined to be part of the regulated activity, to determine how gain should be divided. *See DCC*, 485 F.2d at 812 (analyzing the history of the asset to be sold). The phrase "regulatory asset" cannot illuminate any aspect of the DCC test because that test, by definition, applies only to such assets.

31 Staff then posits that the issue has been resolved – in a different docket under a different record. Because the Washington Supreme Court once found historical linkages between US West and its directory business, Staff concludes that the "benefits" of the business "did not derive from entrepreneurial risks taken by shareholders." *Staff Brief* at 24 (*citing US West*, 134 Wn.2d 74, 99, 949 P.2d at 1337, 1350 (1997)). The quote used by Staff begins with "[t]he record shows" but fails to identify any salient evidence that was placed before the Commission as part of that record. In contrast, the record before this Commission contains detailed and methodical analysis by Mr. Grate showing that during fully half of Qwest's life span, ratepayers have borne no risk of loss on the capital assets of the directory publishing business. *See* Exh. 101 (Grate Direct) at 23-24.

32 In response to Mr. Grate's testimony about the formative years of the business and the impact on modern-day gain allocation, Staff dismisses such analysis as "irrelevant." *See Staff Brief* at 26. This is so, Staff claims, because whatever risks existed during these early years "were captured" when the ILEC came under regulation.[8] *Staff Brief* at 26. For this point, Staff makes no logical argument and cites no authority to counter the detailed explanation laid out in Mr. Grate's testimony. Then, in response to Mr. Grate's description of the past twenty years – those years during which Qwest operated in a competitive

[8] If, indeed, risks were "captured" then so too would any goodwill that was contributed. Yet there is no evidence in the record that Qwest's predecessor was ever compensated or allowed a return on the going concern value of the directory business that was "captured" in 1923.

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environment, *see* Exh. 101 (Grate Direct) at 21-23 – Staff claims that the yellow pages business was never fully transferred and thus "did not fundamentally change ratepayers' interests and obligations with respect to the directory publishing business." *Staff Brief* at 27. Again, Staff's unsupported and tangential comments on the status of Dex entirely fail to address the question of whether ratepayers or shareholders have borne the risks of capital loss on the directory assets.

33 Further, Staff characterizes the *DCC* test in a manner that is flatly inconsistent with the language of the case itself, avoiding the very regimented test in *DCC* that requires an examination of 1) the risk of capital losses or 2) the burden of a "*particular utility activity*." Instead, Staff claims that *DCC* "requires one to look at the business enterprise in a holistic manner, encompassing both tangible and intangible assets." *Staff Brief* at 27. For this specific legal proposition, Staff cites to Dr. Selwyn's Direct Testimony, Exh. 311 at 63-64. However, not surprisingly, Dr. Selwyn cites to no part of the *DCC* opinion in support of his contention. Indeed, there is none. Staff's faulty legal interpretation is an effort to detract focus from the undisputed history of the directory publishing business and how that history fits squarely within the *DCC* test. When applied, that test shows both that ratepayers have not borne the risk of loss and that shareholders have continually borne the financial burden of the publishing business. *See Dex Holdings Brief* at 34-36. Staff's argument that ratepayers should receive 100 percent of the gain under the *DCC* analysis is unsupportable.

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1 3. Staff Mangles the *Centralia* Test and Its Application to this Case, Erroneously Positing that the Sale and Settlement Harm Ratepayers.

2

3 *a. Staff Grossly Misstates and Misapplies the* Centralia *Test*

4 *34* Staff concedes that *Centralia*[9] is the proper legal standard under which to analyze the sale

5 of the Dex publishing assets, *see Staff Brief* at 15, but then proceeds to misinterpret the test

6 espoused by that case. Staff leads off its argument by simplifying *Centralia's* four-part "no

7 harm" test into a single question of whether ratepayers will pay more after the transaction.

8 *See Staff Brief* at 15 ("*Centralia Coal* requires that customers receive no less, under the

9 proposed "Rodney" sale of the yellow pages directory business, than they currently receive

10 through imputation of directory revenues."). In fact, the "no harm" language refers not to

11 the rates that Qwest customers pay, but to the transaction's overall impact on the public

12 interest – something quite different than that espoused by Staff and a concept that must be

13 carefully explicated using all four factors of the test. *See Centralia* at ¶ 29 (four-part test

14 are "guidelines that, when taken together, can be used to determine whether there is, at

15 least, no harm *to the public interest*") (emphasis added).

16 *35* The Staff's question – whether ratepayers will pay more after the transaction – presumably

17 is a misstatement of the first *Centralia* factor: the "rates and risks faced by ratepayers."

18 Even under Staff's interpretation of this factor, however, its argument that ratepayers would

19 be better off under a policy of never-ending imputation than they would under the

20 Settlement suffers from at least two flaws. **First,** as discussed below, the present value to

21 ratepayers of the Settlement is considerably greater than that of continued imputation.

22 **Second,** the value of never-ending imputation, whatever it may be, is not a proper starting

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[9] *Application of Avista Corp. for Authority to Sell its Interest in the Coal-Fired Centralia Power Plant*,
25 WUTC Consolidated Docket Nos. UE-991255, UE-991262, UE 991409, Second Supplemental Order, Order Approving Sale with Conditions (Mar. 27, 2000).

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place for analysis of whether the transaction does harm to the public interest under *Centralia* because ***perennial imputation is not – and never has been – any part of the public policy of the state of Washington.*** *US West*, 134 Wn.2d at 101-02, 949 P.2d at 1351 ("neither never-ending imputation nor seizure of income is contemplated or attempted here."). Indeed, Staff concedes that imputation was not designed to last forever. *See Staff Brief* at 14 (*citing US West*, 134 Wn.2d 48, 949 P.2d 1337). Imputation is nothing more than an interim means to compensate ratepayers for their interest in Dex until they receive fair value for that interest, at which point imputation should end.[10]

36 Having misstated and misapplied the first *Centralia* factor, Staff then completely overlooks the remaining three factors of *Centralia*[11] in a vain attempt to magnify the value of its singular (and flawed) argument that ratepayers will receive less under the settlement than they would if imputation continues to grow indefinitely. Staff's misapplication of the *Centralia* test is particularly unfortunate because the issues faced by the Commission in the *Centralia* docket resemble the questions that must be addressed in this proceeding. Like here, the transaction in *Centralia* carried with it attendant risks related to either 1) maintaining the status quo or 2) approving the sale and severing the connections with the regulated utility. *See id.* at ¶ 21. Even though the sale appeared to result in higher rates paid by Washington consumers – an issue *not* faced here – the Commission determined that the proper balancing of interests favored approval of the sale:

> When all is said and done, the power cost analyses present us with a useful, but not definitive, view of the future. They suggest that,

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[10] This assumes that Washington ratepayers are entitled to share in the gain notwithstanding the fact that they have not borne the risk of loss or the financial burden of the asset. *See* discussion *infra/supra* at Section II.B.2.

[11] Those factors are (1) the rates and risks faced by ratepayers; (2) the balance of interests among customers, shareholders, and the broader public, (3) the effect of the transaction on competitive markets, and (4) protection of the interests' of Washington ratepayers. *Centralia*, ¶ 29.

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> subject to unavoidable uncertainty and imprecision, Centralia power is projected to become increasingly valuable when compared with market-priced power alternatives. These analyses, do not, however, take into account technological change which, over the span of 26 years, could cause market rates to be lower than forecast, diminishing or even reversing the cost advantage of Centralia. Nor do these analyses take into account potential industry restructuring, which could sever the ratepayers from any cost advantages of Centralia. Therefore, we do not believe that these analyses are persuasive evidence that ratepayers or the broader public will, on balance, suffer harm from increased rates attributable to the sale.

Id. at ¶ 63.

37 The risk balancing that the Commission performed in that case is precisely the process that the Commission must engage in here. On balance, when viewed in light of *Centralia's* test that analyzes the "unique mix of factors" of each case, the proposed sale of Des does no harm to the public interest and should be approved.

b. Staff's Concerns About Distribution Of Sale Proceeds Are Misplaced.

38 Staff has argued that fair value for Dex has not been achieved through the proposed Rodney transaction because "[n]ot only does QC not receive a penny of the sale proceeds, under the settlement, in fact, QC must make all the payments to customers, including the $67 million one-time bill credit." *Staff Brief* at 15. Staff's argument is incorrect in at least two ways.

39 **First**, the Washington Supreme Court did not state that to receive "fair value," the regulated utility or ratepayers must be paid in "cash" when the assets are transferred. Staff's argument that QC receives "not a penny" completely overlooks the parties' and the Commission's freedom to structure a settlement that returns fair value, in a multitude of forms, to the utility and its ratepayers. The fact that QC does not receive cash in the sale is no different from the imputation regime, under which QC must operate its business under the premise that it is benefiting from funds that it never receives.

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1 40 **Second**, Staff is unjustifiably concerned that the $7.05 billion payment is made to QCII,
2 rather than Qwest itself. *See Staff Brief* at 14. As mentioned above, all of the benefits flow
3 through to ratepayers in the form of an up front payment of $67 million and 15 years of
4 revenue credits. That the sales payment is made to QCII is not relevant. Under the status
5 quo, QCII has first claim on the profits of both Qwest and Dex. The terms of the
6 Settlement allow QCII to provide fair value to ratepayers by monetizing the Dex revenue
7 stream today and then amortizing what it owes to QC through reductions to QC's earnings
8 over a 15-year "mortgage" period. In effect, QC and, by extension, its ratepayers, receive
9 fair value *from QCII* (which initially receives the sale proceeds) over time in the form of
10 reductions to the dividends QC would otherwise remit to QCII. Those reductions accrue
11 directly to the benefit of Washington ratepayers in the form of 15 years of revenue credits.
12 In this way, the payment of fair value to QCII for the directory publishing assets is
13 manifested in revenue credits to Washington ratepayers, whom Staff admits were the
14 designated beneficiaries under the *US West* approach. *See Staff Brief* at 14 ("imputation
15 was for the benefit of the USWC's ratepayers"). The identity of the *initial* recipient of the
16 proceeds of the Dex sale is irrelevant.
17
18 *c. Staff's Financial And Economic Analysis Is Fundamentally Unsound.*

19 41 The present value analysis Staff conducts in applying its misguided version of the *Centralia*
20 test suffers from a host of infirmities. Once corrected, Staff's arguments about valuation
21 and probability actually counsel in favor of approving the Settlement.
22 Staff attempts in its brief to compare the present value of what it believes
23 that ratepayers would receive if imputation were to continue under the status quo to the
24 present value to ratepayers of the Settlement. Staff errs in this analysis for at least three
25 reasons. **First,** the Staff makes wildly optimistic assumptions about the future of Dex's
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earnings and the imputation revenue stream, assuming that it will grow at a rate of between 2.1 and 10 percent every year for 40 years. (Exh. 325C). In doing so, Staff fails to address or analyze the plethora of new challenges to Dex that are well-documented in the record and that heighten the risk to Dex's revenue stream and earnings. Using the example of the CPE industry, which grew out of divestiture and FCC orders, Dr. Selwyn admitted that the impact of deregulation and competition there was both dramatic and did not take very long to occur. *See* TR at 958-59 (Selwyn). The problem, as Dr. Selwyn agreed, is it is impossible to predict the value of any business over the long term. TR at 967 (Selwyn); *see also* Exh. 417; TR at 1413-14 (Blackmon). Because it is based on such a rosy imputation scenario, Staff's "no harm" comparison between the Settlement revenue credits is misleading and, ultimately, of no value to the Commission's analysis.

Second, even putting these concerns about Staff's assumed imputation revenue stream, Staff's present value analysis improperly uses the same discount rate in making its comparison. It is well established in economic literature that a present value analysis of a stream of payments must reflect a discount rate that takes into account the risk associated with that particular payment stream, with risky streams being discounted at a **higher** rate. As described in a well-known finance text:

> The discount rate is determined by rates of return prevailing in capital markets. If the future cash flow is absolutely safe, then the discount rate is the interest rate on safe securities such as United States government debt. If the size of the future cash flow is uncertain, then the expected cash flow should be discounted at the [higher] rate of return offered by equivalent-risk securities.12

[12] Richard A. Brealy & Stewart C. Myers, *Principles of Corporate Finance* 23 (4th ed., 1991).

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1 Clearly, the uncertainty associated with the defined revenue stream to
2 ratepayers included in the Settlement is lower than the uncertainty associated with a 40-
3 year income stream from a company facing substantial change in its industry. The lower
4 risk of the Settlement stream of payments enhances their value relative to continued
5 imputation.
6
7 *42* **Third,** the 10 percent discount rate Staff chose does not accurately reflect the risk
8 associated with either revenue stream. The market has already assigned a discount rate to
9 the Dex income stream, upon which the level of imputation is based. According to Mr.
10 Kennard, the buyer's expected return on the purchase of Dex is **BEGIN HIGHLY**
11 **CONFIDENTIAL**
12 **************************** **END HIGHLY CONFIDENTIAL** discount rate to
13 Staff's view of the 40-year imputation stream shows that the present value that Washington
14 ratepayers should expect to receive would be only **BEGIN HIGHLY CONFIDENTIAL**
15 ****[13] ****************************** **END HIGHLY CONFIDENTIAL** as Staff
16 calculates in Exhibit 422C.
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18 *43* Similarly, also using a discount rate of 10 percent, Staff computes a present value of the
19 Settlement at $874 million. *See* Exh. 422C. The 10 percent discount rate, however, fails
20 properly to reflect the substantially lower risk associated with the Settlement because
21 (a) the revenue credits are locked in – they do not fluctuate depending on Dex's
22 profitability, as does current imputation; and (b) the revenue credits are essentially a
23 product of this Commission's regulatory ratemaking authority. Should Qwest be forced

24 [13] Appendix A (Highly Confidential). The bottom number on page 1 is simply a net present value calculation performed using the same calculations that Staff used in deriving the net present values in Dr.
25 Blackmon's Exhibit 422C, except that a more appropriate discount rate is used. Pages 2-3 replicate the Staff's calculations behind Exhibit 422C, including all values and formulas.
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into bankruptcy, the revenue credits will not disappear. *E.g.* TR at 719-20. Under Staff's alternate recommendation, if Qwest were to file for bankruptcy, the revenue streams that currently form the basis for imputation could be channeled elsewhere, leaving Washington ratepayers high and dry. *E.g.* TR at 598 (King). In these ways, the revenue credits in the Settlement provide for a far less risky future for Washington ratepayers. Because of that, an entirely different – and lower – discount rate should be applied.

44 Using either the 20-year Treasury bill rate of 4.9 percent, or the 10-year Treasury bill rate of 3.96 percent, either of which reflect this lower risk, Dr. Kalt calculated the present value of the settlement bill credits at roughly $1.2 billion, *see* Exh. 13; TR at 765, 805 (Kalt), or roughly **BEGIN HIGHLY CONFIDENTIAL** ************END HIGHLY CONFIDENTIAL** ***more*** than ratepayers can expect under even the rosy-scenario imputation revenue stream advocated by Staff. By correcting the discount rate for the actual risks involved with each option, Staff's doom and gloom scenario fades away and the real value of the Settlement to ratepayers becomes apparent. Moreover, the Settlement effectively provides the full value of Washington's share of the gain on the sale of Dex to Washington ratepayers.

C. Staff Misconstrues the FAS 141 Analysis.

45 As part of the closing of the Dexter transaction, pursuant to requirements of federal law, Dex Holdings performed a valuation of the intangible assets involved in the purchase. This valuation was done by the Murray Devine company according to Financial Accounting Standard 141 ("FAS 141"). *See* Exh. 243. In the FAS 141 report, Murray Devine reported on the value of certain identifiable intangible assets that were transferred as part of the Dexter closing. When the Rodney transaction closes, a similar report will be issued.

46 The Murray Devine report squarely rebuts Staff's unsupported assertions that the overwhelming majority of the value of the Dex business derives from its relationship with

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QC.[14] For support, Staff points to one of Dr. Selwyn's exhibits that merely lists all of the assets being transferred, but does not assign value to such assets. *See Staff Brief* at 27; Exh. 326HC. Other than this, Staff merely asserts that because the non-competition and publishing agreements are "important" to the buyer, that they must be valuable. *See Staff Brief* at 21-22.

47 Notwithstanding the conviction with which Staff makes these assertions, such baseless claims do not constitute evidence to contradict the rigorous FAS 141 analysis, which assigns the vast majority of the value of the sale to intangible assets not connected to Dex's relationship to the regulated ILEC. *See* Exh. 243 at 2. The un-contradicted evidence in the FAS 141 report shows that the value of the publishing and non-competition agreements between QC and Dex contributed only a few percentage points of the value of Dex Media East. *See* Exh. 242C (Kennard Rebuttal) at 12.

48 Rather than offer any competing analysis of its own, Staff, at hearing and in its brief, launches a collateral attack on the FAS 141 report, to no avail. **First,** Staff's brief erroneously suggests that the FAS 141 analysis is "solely for financial reporting, accounting, and taxation purposes," and somehow "do[es] not address the value that is being contributed by QC to the transaction." *Staff Brief* at 28. Of course, the value of the identifiable intangible assets Dex is acquiring from QCII and QC is precisely what the FAS 141 analysis measures. Exh. 245 at 3 ("[T]his Statement requires disclosure of . . . . the allocation of the purchase price paid to the assets acquired and liabilities assumed . . . .") Particularly in this proceeding, it would seem unnecessary to stress the importance of

[14] There was also substantial opinion testimony to rebut Staff's claims, by people who are in a much better position to know than Staff's witnesses. *E.g.*, TR at 449 (Burnett) ("[T]he idea that the official designation things is all the value is [*sic*] would be a nonstarter from my perspective").

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1 rigorous analysis and accuracy when valuing such assets for "financial reporting,
2 accounting, and taxation purposes."

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49 **Second,** Staff fundamentally misapprehends the analysis contained in the FAS 141 report in an attempt to magnify the significance of the publishing and non-competition agreements beyond that computed by Murray Devine. In doing so, Staff argues that the report "assessed the probability of a material breach in some or all of the Dex operating areas at 50%." *Staff Brief* at 22. The FAS 141 report could not be more clearly to the contrary on this point. In valuing the publishing and non-competition agreements, Murray Devine evaluated the probability that QC might re-enter the directory publishing business ***assuming the publishing and non-competition agreements were not in place.*** Exh. 243 at 19. The FAS 141 analysis clearly explains that the "analysis attempts to measure the impact on the Company if the two agreements were not in place using the damages clauses as a basis to measure the financial impact." Exh. 243 at 19. Properly read, the Murray Devine report reveals the true value of the publishing and non-competition agreements to be far less than that attributed to them by Staff.

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D. Staff's 13-State "Go It Alone" Arguments Are Speculative, Illogical, And Unsupported By The Record.

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50 As extreme as some of Staff's predictions and recommendations are, perhaps the riskiest one of all is that the Commission need not be concerned with the possibility that if it rejects or modifies the Settlement, the parties could renegotiate the sale to 13 states. Staff's characterization of Qwest and Dex Holdings argument is that, "Washington will become the directory ghetto, a stand-alone weakling to be preyed upon by rapacious publishers including Dex Media itself." Although this rhetoric was undoubtedly intended to convey a sense of hyperbole, ironically, it contains a great measure of truth. The record contains substantial discussion of this concern. *E.g.,* TR at 350-52 (Kennard) ("it would be a pretty

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1 unattractive business to own"); 421-23, 444-448 (Burnett) (discussing the challenges of
2 both building a stand alone directory business as well as trying to outsource it). Mr.
3 Kennard opined that, "Washington as a stand alone company with no infrastructure would
4 be a sitting duck for competitors, because they would be a weakened company without the
5 infrastructure." TR at 351. Indeed, the Commissioners elicited much of the testimony on
6 this issue. *E.g.* TR at 421-23 (Burnett).

7
51 To the extent Staff is arguing that no one can predict with any accuracy whether **or not** a
8 stand alone Washington QC directory business would be as profitable as what the
9 Commission currently allocates from Dex to Washington, Staff is certainly correct. As Dr.
10 Selwyn admitted on cross:
11

12 > Whether that arrangement would produce quite as much revenue to QC Washington as has been -- as the status quo, assuming the status
13 > quo were to simply persist, is obviously something that one can only speculate about.

14
52 TR at 976 (Selwyn). The problem is that the Staff draws a wholly inappropriate and
15 unsupported conclusion from this uncertainty, concluding that the Commission should
16 discount or ignore the risks to the revenue/imputation stream. Because Staff acknowledges,
17 indeed implicitly argues, that the fortunes of a stand-alone directory publisher are
18 speculative, the Commission can only conclude that this is a very risky proposition.

19
53 Staff attempts to counter the argument by asserting that denial of the Settlement would
20 result in outsourcing, not a stand alone Washington directory. But Mr. Burnett analyzed the
21 potential outsourcing options, and they all a fraught with problems. TR at 444-48 The
22 problem with Staff's ill-considered and rosy scenario, with any of the potential outsource
23 publishers, is the threat of entry by Dex Media. Staff certainly could not rule out that
24 possibility:

25 > Q. Do you have an opinion as to what would be the likelihood that Dex
26 > would actually, in fact, mount a competitive assault in Washington?

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A. That's difficult to say. And certainly, we have seen Dex go into non-Qwest territory in a limited -- at least in a limited way in this state. . . . I suppose they might give it a try . . . .

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TR at 990-91 (Selwyn).

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54 The greatest uncertainty of the go it alone scenario comes from the fact that no one, least of all the regulators, can control where the employees go if the Washington directory market is shaken up.

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Q. [W]hat is our leverage over the employees currently associated with Dex, currently associated with Washington? How do we insist that they be maintained in the Qwest auspices?

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A. Well, I mean, that is a good question, and you know, I'm not sure that there's necessarily a good answer, because none of the -- none of the scenarios before you is really good.

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TR at 977-78 (Selwyn). Staff can provide no assurances to the Commission that the Qwest Dex employees, seeing a weakened, stand alone Washington operation in need of significant rebuilding will not decide to jump to Verizon, Transwestern, or possibly Dex Media. With the employees goes the value that generates the current levels of imputation. TR at 1326 (King) ("It's been said that most of the assets of the . . . directory business ride up and down the elevators every day.")

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55 Finally, Staff asserts that the willingness of Dex Holdings to buy Dex reflects that it has value. But Staff neglects the important factor of synergies. Dex Holdings' deal is to buy **all** of Dex, not a single state. Dex Holdings' offer for Washington alone would be very different than the pro rata share of the proposal currently before the Commission. Mr. Kennard quite pointedly noted, "I mean put it this way, would we buy a stand alone Washington business with no infrastructure? I don't think it would be very valuable." TR at 351. Thus the record provides no support for Staff's argument which is intuitively illogical in any event.

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III. CONCLUSION

56 A critical analysis of Staff's arguments reveals that Staff is willing to reject the Settlement based on speculation and hope that none of the risks inherent in rejecting the Settlement will ever come true. Staff's advocacy is supposedly intended to protect Qwest's ratepayers. It is ironic and telling that, as Commissioner Hemstad noted,[15] the ratepayer groups represented in this docket oppose the Staff's position in this case. None of the parties who stand to gain or lose real dollars are willing to take the gamble that Staff's prophecies regarding the future will come true. Neither should the Commission. The benefits of the Settlement not only to Qwest's ratepayers but to the broader public interest should not be jeopardized by rejection or modification. Approval is consistent with the law and the Commission's prior enunciation of the public interest.

Dated this 18th day of July, 2003.

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[15] TR at 1312.

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1 APPENDIX A IS HIGHLY CONFIDENTIAL
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CERTIFICATE OF SERVICE - Docket UT-021120

I hereby certify that a true and correct copy of the foregoing was sent by e-mail and United States first class mail, postage fully prepaid, addressed to the following:

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Carol Munnerlyn

*** Hand delivered by Noon**