

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

)	
In the Matter of the Application of)	
)	DOCKET NO. UT-021120
QWEST CORPORATION)	
)	
Regarding the Sale and Transfer of)	NINTH SUPPLEMENTAL
Qwest Dex to Dex Holdings, LLC, a)	ORDER: DENYING REQUEST
non-affiliate)	FOR JUDICIAL NOTICE
.....)	

1 **PROCEEDINGS:** Qwest Corporation filed its “Application Regarding Transfer and Sale of Directory Business and Notice of Possible Affiliated Interest Transaction” on September 3, 2002. The Commission conducted evidentiary hearings on May 19, 21-23, and 28-30, 2003. The parties filed initial briefs on July 3, 2003, and reply briefs on July 18, 2003. This Order concerns Staff’s post-brief request that we consider “supplemental authority” and take “judicial notice” with respect to one of our recent orders in another, wholly unrelated proceeding.

2 **PARTIES:** Lisa A. Anderl, Senior Attorney, U S WEST, Inc. Seattle, Washington, represents Qwest Corporation. Brooks Harlow, Miller Nash LLP, Seattle, Washington, represents Dex Holdings, LLC. Gregory J. Kopta, Davis Wright Tremaine LLP, Seattle, Washington represents XO Washington, Inc. Arthur A. Butler and Lisa Rackner, Ater Wynne LLP, Seattle, Washington and Portland, Oregon, represent WeBTEC, f/k/a TRACER. Stephen S. Melnikoff, Department of the Army, Judge Advocate General, represents the Department of Defense and Federal Executive Agencies. Ronald Roseman, attorney, Seattle, Washington, represents the AARP. Simon ffitich and Robert Cromwell, Assistant Attorneys General, Seattle, Washington, represents the Public Counsel Section, Office of Attorney General (“Public Counsel”). Greg Trautman, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”).

3 **STAFF CITATION AND REQUEST:** On July 22, 2003, Staff filed its Citation to Supplemental Authority and Request for Judicial Notice of Commission Order. Staff requests “that the Commission take judicial notice of its just-entered order in the consolidated PacifiCorp dockets” citing our final order in Docket Nos. UE-020417, entered on July 15, 2003. We construe this second aspect of Staff’s filing to be a request that we take “official notice,” under RCW 34.05.452 and WAC 480-09-750.

MEMORANDUM

4 The Commission may take official notice of “administrative rulings and orders, exclusive of findings of fact.” WAC 480-09-750. Findings of fact are necessarily excluded because they are uniquely based on the evidence of record in whatever proceeding led to the administrative order. A finding of fact in one proceeding simply has no value in the context of another proceeding that does not involve the same transaction or occurrence and where there is no identity of parties.¹

5 The specific passage Staff quotes from the PacifiCorp Order is a mixed finding of fact and conclusion of law. Staff’s interest appears to be in the fact component: “the record, considered as a whole, demonstrates that the Rate Plan has been . . . overtaken by events.” The law component in the passage Staff quotes in its Request is our conclusion that one aspect of the Rate Plan “is no longer in the public interest.”

6 Our finding of fact in the PacifiCorp proceeding, in the plain terms of the Order itself, is based on the unique record in that proceeding “considered as a

¹ We are mindful in this context of the somewhat related principles of *res judicata* and collateral estoppel. *Res judicata*, sometimes called “claims preclusion,” requires identity of (1) subject matter; (2) cause of action; (3) persons and parties; and (4) the quality of persons for or against whom the claim is made. Collateral estoppel, sometimes called “issue preclusion,” requires: (1) identical issues, (2) final judgment on the merits in the prior proceeding, (3) identical parties or parties in privity with the prior parties, and (4) that application of the doctrine will not work an injustice. None of these elements is present in the present context.

whole.” The fact in question has absolutely no relevance in the context this proceeding.² We will not take official notice of this fact.

- 7 Staff’s filing bears, as part of its caption, the heading “Citation to Supplemental Authority.” This suggests that Staff views our Order in the PacifiCorp proceeding as somehow precedential. We do not wish to leave that suggestion unresolved. The Commission’s final Order in the PacifiCorp proceeding includes no holding, no conclusion of law, and no dicta that is even arguably legal authority, or persuasive of any point of law, germane to our determination of this proceeding.

ORDER

- 8 The Commission rejects and denies, respectively, Staff’s Citation to Supplemental Authority and Request for Judicial Notice of Commission Order.

DATED at Olympia, Washington, and effective this 1st day of August 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

² It appears that Staff would have us take official notice of this fact only so that it can emphasize a common-sense point already made in its brief—that circumstances sometimes change in unanticipated ways with the passage of time. If that is so, we find that Staff’s filing is procedurally inappropriate.