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 QWEST'S REPLY BRIEF

NON-CONFIDENTIAL VERSION

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. DISCUSSION 2

A. Staff's primary recommendation is premised on the incorrect assumption that maintaining the pre-sale "status quo" is a possible outcome of this case. 2

B. All parties and interests are better served by Commission approval of the Settlement Agreement than by accepting the risks of bankruptcy. 4
1. Staff's belief that Dex will not be sold in bankruptcy separate from QC is incorrect and unsupported in the record. 4
2. Staff incorrectly argues that a QCI bankruptcy offers no potential harm to ratepayers and that QC will not file bankruptcy even if QCI does. 5
3. Staff seems not to understand that its recommendation exposes atepayers to the greatest risk of harm. 7

C. Staff's analysis of the financial importance of the Dex sale is without support in the record and is without merit. 8
1. Staff offers no evidence showing that bankruptcy is unlikely if the Commission disapproves the sale. 8
2. Staff's speculation that QCI will be better off without the sale is disingenuous and unsupported. 11
3. Staff is wrong that QC will be left in a worse position by virtue of the sale. 12

D. The Dex sale and Settlement Agreement satisfy the requirement that fair value be paid to QC and its ratepayers. 12
1. The relevant inquiry is whether QC's ratepayers, not QC itself, will receive fair value under the Settlement Agreement. 12
2. The Dex sales price represents "fair value." 14

E. Staff virtually ignores the issue of the Commission's jurisdiction to approve the sale. 15

F. Staff's public interest/no harm analysis is at odds with the case law it cites. 16
1. Staff's method of calculating the gain is inconsistent with its own advocacy. 16
2. Staff invents its own standards for applying the no-harm and gain allocation standards. 17
3. Staff misapplies *Centralia Coal* and *Democratic Central Committee*. 18

G. Staff's desire for a standalone Washington QC or standalone QC Dex operation is unrealistic and cannot be compelled by the Commission. 22
1. Staff fails to demonstrate that the Commission has authority to compel the "safeguards" Staff recommends. 23
2. Creation of a QC-Washington is an unrealistic and counterproductive goal. 26

III. CONCLUSION 26

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I. INTRODUCTION

1 On July 3, 2003, opening briefs were filed by Qwest, Dex Holdings, LLC, the Public Counsel group (Public Counsel, AARP and WeBTEC), the Department of Defense ("DOD") and Commission Staff ("Staff"). All submitting parties except Staff support approval of the Dex sale, as conditioned by the stipulation ("Settlement Agreement") entered into on May 16, 2003, by Qwest, Dex Holdings, Public Counsel, AARP, WeBTEC and DOD ("Settling Parties"). Staff remains locked into its position that QC's ratepayers, and even Qwest itself, would be better off if the Commission were to deny Qwest's application, even if such denial leads to a Qwest bankruptcy.

2 In its opening brief, Staff offered the Commission nothing but a recasting of its prefiled testimony, augmented only by a sprinkling of citations to the hearing transcript. Staff's brief is bereft of legal authority supporting either its primary or alternate recommendations. This is so despite the fact that Staff could not say during the evidentiary hearing whether its recommendations are lawful, and despite ample notice that Qwest challenges the lawfulness of Staff's recommendations.

3 By contrast, Qwest's opening brief integrated the evidence and the relevant legal principles and authority. Qwest directly addressed Staff's pre-filed recommendations and assertions. Thus, Qwest has already addressed (and in a sense responded to) each issue raised by Staff in its opening brief. Rather than specifically responding to each of Staff's assertions again in this brief, Qwest will address several critical misconceptions permeating Staff's opening brief.

4 In the final analysis, Staff does not provide the Commission any substantive or evidentiary support for its position that the Settlement Agreement would harm the public interest and that ratepayers would be better served by a Qwest bankruptcy. The Commission should not overlook the fact that every consumer group in this docket supports the Settlement Agreement and sees value in preserving the financial stability of QC and its corporate parent. The Settling Parties have provided substantial

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evidence demonstrating that QC's ratepayers, QC and the general public would be best served by the Commission's adoption of the Settlement Agreement.

II. DISCUSSION

5 Staff's advocacy, as set out in both its prefiled testimony and its opening brief, consists of positions that are unattainable or unrealistic, contrary to the legal principles that govern the Commission's considerations in this docket and unsupported by record evidence.

A. Staff's primary recommendation is premised on the incorrect assumption that maintaining the pre-sale "status quo" is a possible outcome of this case.

6 Staff urges the Commission to reject the Settlement Agreement and deny QC permission to close the Washington portion of the Dex sale. It does so under the assumption that the pre-sale status quo – whereby QC's Washington ratepayers receive allocated benefits of an integrated 14-state Qwest Dex operation – can be preserved. Staff states "customers will receive far fewer benefits as a result of the sale ***than they will under the status quo***." *Staff opening brief, at ¶ 3 (emphasis added; footnote omitted).* Staff also complains that the Settlement Agreement falls short of the Commission's no-harm test because the upfront bill credit and 15 years of revenue credits "provide ratepayers with far less than they ***can reasonably expect to receive*** in benefits from the yellow pages." *Id. at ¶ 23 (emphasis added).* Later, Staff estimates the net present value of continuing, perpetual imputation and describes that dollar figure as "[t]he net present value of future anticipated directory imputations – what QC and its customers ***will receive under the status quo***." *Id. at ¶ 33 (emphasis added).* Finally, Staff urges the Commission to believe that, absent the sale of the Washington operations of Dex, "ratepayers ***would receive*** the benefit of continued directory imputations" during the 40 years of the non-compete agreement. *Id. at ¶ 43 (emphasis added).*

7 Each of these arguments presumes and suggests that rejection of the sale by the Commission will result in the continuation of a 14-state Qwest Dex operation. This is absolutely false, as Chairwoman Showalter emphasized during the evidentiary hearing. During her cross-examination of Staff witness

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Selwyn, the Chairwoman challenged Staff's premise by stating, "it strikes me that much of your testimony is about the wisdom of selling or not selling Dex as a whole business, and I'm not certain that's going to be our choice." *Tr. 974.* When Dr. Selwyn urged that the Commission should preserve the "status quo," Chairwoman Showalter asked:

> How are you defining status quo? That's the very word that is getting at me, because there's a status quo of today, but there's what you might call the status quo of all other 13 states going one way and us being the other. And as compared to that status quo, that's actually what I'm interested in figuring out.

Tr. 976.

8 In response, Dr. Selwyn backed away from the notion of returning to a 14-state operation and curiously explained that what he meant by "status quo" was a vibrant standalone operation in Washington. He then volunteered that "[w]hether that arrangement would produce quite as much revenue to QC Washington as has been – as the status quo, assuming the status quo were to simply persist, is obviously something that ***one can only speculate about.***" *Id. (emphasis added).* Thus, while at the hearing Staff backed away from its argument that this Commission has the power to preserve a 14-state Qwest directory operation, Staff's brief reflects that Staff has returned to the unrealistic suggestion that such an outcome is possible.

9 As the Commission knows, the seven state Dexter phase of the transaction has already closed. Five of the seven Rodney states have approved the sale or resolved not to take action to prevent the sale. Only Arizona and Washington remain unresolved. If either or both states reject the sale or attempt to impose conditions that frustrate the purpose of the transaction or that are otherwise unacceptable to the parties,[1] it is possible (but not assured) that the buyer and seller will close around the state(s). As such, Staff's analytical framework is misleading. The Commission is not faced with a choice between

[1] Qwest witness Reynolds made clear in testimony and during the hearing that Staff's alternate proposal of a QCI-QC contract augmented by a set of "safeguards" aimed at restructuring the 14-state financial dealings of QC and its affiliates and subsidiaries is "totally and unequivocally unacceptable to the Company." *Ex. 94, at 3; Tr. 1120-1121.*

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the Settlement Agreement and continuing a 14-state Qwest Dex operation. It is more realistically faced with a choice between the Settlement Agreement and a Qwest bankruptcy and/or a transaction in which Qwest is quite possibly left with a standalone directory operation in Washington.

10 As discussed at length in the opening briefs of Qwest, Dex Holdings, Public Counsel and DOD, a Qwest bankruptcy or a standalone Washington Qwest directory operation are both far inferior options to the closing of the Rodney transaction, as conditioned by the Settlement Agreement. *Qwest opening brief, at ¶¶ 152-177; Dex Holdings opening brief, at ¶¶ 33-36, 55; Public Counsel opening brief, at ¶¶ 19-21, 25-34; DOD opening brief, at pp. 21-24.* The Settlement Agreement provides ratepayers, among other things, the assurance of a substantial upfront bill credit and 15 years of rate protection. Wishing for a return to a 14-state Qwest Dex operation will not make it so, and ratepayers would be far better off with the protections and benefits provided by the Settlement Agreement.

B. All parties and interests are better served by Commission approval of the Settlement Agreement than by accepting the risks of bankruptcy.

11 It is difficult to grasp why Staff – knowing so little about how bankruptcy works or the impacts of bankruptcy on the debtor companies, their customers and regulators[2] – continues to press that a QCI bankruptcy is a superior outcome to approval of the Settlement Agreement and the associated customer benefits.

1. Staff's belief that Dex will not be sold in bankruptcy separate from QC is incorrect and unsupported in the record.

12 Staff proclaims that there is no reason to believe from an economic or business standpoint that either Dex or QC might be sold separately in bankruptcy. *Staff opening brief, at ¶¶ 5, 65, 75-81.* Staff's theory is based only on its speculation and seems to be founded on the false assumption that the

[2] *See Qwest opening brief, at ¶¶ 158-161.*

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interests of all QCI's and QSC's many creditors are identical. *Id. at ¶ 75 ("the question is what would* ***the creditors*** *likely do if QCII declares bankruptcy?").* Staff's advocacy depends on there being a homogeneous group of creditors (thus, the use of the term "the creditors") who have identical investment horizons and identical interests. Staff's suggestion is undermined by its admission that it is unaware of the identities and interests of QSC's creditors. *Ex. 393; see Qwest opening brief, at ¶ 167.* As such, Staff's opinion about what QCI's and QSC's creditors, as a whole, may or may not pursue in a QCI/QSC bankruptcy is without merit.

13 At the evidentiary hearing, Qwest witness Mabey testified that, since the execution of the Dex sale agreements was a precondition to Qwest's lenders' willingness to renegotiate the Amended Credit Facility (which renegotiation ultimately took the form of the ARCA), one would expect that those creditors would push for the liquidation of Dex through a bankruptcy sale. *Tr. 708-709.* Staff offers no evidence rebutting Mr. Mabey's analysis.

14 Staff also failed to offer any evidence or explanation as to why the buyer of Dex in bankruptcy would necessarily seek to purchase QC as well. As Mr. Mabey explains, one very likely scenario would be that Dex Holdings would seek to complete the Rodney transaction through a bankruptcy sale. *Ex. 211, at 9; Tr. 714-715.* This would include QC's execution of the publishing and non-compete agreements. This not only highlights that Staff is wrong concerning the likelihood of a QC bankruptcy (as QC would likely be placed into bankruptcy in order to execute those agreements), but it illustrates a likely scenario in which Dex would be sold separate from QC, contrary to Staff's speculation.

2. Staff incorrectly argues that a QCI bankruptcy offers no potential harm to ratepayers and that QC will not file bankruptcy even if QCI does.

15 The scenario discussed above – the bankruptcy sale of Dex alone – also shows how far off the mark Staff is as to its belief that a QCI bankruptcy will not harm, and may actually benefit, QC and its customers. *Staff opening brief, at ¶¶ 85-89.* Qwest has already addressed in detail why Staff's predictions are so far removed from reality. *Qwest opening brief, at ¶¶ 162-167.* Staff cites no

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legal authority to challenge Mr. Mabey's explanation of the roles and interests of ratepayers and the Commission in bankruptcy. Staff bases its advocacy on the fact that one of the many authorities cited by Mr. Mabey (the *Pacific Gas & Electric* decision) is on appeal before the Ninth Circuit. *Staff opening brief, at ¶¶ 75-76.* Notably, Staff does not challenge Mr. Mabey's interpretation of that decision; it merely hints at the possibility that the decision could be reversed on appeal. Qwest submits that the Commission should not base its decision on Staff's guess as to what might happen in an unresolved appeal of a binding, final order. Qwest has provided ample direct evidence of the risks to ratepayers, the company and even this Commission should QCI be forced to file bankruptcy. Every consumer group in this docket, having evaluated those risks and the guaranteed stream of benefits provided in the Settlement Agreement, urges the Commission to approve the Settlement Agreement and to reject Staff's recommendations.

16 The risks of a bankruptcy to ratepayers and this Commission were also explained by Dex Holdings witness Kennard. Mr. Kennard testified that he finds it remarkable that anyone would seriously countenance the bankruptcy of an RBOC. *Tr. 311-312.* Staff attempts to twist Mr. Kennard's testimony, claiming it supports the notion that QCI would never place QC in bankruptcy, even to consummate the Dex sale. *Staff opening brief, at ¶ 6.* Staff has taken Mr. Kennard's statement out of context. On re-direct examination, Mr. Kennard made clear that his concern about an RBOC bankruptcy came from his perspective as a former regulator. He described that he found it remarkable that Staff would push for a result that might lead to a Qwest bankruptcy. He stated:

> Well, when I was chairman of the FCC, I lived through some bankruptcies of telecom companies, and it is pretty devastating ***from a regulatory standpoint***, because you lose control, and the jurisdiction is transferred to the bankruptcy court. We had a lot of experience during that era with a company called NextWave, which was a large wireless carrier that went bankrupt, and we had to convert about a third, as I recall, of our Staff in the general counsel's office became bankruptcy experts, and it was a huge diversion of our staff resources to dealing with the bankruptcy law. In discussions I have had with my successor, Michael Powell, he frequently bemoans the fact that running the FCC in an environment where a lot of the companies that you

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> regulate are in Chapter 11 makes it difficult to do your job, because you've got quality of service issues, you've got government contracting issues that are at stake when a company goes into bankruptcy. So it is not – it's just not a healthy scenario. ***That's why I was -- I thought it was remarkable that Staff in this proceeding suggested that bankruptcy would be a viable alternative and, in fact, a preferable alternative to allowing Qwest to solve its financial problems through this transaction.***

Tr. 353-354 (emphasis added).

17 Staff has offered no support for its speculation that bankruptcy offers no harm to ratepayers. The testimony of Mr. Mabey, Mr. Kennard, and witnesses for the consumer groups supports Qwest's view that ratepayers will be harmed by a Qwest bankruptcy, and that Staff's desire for such an outcome is unfathomable.

3. Staff seems not to understand that its recommendation exposes ratepayers to the greatest risk of harm.

18 Perhaps the most obvious example of how Staff's judgment is clouded by its lack of understanding of bankruptcy law – even after hearing Mr. Mabey's testimony and having an opportunity to conduct legal research and provide the Commission authority contradicting his perspective – is its failure to recognize that its QCI-QC contract recommendation would leave ratepayers more vulnerable than under any other scenario discussed during the hearing. As Mr. Mabey explained in testimony and Qwest explained in its opening brief, executory contracts (including Staff's proposed QCI-QC contract) can be rejected in bankruptcy.[3] The injured party (in this case, QC) would have its contract claim converted into a general unsecured claim, and QC would be left to stand in line with QCI's other unsecured creditors. QC might realize little or nothing under such a scenario. In that event, ratepayers will not receive the benefits Staff's proposal is intended to convey. To the contrary, the upfront bill credit and 15 years of revenue credits provided under the Settlement Agreement constitute the most resilient form of customer benefit as they would likely be considered a rate order by a

[3] 11 U.S.C. § 365.

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bankruptcy court. *Qwest opening brief, at ¶ 75.* Yet Staff stubbornly refuses to accept this reality or to offer the Commission some authority contradicting Mr. Mabey's analysis.

C. <u>Staff's analysis of the financial importance of the Dex sale is without support in the record and is without merit.</u>

19 Without any evidence, Staff rejects Qwest's and the financial community's analysis that bankruptcy is likely if the Rodney transaction fails to close. *Staff opening brief, at ¶¶ 2, 4, 65, 67-74.* In fact, Staff goes further by taking the position that while Qwest will not be harmed should the Rodney transaction fail to close, bankruptcy will actually become more likely should the Commission approve the Settlement Agreement. *Id. at ¶¶ 7, 12, 65, 82-83.* Finally, Staff argues that QC will be left weak by the sale and that, as a result, the revenue credits under the Settlement Agreements are illusory. *Id. at ¶¶ 12, 13, 31, 65, 84.* Staff's analysis is not supported by the record and is without merit.

1. Staff offers no evidence showing that bankruptcy is unlikely if the Commission disapproves the sale.

20 Staff's opinion that a bankruptcy is unlikely if the Commission rejects the sale is pure speculation. Staff offers no support for its assertion apart from inferences it draws from the following facts: (1) QCI has not made plans for an imminent bankruptcy filing and is not publicly predicting bankruptcy; (2) Mr. Cummings' testimony that failure to close the Rodney transaction is not an event of default under the ARCA; and (3) credit rating agencies' statements that Staff alleges are inconsistent with Qwest's claim. *Staff opening brief, at ¶¶ 68-70.* Qwest will respond to each of these points.

21 First, Staff's implication that, apart from in this docket, QCI has not publicly indicated that it is in financial risk is misleading and unsupported by the record. In August 2002, in fact, QCI issued an 8-K warning of an impending default under the Amended Credit Facility. QCI stated,

> Based on our expectations for the remainder of 2002, we must complete the amendment of the syndicated credit facility or obtain waivers from the banks prior to September 30, 2002. Unless we accomplish one of these alternatives, we anticipate we will fail to satisfy the financial covenants under the syndicated credit facility as of the end of the third quarter.

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Ex. 171, at 6; Ex. 83.[4]

22 Furthermore, the fact that QCI is not finalizing plans for an imminent bankruptcy is not evidence of whether bankruptcy is likely or unlikely should the Commission reject the sale. Having taken several steps to de-lever its balance sheet – including negotiating the ARCA, closing the Dexter phase of the Dex sale, conducting the debt exchanges, etc. – Qwest has publicly announced that it believes its cash flow needs through 2005 are satisfied. *Tr. 560.* This projection, however, assumes that the Rodney transaction is going to close. *Id.* **HIGHLY CONFIDENTIAL**
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XXXXXXXXXXXXXXXXXXXXXXXX. **HIGHLY CONFIDENTIAL** Staff's speculation and its general sense[5] that Qwest will be able to meet its obligations without the Rodney transaction closing should not provide the Commission comfort.

23 Second, Staff relies on Mr. Cummings' testimony that failure to close the Rodney transaction is not an event of default under the ARCA. *Staff opening brief, at ¶ 69.* However, Mr. Cummings' testimony does not prove that bankruptcy is unlikely if Rodney fails to close. Staff failed to cite Mr. Cummings' related testimony on redirect examination. There, he clarified that, while the closing of

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[4] *See Ex. 83 (QCII 8-K 8-19-02, at 18).*

[5] During cross examination, Chairwoman Showalter asked Staff witness Blackmon whether he believes QCI will be able to meet its payment obligations absent the Rodney proceeds. Dr. Blackmon responded, "[i]n general, yes, I do." *Tr. 1463.* His belief is based on his conjecture that QCI will be able to simply refinance the ARCA debt when it comes due. *Id.* But Staff provides no evidence supporting the notion that the ARCA lenders, secured by the Dex assets and a lien on QC's stock, would opt to forbear or renegotiate with Qwest rather than to simply foreclose on their collateral.

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Rodney is not strictly itself an event of default, it makes default and bankruptcy more likely because Qwest needs the cash in order to meet its maturing payment obligations under the ARCA and other debt instruments. *Tr. 664-665.*

24 Lastly, Staff is incorrect that rating agencies' statements support its speculation that bankruptcy is unlikely if the Rodney transaction fails to close. Staff cites Exhibit 425 (a May 29, 2003 release by Moody's) as evidence that Moody's does not view the closing of the Rodney transaction as essential. Contrary to Staff's characterization, Moody's did not draw this conclusion. In fact, that very release speaks positively of the closing of Rodney by indicating that the closing "should allow for further consolidated debt reduction." *Ex. 425.* Also, Staff ignores other documents ***it*** placed in the record which indicate Moody's assumes the entire Dex sale will close and considers the closing of the entire Dex sale to be critical to the consolidated companies' financial health. *Exs. 196 (indicating Moody's may take further downward rating action if asset sales slip below expectations), 197 (indicating Moody's review of downgrade will remain focused on, among other factors, Qwest's ability to sell Dex), 198 (indicating Moody's believes the ARCA and sale of Dex help address the acuity of Qwest's liquidity problem, and that "Moody's believes it is critical that the Dex sale proceed on course").* Standard & Poor's ("S&P") and Fitch have issued numerous similarly-worded releases. *Ex. 172, at 10-11; Ex. 177.*

25 Staff also cites Exhibit 420 (an April 2003 S&P release) as proof that S&P agrees with Staff that bankruptcy is not likely. Staff implies that, because S&P does not state that Qwest will be unable to renegotiate the ARCA when it matures, it follows that QCI will be able to refinance the ARCA. This is similar logic to Staff's reference to the fact that Qwest's CFO made a speech in March 2003 where he did not mention bankruptcy. *Staff opening brief, at ¶ 68; Ex. 370, at 11.* S&P's failure to rule out refinancing and Qwest's CFO's failure to mention bankruptcy in a speech do not – contrary to Staff's reasoning – constitute proof of anything. And, again, each of the statements upon which Staff relies assumes and factors in that the second portion of the Dex sale will close.

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2. Staff's speculation that QCI will be better off without the sale is disingenuous and unsupported.

26 In addition to speculating that the failure to close Rodney will not lead to bankruptcy, Staff goes a step further by suggesting that the likelihood of bankruptcy is increased if the sale does close. *Staff opening brief, at ¶¶ 7, 12, 65, 82-83.* It is ironic that Staff offers this prediction as a basis to deny the sale given its apparent desire for a QCI bankruptcy and the accompanying loss of shareholder value. *Staff opening brief, at ¶ 73 (arguing that stockholder losses are "exactly what should happen when the management and directors of a company, for whom the common stockholders are ultimately responsible, dissipate the value of the company."); Ex. 370, at 18-21 (wherein Dr. Blackmon proclaims that QCI deserves nothing more than the same opportunity as WorldCom, Global Crossing and twelve other bankrupt telecommunications companies to file bankruptcy and "try and to live with the consequences of its attempt" to succeed in competitive, unregulated areas of business).* Staff's sudden concern for QCI's cash flow position is also in conflict with its alternate recommendation that the Commission condition its approval for the sale on execution of a contract that would require QCI to make annual, escalating cash payments to QC for 50 years. *Staff opening brief, at ¶ 96.*

27 In addition to Staff's position being at odds with its own advocacy, it again is supported by nothing but Staff's speculation. That QCI will not have the Dex revenue is true and obvious. However, Staff is ignoring the relative offset that occurs at the corporate level by virtue of the fact that the consolidated companies' debt and debt expenses will be dramatically reduced. *Tr. 1133-1135.* **HIGHLY CONFIDENTIAL** XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXX **HIGHLY CONFIDENTIAL.** Qwest asks the Commission to give little weight to Staff's unsupported and internally-inconsistent arguments.

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3. Staff is wrong that QC will be left in a worse position by virtue of the sale.

28 Staff completes its discussion of the financial impact of the sale by attempting to convince the Commission that the sale will "leave QC a weak company, with resources well shy of its obligations." *Id. at ¶ 12; see also id., ¶¶ 13, 31, 65, 84.* Staff offers no evidence in support of this prediction. In addition, Staff's argument relies on the assumption that, from QC's perspective, the revenues from Dex offset the imputation that lowers QC's rates today. This is inaccurate. Under today's imputation scheme, QCI receives the Dex net income and accepts less in net income from QC as a result of Dex imputation ordered by the Commission. QC receives no support from QCI by virtue of the Dex revenue, and dividends up to QCI all of its net income. *Tr. 537.* As such, a shift from the imputation of today to the revenue credits of tomorrow (under the Settlement Agreement) will not undermine QC's financial strength, but would likely improve it, should the sale and reduction of debt lead to higher credit agency ratings for QCI and its subsidiaries.

D. The Dex sale and Settlement Agreement satisfy the requirement that fair value be paid to QC and its ratepayers.

29 Staff argues that the Commission should reject the sale because QC, as opposed to QCI, will not receive fair value. In the alternative, Staff restates its testimony position that the $7.05 billion sales price does not represent fair value when Dex's business enterprise value ("BEV") is considered. Staff's analysis fails on both points.

1. The relevant inquiry is whether QC's ratepayers, not QC itself, will receive fair value under the Settlement Agreement.

30 Staff argues that the Commission may not approve the sale because Qwest has failed to prove that the fair value for Dex will be paid to QC under this transaction. *Staff opening brief, at ¶¶ 3, 9, 28-31.* Staff asserts the Supreme Court's 1997 decision[6] in the 1995 U S WEST rate case requires that QC, not QCI, receive the benefit of the sale. However, Staff's argument superficially overlooks the fact

[6] *U S WEST Communications, Inc. v. WUTC,* 134 Wash.2d 74, 949 P.2d 1337 (1997).

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that the Supreme Court decision and the underlying Commission order[7] focus on the protection of ratepayers, not the protection of the regulated telephone company. That decision quite clearly required that QC's predecessor receive fair value because that is what would ensure that ratepayers would, in turn, receive fair value. Thus, to the extent QC's ratepayers receive fair value, the Supreme Court's standard for ending imputation is met.

31 In its final order in US WEST Communications' ("USWC") 1995 rate case, the Commission rejected a number of arguments by USWC as to why imputation was inappropriate. Among those arguments was USWC's assertion that imputation contradicts the general purpose of regulation. The Commission stated that "[t]he Commission is charged with protecting the ratepaying public. One of the Commission's functions has been to protect customers of noncompetitive services from utilities' self-dealing."[8] In rejecting USWC's argument that advertising revenues did not belong to it and thus could not be imputed to its earnings, the Commission stated that commissions have historically been permitted to impute revenue to prevent utilities from taking profitable aspects and "leaving captive utility customers with expenses of the operation but with reduced offsetting revenues from related services."[9] In affirming the Commission on the imputation issue, the Supreme Court repeatedly referenced that imputation is a legitimate exercise of Commission authority in order to protect ***ratepayers*** and produce rates that are fair and reasonable.[10]

32 Given the primacy of protecting ratepayer interests, the standard to be applied to determine whether "QC" has received fair value so as to signal the end of imputation is whether QC's ratepayers have received fair value. Under the Settlement Agreement, they clearly do. Among other benefits,

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7 *WUTC v. U S WEST Communications, Inc.,* Docket No. UT-950200, Fifteenth Supplemental Order ("Fifteenth Supplemental Order").

8 *Fifteenth Supplemental Order, at 39.*

9 *Id. at 34.*

10 *U S WEST Communications, Inc. v. WUTC, 134 Wash.2d at 91, 94-96.*

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ratepayers receive upfront bill credits totaling $67 million and a stream of revenue credits over 15 years that will replicate imputation and hold retail rates down. This notion is supported wholeheartedly by every consumer group in this docket.

33 Staff effectively acknowledges that the Supreme Court was really speaking of fair value to ratepayers in its order. When it raises this issue for the second time in its brief, Staff argues that "the sale also fails the test set forth by the State Supreme Court in *US WEST v. Washington Util. & Transp. Comm'n* [citation omitted] for the simple reason that it does not provide fair value to QC, the regulated company, ***nor to its ratepayers.***" *Staff opening brief, at ¶ 9.* Describing the Supreme Court's decision, Staff later asserts that "the Court clearly understood that imputation was ***for the benefit of the [sic] USWC's ratepayers . . ."*** *Id. at ¶ 29.* Staff's argument about who must receive fair value is, thus, superficial at best.

2. The Dex sales price represents "fair value."

34 Staff claims that the sale transaction produced a price at less than the fair market value of the asset. *Staff opening brief, at ¶¶ 28-32.* Staff also claims that the reason the price was reduced was because the sale was in the nature of a "distress" sale. *Staff opening brief, at ¶¶ 37-42.* However, Staff has produced no support for this claim. Indeed, Qwest has shown that the transaction was an arm's length transaction between a motivated seller and an eager buyer, each negotiating hard to get the best deal. While it may well be that different market conditions and financing opportunities might have existed years before or years after the transaction, that inquiry is irrelevant to the question of whether the transaction at the time it was entered into produced fair market value for the asset.

35 Staff did not offer an expert in business valuation, did not prepare an independent estimate of the fair market value of Dex, and has not otherwise shown that the fair market value is anything other than $7.05 billion. Although Dr. Selwyn agreed that he had not been retained to calculate a single point estimate of fair market value for Dex, Staff now points to his DCF analysis with approval, claiming that

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it produced a valuation of **CONFIDENTIAL** XXXXXXXXX **CONFIDENTIAL**. *Staff opening brief, at ¶ 40.* However, Qwest showed this calculation to be incorrect because it is based on outdated information. *Qwest opening brief, at ¶¶ 69-71.* The correct analysis produces a valuation of **CONFIDENTIAL** XXXXXXXXXXXX **CONFIDENTIAL**, thus validating the sale price. *Id.* Nor has Staff provided any proof that the asset would have brought a higher price if Qwest had been less eager to sell. Qwest's witnesses established that the transaction and the price were fair to Qwest.

36 Staff's valuation analysis for the Dex business is based on the assumption that the 14-state publishing operation stays intact, and that the business is *guaranteed* to grow at 2.25% in perpetuity. *Staff opening brief, at ¶¶ 34-35.* Since Staff's primary recommendation is that Washington be excluded from the sale transaction, it is difficult to reconcile Staff's recommendation with its assumption about the revenues that should be available for imputation, which clearly assumes a status quo that no longer exists. Qwest demonstrated in its opening brief that an assumption of perpetual growth is contrary to the law. *Qwest opening brief, at ¶¶ 6, 80, 82.* See section II.A. above. Qwest has also demonstrated that management projections of growth are far different from a guarantee of growth, and that it is incorrect to convert management assumptions into a guaranteed return by incorporating them into a DCF analysis. *Id. at ¶ 87.*

E. <u>Staff virtually ignores the issue of the Commission's jurisdiction to approve the sale.</u>

37 Qwest has challenged the Commission's jurisdiction to approve the sale under chapter 80.12, RCW. Qwest has argued that because the Dex assets are not in rate base, the Commission has no jurisdiction under chapter 80.12 to approve a transfer of these assets. This issue was first raised in Qwest's application on August 30, 2002. It was next raised in direct testimony on January 17, 2003. It was also addressed extensively by Qwest in its opening brief (¶¶ 7-22).

38 Staff addressed jurisdictional issues in only three paragraphs of its opening brief (¶¶ 25-27). To date, Staff has not commented on the argument that the Commission does not have jurisdiction over a

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transfer of assets that are not in the rate base. Nor has Staff introduced any evidence that would suggest that the factual premise underlying the argument, i.e., that the assets are not in rate base, is incorrect. Thus, Qwest cannot here attempt to rebut an argument that Staff has not yet raised. However, it may be that Staff simply has nothing to say on this issue because the Commission's rules are themselves so clear – assets not in rate base are not subject to Commission jurisdiction for purposes of the transfer of property statutes.[11]

F. Staff's public interest/no harm analysis is at odds with the case law it cites.

39 Staff's analysis of how the gain should be calculated and how the gain should be allocated is confused and inconsistent with Commission and judicial case law. Staff's gain calculation theory contradicts its own advocacy. Ignoring the governing case law, Staff invents its own standards for evaluating the public interest, no harm standard and proper allocation of the gain. It then purports to apply the controlling cases, but does so in a manner completely at odds with that precedent.

1. Staff's method of calculating the gain is inconsistent with its own advocacy.

40 Staff challenges certain aspects of Qwest's calculation of the gain that is available for sharing in Washington. *Staff opening brief, at ¶¶ 59-63.* Staff contends that it is not appropriate to exclude the gain from Secondary Directories, non-Qwest listings, and NewVentures because ratepayers are entitled to the full value of the publishing operation, which includes those other publishing activities. Qwest explained at length in it opening brief that these exclusions were necessary in order to correctly determine the value of the Washington publishing operation that was related to fulfilling the publishing obligations of the incumbent telephone company, and thus the amount that is arguably available for sharing between ratepayers and shareholders. *Qwest opening brief, at ¶¶ 91-110.* Yet Staff has also vigorously contended that the value associated with Dex is based on Dex's association with the incumbent local exchange company, and the designation as the official publisher. *Ex. 311, at 82-91.*

[11] WAC 480-143-180(4).

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But publication of directories in Verizon's service territory, or for non-Qwest customers, confers no such benefit on Dex. Thus, Staff's advocacy here is at odds with its core assertion that the value of Dex that should be made available to ratepayers is due to the association with the incumbent local exchange carrier. Staff cannot have it both ways.

2. Staff invents its own standards for applying the no-harm and gain allocation standards.

41 Assuming the Commission finds it has jurisdiction to review the Dex sale and to condition the sale on a particular allocation of the gain on sale, its analysis will be governed by the *Centralia Coal*[12] and *Democratic Central Committee*[13] cases discussed at length in Qwest's opening brief. Ignoring those two cases, Staff urges the Commission to apply a presumption that ratepayers get 100% of the gain and a new "deserves it" test. Each will be discussed.

42 In its testimony and opening brief, Staff sets up a presumption that 100% of the gain on the sale goes to ratepayers. *Staff opening brief, at ¶ 98 ("it is generally appropriate to use the gain on a sale to the benefit of customers").* However, Staff provides no citation of support or authority for this claim. As Qwest pointed out in its opening brief, no such presumption exists, either in fact or in law. *Qwest opening brief, at ¶¶ 116-117.*

43 Indeed, if one wishes to argue that a presumption exists, it is a presumption that the owners of the business (i.e., the shareholders) are entitled to the gain on the sale of any assets. As noted in *Illinois*

[12] *In re the Matter of the Application of AVISTA* Corporation for Authority to Sell Its Interest in the Coal-Fired Centralia Power Plant, Docket No. UE-991255; In re the Matter of the Application of PACIFICORP for an Order Approving the Sale of its Interest in (1) the Centralia Steam Electric Generating Plant, (2) the Rate Based Portion of the Centralia Coal Mine, and (3) Related Facilities; for a Determination of the Amount of and the Proper Rate Making Treatment of the Gain Associated with the Sale, and for an EWG Determination, Docket No. UE-991262; In re the Matter of the Application of Puget Sound Energy, Inc. for (1) Approval of the Proposed Sale of PSE's Share of the Centralia Power Plant and Associated Transmission Facilities, and (2) Authorization to Amortize Gain over a Five-Year Period, Docket No. UE-991409; Second Supplemental Order, Order Approving Sale with Conditions (2000).

[13] *Democratic Central Committee v. Washington Metropolitan Transit Commission*, 458 F.2d 786 ("Democratic Central")

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Public, the general rule is that utility ratepayers pay for service and thus do not acquire any interest in the property of the utility. Property paid for out of moneys received for service belongs to the company.[14] However, the Illinois court went on to make it clear that neither the shareholders nor the ratepayers are necessarily entitled to the increase in value in the company's assets, and that the two-step test set forth in Democratic Central is to be followed to determine an appropriate allocation.[15] Staff's 100% presumption is clearly erroneous.

44 Staff also attempts to establish a new standard for asset transfers and gain disposition – the standard of whether the corporation "deserves" to receive the gain on the sale of an asset. Staff states at paragraph 11 of its opening brief that every dollar of the gain should go to customers because customers "deserve it" and because QCII does not "deserve it." In other discussions, Staff characterizes the gain on the sale as a "reward" that Staff believes should not be given to shareholders. *Staff opening brief, at ¶¶ 46, 58, 98.* There is clearly no basis for establishing this type of standard, which essentially throws out *Democratic Central* and *Centralia* in favor of a penalty program whereby Staff determines who should receive the gain as a reward or punishment for alleged misdeeds. Any reading of guiding case law on this issue makes it clear that risk and burden are the objective factors to consider, not whether shareholders are, in Staff's view, deserving of punishment.

3. Staff misapplies *Centralia Coal* and *Democratic Central Committee.*

45 Staff claims that the Rodney transaction violates the first principle of the *Centralia* case, because ratepayers will be worse off under the Settlement Agreement than they would have been in the absence of the transaction. *Staff opening brief, at ¶ 32.* However, Staff's analysis makes the wrong comparison and leads to the wrong conclusion. Staff erroneously believes that the comparison should

[14] *Illinois Public Telecommunications Association v. Federal Communications Commission and United States of America,* 326 U.S. App. D.C. 1 at 43; 117 F.3d 555 (1997).

[15] *Id.*

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be between the Settlement Agreement and the status quo as of the time prior to the Dex sale transaction. In other words, Staff would like to prevent not only the Washington portion of the sale, but the other 13 states as well. As discussed in section II.A. above, this is clearly impossible.

46 In addition, Staff fails to address the other principles in *Centralia* and specifically fails to demonstrate how its proposal balances the interests of shareholders, ratepayers, and the general public. Qwest addressed these factors in its opening brief (¶¶ 134-147) and will not repeat that analysis here, but the conclusion is inescapable that the Settlement Agreement best meets the test in *Centralia*.

47 Finally, Staff confuses the "no harm" test in *Centralia* with the standards to be used for calculating the Washington gain in the first instance and then allocating the gain under *Democratic Central*. At paragraph 36 of its opening brief, Staff claims that because the value of the Settlement Agreement falls short of the Washington share of the gain, it fails the no harm test. This claim reflects a hopelessly jumbled analysis of the issues. First, it completely obliterates the gain-sharing principles set forth in *Democratic Central* and *Centralia*. Staff's apparent jumping off point for its analysis—that ratepayers must receive all the gain, and that any settlement must be measured by that yardstick—is simply not the law. The proper analysis requires the following sequential steps – calculate the overall gain; calculate the Washington portion of the gain with appropriate exclusions, using the imputation formula; allocate the gain between ratepayers and shareholders, using *Democratic Central* and *Centralia*; then apply the "no harm" standard to the transaction. As Qwest has previously described, 100% of the properly calculated Washington portion of the gain is less than the value of the Settlement Agreement.[16] Additionally, even if one were to accept Staff's calculation, proper application of *Democratic Central* principles demonstrates that ratepayers receive more under the Settlement Agreement than they could rightly claim. Thus, Staff's logic on this point fails.

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[16] The Washington portion of the gain is **CONFIDENTIAL** XXXXXXXXXXX **CONFIDENTIAL**. *Ex. 133C*. The Settlement Agreement has a net present value of **CONFIDENTIAL** XXXXXXXXXX **CONFIDENTIAL**. *Ex. 287C*.

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48 Although the Commission has cited the principles in *Democratic Central* with approval, Staff does not correctly analyze the case or properly apply the principles. As Qwest discussed at length in its opening brief, the proper analysis is a two-step test. The first step is to determine who—as between ratepayers and shareholders—bore the risk of capital loss. If that determination cannot be made, then it is necessary to take the second step and determine who bore the burden of the utility activity in question.[17] Qwest witness Grate is the only witness in this docket who undertook a historical analysis of the facts to determine the allocation of risks and burdens.

49 Staff makes no allowance for any allocation of any of the gain to Qwest shareholders. Instead, Staff argues ratepayers are entitled to 100% of the gain. This is in spite of the fact that Staff agreed that not all of the assets in the transaction are contributed by QC and that not all of the value in the transaction is attributable to QC. *Tr. 890.*

50 Staff fails to address the first step of the two-step test. Staff makes no effort to show that ratepayers bore the risk of capital losses on the intangible assets or on the business as a whole. Staff's analysis intentionally disregards the first forty years of the relevant history of risks and burdens, brushing that period aside as "irrelevant." *Staff opening brief, at ¶ 51.* Staff also fails to apply its analysis to the particular assets being sold and instead incorrectly applies its test to Qwest's business as a whole. Although Staff claims that *Democratic Central* supports a "holistic" analysis, Staff cites only to Dr. Selwyn's testimony in support of this proposition, which finds no support in the language of the case itself. Id. *at ¶ 51, citing ex. 311 at 63-64.*

51 Dr. Selwyn's "holistic" analysis is directly contrary to the principles set forth in *Democratic Central*, which focuses on who bore the burden or risk of the particular utility activity in question. Dr. Selwyn, in fact, acknowledges this in his own testimony. Dr. Selwyn observed: "[t]hat case holds that 'the

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[17] *Democratic Central*, 458 F.2d at 806; *Illinois Public,* 326 U.S. App. D.C. at 43-44.

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right to capital gains on utility assets is tied to the risk of capital losses," and that 'he who bears the financial burden ***of a particular utility activity*** should also reap the benefit resulting therefrom." *Ex. 311, at 55 (emphasis added).*

52 Indeed, the *Democratic Central* court held that the relevant inquiry required an "examination of the history of the acquisition ***of the questioned assets***," and of "the allocation of the burdens and the accrual of advantages associated with the holding of ***those assets***. . . ."[18] The guidance of the *Democratic Central* decision is quite clear in this regard. Whether ratepayers are at risk or bear any burden with regard to Qwest's other (or overall) operations is utterly irrelevant. If that were the test, then there would be no need for a *Democratic Central* type inquiry. Under Dr. Selwyn's approach, ratepayers would be entitled to the gain on any asset or business operation that a rate of return regulated utility sold--whether that asset or business operation itself is regulated or in rate base--because the general utility operations are rate of return regulated, imposing on ratepayers a risk of capital loss. This reasoning is circular.

53 In contrast, Qwest has demonstrated conclusively that ratepayers have never borne the risk of capital loss on intangible directory assets in Washington because they have never been in rate base. *Ex. 101, at 17; Ex. 110, at 29.* Ratepayers cannot bear the risk of capital loss on assets not in rate base, because there is no mechanism to impose cost recovery on ratepayers for such assets. *Ex. 101, at 24; Ex. 110, at 29-30.*

54 Staff's risk analysis relies almost entirely on the 1997 Supreme Court decision, in which the Court noted that "[t]he record shows that US West did not develop this lucrative business by its initiative, skill, investment, or risk taking in a competitive market." *Staff opening brief, at ¶ 48.* However, Staff fails to point out that the Court made that statement based on the record in ***that*** case – a case

[18] *Democratic Central*, 458 F.2d at 811.

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where disposition of the gain on a sale under Democratic Central was not at issue. The record in ***this*** case is entirely different, and shows accurately and completely how shareholders were at risk of loss during the critical start up period of the business. For roughly 50% of the period for which Qwest or its predecessors have published directories in Washington, ratepayers have borne no risk of capital loss even with regard to the tangible directory assets. *Ex. 101, at 25*. This evidence is undisputed.

55 Just as Staff has failed to address the jurisdictional arguments with regard to non-rate base assets, Staff has failed to show how ratepayers could have ever borne the risk of loss on these assets, which were never in rate base and thus never supported by rates paid. In fact, had Dex's directory operation ever ceased to generate revenues in excess of its costs, ratepayers would not have been at risk to support directory operations under the directory imputation regulatory scheme of the past two decades. The imputation formula has always been based on "excess" revenues: "for regulatory purposes in calculating performance, the Commission imputes the 'excess' revenues to USWC results of operations."[19] Were there no "excess" revenues, there could be no imputation amount. Thus, there has been no possibility of a negative imputation.

56 Yet Staff premises its risk analysis on just such a mistaken assumption. Staff contends that imputation would operate to require ratepayers to actually support directory operations if they were to lose money. *Tr. 904*. Because this premise is incorrect, the conclusion drawn from it (that ratepayers bore a risk or burden) is wholly unsupported.

G. <u>Staff's desire for a standalone Washington QC or standalone QC Dex operation is unrealistic and cannot be compelled by the Commission.</u>

57 Staff's testimony and brief make clear that Staff's desire is that QC operate as a single state, standalone company focusing entirely on providing local telephone service to Washington customers

[19] Fifteenth Supplemental Order, p. 34. *See also Fourth Supplemental Order,* Docket Nos. U-89-2698-F and U-89-3245-P, dated January 16, 1990 *("1989 Settlement Agreement"), at ¶ 18.H.a.*

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and publishing white and yellow pages for Washington. *Staff opening brief, at ¶¶ 10, 14, 65, 92, 95, 100-103.* Many times during the hearing and twice in its brief, Staff refers to "QC-Washington" as if such a standalone entity already exists. *Staff opening brief, at ¶ 91.* There is no such entity. QC is a Colorado corporation that operates in each of Qwest's 14 in-region states. *Ex. 94, at 11.* While Staff desires there to be a fence around QC and Qwest Dex operations for Washington, there is no support in the record or in Staff's brief evidencing that such a goal can be lawfully compelled by the Commission or would serve the best interests of Washington ratepayers.

1. Staff fails to demonstrate that the Commission has authority to compel the "safeguards" Staff recommends.

58 Staff's brief contains virtually no discussion of the Commission's authority to impose the "safeguards"[20] recommended by Dr. Blackmon as part of its alternate recommendation. This is quite surprising given that the lawfulness of these recommendations was specifically discussed during the cross examination of Dr. Blackmon, and Qwest made it very clear that it believes that the Commission lacks such authority.

59 During the cross examination of Dr. Blackmon, he was asked a series of questions regarding whether he believed (as the witness proposing that the Commission impose the safeguards) the Commission has broad enough jurisdiction to order the safeguards and whether he believed it was appropriate for Staff to investigate whether its recommendations are lawful prior to making them to the Commission. *Tr. 1401-1406.* During that colloquy, Dr. Blackmon admitted that he was unsure whether his recommendations were lawful or sustainable on appeal. *Tr. 1401-1404.* When asked whether the Commission needs its Staff's guidance as to whether it has explored the legal viability of its recommendations, Dr. Blackmon answered as follows:

[20] The "safeguards" would restrict QC from increasing its debt-to-equity ratio above 48.32%, would restrict QC from increasing its dividend to QSC (its parent) and would restrict QC from lending or otherwise providing credit to QCI or any subsidiary of QCI. *Ex. 370, at 26-26a.*

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> Okay. Yes, the Commission deserves the benefit of our analysis of those questions. At the testimony level, we shouldn't bring forward things that we think the Commission couldn't do. It would be a waste of the Commission's time to consider things that we know not to be within its authority. ***But ultimately, the best advice that the Commission will get from us on those points will be in our brief.***

Tr. 1406 (emphasis added).

60 Despite Staff's promise that it would provide its best advice on brief, Staff's brief almost entirely ignores the question of the Commission's authority to impose the safeguards. That can be interpreted in one of two ways. Either Staff has no authority to point to, or it is holding its "best advice" for its reply brief (knowing Qwest will not have an opportunity to respond).

61 Based on its brief, Staff apparently relies on three general statutes: RCW 80.12.020; RCW 80.01.040; and RCW 80.36.140.[21] The first, RCW 80.12.020, authorizes the Commission to approve the sale of utility property that is necessary or useful in the performance the utility's duties to the public. The second, RCW 80.01.040, directs the Commission to regulate utility rates, services, facilities and practices in the public interest, as provided in the public service laws. The third, RCW 80.36.140, authorizes the Commission to determine whether a telecommunications company's rates are unjust, unreasonable, unjustly discriminatory, unduly preferential or otherwise in violation of the law. None of these statutes specifically relates to this Commission's authority to interject itself in the corporate and financing structure of multi-state corporations (such as QC) and their affiliates and subsidiaries.

62 Staff makes no attempt to explain the nexus between these general statutes and its recommendations. With regard to the first two statutes, Staff states in conclusory fashion only that "***[i]t follows that*** the Commission may conclude that it can approve the sale only if modifications are made which would

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[21] By comparison, Qwest dedicated over 17 pages in its opening brief to a discussion of applicable limitations on the Commission's jurisdiction. Of that, Qwest discussed for more than 4 pages specifically why the Commission lacks authority to adopt Staff's alternate recommendation. *Qwest opening brief, at ¶¶ 39-49.*

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render the overall transaction consistent with the public interest." *Staff opening brief, at ¶ 101 (emphasis added).* Staff fails to explain why "it follows that" the statutes provide the Commission this expansive jurisdiction. With regard to the third statute, Staff argues vaguely that the Commission has broad authority to regulate the practices of public utilities affecting rates and that its "proposed structural safeguards related to QC * * * address precisely these types of practices." *Id. at ¶ 102.* Again, the beyond-tenuous connection Staff seeks to draw is not borne out by the statute it cites. RCW 80.36.140 does relate to rates, but it provides the Commission the authority to take action only after adjudication of a complaint proceeding evaluating whether a telecommunications company's rules, regulations or practices have affected rates[22] and are unjust or unreasonable. Then still, the statute does not specifically provide the Commission authority to reach beyond the borders of this state to impact the multi-state corporate and financing organization of QCI and its subsidiaries. Under Staff's interpretation, the Commission has limitless authority, so long as it can assert the vaguest connection to the public interest or customer rates. Such a breathtaking interpretation is clearly not supported by the law.

63 Furthermore, the specific relief requested by Staff is at odds with other statutes governing the rights of public service companies. For instance, RCW 80.08.030 authorizes a public service company to issue stock, notes or other evidence of ownership or indebtedness in order to issue stock dividends. Thus, QC is authorized by statute to borrow money to dividend those funds to QSC, which could in turn dividend those funds to QCI. Staff's proposal would restrict QC from dividending to QSC at a level higher than it did in 2002. *Ex. 370, at 26a.* Staff's proposed restriction is arbitrary and inconsistent with RCW 80.08.030, and Staff makes no attempt to reconcile its recommendation with that statute.

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[22] Although there are a myriad of problems with Staff's reliance on RCW 80.36.140, one obvious flaw is that Staff cannot show that the actions it believes are unjust or unreasonable have actually affected QC's rates. The Settlement Agreement provides rate security for 15 years. Staff's apparent belief that RCW 80.36.140 applies is both unsupported by fact and at least 16 years premature.

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2. Creation of a QC-Washington is an unrealistic and counterproductive goal.

64 Staff believes it is possible to create (actually or constructively) a QC-Washington and that ratepayers would be better off with a QC-Washington rather than a 14-state utility integrated into a corporate structure consisting of affiliates and subsidiaries providing unregulated services. Staff's recommendations ignore the fact that QC is the dominant member of a highly-integrated corporate structure that cannot be easily segregated from its parent and affiliates, let alone subdivided into 14 individual operating companies. QC comprises 73.1% of the employees, 74.1% of the revenues and 70.8% of the property, plant and equipment of the Qwest consolidated companies. *Ex. 179.* QC's bond indebtedness is not state-specific. *Ex. 94, at 7.* Staff fails to explain how the Commission can compel QC's bondholders to segregate their claims against QC and its assets into state-specific claims. At present, a QC bondholder has a claim against all of the region-wide assets of QC. Staff offers no explanation as to how those claims could be involuntarily converted into QC-Washington, QC-Oregon, (etc.) claims.

65 It is equally unclear that Staff's goal of a standalone QC-Washington, even if achievable, would benefit ratepayers. Just as Dex gains tremendous economies of scale through its multi-state operation,[23] QC enjoys the same efficiencies. Presumably, rates would increase if based solely on the expenses and revenues of a standalone QC-Washington. Staff has placed no evidence into the record as to how, in reality, QC-Washington would be organized, would overcome the inefficiencies of a single-state operation and would benefit ratepayers.

III. CONCLUSION

66 Staff has not provided the Commission factual or legal support for its opposition to the sale of Dex and the Settlement Agreement. The Commission should approve the Settlement Agreement. The evidence in the record and the briefs submitted by the Settling Parties demonstrate that approval of the

[23] *See Qwest opening brief, at ¶¶ 169-170.*

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Dex sale, as conditioned by the Settlement Agreement, is in the public interest. Consistent with Commission and judicial authority, the Settlement Agreement appropriately balances the interests of ratepayers, shareholders and the public at large.

DATED this 18th day of July, 2003.

QWEST

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