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BEFORE THE ARIZONA CORPORATION COMMISSION

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2005 FEB -3 P 4: 09
AZ CORP COMMISSION
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Arizona Corporation Commission
DOCKETED
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8 IN THE MATTER OF QWEST
CORPORATION'S FILING AMENDED
9 RENEWED PRICE REGULATION PLAN.

10 IN THE MATTER OF THE INVESTIGATION
11 OF THE COST OF
12 TELECOMMUNICATIONS ACCESS.

DOCKET NO. T-01051B-03-0454

DOCKET NO. T-00000D-00-0672

**EMERGENCY MOTION TO SUSPEND
THE INFLATION MINUS
PRODUCTIVITY FACTOR
ADJUSTMENT**

14 Qwest Corporation ("Qwest") moves the Arizona Corporation Commission (the
15 "Commission") for an order suspending application of the "Inflation Minus Productivity" indexing
16 rate reduction mechanism on April 1, 2005 (the "April 1 Rate Reduction") under the Qwest Price
17 Cap Plan pending an order of the Commission in the captioned docket.

18 The Price Cap Plan approved by the Commission in Decision No. 63487 in 2001 provided
19 that Basket 1 services¹ are capped and subject to an annual rate adjustment determined by an
20 "Inflation minus Productivity" indexing mechanism. Under that mechanism, when productivity
21 exceeds inflation, rates will decrease, and the decrease is effective on April 1 of the following year.
22 Thus, under the current factors effective in the Price Cap Plan, application of Inflation minus
23 Productivity indexing mechanism would require Qwest to reduce its Basket 1 rates in amounts that
24 would reduce its annual revenues approximately \$12 Million, effective April 1, 2005, absent an
25

26 ¹ Basket 1 services include, among other services, basic residence and basic business services.

1 order by the Commission to the contrary. The Commission has previously declined to interpret the
2 Price Cap Plan as limiting the number of annual adjustments.² In its initial February 10, 2004
3 Decision, the Commission, in relevant part, ordered Qwest to make further reductions in its rates
4 for Basket 1 services on April 1, 2004 and annually thereafter. On June 9, 2004, the Commission
5 considered all proffered amendments and ultimately adopted Decision No. 67047. In so doing, the
6 Commission accepted an amendment that prospectively reversed its earlier determination to require
7 further reductions in intrastate access charges, but rejected an amendment that would have similarly
8 reversed the mandate for further productivity/inflation adjustments to Basket 1.

9 In the interim, the current Price Cap case has been proceeding.³ The parties have conducted
10 extensive discovery, sending dozens of data requests containing hundreds of questions, in response
11 to which Qwest has produced hundreds of thousands of pages of data. The time allowed for
12 discovery under the procedural schedule expired on January 31, and the parties have submitted all
13 rounds of their pre-filed written testimony. Based on the all the testimony filed by the parties,
14 Qwest believes that settlement discussions may very well be productive; accordingly Qwest asked
15 the Hearing Division to suspend the Procedural Schedule in order to pursue settlement. A number
16 of parties in the case, including Staff, RUCO, and Cox supported suspension of the Procedural
17 Schedule, and on February 2 Administrative Law Judge Rodda ordered the Schedule suspended.

18 Generally settlements of disputed matters are viewed favorably in litigation, and given the
19 complexity of this proceeding and the number of parties involved, prompt pursuit of good faith
20 settlement discussions is highly desirable. However, in this case, the pursuit of settlement is

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22 ² Decision No. 66772 issued on February 10, 2004 and Decision No. 67047 issued on June 18, 2004 (the "Decisions").
23 Qwest has directly appealed the Decisions to the Court of Appeals [No. 1 CA-CC 04-0001 and 1 CA-CC 04-0002
24 (consolidated)] pursuant to A.R.S. § 40-254.01, as well as to the Maricopa County Superior Court under A.R.S.
25 § 40-254 (to preserve its appeal rights should the Court of Appeals determine that it does not have jurisdiction).
26 Nothing herein shall be construed as a waiver of the arguments advanced by Qwest in these appeals.

³ Qwest complied with Decision No. 66772 by submitting its A.A.C. R14-2-103 for modification of the Price Cap
Plan on May 20, 2004. As a result, the Hearing Division ordered a schedule designed to achieve a hearing of the
matter in early January 2004 with a final decision from the Commission prior to April 1, 2005. However, pursuant
to procedural changes necessitated by the extensive discovery of the parties and through no fault of Qwest, the
matter was subsequently set for evidentiary hearing on February 10, 2005. "We do not grant the extension request to
penalize Qwest for any delay in responding to Staff's data requests . . ." Procedural Order at 3 (October 13, 2004).

1 jeopardized by the looming April 1 Rate Reduction.

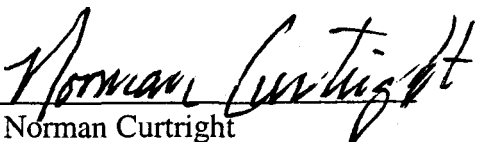
2 The April 1 Rate Reduction will be required automatically unless the Commission
3 suspends it under the Commission's currently effective interpretation of its Decision 63487. An
4 automatic rate reduction at this time is not supported by the evidence in the case, and if effected
5 would most probably have to be subsequently reversed in whole or in part. Based on the written
6 pre-filed testimony, no likely scenario warranting Basket 1 rate reductions exists. Qwest's
7 testimony and revised AAC R14-2-103 revenue requirement finds a \$275 million revenue
8 deficiency. RUCO's testimony states that Qwest has a \$160 million revenue deficiency. The
9 Arizona Corporation Commission Staff ("Staff") analysis concludes that Qwest has a \$3.5
10 million revenue deficiency. Even taking the most conservative view of the likely outcome of this
11 case, there is no likelihood that a rate reduction will be supported by the evidence. Indeed, given
12 the testimony that has been pre-filed, a rate reduction would be unreasonable and confiscatory.
13 Further, a rate reduction may very well have to be reversed in a matter of months, as a
14 consequence of this proceeding. "Yo-Yo" rates are confusing to consumers, expensive for the
15 company to administer, and bad public policy.

16 Unfortunately, under the circumstances of the current case, in which the parties are just now
17 beginning settlement discussions, there is little, if any, chance that the Commission will consider its
18 final decision concerning modification, amendment or termination of the Price Cap Plan prior to
19 April 1, 2005. However, the Commission has the option of staying any further Basket 1 reduction
20 until it has issued its final decision concerning modification, amendment or termination of the
21 Price Cap Plan and can then determine whether any further adjustment or true-up will be
22 necessary. The Commission should now take action to suspend the April 1 Rate Reduction.
23 Taking such action expeditiously will prevent unjust rate reductions, and the possibility of customer
24 confusion when the rate reductions are later reversed. Intervention now demonstrates sound public
25 interest stewardship by the Commission.

26 Qwest respectfully requests that the Commission suspend any further Basket 1 rate

1 reduction under the Inflation minus Productivity indexing mechanism under the Price Cap Plan
2 pending a final decision concerning the matters in this docket.

3 RESPECTFULLY SUBMITTED this 3rd day of February, 2005.

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19 filing this 3rd day of February, 2005 to:**

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24 **COPY of the foregoing delivered
25 this 3rd day of February, 2005 to:**

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- 3 Archtel, Inc.
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- 5 Brooks Fiber Communications of Tucson, Inc.
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- 7 Centurytel
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- 8 Monroe, LA 71211-4065
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- 12 Citizens Telecommunications Co. of the White Mountains, Inc.
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- 20 Eschelon Telecom of Arizona, Inc.
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- 22 Ernest Communications, Inc.
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- 23 Norcross, GA 30092-6511
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- 18 North County Communications Corporation
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- 19 San Diego, CA 92110
- 20 One Point Communications
Two Conway Park
- 21 150 Field Drive, Ste. 300
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- 23 Opex Communications, Inc.
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- 24 Elk Grove Village, IL 60007
- 25 Pac-West Telecomm, Inc.
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- 4 PO Box 189
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- 6 South Central Utah Telephone Association, Inc.
PO Box 226
- 7 Escalante, UT 84726-000
- 8 Southwestern Telephone Co., Inc.
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- 9 Madison, WI 53705-0158
- 10 Special Accounts Billing Group
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- 11 Inverness, IL 60067
- 12 Touch America
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- 14 Table Top Telephone Co, Inc.
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