

ORIGINAL



0000016972

RECEIVED
BEFORE THE ARIZONA CORPORATION COMMISSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

JEFF HATCH-MILLER
Chairman
WILLIAM A. MUNDELL
Commissioner
MARC SPITZER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN MAYES
Commissioner

2005 MAR -1 P 2:30

AZ CORP COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission

DOCKETED

MAR 01 2005

DOCKETED BY
KJ

IN THE MATTER OF QWEST
CORPORATION'S FILING AMENDED
RENEWED PRICE REGULATION PLAN.

DOCKET NO. T-01051B-03-0454

IN THE MATTER OF THE
INVESTIGATION OF THE COST OF
TELECOMMUNICATIONS ACCESS.

DOCKET NO. T-00000D-00-0672

**QWEST CORPORATION'S REPLY IN
SUPPORT OF ITS EMERGENCY
MOTION TO SUSPEND THE
INFLATION MINUS PRODUCTIVITY
FACTOR ADJUSTMENT**

I. Introduction

Pursuant to the Procedural Order issued on February 16, 2005 in the above-captioned docket, Qwest Corporation ("Qwest") submits this reply (1) in support of its Emergency Motion to Suspend the Inflation Minus Productivity Factor Adjustment filed on February 3, 2005 ("Motion") and (2) to address the responses to the Motion filed by the Residential Utility Consumer Office ("RUCO") and Staff.

II. Discussion

A. Staff

Staff supports suspending the application of the Inflation Minus Productivity Factor Adjustment on April 1, 2005, provided that the current appeals of Arizona Corporation Commission ("Commission") Decision Nos. 66772 and 67047 filed by

1 Qwest are similarly suspended. Consistent with Staff's requests, Qwest, the Commission
2 and RUCO filed a stipulation with the Arizona Court of Appeal, Division One, on
3 February 22, 2005, requesting that the Court defer consideration of and stay these appeals
4 until such settlement negotiations have concluded. Stipulation and Order attached hereto
5 as Exhibit 1. Under these circumstances, suspension of the April 1, 2005 adjustment is
6 warranted. As Staff suggests, the parties' pending settlement negotiations in this docket
7 will include consideration of both the April 1, 2005 adjustment and Qwest's pending
8 appeals. Staff Response at 3. If, for example, the parties reach a successful settlement
9 that eliminates any further reductions in Basket 1 rates (including the April 1, 2005
10 reduction), it does not serve the public interest to lower rates on April 1st, and later
11 subject consumers to a surcharge for Qwest's recovery of this reduction. Similarly,
12 compromise of Qwest's appeals concerning the legality of any such reductions, including
13 the April 1, 2004 reduction, become less likely. Preserving the *status quo* without
14 prejudice to any party will only serve to allow the parties to move forward with
15 meaningful and productive settlement negotiations.

16 B. RUCO

17 RUCO argues that any suspension of the April 1, 2005 reductions would
18 undermine the Commission's prior ruling in Decision Nos. 66772 and 67047. RUCO
19 Response at 2. RUCO describes the Motion as "an attempted end-run around" these
20 decisions. RUCO Response at 3. This is not the case, and the record does not support
21 RUCO's characterization of Qwest's motion.

22 For example, the Motion does not request the "termination" of the inflation minus
23 productivity factor adjustment raising "concerns under *Scates*," as RUCO claims.¹

24 _____
25 ¹ It should be noted that Qwest believes that Decision Nos. 66772 and 67047, in fact, violate *Scates* because the
26 Commission required additional, arbitrary annual reductions based on an outdated productivity factor for an
indefinite period of time, without any attempt to determine the fair value of Qwest's property. The reasons,
precedent and analysis for Qwest's position are set forth in its briefs to the Court of Appeals, and Qwest will not
repeat them here.

1 RUCO Response at 4. It simply requests "suspension" of the April 1, 2005, until the
2 Commission issues a final order in this docket. Whether the parties are able to
3 successfully resolve this docket through settlement or through a fully litigated hearing,
4 the Commission will then address the value, if any, of continued application of this
5 adjustment (on April 1, 2005 and in the future) on a permanent basis, and only after
6 considering the evidence and arguments of all parties. Under these circumstances, the
7 Commission will not reach a premature conclusion and will certainly not violate *Scates*
8 since any order issued by the Commission concluding this docket will comply with the
9 fair value requirement of the Arizona Constitution.

10 It makes no sense, however, to reduce Qwest rates further on April 1, 2005.
11 RUCO admits that Qwest, Staff and RUCO have all filed testimony in this proceeding
12 showing that "Qwest is under-earning." RUCO Response at 6. All testimony in this
13 docket has been filed, and the cut-off for any further discovery has passed.
14 Consequently, there is no dispute to be litigated concerning the fact that Qwest's current
15 rates produce a revenue requirement deficiency.² Under these circumstances, further rate
16 reductions on April 1, 2005 serve no useful purpose or interest, and would be arguably
17 illegal and confiscatory. Rather, sound public policy would support the temporary
18 suspension requested by Qwest so the Commission can, in fact, remain free to consider
19 the appropriate means of addressing this and other issues within the context of the entire
20 case before it.

21 RUCO also argues that the Motion should fail because it is inconsistent for Qwest
22 to decry traditional rate-of-return regulation while simultaneously relying on a revenue
23 requirement deficiency as a basis to suspend the April 1, 2005 reductions. RUCO's
24 argument misses the point. Because all of the parties concede, either expressly or
25

26 ² Qwest does not dispute that the size of the deficiency and the appropriate rate design to address the deficiency are matters that remain to be litigated.

1 implicitly, that Qwest is under-earning, an April 1, 2005 rate reduction is inappropriate
2 irrespective of whether the Commission utilizes traditional rate-of-return regulation or
3 adopts another form of regulation in this docket.

4 Finally, the requested suspension does not “undermine” the Commission’s prior
5 decisions; neither is it inconsistent with the Commission’s prior litigation position. A
6 comprehensive review of the transcript from the Commission’s June 9, 2004 Special
7 Open Meeting (at which time the Commission issued Decision No. 67047 eliminating the
8 continued access charge reductions under Decision No. 66772), does not support
9 RUCO’s assertion. *See Excerpts of Reporter’s Transcript of Proceedings (June 9, 2004)*
10 attached as Exhibit 2. Rather, the Commission expressed concern with the exact scenario
11 it is faced with today—that this docket would not have reached conclusion before April
12 1, 2005. For example, in discussing various proposed amendments, then-Chairman
13 Spitzer stated:

14 Mr. Kempley, Commissioner Gleason and Commissioner Mundell, the way
15 I look at this language, had we approved the Gleason amendment, then I
16 think it would be surplusage. It would be unnecessary. But given the fact
17 that we did not accept the Gleason amendment *and we have an overhang of*
18 *what happens on April 1, 2005, for the next year, what this language does*
19 *is it does not prejudice any future Commission action one way or the other,*
20 *which I think is the fair, as I reflect on it, I think that’s the fair and*
21 *appropriate way.*

22 Exhibit 2 at 63:6-16 (emphasis added).³ Commissioners Mundell, Gleason and Hatch-
23 Miller also expressed similar concerns, albeit with differing points of view. *See, e.g., id.*

24 ³ The amendment Commissioner Spitzer was addressing would have added the following language to the Order:

25 “Nonetheless, if Qwest can demonstrate that any further delay was not of its own making and that
26 the equities require us to reevaluate whether a further reduction on April 1st, 2005, and beyond is
appropriate, we will do so at the appropriate time upon motion by Qwest.”

27 Exhibit 2 at 61:3-13. That language was removed from the amendment, however, upon motion made by
28 Commissioner Hatch-Miller, in recognition of the fact that “Qwest could file at any time to have us look at the
casues fo the delay and whether or not to sort of continue the reductions for a further year.” Exhibit 2 at 74:2-5.

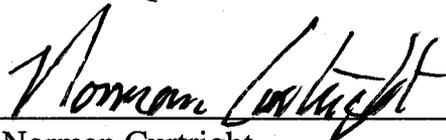
1 at 70:13-19, 71:2-25,72:1-5, 74: 1-6, 75:11-17, 76:1-13, 77:22-25, 87:20-23. Thus, the
2 Commission made clear that it did not intend to limit itself if again faced with further rate
3 reductions on April 1, 2005. That time has come, and the fact that this docket has not yet
4 resulted in a final determination, can no longer be attributed to any delay on the part of
5 Qwest.

6 **III. Conclusion**

7 For all the reasons stated herein and in the Motion, suspension of the April 1, 2005
8 rate reductions is appropriate. Qwest has agreed to stay current proceedings before the
9 Court of Appeals, and suspension of the April 1, 2005 rate adjustment is also necessary to
10 allow full and fair settlement negotiations to proceed in any meaningful way. The
11 Commission is not limited by granting such a suspension and retains the ability to reach a
12 final determination it believes appropriate addressing this and other issues raised in this
13 docket. Therefore, Qwest requests that the Commission grant the relief sought in the
14 Motion.⁴

15 RESPECTFULLY SUBMITTED this 1st day of March, 2005.

16
17 On Behalf of QWEST CORPORATION

18 By: 
19 Norman Curtright

20 QWEST CORPORATION
21 4041 N. Central, 11th Floor
22 Phoenix, AZ 85012

23 -and-
24
25

26 ⁴ If the Motion is denied, Qwest requests that it be given an additional 60 days to implement the rate reductions, with such reductions relating back to April 1, 2005.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Timothy Berg
Theresa Dwyer
3003 North Central Ave., Suite 2600
Phoenix, Arizona 85012-2913
(602) 916-5421
Attorneys for Qwest Corporation

ORIGINAL and 15 copies hand-delivered for
filing this 1st day of March, 2005 to:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

COPY of the foregoing delivered
this 1st day of March, 2005 to:

Jane Rodda
Administrative Law Judge
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

Christopher Kempley
Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

Maureen A. Scott
Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

COPY of the foregoing mailed
this 1st day of March, 2005 to:

- 1 Scott S. Wakefield, Chief Counsel
Daniel W. Pozefsky, Esq.
- 2 RUCO
1110 West Washington, Suite 220
- 3 Phoenix, AZ 85007

- 4 Michael W. Patten
Roshka Heyman & DeWulf, PLC
- 5 One Arizona Center
400 East Van Buren Street, Suite 800
- 6 Phoenix, Arizona 85004

- 7 Mark A. DiNunzio
Cox Arizona Telcom, LLC
- 8 20401 North 29th Avenue
Phoenix, Arizona 85027

- 9 Thomas H. Campbell
- 10 Michael T. Hallam
Lewis and Roca
- 11 40 N. Central Avenue
Phoenix, Arizona 85004

- 12 Thomas F. Dixon
- 13 WorldCom, Inc.
707 17th Street, 39th Floor
- 14 Denver, Colorado 80202

- 15 Peter Q. Nyce, Jr.
Regulatory Law Office
- 16 U.S. Army Litigation Center
901 N. Stuart Street, Suite 713
- 17 Arlington, VA 22203-1837

- 18 Richard Lee
Snively King Majoros O'Connor & Lee
- 19 1220 L. Street N.W., Suite 410
Washington, DC 20005

- 20 Walter W. Meek President
- 21 Arizona Utility Investors Association
2100 N. Central Avenue, Suite 210
- 22 Phoenix, AZ 85004

- 23 Albert Sterman, Vice President
Arizona Consumers Council
- 24 2849 E. 8th Street
Tucson, AZ 85716
- 25
- 26

1 Martin A. Aronson
Morrill & Aronson, PLC
2 One East Camelback Road, Suite 340
Phoenix, AZ 85012

3 Brian Thomas
4 Vice President Regulatory
Time Warner Telecom, Inc.
5 223 Taylor Avenue North
Seattle, WA 98109

6
7  A handwritten signature in cursive script, appearing to read "Diane Hyman", is written over a horizontal line.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT

1

1 FENNEMORE CRAIG
2 Timothy Berg (No. 004170)
3 Theresa Dwyer (No. 010246)
4 3003 North Central Avenue, Suite 2600
5 Phoenix, Arizona 85012-2913
6 Telephone: (602) 916-5000
7 Email: tberg@fclaw.com
8 Email: tdwyer@fclaw.com
9 Attorneys for Qwest Corporation

6 **IN THE COURT OF APPEALS**

7 **STATE OF ARIZONA**

8 **DIVISION ONE**

9 QWEST CORPORATON, a
10 Colorado corporation,
11 Appellant,

No. 1 CA-CC 04-0001
1 CA-CC 04-0002
(Consolidated)

11 v.

ACC Docket No. T-01051B-03-0454
ACC Docket No. T-00000D-00-0672
(Consolidated)

12 ARIZONA CORPORATION
13 COMMISSION, an agency of the
14 State of Arizona,

**STIPULATION TO SUSPEND
APPEAL**

15 and

Appellee.

16 RESIDENTIAL UTILITY
17 CONSUMER OFFICE, and agency
18 of the State of Arizona,

Intervenor-Appellee.

19 QWEST CORPORATON, a
20 Colorado corporation,
21 Appellant,

21 v.

22 ARIZONA CORPORATION
23 COMMISSION, an agency of the
24 State of Arizona,

Appellee,

25 and

26

1 RESIDENTIAL UTILITY
2 CONSUMER OFFICE, and agency
of the State of Arizona,

3 Intervenor-Appellee.
4

5 This action challenges certain rate orders of the Arizona Corporation
6 Commission and its individual members in their official capacities (collectively, the
7 "Commission"). See Opinion and Order, *In the Matter of Qwest Corporation's*
8 *Filing of Renewed Price Regulation Plan*, Docket No. T-01051B-03-0454,
9 Decision No. 66772 (February 10, 2004); and Opinion and Order, *In the Matter of*
10 *Qwest Corporation's Filing of Renewed Price Regulation Plan*, Docket Nos.
11 T-01051B-03-0454 and T-00000D-00-0672 (consolidated), Decision No. 67047
12 (June 18, 2004). Both orders require that Qwest Corporation ("Qwest") annually
13 reduce its rates for certain services after March 31, 2004, based on a
14 productivity-minus-inflation factor. These annual rate reductions continue until the
15 Commission orders otherwise.

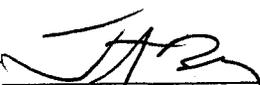
16 Pursuant to A.R.S. § 40-254.01, Qwest filed timely notices of direct appeal
17 with this Court for both Commission orders, on April 9, 2004 and July 22, 2004
18 respectively. The Court issued an order consolidating these appeals on July 29,
19 2004. The parties recently completed briefing these appeals and the Court has
20 issued an order granting oral argument, but has not yet scheduled a date to hear the
21 matter.

22 In the interim, the parties have entered into settlement negotiations regarding
23 a pending Commission docket concerning Qwest's current rates, and which may
24 also result in the settlement of these appeals. Therefore, to avoid unnecessary
25 litigation and waste of state judicial resources and the resources of the parties, the
26 parties agree that this Court should defer consideration of and stay these appeals

1 until such settlement negotiations have concluded. The parties will notify the Court
2 upon the conclusion of settlement negotiations, advising as to whether (a) a
3 successful settlement was reached or (b) the stay should be lifted and the matters
4 calendared for oral argument.

5 RESPECTFULLY SUBMITTED this 22nd day of February, 2005.

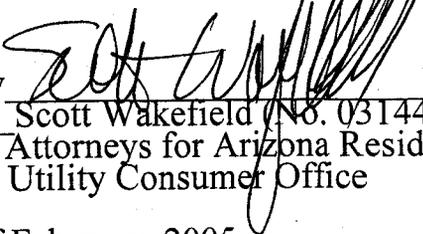
6 FENNEMORE CRAIG

7
8 By 
9 Timothy Berg (No. 004170)
10 Theresa Dwyer (No. 010246)
Attorneys for Qwest Corporation

11 ARIZONA CORPORATION
12 COMMISSION

13 By 
14 Christopher C. Kempley (005531)
15 Maureen Scott (No. 012344)
16 Timothy J. Sabo (No. 021309)
Attorneys for Arizona Corporation
Commission

17 ARIZONA RESIDENTIAL UTILITY
18 CONSUMER OFFICE

19 By 
20 Scott Wakefield (No. 031442)
Attorneys for Arizona Residential
Utility Consumer Office

21 ORIGINAL and 4 copies filed this 22nd day of February, 2005:

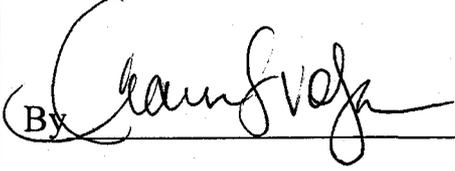
22 Clerk of the Arizona Court of Appeals
23 Division One
24 1501 West Washington
25 Phoenix, Arizona 85007-3329
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

COPY mailed this 2nd day of February, 2005 to:

Christopher C. Kempley, Chief Counsel
Maureen Scott, Attorney
Timothy Sabo, Attorney
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007
Attorneys for the Arizona Corporation Commission

Scott S. Wakefield, Chief Counsel
Daniel W. Pozefsky, Esq.
RUCO
1110 West Washington, Suite 220
Phoenix, AZ 85007

By 

217F

DIVISION 1
COURT OF APPEALS
STATE OF ARIZONA

FILED

FEB 24 2005

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

PHILIP G. URRY, CLERK

By *M. Allen*

QWEST CORPORATION, a Colorado
corporation,

Appellant,

v.

ARIZONA CORPORATION COMMISSION,
an agency of the State of
Arizona,

Appellee,

and

RESIDENTIAL UTILITY CONSUMER
OFFICE, an agency of the State of
Arizona,

Intervenor-Appellee.

QWEST CORPORATION, a Colorado
corporation,

Appellant,

v.

ARIZONA CORPORATION COMMISSION,
an agency of the State of
Arizona,

Appellee,

and

RESIDENTIAL UTILITY CONSUMER
OFFICE, an agency of the State of
Arizona,

) Court of Appeals
) Division One
) No. 1 CA-CC 04-0001
) 1 CA-CC 04-0002
) (Consolidated)

) Arizona Corporation
) Commission
) No. T00000D000672
) T-01051B-03-0454

) O R D E R

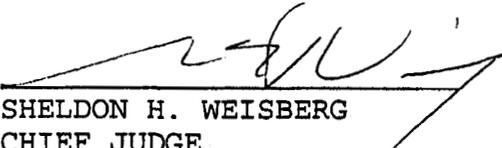
Intervenor-Appellee.)
_____)

This court has considered the parties' stipulation requesting suspension of this consolidated appeal to pursue settlement negotiations. Good cause appearing,

IT IS ORDERED suspending this appeal until April 25, 2005.

IT IS FURTHER ORDERED that on April 26, 2005, this appeal shall be automatically reinstated before this court, unless before that date the parties file a notice reinstating the appeal, a motion to dismiss the appeal, or a motion to continue the period of suspension of the appeal.

DATED this 24th day of February, 2005.



SHELDON H. WEISBERG
CHIEF JUDGE

Page 3

1 CA-CC 04-0001

Consolidated with:

1 CA-CC 04-0002

Arizona Corporation Commission

T-01051B-03-0454

A true copy of the foregoing
was mailed February 24, 2005 to:

Mr Timothy Berg
Fennemore Craig PC
Central Office
Ste 2600
3003 N Central Ave
Phoenix AZ 85012-2913

Ms Theresa Dwyer
Fennemore Craig PC
Central Office
Ste 2600
3003 N Central Ave
Phoenix AZ 85012-2913
Attorneys for: Appellant

Mr Christopher C Kempley
Chief Counsel
Arizona Corporation Commission
Legal Division
1200 W Washington St
Phoenix AZ 85007-2929

Ms Maureen A Scott
Arizona Corporation Commission
Legal Division
1200 W Washington St
Phoenix AZ 85007-2929

Timothy J Sabo
Arizona Corporation Commission
Legal Division
1200 W Washington St
Phoenix AZ 85007-2929
Attorneys for: Appellee, ACC

Page 4

1 CA-CC 04-0001

Mr Scott S Wakefield
Residential Utility Consumer Office
Suite 220
1110 W Washington Street
Phoenix AZ 85007
Attorney for: Appellee, Residential Utility

Philip G Urry, Clerk
By


Deputy Clerk

EXHIBIT

2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF QWEST)	
CORPORATION'S FILING OF)	DOCKET NO.
RENEWED PRICE REGULATION)	T-01051B-03-0454
PLAN.)	
<hr/>		SPECIAL OPEN MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona
June 9, 2004

ARIZONA REPORTING SERVICE, INC.
Court Reporting
Suite Three
2627 North Third Street
Phoenix, Arizona 85004-1126

**DISK
ENCLOSED**

BY: DAWNA J. BOSWELL, RPR
Certified Court Reporter
Certificate No. 50326

Prepared for:
QWEST

**CERTIFIED COPY
(When in red)**

1 repetitive, but again, this creates a status quo that
2 the Commission could alter.

3 MR. KEMPLEY: Mr. Chairman, that's certainly
4 the intent.

5 CHMN. SPITZER: Commissioner Mundell.

6 COM. MUNDELL: Could you read the sentence
7 totally then, because I have some questions.

8 MR. KEMPLEY: Sure. "Nonetheless, if Qwest
9 can demonstrate that any further delay was not of its
10 own making and that the equities require us to
11 reevaluate whether a further reduction on April 1st,
12 2005, and beyond is appropriate, we will do so at the
13 appropriate time upon motion by Qwest." The inference
14 here --

15 COM. MUNDELL: Do we even need this language
16 now that we adopted the Hatch-Miller? I guess I'm
17 missing something.

18 MR. KEMPLEY: Mr. Chairman, Commissioner
19 Mundell, the reason the sentence is in here is because
20 the inflation and productivity adjustment is an annual
21 adjustment, and so it would be. Based on the Staff's
22 view on the Basket 1 adjustment, we would be back in
23 front of you again potentially around April 1st, 2005,
24 suggesting that a continuation of the plan necessitated
25 another implementation.

1 This is intended to reflect that part of the
2 reason for the timing that we have now is as we've
3 discussed at some length Qwest's inability to make its
4 filing and know what it's financial statements were, all
5 of those things that led to the length of time that it's
6 taking to process the underlying price cap case. I
7 don't think this language has any substantive effect.
8 It is simply designed to be a signal and provide a
9 vehicle in the event we don't get a Final Order by
10 April 1st, 2005.

11 CHMN. SPITZER: Commissioner.

12 COM. MUNDELL: Well, that, I guess the
13 concern I have is that sort of goes, flies in the face
14 of my question to Mr. Berg saying you guys aren't going
15 to file any, for any continuances. And I understand
16 you, you say if they can show it's not of their own
17 making, but I want to discuss this a little further,
18 because it does give me a little pause for reflection.
19 Let me put it that way.

20 CHMN. SPITZER: Commissioner Gleason, you
21 wish to be recognized?

22 COM. GLEASON: Yes. Again, we're hit with
23 this thing cold and I haven't had a chance to look at
24 it, but it seems to me since you defeated my amendment,
25 what you are saying is that thing continues. Therefore,

1 I don't see that this statement is necessary in there.

2 MR. KEMPLEY: Mr. Chairman, Commissioner
3 Gleason, I think that's, I think that's right, and the
4 purpose of this is to provide an out, if you will, to
5 that eventuality, because --

6 CHMN. SPITZER: Mr. Kempley, Commissioner
7 Gleason and Commissioner Mundell, the way I look at this
8 language, had we approved the Gleason amendment, then I
9 think it would be surplusage. It would be unnecessary.
10 But given the fact that we did not accept the Gleason
11 amendment and we have an overhang of what happens on
12 April 1, 2005, for the next year, what this language
13 does is it does not prejudice any future Commission
14 action one way or the other, which I think is the fair,
15 as I reflect on it, I think that's the fair and
16 appropriate way.

17 Ms. Scott, were you the scrivener on this?

18 MS. SCOTT: Unfortunately, yes, Chairman.

19 CHMN. SPITZER: Okay. And it seems to me
20 what you tried to do is, in fairness, I think we have to
21 acknowledge the fact that by keeping, by having a
22 declaration that the price cap plan continues, which is
23 what we've done in this Order by approving this Order
24 today without the Gleason amendment, we have to have
25 some declaration about what happens going forward. And

1 that's, that really is a helpful and I think important
2 clarification. However, understanding that we had a
3 three to two vote on the last motion --

4 MR. KEMPLEY: Mr. Chairman, I think that
5 accurately captures the intent.

6 CHMN. SPITZER: Okay. Let's have two
7 separate motions regarding these two amendments. The
8 first, Commissioner Mundell, that would be page 9 on the
9 effective date.

10 COM. MUNDELL: Thank you, Mr. Chairman.

11 At page 9, line 21, strike "any billing,"
12 insert "rates," and then at line 22, after the decision
13 number, "effective July 1st, 2004."

14 CHMN. SPITZER: You've heard that motion.
15 Hearing no further discussion, all in favor will please
16 vote aye.

17 (A chorus of ayes.)

18 CHMN. SPITZER: Opposed, no.

19 The ayes have it.

20 And I will make the motion at page 5,
21 line 20, to insert the word "its" between "of" and
22 "own," to insert the word "reduction" in between the
23 words "further" and "on," line 21, and change 2004 to
24 2005.

25 COM. MUNDELL: Are you going to have some

1 discussion from any of the other parties on this matter?

2 CHMN. SPITZER: Sure, yes. Is there any
3 discussion from my colleagues on this? Does anyone wish
4 to be heard?

5 Mr. Wolters.

6 MR. WOLTERS: I think this language,
7 Chairman, adds ambiguity to the document. I think the
8 problem with the language is if you had left it out,
9 Qwest always has a right to come in and ask that the
10 Commission amend its Order. All this does is make it
11 clear that they have this right. But the way I read
12 this Order, and it is consistent with what I think
13 Commissioner Gleason was getting at, you voted today
14 that on April 5th, or April 1st, 2005, they will have to
15 make the reduction. You said the original plan
16 continues in effect. So all this does is gives some
17 language to Qwest that says if they can meet these
18 standards, they could come in and ask that the 2005
19 adjustment not be made, but I don't think it implies
20 that you have to make a decision in 2005 one way or the
21 other. I think you made that decision today, that the
22 reduction will be made in April 1, 2005, unless Qwest
23 comes in here and proves it should not be made like it's
24 trying to do today.

25 CHMN. SPITZER: But Mr. Wolters, don't the

1 totality of the circumstances of this -- and everything
2 is context. The totality of the circumstances including
3 the absence of financial statements when the original
4 filing was made, the procedural posture, the fact that
5 we have an application filed prior to the rendering of
6 this decision, suggest that that's a clarification as
7 opposed to an ambiguity.

8 MR. WOLTERS: No, I disagree, Chairman,
9 because it says, "Nonetheless, if Qwest can
10 demonstrate." It has to make a demonstration that that
11 reduction should not be made in 2005. So inherent in
12 that, implicit in that is that it will be made, and
13 that's why I think it leaves ambiguity if you don't
14 think as a group that they will make the reduction on
15 April 1, 2005, unless there's a subsequent Order.

16 CHMN. SPITZER: So Mr. Wolters, you're not
17 really in opposition to my amendment. You would like
18 lines 20 through 22 to be deleted would be your --

19 MR. WOLTERS: I think it would be clearer if
20 you delete it than if you put it in, but if you put it
21 in, I think you need to be clear that that reduction
22 will be made unless you say it won't be.

23 CHMN. SPITZER: Further discussion?
24 Mr. Wakefield? I'm sorry, Commissioner Mundell.

25 COM. MUNDELL: I was just going to say I

1 agree. We're asking for litigation, A, and B, it's
2 ambiguous, and if we are going to do this we need to
3 clarify it. And I guess I would throw out the question,
4 what would happen if they filed March 31, 2005, a
5 motion? Does the reduction go into effect and we are
6 back to square one again three months later deciding to
7 reduce it? I just think it concerns me. I mean, I'm
8 trying to think through what would happen. They file a
9 motion the day before it's supposed to go into effect.
10 Does that stay them or do they go into effect and we
11 hear whether we will reduce them back? I think we ought
12 to delete the language.

13 CHMN. SPITZER: Mr. Wakefield.

14 MR. WAKEFIELD: I think I would agree with
15 what Mr. Wolters and Commissioner Mundell says. It's
16 probably cleaner to delete the sentence that begins on
17 line 20. The legal basis I understand the Commission
18 has adopted in adopting, not adopting the Gleason
19 amendment but leaving the underlying decision in place
20 is that there is a legal requirement that the annual
21 reduction called for in the underlying price cap
22 agreement continue to be made on April 1st of each year,
23 and that would leave you with the result that on
24 April 1st of 2005, if there isn't further action by the
25 Commission in the present docket, that there would need

1 to be another adjustment. I think by setting out this
2 sentence, you suggest that there might be a basis to
3 reach a different result at that time, and I am not sure
4 there is any legal justification for such a change in
5 result on April 1st, 2005. And I think by suggesting in
6 this document that there might be, you create an
7 ambiguity you don't have if you just omit the entire
8 sentence.

9 CHMN. SPITZER: Mr. Wakefield, is the reason
10 that the legal arguments should relate back to the price
11 cap plan -- and here we have -- you know, I love arguing
12 against my own amendments. Here we have --

13 COM. MUNDELL: That shows a brilliant mind,
14 Mr. Chairman.

15 CHMN. SPITZER: Confused, but honest. That
16 these are events occurring way after, and if you
17 interpret a contract, you can't take into account
18 subsequent events. Is that part of the reason you argue
19 to get rid of the sentence? In other words, you are
20 saying either the interpretation of the price cap plan
21 led to seriatim reductions or didn't, and if we decided
22 it's seriatim reductions, stuff that happens after the
23 price cap plan is irrelevant.

24 MR. WAKEFIELD: I think I agree with that.

25 CHMN. SPITZER: Mr. Berg.

1 MR. BERG: I would like to argue for your
2 amendment now that you argued against it, Mr. Chairman.

3 CHMN. SPITZER: Convince me.

4 MR. BERG: I think first, everyone here is
5 assuming that the Commission has decided that there is a
6 mechanism that goes on forever reducing this on April 1
7 of each year. Certainly Staff made two alternative
8 arguments for you, either one of which would have
9 supported the rejection of Commissioner Gleason's
10 amendment as drafted. The first one was there were
11 supposed to be three decreases, and the third one was on
12 April 1, 2004. The second was that it went on
13 afterwards. So I think we're all engaged in sort of
14 speculating what is in your mind which is dangerous for
15 us.

16 But leaving that aside, leaving that aside,
17 I think this sentence addresses a very real problem, and
18 the problem is that if we get to April 1, 2005, and this
19 proceeding is still going on through no fault of
20 Qwest's, and the Staff has made it clear that we can't
21 be the cause of any further delay, that it's reasonable
22 to let Qwest come to this Commission and say, "No one
23 intended to continue to ratchet these rates down year
24 after year after year."

25 Certainly everybody believed that we would

1 have a new price cap plan in place by April 1 of 2005,
2 even if we didn't get it done by April 1 of 2004, and
3 it's an appropriate thing for this Commission to look at
4 those conditions at that time. And I have no objection
5 to meet Commissioner Mundell's concern about us filing
6 on March 31 to have the thing say we have to file
7 60 days ahead of it. You can make us file on January
8 31st or whatever date that would give everybody a fair
9 chance to brief. And I am not trying to file a motion
10 that doesn't get briefed.

11 I'm sorry, Commissioner.

12 CHMN. SPITZER: Commissioner Mundell.

13 COM. MUNDELL: At that point, though,
14 doesn't it defeat the discussion we had on the
15 Hatch-Miller amendment, getting this done? I mean,
16 it's one other issue hanging out there. I asked the
17 administrative law judge; we're going to have a hearing
18 in January. It just seems to me it takes away the
19 incentive then to get it done in a timely fashion.

20 MR. BERG: Commissioner, I don't think it
21 does. I mean, I think we have an incentive to get this
22 done in a timely fashion because we've already taken
23 another reduction on April 1 of 2005, and we have not
24 done anything to delay the course of this proceeding.
25 In fact, we've been the ones pushing it. And I'm afraid

1 if you --

2 COM. MUNDELL: Mr. Berg, let me interrupt
3 for a second. One of the reasons I voted for the
4 Hatch-Miller amendment, because we said, I heard we're
5 going to get this thing done before April 1st, and that
6 was one of the reasons for my vote trying to make a
7 distinction between my prior vote where we didn't have
8 the price cap plan filed, we didn't have a procedural
9 schedule, you know. And so I changed my mind based on
10 that. Now you're sort of arguing, well, we still want
11 to have an out in case it doesn't get resolved, and I
12 think that is a disincentive to get it done in a timely
13 fashion.

14 MR. BERG: Commissioner, I guess my response
15 would be we want this done by April 1 of 2005. We have
16 done, argued for a more aggressive schedule than the one
17 we are under now. I obviously can't control what the
18 other parties to this case do, and I am afraid that it
19 creates an incentive not on our part but on other
20 people's parts perhaps to have, to inject delay into the
21 procedure if there is another automatic rate decrease.

22 All this language does is let us come back
23 and ask you for relief if we need it. It doesn't
24 require you to give us the relief, and I think --

25 COM. MUNDELL: Don't you have that option

1 anyway?

2 MR. BERG: I think this makes it clearer.

3 Yes, it certainly would be my position --

4 COM. MUNDELL: Yes or no.

5 MR. BERG: You're right.

6 CALJ FARMER: Mr. Chairman, can I speak for
7 a moment? I think I need to clarify some of the
8 information about the procedural schedule.

9 Qwest is saying that it's not delaying it,
10 but Qwest filing its information was the starting point.
11 Originally, it was supposed to be July of 2003, and it
12 didn't get filed until May of 2004. So it's true that
13 that information, starting from the time when they filed
14 that information and working, we're going to try to
15 expedite it, but from the standpoint of the Hearing
16 Division, we have to be fair to all parties. Qwest has
17 had a lot of time to prepare that information and is
18 familiar with it, and we have to balance the other
19 parties' ability to analyze that, and to be able to give
20 to you information that's full and accurate.

21 We gave you information that it looks like
22 the hearing would be approximately six months after it
23 is sufficient. We don't know at this time if Staff is
24 going to find it to be sufficient or not. If Staff
25 doesn't find it to be sufficient, you are going to add

1 additional time.

2 So if there's a hearing in six months from
3 the sufficiency, it would be around the first or middle
4 part of January, that's true, but we still have a
5 hearing to do. And depending on what the case is like,
6 it could be a fully litigated case going several weeks,
7 then you've got briefing schedules, you've got time to
8 write a Recommended Order, and you need time yourselves
9 to be able to look at exceptions and make a decision.

10 So I don't want the record to reflect that
11 the Hearing Division has made some sort of commitment
12 that there will be a decision by April 1st.

13 CHMN. SPITZER: And Ms. Farmer, I want to
14 make it clear at least on my own part that fairness and
15 due process I think transcend other considerations. And
16 I know that parties are, have various agendas and that's
17 their prerogative, and there are certain things that all
18 the parties would like out of this proceeding, and they
19 would like that because there is a lot of money
20 involved. Quicker rather than slower, but again,
21 fairness and due process trumps and transcends all other
22 considerations and those of the parties, and the case
23 will be ready when the case is ready is my view.

24 Commissioner Hatch-Miller.

25 COM. HATCH-MILLER: I think Commissioner

1 Mundell has already asked the question, I was just
2 sitting here saying that Qwest could file at any time to
3 have us look at the causes for the delay and whether or
4 not to sort of continue the reductions for a further
5 year. So I would like to make a substitute motion, if I
6 might, Mr. Chairman.

7 CHMN. SPITZER: Okay.

8 COM. HATCH-MILLER: That would be to delete
9 on page 5 all of lines 20 and 21 and 22.

10 CHMN. SPITZER: Thank you for that,
11 Commissioner Hatch-Miller. And I'm, I can see both
12 sides of having the language in and having it deleted,
13 and that would be our choice here. There are reasons
14 why the filing wasn't made 2003, and the filing in 2004
15 I had in the docket expressed great concern over the
16 fact that there were no financial statements. Again,
17 that's one of the things in this very complicated case.
18 And it was, I won't say, I won't take full credit for it
19 because there are a lot of factors and a lot of other
20 Commissioners weighed in as well, but I was extremely
21 concerned with this Commission adjudicating the rights
22 and responsibilities and obligations of the parties in a
23 circumstance where the financial data was not available.
24 Now, we can get into a blame game as to
25 whose fault is that, but I think the argument,

1 Mr. Wakefield cogently articulated the arguments for
2 deleting this language, but the argument for keeping it
3 in is I think a recognition of the fact that at the
4 expiration of the price cap, we had a unique
5 circumstance where the RBOC didn't have audited
6 financial statements and it would have been imprudent
7 and improper to adjudicate their responsibilities. And
8 it's almost a force majeure, you know, the dog ate my
9 homework, you know. Sometimes the dog did eat your
10 homework.

11 And so, to me, this language is a
12 recognition that although I did not support the Gleason
13 amendment, I do think there are equities. And Qwest did
14 file in May and the Commission made a decision not to
15 take out the price cap plan for reasons it found valid.
16 And it may not add a great deal, but I think the four
17 corners of this Order ought to contain the language.
18 But we have Commissioner Hatch-Miller's motion which is
19 a substitute motion to the Spitzer amendment which would
20 delete lines 20, 21, and 22, is that correct?

21 COM. HATCH-MILLER: Yes.

22 CHMN. SPITZER: Okay. Further discussion?

23 Mr. Gleason.

24 COM. GLEASON: Yes, I don't know exactly how
25 to do it, but where we are now on this thing is on

1 April 1, '05, we are going to come back and argue
2 exactly the same case we argued today, whether, whether
3 the continuation clause goes on and on and on or whether
4 it is terminated. I think if we want to make this thing
5 complete, we need to have a statement in here that the
6 continuation clause is terminated as of, let's set the
7 date. This is what we're, this is what basically we're
8 saying out there is that, and what Staff had said is
9 that the continuation clause is effective of April 1,
10 '04, and not beyond. How -- if you want to make this
11 thing complete, let's terminate, put it in here and
12 terminate it. Otherwise, on April 1, '05, we're going
13 to argue the same thing we're arguing today.

14 CHMN. SPITZER: Further discussion on
15 Commissioner Hatch-Miller's substitute amendment?
16 Hearing none, all in favor will --

17 COM. GLEASON: Wait a minute, we're going to
18 have --

19 CHMN. SPITZER: Is there further discussion,
20 Commissioner? The question before us is Commissioner
21 Hatch-Miller's substitute amendment.

22 COM. GLEASON: Okay.

23 CHMN. SPITZER: Hearing no further
24 discussion, all in favor, please say aye.

25 (A chorus of ayes.)

1 CHMN. SPITZER: Opposed, no.

2 (A chorus of nos.)

3 THE COURT REPORTER: I'm sorry, I don't know
4 who voted no.

5 CHMN. SPITZER: I'm going to rule that the
6 ayes have it. Commissioner Hatch-Miller's motion is
7 carried.

8 Is there anything further?

9 Yes, Commissioner.

10 COM. GLEASON: Is there, are we going to get
11 something in here that terminates this thing so we don't
12 come back in April '05 and argue this whole case again?

13 CHMN. SPITZER: That's up to the
14 Commissioners.

15 COM. GLEASON: Could Staff give me an
16 amendment to that effect?

17 CHMN. SPITZER: The Gleason amendment would
18 have had that effect.

19 COM. GLEASON: Yes.

20 CHMN. SPITZER: The Gleason amendment didn't
21 carry.

22 COM. GLEASON: The Gleason amendment would
23 have had that effect as of right now, but I am talking
24 about so we don't come back in '05 and reargue this
25 case.

1 CHMN. SPITZER: Certainly I think the
2 Commissioners can take up any -- Commissioner Mundell.

3 COM. MUNDELL: I don't know what we're
4 doing. I was going to move the Order as amended, but I
5 think we're in hiatus here.

6 CHMN. SPITZER: Mr. Wakefield.

7 MR. WAKEFIELD: While Staff is discussing
8 language, if I could speak substantively to the
9 proposal.

10 CHMN. SPITZER: Right.

11 MR. WAKEFIELD: At the hearing on the
12 underlying price cap plan back in December of 2003, I
13 think it was RUCO's witness, Dr. Johnson, testified
14 about the possibility of gap period and what that might
15 mean as he was raising certain objections to the price
16 cap plan, and I quoted a bit of that testimony in RUCO's
17 response to Qwest's application for rehearing that we
18 filed on April 5th in this docket. And what you will
19 see there is that he made reference to an experience
20 that he was familiar with in another state where there
21 was such a gap period and that is why he was cautioning
22 the Commission to be careful how you draft this price
23 cap plan. In that instance, he was referring to Indiana
24 where there was a gap period that exceeded a year.

25 So I think from the fact that that testimony

1 was before the Commission at the time they adopted this
2 price cap plan, you could say that this Commission could
3 have foreseen a gap period that exceeded a year and that
4 with what I understand the Commission is doing at this
5 point with the Basket 1 services, that would suggest
6 that they recognize an annual reduction in Basket 1 for
7 a price cap adjustment would have to continue every year
8 exceeding the period of a year of a gap period, which
9 would put us, again, on April 1st we would in fact have
10 another gap period there. So if the fact that is in the
11 record helps the Commission with its decision on the
12 issue Commissioner Gleason raised, I wanted to make you
13 aware of that.

14 CHMN. SPITZER: And I didn't want to belabor
15 the point, Mr. Wakefield, but given the positions I've
16 taken on the price cap aspect, I would disagree with
17 Mr. Gleason's proposal.

18 MR. KEMPLEY: Mr. Chairman.

19 CHMN. SPITZER: Mr. Kempley.

20 MR. KEMPLEY: Commissioner Gleason, the
21 Commissioner asked for language that would in effect
22 terminate the continuation of the plan before April 1st
23 of 2005, and my suggestion for such an amendment would
24 be on page 5 at line 19 that you strike, "The Commission
25 approves a new or revised plan," and insert,

1 "March 31st, 2005." I think that would have the effect
2 that Commissioner Gleason desires.

3 CHMN. SPITZER: Commissioner Mundell.

4 COM. MUNDELL: Well, I will let
5 Commissioner -- I have some questions about it.

6 CHMN. SPITZER: Commissioner Gleason, do you
7 believe that language effects your proposals?

8 COM. GLEASON: Yes. In other words, what
9 you are saying, what this says is that a continuation of
10 the price cap plan is terminated March 30, '05?

11 CHMN. SPITZER: March 31.

12 COM. GLEASON: Oh, March 31.

13 MR. KEMPLEY: Mr. Chairman, Commissioner
14 Gleason, this Order as written contemplates as we've
15 discussed that the plan will continue until the
16 Commission either approves a revised plan or terminates
17 it. And that would, again, under this Order require
18 annual column reductions, the implementation of the
19 Basket 1 inflation productivity adjustment on an annual
20 basis. What I did was in effect take away the
21 indefinite continuation and insert a date certain, and I
22 think that would have the effect of ending the plan on
23 March 31st, 2005.

24 COM. GLEASON: Again, is this not consistent
25 with your objections to my amendment? In other words,

1 your amendment said that the three reductions which they
2 talked about, one of them was to be on April 1, '04.

3 MR. KEMPLEY: Mr. Chairman, Commissioner
4 Gleason, I can't remember who pointed it out over here,
5 but Staff had two alternative legal theories. One was
6 that there were three annual reductions that were
7 contemplated by the plan, and that the April 1st, 2004
8 adjustment was the third of those. But we also believed
9 that under the continuation clause of the plan, an
10 April 1st, 2004 reduction would have been necessary in
11 any event, and under that theory, the continuation
12 clause would apply if we don't get this case decided by
13 April 1st, 2005. And as has been said several times, we
14 would be back here trying to argue on probably on the
15 same bases whether an adjustment is necessary on
16 April 1st, 2005. So --

17 CHMN. SPITZER: Commissioner, do you want to
18 make a motion on it?

19 COM. GLEASON: Yes, I want to move the
20 change on page 5, 19, as stipulated by --

21 CHMN. SPITZER: Delete "The Commission
22 approves a new or revised plan" and insert in its place
23 "March 31, 2005."

24 COM. GLEASON: Yes.

25 CHMN. SPITZER: You have heard the motion.

1 Any further discussion?

2 COM. MAYES: Can you repeat that.

3 CHMN. SPITZER: Surely, Commissioner Mayes.

4 The motion by Commissioner Gleason is to delete on
5 page 19, excuse me, page 5, line 19, "The Commission
6 approves a new or revised plan," and insert in its
7 place, "March 31, 2005."

8 COM. GLEASON: Let me just make -- I really
9 think we need to have something in here that puts an end
10 to the arguments on these things, and this will do it.

11 CHMN. SPITZER: Well, it will do it, that's
12 true.

13 COM. GLEASON: Because otherwise, we're
14 going to litigate this thing every year from now until
15 eternity.

16 CHMN. SPITZER: Okay. All in favor of
17 Commissioner Gleason's amendment, please signify by
18 saying aye.

19 (A chorus of ayes.)

20 CHMN. SPITZER: Those opposed, say no.

21 (A chorus of nos.)

22 CHMN. SPITZER: The Chair believes the nos
23 have it. The Gleason amendment fails.

24 Commissioner Mundell has the floor.

25 COM. MUNDELL: Mr. Chairman, I will move the

1 Opinion and Order as amended.

2 COM. HATCH-MILLER: Wait, wait, wait.

3 COM. MUNDELL: What now?

4 COM. HATCH-MILLER: I wanted to take some
5 time to talk about, we have been using the term basket.
6 I was thinking we might use the term bucket, and I'd
7 like to have everybody's opinion on it.

8 COM. MUNDELL: Do you want to make an
9 amendment to that?

10 COM. HATCH-MILLER: I'll withdraw it.

11 COM. MUNDELL: Did I move it as amended?

12 COM. HATCH-MILLER: No, not yet.

13 COM. MUNDELL: Then I will try again. I
14 will move the Opinion and Order distributed by Mr.
15 Kempley as amended.

16 CHMN. SPITZER: You've heard that motion.
17 Is there any further discussion?

18 COM. MAYES: Just a quick clarification,
19 just to make sure we are all on the same page,
20 Mr. Kempley. So this Opinion and Order is we are, as
21 amended, is 06772 --

22 MR. KEMPLEY: Mr. Chairman --

23 COM. MAYES: -- in its entirety, because I
24 have to tell you, I agree with Commissioner Gleason when
25 he makes the point we are reading -- I have not had a

1 chance to read through the entirety of this document,
2 and I am going on faith that this is the same 06772. Is
3 that what we are doing here again?

4 MR. KEMPLEY: Mr. Chairman, Commissioner
5 Mayes, if you look at the very, the next to the last
6 ordering paragraph, what that says is that other than as
7 changed in this Order, Decision 66772 is affirmed. So
8 the only changes you are making to 66772 by passing this
9 Order as amended are the changes that are specifically
10 spelled out, and in this instance, those changes are
11 Commissioner Hatch-Miller's Proposed Amendment to
12 Decision 66772.

13 COM. MAYES: Okay. That's what I thought.
14 I just wanted to make sure.

15 MR. KEMPLEY: And I apologize again for the
16 awkwardness of the procedure.

17 CHMN. SPITZER: And Commissioner, I think
18 it's, there's certainly a point you have and
19 Commissioner Gleason has about timeliness. On the other
20 hand, in defense of the Staff, this is an unusual
21 proceeding. It was not a reconsideration of the Order,
22 but it was a statutory basis to amend the Order.

23 COM. MAYES: I know.

24 CHMN. SPITZER: And that's something that
25 was obviously not Staff's. Procedurally --

1 COM. MAYES: I know, and I don't mean that
2 as a harsh criticism. I just think it's important for
3 each of us to be able to read everything we vote on, and
4 I can't do that from the bench.

5 CHMN. SPITZER: I would agree, Commissioner.
6 Commissioner Mundell has made a motion. Is
7 there any discussion?

8 Hearing none, Madame Secretary will please
9 call the roll.

10 SECY. McFARLIN: Commissioner Mayes.

11 COM. MAYES: Explain my vote.

12 CHMN. SPITZER: Please.

13 COM. MAYES: First, I would like, I didn't
14 get a chance, but I would like to thank Commissioner
15 Hatch-Miller who obviously put a lot of thought into his
16 amendment, and it's well written and as has been stated
17 before, you know, minds can differ about the
18 interpretation.

19 My interpretation on the access charge issue
20 was that, you know, as Mr. Campbell stated, there is a
21 lot of evidence that access charges are above cost right
22 now and obviously above interstate rates. There's no
23 indication that access charge reform is on the horizon,
24 and Qwest has not seemed willing to come to the table on
25 this issue. It's been seven years, I think that's been

1 pointed out, since the issue was first raised.

2 I think there is a strong public policy
3 argument to be made for addressing this issue from the
4 bench again since Qwest doesn't seem to want to or able
5 or willing to do it on its own volition, and on that
6 particular issue, I just didn't see much of a compelling
7 reason to reverse my vote.

8 I also think the expectations of the parties
9 is an issue with regard to access charges. I certainly
10 am hopeful and grateful that consumers appear not to be
11 affected by it or won't be affected by it, and I hope
12 that turns out to be true, assuming there is no
13 pass-through to the customers that's already occurred.

14 All of that having been said, though, I
15 don't think it's vital to the Order, and I will vote
16 eye.

17 CHMN. SPITZER: Thank you, Commissioner.

18 SECY. McFARLIN: Commissioner Gleason.

19 COM. GLEASON: Explain my vote --

20 CHMN. SPITZER: Please.

21 COM. GLEASON: -- following my dissent.

22 We got part way there. I think that was an
23 improvement. I still think my original statement that
24 we're not following the agreement that the Commission
25 made, and as far as this last thing, I'll keep my file

1 because on April 1, '05, we'll be back arguing the same
2 thing again.

3 I still vote aye.

4 SECY. McFARLIN: Commissioner Hatch-Miller.

5 COM. HATCH-MILLER: Mr. Chairman, discussing
6 my vote as well, Mr. Kempley, I appreciate your attempt
7 to clarify in a written form what we were doing. I
8 think that the problem for me was I didn't really have
9 time to look at it. So as good as it was as an idea, it
10 didn't help me because I couldn't digest it completely.

11 I hope that in the future we're able to make
12 decisions as a Commission when there are these three or
13 four years, these period kinds of decisions, that we be
14 very clear about their term. You know, the motion that
15 I made today was really based upon law. I just felt
16 that for justice, you had to look at legally what was
17 here, and I think Mr. Wakefield was very clear and
18 eloquent in his expression of that and I appreciate that
19 support. I think we did the right thing.

20 I hope we don't come back again and discuss
21 this, Mr. Gleason, but if we do, I hope the next time we
22 have clear financials in front of us that all of us have
23 had a chance to analyze before we make the decision.

24 Until then, I vote aye.

25 CHMN. SPITZER: Thank you.