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IN THE MATTER OF QWEST CORPORATION'S  
FILING OF 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

**STAFF'S RESPONSE TO QWEST'S EMERGENCY  
MOTION TO SUSPEND THE INFLATION MINUS  
PRODUCTIVITY FACTOR ADJUSTMENT**

**I. Introduction**

On February 3, 2005, Qwest Corporation ("Qwest") filed an Emergency Motion to suspend the Inflation Minus Productivity Factor Adjustment ("Motion") scheduled for April 1, 2005. The Residential Utility Consumer Office ("RUCO") filed a response to Qwest's Motion on February 8, 2005. Staff supports suspending the Inflation Minus Productivity Factor Adjustment until the conclusion of Docket No. T-01051B-03-0454, so long as the pending appeals of Commission Decision Nos. 66772 and 67047 are suspended for a corresponding period.

Staff offers the following comments on Qwest's Motion and RUCO's response to that Motion.

**II. Discussion**

Qwest seeks on order from the Commission suspending application of the Inflation Minus Productivity mechanism on April 1, 2005 pending a final order of the Commission in this case. Qwest indicates that unless the mechanism is suspended, it will be required to reduce rates in Basket 1 in amounts that would lower its annual revenues by approximately \$12 Million on April 1, 2005.

1 Qwest offers two reasons to support its request for suspension. First, Qwest states that it  
2 asked the Hearing Division to suspend the Procedural Schedule in order to pursue settlement  
3 negotiations, which a number of the parties supported. The parties are now engaged in settlement  
4 discussions, however, since settlement discussions are just beginning the pursuit of settlement is  
5 jeopardized by the looming April 1, 2005 rate reduction. Second, Qwest states that the April 1, 2005  
6 rate reduction is not supported by the evidence in this case and that based on the pre-filed testimony,  
7 no likely scenario warranting Basket 1 rate reductions exists. Qwest argues that thus a rate reduction  
8 may have to be reversed in a few months leading to a "yo-yo" impact on customer rates.

9 RUCO opposes Qwest's Motion and states that Qwest should be required to make the next  
10 adjustment as required by the Plan on April 1, 2005. RUCO points out that Qwest does not rely upon  
11 the delay in the proceeding due to settlement discussions as the reason for its Motion. Rather, Qwest  
12 relies upon a traditional revenue requirements analysis and the pre-filed testimony filed in this docket  
13 to support its request. RUCO also notes that two times in the past year the Commission has ruled that  
14 the current price cap plan requires annual inflation minus productivity adjustments, with the  
15 Commission concluding that this was an integral part of the current plan that must remain in effect  
16 until the Commission approves a new or revised plan. RUCO also notes that the Commission has  
17 already rejected Qwest's argument that unverified claims of under-earning justify the termination of  
18 the inflation minus productivity adjustment. RUCO states that it is equally premature for the  
19 Commission to reach a conclusion today, prior to a hearing on the evidence offered by Qwest, Staff  
20 and RUCO. Finally, RUCO points out that the Commission has already recognized that termination  
21 of the inflation minus productivity adjustment would "raise concerns under Scates,"<sup>1</sup> and that Staff  
22 support of termination at this time would be inconsistent with the positions it has taken in the past.

23 As indicated in the introduction, Staff supports the suspension of the April 1, 2005  
24 adjustment, so long as the pending consolidated appeals of Decision Nos. 66772 and 67047 are  
25 suspended for the same time period. Staff does not support termination of the April 1, 2005  
26 adjustment, nor has that been requested by Qwest. Staff agrees with many of the arguments made by  
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28 <sup>1</sup> Scates v. Arizona Corporation Commission, 118 Ariz. 531, 578 P.2d 612 (App. 1978) ("Scates").

1 RUCO in its Opposition, but notes that those arguments are not applicable to consideration of a  
2 suspension rather than a termination of the adjustment. It has always been Staff's position that absent  
3 an Order by the Commission approving a new or modified Plan, the April 1, 2005 adjustment would  
4 be required under the Continuation Clause of the Plan and that as an integral part of the Plan, it could  
5 not be terminated without implications under Scates. The Staff, however, believes that temporary  
6 suspension of the adjustment does not raise the same implications under Scates as termination of the  
7 adjustment, and that the Commission would have the flexibility to temporarily suspend the  
8 adjustment pending the outcome of Docket No. T-01051B-03-0454.

9 Staff does not believe that its position on this issue is in any way in conflict with the positions  
10 it has taken before either the Commission or the Arizona Court of Appeals. First, Staff's position  
11 on suspension of the adjustment is not based at all on the arguments advanced by Qwest in its Motion  
12 that an adjustment is not warranted based on the prefiled testimony of the parties. It was Staff's  
13 position before and continues to be that it would be premature for the Commission to reach a  
14 conclusion on the evidence prior to a hearing on the matter. Nonetheless, Staff believes that  
15 suspension may be appropriate based upon the fact that settlement discussions are underway and the  
16 likelihood that any settlement reached between the parties would be a comprehensive settlement  
17 which addressed both the April 1, 2005 adjustment as well as the consolidated appeal now pending in  
18 the Arizona Court of Appeals.

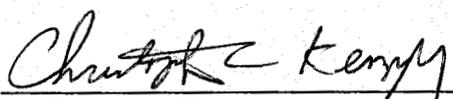
19 Staff's support for a suspension, however, is dependent upon a condition. Qwest would have  
20 to agree to suspend the current consolidated appeal for a like time period. As RUCO notes, Qwest  
21 has appealed the Commission's rulings in Decision Nos. 66772 (February 10, 2004) and 67047 (June  
22 18, 2004) and both appeals have been consolidated and are currently pending before the Arizona  
23 Court of Appeals. Because both of these appeals relate in large part to the Company's obligation to  
24 make the April 1, 2005 reduction, Staff believes that Qwest should agree to suspend the procedural  
25 schedule of the consolidated appeal for a comparable period of time, and take the necessary actions to  
26 implement such suspension. Because those consolidated appeals create a situation in which a  
27 possibility exists that the most recent reduction made April 1, 2004 could be set aside by the court,  
28

1 Staff believes that suspension of the consolidated appeals maintains the status quo during Settlement  
2 discussions and litigation of the case, if necessary.

3 **III. Conclusion**

4 Staff believes that suspension of the April 1, 2005 adjustment during the pendency of the  
5 proceeding would be appropriate. However, no suspension should occur without an agreement by  
6 Qwest to similarly suspend the procedural schedule of the consolidated appeal by a comparable  
7 period of time. The Commission should retain full authority to reach any determination it deems  
8 appropriate with regard to the April 1, 2005 adjustment at the time it decides this Docket No. T-  
9 01051B-03-0454.

10 RESPECTFULLY submitted this 18 day of February, 2005.

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13  
14 

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