

THIS AMENDMENT:

Passed
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Passed as amended by _____
 Not Offered

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HEARING DIVISION PROPOSED AMENDMENT # 1

Arizona Corporation Commission

DOCKETED

MAR 30 2005

COMPANY: Qwest Corporation

DOCKET NO. T-01051B-03-0454, et al.
T-000005-00-0672

SPECIAL OPEN MEETING DATE: March 30, 2005

AGENDA ITEM: U-

DOCKETED BY	KW
AZ CORP COMMISSION DOCUMENT CONTROL	2005 MAR 30 11:17
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Page 5, DELETE lines 15 through 28, Page 6, DELETE lines 1 through 13.

Page 5, INSERT the following at line 15:

We agree with RUCO that based on the terms of the current Price Cap Plan, and our holdings in Decision Nos. 66772 and 67047 that unless we approve a new Plan or terminate the current Plan, Qwest is required under the Continuation Clause of the Plan to make the April 1, 2005 productivity adjustment. However, the Commission certainly has the discretion to suspend the April 1, 2005 reduction, to accommodate comprehensive settlement discussions in this case. We do not believe that a mere suspension of the April 1, 2005 reduction would violate Scates¹, or the principle that the Commission can not modify rates absent a fair value finding. We are not terminating the April 1, 2005 adjustment. The liability associated with the April 1, 2005 adjustment will continue to accrue. We will address the accrued liability for the April 1, 2005 adjustment in the final rate order in this Docket.

We also do not believe that suspension of the April 1, 2005, reduction is by itself retroactive ratemaking. The Commission by suspending the adjustment is not declaring its earlier finding or order to be unreasonable and is not instituting any new rates with retroactive impact.

We can also see that adjusting rates for basic services downward now, and then adjusting them again in the opposite direction in the near future as a result of final rates being set in the Renewed Plan, could cause consumer confusion. Therefore, we believe that a suspension of the adjustment is appropriate.

Our Decision granting Qwest's Motion is motivated solely by a desire to avoid consumer confusion and to accommodate comprehensive settlement discussions in this case. Qwest's claim that it is under-earning under traditional

¹ *Scates v. Arizona Corporation Commission*, 118 Ariz. 531, 578 P.2d 612 (App. 1978).

rate of return analysis has no bearing on our Decision. That is an issue to be determined through the evidentiary hearing process. Further, in no way does our conclusion indicate one way or the other how the Commission will decide the issue of whether there should be a productivity adjustment when we consider Qwest's Renewed Plan currently before us.

Page 7, lines 26-27, MODIFY Finding of Fact 15 by deleting "obligation to make" and insert in its place "liability relating to."

Page 8, INSERT new Finding of Fact 17 to read as follows:

A suspension of the April 1, 2005 productivity/inflation adjustment is appropriate to allow for comprehensive settlement discussions between the parties and avoid customer confusion.

Page 8, RENUMBER old Finding of Fact 17 to new Finding of Fact 18.

Page 8, DELETE old Finding of Fact 18 and INSERT in its place as Finding of Fact 19:

It is in the public interest to allow Qwest to suspend the implementation of the April 1, 2005 productivity adjustment until final rates are set in this docket, as long as the consolidated appeals are suspended for a similar time period, at which time the Commission will address issues surrounding the April 1, 2005 adjustment. **However, the liability associated with the April 1, 2005 adjustment will continue to accrue, in accordance with the terms of the Continuation Clause of the Price Cap Plan.**

Page 8, DELETE old Finding of Fact 19.

Page 8, DELETE old Finding of Fact 20.

Page 8, DELETE Conclusion of Law 3 and INSERT in its place:

Pursuant to Arizona Constitution Article 15, Section 14, the Commission must determine the fair value of a utility's property before modifying its rates. Suspension of the April 1, 2005 adjustment by itself does not constitute a change in rates but merely delays collection, and therefore, does not violate *Scates*.

Page 8, DELETE Conclusion of Law 4 and INSERT in its place:

Suspending the April 1, 2005 productivity adjustment by itself does not violate the prohibition on retroactive ratemaking **because the liability associated with the April 1, 2005 adjustment continues to accrue.**

Page 9, MODIFY Conclusion of Law 5 to read:

It is in the public interest to grant Qwest's Motion to suspend the April 1, 2005 productivity adjustment to the extent discussed herein and for the reasons set forth herein.

Page 9, DELETE Conclusion of Law 6.

Page 9, MODIFY the first Ordering Paragraph as follows:

IT IS THEREFORE ORDERED that Qwest Corporation's Emergency Motion to Suspend the Productivity Adjustment to Basket 1 required on April 1, 2005, is granted to the extent discussed herein and for the reasons set forth herein.

Page 9, DELETE the second Ordering Paragraph.

Page 9, INSERT new Ordering Paragraph as follows:

IT IS FURTHER ORDERED that the liability associated with the April 1, 2005 adjustment will continue to accrue, in accordance with the terms of the Continuation Clause of the Price Cap Plan.

Make all conforming changes.