

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

MOTION OF COMMISSION
STAFF TO APPLY THE PER-LINE
BILL CREDIT MANDATED IN
THE QWEST DEX SETTLEMENT
AGREEMENT TO QWEST'S
RETAIL AND RESALE ACCESS
LINES

On September 29, 2003 (later corrected by letter of October 3, 2003), Qwest filed its estimation of the per-line bill credit to be provided to customers, as required by Section III (C)(1) of the Settlement Agreement adopted by the Commission in this docket. In its letter, Qwest states, "The bill credit is calculated by dividing the total credit amount of \$67,000,000.00 by the estimated access lines to be credited during the billing period." However, Staff's review of Qwest's calculations and Staff's subsequent discussions with Qwest and other parties show that Qwest has decided not to apply the

MOTION OF COMMISSION STAFF TO APPLY
THE PER-LINE BILL CREDIT MANDATED IN
THE QWEST DEX SETTLEMENT AGREEMENT TO
QWEST'S RETAIL AND RESALE ACCESS LINES - 1

credit to all of its access lines. Rather, Qwest plans to limit the credit to its retail access lines, excluding resale access lines entirely. Staff believes the Commission should reject this exclusion, and apply the per-line credit to all access lines equally, consistent with the language of the Settlement Agreement, the law on resale, and the Commission's policies implementing that law. Including lines sold for resale will have a minor effect on the amount that Qwest's own retail customers receive,¹ but it will avoid a result that would be both unfair and anticompetitive.

The Settlement agreement makes no distinction between retail and resale lines in calculation of the per-line credit. It simply provides that "the bill credit shall be provided to the customers identified in Appendix 1 [of the Agreement] in its entirety in the single billing cycle." *Id.* at p. 4, section III (C)(1).² Furthermore, any such distinction contravenes the well-established principle that there should be parity between retail services and resale services. Under Sections 251(b)(1) and 252(d)(3) of the Federal

¹Qwest has indicated to Staff that its resold line count (for the same service categories as retail) totaled 11,727 lines as of August 31, 2003. Including resale lines would cause the per-line credit to decrease by no more than \$0.17, from \$30.93 to at least \$30.76. That amount is still larger than the \$29.87 amount that the settlement parties estimated at the time they submitted the Settlement Agreement. This is because Qwest has lost more than 11,727 retail lines in the intervening months.

²Staff is aware that Public Counsel's witness, in passing, referred to "retail" customers of Qwest in his testimony. However, this distinction is not made in the Settlement Agreement itself, nor was it made by any of the other parties who supported the Settlement Agreement. The Commission should not view this passing reference as binding or determinative, particularly since it directly conflicts the Commission's past policy of parity between Qwest's own end-use customers and those customers who purchase the same services via resale

Telecommunications Act of 1996, Qwest is required to make its services available for resale, without unreasonable or discriminatory conditions or limitations, subject only to the wholesale discount attributable to avoided marketing, billing, collection or other costs.

This parity concept is established and implemented in Qwest's tariff, which establishes the right to purchase resold services. If Qwest were to implement the per-line bill credit in this docket by placing it in its exchange and network services tariff (stating that customers as of a specified date will receive the credit), then resellers of access lines would also be entitled to receive the per-line credit.

Staff understands that the other parties³ to the Settlement Agreement explicitly discussed this issue in developing the settlement and agree with Qwest's retail-only calculation. Staff submits this unwritten agreement should not control the Commission's decision, particularly since it would be contrary to the legal and policy considerations favoring parity. Staff believes that the most reasonable reading of the Settlement Agreement was that all lines – retail and resale – would be entitled to the credit. This reading is consistent with the parity approach between retail and resale

³The telecommunications companies that engage in resale were not parties to the Settlement Agreement. One competitive local exchange company, XO Communications, intervened in this proceeding but did not actively participate.

services that has been applied to the credits resulting from Qwest's Service Quality Performance Program that arose out of the Qwest merger agreement, Docket UT-991358. The payments made by Qwest under that program from 2001 through 2003 were divided over all lines, both retail and resale.

There is no reason why the per-line credits mandated by the Commission-approved Settlement agreement should be treated any differently. Indeed, Staff submits that as a matter of fundamental fairness, the resellers are equally entitled to a share of the \$67 million credit amount. This credit amount is intended to compensate customers for the loss of the directory publishing business that had contributed to Qwest's revenues. Resale services, since they are priced as a discount from retail prices, are just as affected by the loss of directory revenues as are retail services. There is nothing unique about the retail customer base that should entitle it to a credit that does not apply to resold lines. Accordingly, the Commission should require Qwest to apply

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the per-line credit set forth in the Settlement agreement to both retail and resale access lines.

Respectfully submitted this 16th day of October, 2003.

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