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1 THE ARIZONA CORPORATION COMMISSION

2 COMMISSIONERS

3 MARC SPITZER, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
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7 KRISTIN K. MAYES

Arizona Corporation Commission

DOCKETED

FEB 10 2004

DOCKETED BY

*NR*

8 IN THE MATTER OF QWEST CORPORATION'S  
9 FILING OF RENEWED PRICE REGULATION  
10 PLAN.

DOCKET NO. T-01051B-03-0454

DECISION NO. 66772

OPINION AND ORDER

11 BY THE COMMISSION:

12 On July 1, 2003, Qwest Corporation ("Qwest") filed the Qwest Renewed Price Regulation  
13 Plan in accordance with the provisions of the Second Revised Settlement Agreement approved in  
14 Decision No. 63487 on March 30, 2001. Qwest's Revised Price Regulation Plan proposed revisions  
15 to the existing Price Cap Plan, including:

- 16 1. Elimination of the productivity/inflation adjustment mechanism;
- 17 2. Replacement of an indexed basket cap on the Basic/Essential Service Basket with a  
18 newly determined revenue cap;
- 19 3. Introduction of a "Competitive Zone" test for moving services out of the  
20 Basic/Essential Services Basket on a geographic basis;
- 21 4. Ability to move wholesale services to a competitive sub-basket within Basket 2;
- 22 5. Elimination of the revenue cap on the Competitive Services Basket; and
- 23 6. Greater flexibility for services in the Competitive Services Basket.

24 On October 2, 2003, Commission Utilities Division Staff ("Staff") filed a Request For  
25 Procedural Conference.

26 Pursuant to our October 10, 2003, Procedural Order, the Commission convened a Procedural  
27 Conference on October 20, 2003, for the purpose of discussing procedures to govern Commission  
28 review of the Price Cap Plan.

On November 7, 2003, Qwest filed a Motion to Clarify, Or In the Alternative, To Terminate

1 Price Cap Plan. In its Motion, Qwest requested that the Commission clarify that after the expiration  
2 of the initial term of the Price Cap Plan on March 30, 2004, the following conditions apply until the  
3 Commission enters an order approving a revised plan or setting new rates for Qwest:

- 4 1. No further adjustment of the Price Cap Index for Basket 1 Services will be made  
5 pursuant to 2(b) of the Price Cap Plan after March 30, 2004;
- 6 2. No further annual reduction in the level of access charges under the Settlement  
7 Agreement and the Price Cap Plan will be made after April 1, 2004; and
- 8 3. The procedures for changes in Qwest's rates and charges, including the hard caps  
9 imposed on the specific Basket 1 Services, continue to apply until superceded by a  
10 revised plan approved by the Commission or a Commission order setting new rates  
11 and charges for Qwest.

12 Alternatively, Qwest requested that if the Commission does not clarify the Plan as it suggests,  
13 the Commission should terminate the Plan. Qwest claims that the continuation of a Price Cap Plan  
14 that results in inadequate or negative earnings, would amount to confiscation in violation of the Plan  
15 as well as the Arizona constitution. Qwest's request would leave the current rates in effect.

16 On November 17, 2003, the Residential Utility Consumer Office ("RUCO") and AT&T  
17 Communications of the Mountain States, Inc. and TCG Phoenix (collectively, "AT&T") filed  
18 Responses to Qwest's Motion.

19 On November 21, 2003, WorldCom, Inc. ("WorldCom") and Staff filed Responses to the  
20 Motion.

21 On December 1, 2003, Qwest filed a Reply.

22 Qwest argues that market conditions have changed dramatically since the Plan was adopted,  
23 and Qwest must compete against companies that are not constrained in how they price, package and  
24 choose to offer their services. Qwest notes that the parties to the Settlement Agreement intended it to  
25 be in effect for three years and not continue automatically and indefinitely. Qwest claims it is clear  
26 from the language of the Settlement Agreement and the testimony in the docket that the parties  
27 contemplated that Qwest could be kept under price cap regulation past the expiration of the Plan's  
28 initial term only if Qwest and the Commission both agreed.

1 The current Price Cap Plan contains a productivity/inflation adjustment factor for Basket 1  
2 services, which requires an annual resetting of the Price Cap Index for Basket 1. Qwest argues that  
3 the Price Cap Index Adjustment provision, by its express language, was limited to the three-year  
4 term. Qwest states the Index was designed as an experiment that would be reviewed and adjusted at  
5 the end of three years, and its application beyond the three year term was not contemplated. Qwest  
6 requests that the Commission clarify that the provision of the Price Cap Plan providing for further  
7 adjustments in the Basket 1 revenue cap based on the productivity/inflation mechanism terminates on  
8 March 30, 2004.

9 Staff and RUCO argue that Qwest is obligated to continue making annual reductions in the  
10 Basket 1 Revenue Cap under the Price Cap Plan until its renewal, modification, or termination. Staff  
11 and RUCO rely on language in Section 4 of the Settlement Agreement that adopted the Plan and  
12 which provides: “[r]enewal or modification of the Price Cap Plan at the end of the initial term is  
13 subject to approval by the Commission. Until the Commission approves a renewal or modified Price  
14 Cap Plan, or orders a termination of the Plan after its term, the Plan including the hard caps on Basket  
15 One Services set forth in paragraph 2(c)(i) shall continue in effect.” Staff and RUCO argue this  
16 provision requires that the plan as a whole, including all of its collective terms and conditions,  
17 continue in effect until the Commission orders a renewal, modification or termination of the plan.

18 Qwest argues the language of Section 4 was intended to serve a limited purpose—to permit a  
19 grace period after the initial term of the Plan expires and before Commission approval of a new price  
20 cap plan, and was not intended to permit the Plan to be extended indefinitely simply by the  
21 Commission taking no action on a proposed price cap plan or rate application. Qwest argues that any  
22 continuation of the plan in its entirety, by inaction of the Commission or without Qwest’s consent,  
23 including further automatic reductions in the revenue cap for Basket 1 could pose a constitutional  
24 problem. Qwest asserts that “[t]he refusal of the Commission to process a rate application or  
25 renewed price cap plan in the face of a confiscatory level of earnings by Qwest is contrary to the  
26 provisions of the Arizona Constitution.” Qwest Motion fn 3, page 12.

27 In addition to the limit on the Price Cap Index, Qwest also argues that the Price Cap Plan did  
28 not contemplate any further reductions in Qwest’s access charges upon the expiration of the three

1 year period. Staff, RUCO and AT&T agree with Qwest that under the terms of the Settlement  
2 Agreement and the Price Cap Plan, the reduction in access charges was limited to three annual  
3 reductions totaling \$15 million. WorldCom argued that further access reductions should occur on and  
4 after April 1, 2004, if the Price Cap Plan is not renewed, modified, or terminated.

5 Staff and RUCO argue that pursuant to *Scates*<sup>1</sup>, the Commission cannot terminate the Plan  
6 without making a finding of the fair value of Qwest's property. Staff argues that the Plan, including  
7 all of its terms and conditions, was designed to comply with *Scates* at the time it was adopted, and for  
8 the time it was in effect, and that eliminating all the provisions of the Plan, except for the existing rate  
9 levels, has not been determined to comply with *Scates*. RUCO argues that terminating certain terms  
10 of the Plan, such as the annual Price Cap Index adjustment, amounts to setting new rates that must be  
11 accompanied by a fair value finding.

12 AT&T notes that pursuant to *Scates*, the Commission may not increase rates without a  
13 consideration of the impact on the return of the utility and a determination of its rate base. AT&T  
14 asserts that in *US WEST v Ariz. Corp. Comm'n*, 201 Ariz. 242, 34 P.2d 351 (2001), the Arizona  
15 Supreme Court held that while in all cases the Commission must perform a fair value determination,  
16 in a competitive environment, the Commission has broad discretion to determine the weight to be  
17 given, or the use to be made of, the fair value determination. Thus, AT&T argues that the  
18 Commission must determine whether Qwest is a monopoly or not, and if not, the Commission may  
19 develop and order a Price Cap Plan over Qwest's objections. AT&T believes that the Commission  
20 arguably satisfied *Scates* under the current Plan based on the Commission's decision to adopt a fair  
21 value, a rate of return, a revenue requirement and the conditions in the Plan that capped rates. AT&T  
22 also believes that the Commission must do some kind of fair value analysis to renew the Plan and  
23 must continue to do them periodically in the future if it orders a renewed price cap plan. AT&T  
24 believes that if Qwest can show, based on restated financials that it has a negative return in Arizona,  
25 it does not appear wise to reduce residential rates further before the rates for all services can be  
26 reviewed and rates designed for the Company as a whole. AT&T asserts that reducing rates further  
27

28 <sup>1</sup> *Scates v. Arizona Corp. Comm'n*, 118 Ariz 531, 578 P.2d 612 (App. 1978).

1 will adversely effect the negative return on investment and make it more difficult to rebalance rates  
2 and remove implicit subsidies, if any.

3 According to Qwest, *Scates* and its progeny only require a finding of fair value before a  
4 utility's rates are raised or lowered. Qwest further argues that if the Plan is terminated, its current  
5 rates would be in effect, and since they are not being changed, there is no need for a fair value  
6 determination.

7 Staff argues that the information required under A.A.C. R14-2-103 is necessary to evaluate  
8 either the rates in effect if the Plan is terminated, or the modifications that Qwest proposes to the  
9 Current Plan. Thus, Staff recommends that the Commission order Qwest to immediately file the  
10 information required by R14-2-103, as well as updated price cap information, since what it filed  
11 originally is based on unreliable unaudited numbers.

12 Qwest asserts there is no need to require a R14-2-103 filing at this time as the Commission is  
13 not obligated to determine fair value to terminate the Plan. Qwest states the Settlement Agreement  
14 establishes the information that Qwest is required to file in connection with any proposed  
15 modification or renewal and does not call for a full R14-2-103 filing.

#### 16 Clarifying The Price Cap Plan

17 Section 6 of the Price Cap Plan provides "[t]he Price Cap Plan shall have an initial term of  
18 three years". There is no ambiguity that the initial term of the Price Cap Plan is three years, which  
19 expires on March 30, 2004. The language of Section 4 of the Settlement Agreement is unambiguous.  
20 The current Price Cap Plan remains in effect until the Commission approves a renewal of a modified  
21 Price Cap Plan or orders its termination after its term.

22 Section 2 (b) of the Price Cap Plan provides:

23 Given the uncertainty of recent interpretations of Arizona law regarding  
24 rate increase mechanisms, for the initial three year term of the plan, the  
25 weighted average price level (or "Price Index") of all services contained  
26 in Basket 1 is capped, using an "inflation minus productivity" indexing  
27 mechanism, subject to annual updates in the quantities of demand for  
28 each service.

29 This provision states explicitly that "for the initial three year term of the plan" there shall be a Price  
30 Index. Thus, we find that pursuant to the terms of the Plan, the annual Price Index adjustment for

1 the third year of the Plan from April, 2003 to April 2004, is required to be made on April 1, 2004.  
2 Other language of the Plan also supports this result. See Para. 4 entitled "Price Cap Plan" of the  
3 Settlement Agreement ("The productivity offset for each year of the initial term applied to the Price  
4 Index Basket 1 shall be equal to  $(GDP-PI)-X$ , where zero is equal to or greater than  $'(GDP-PI)-X'$ ").  
5 In addition, the Price Cap Plan contains a Continuation Clause which requests that the "Plan" remain  
6 in effect until the Commission approves a new or modified plan or renews or terminates the existing  
7 Plan. The Continuation Clause states as follows:

8  
9 "Renewal or modification of the Price Cap Plan at the end of the  
10 initial term is subject to approval by the Commission. Until the  
11 Commission approves a renewed or modified Price Cap Plan, or  
orders a termination of the Plan after its initial term, the Plan  
including the hard caps on Basket One Services set forth in  
paragraph 2(c)(i) shall continue in effect.

12 Testimony and other statements at the hearing on this matter indicate that the parties' intent  
13 was that the Basket 1 Index mechanism and adjustment would remain in place pending an Order by  
14 the Commission approving another Plan or terminating the existing Plan. Elimination of such an  
15 integral part of the Plan would also raise concerns under Scates. Further, the hard cap on basic  
16 services in Section 2(c)(i) is not limited to the initial term either.

17 Section 3(d) of the Plan provides:

18 Intrastate Switched Access Services which are to be reduced by \$5 million  
19 per year for the duration of the initial term of the Plan, with further  
20 reductions in Intrastate Switched Access Service rates taking place during  
any subsequent term of the Price Cap Plan with the objection of obtaining  
parity with interstate switched access rates.

21 There is no stated limit on how long the Plan can remain in effect past its initial term.  
22 Although this Price Cap Plan was not intended to continue indefinitely, the Commission and parties  
23 must act to approve a modified plan or process a traditional rate application to replace the current  
24 plan in a reasonable amount of time. What is reasonable depends on the circumstances. In this case,  
25 almost six months after the deadline set in the Settlement Agreement, Qwest has yet to file accurate  
26 Arizona financial statements that would allow the Commission to meaningfully review the Plan and  
27 evaluate Qwest's proposed modifications. There is no indication that Staff or the Commission is not  
28 acting reasonably in its review of Qwest's proposed revisions. Any delay is due entirely to Qwest's

1 failure to file accurate financial statements. In this case, Qwest's inaction precludes the Commission  
2 from having sufficient information, as required in the Agreement, to determine whether further  
3 reductions in switched access charges are warranted. Given that those reductions would lift the  
4 burden on Qwest's competitors, Qwest's inaction benefits its own competitive positions.

5 The Commission is clearly justified in imposing a deadline for the filing of audited financial  
6 information. However, we would be remiss if we did not consider that Qwest is already several  
7 months past a similar deadline – thus we will enact another round of switched access charge  
8 reductions effective April 1, 2004, again in the amount of \$5 million. Should Qwest wish to submit  
9 evidence on the merits of those reductions, it can do so in the form of audited financial information  
10 which the Commission will consider as quickly as practicable. In the event Qwest submits audited  
11 financial information which the Commission lacks sufficient time to consider before April 1, 2004,  
12 the reductions will occur as scheduled and any adjustments can occur after the Commission finishes  
13 its review of the Qwest data (if it is filed).

14 The adjustments we are requiring here are not new rates, but rather the continuation of the  
15 adjustments as expressly contemplated in the Settlement Agreement. When interpreting the  
16 Settlement/Price Cap Plan, it is instructive to look at the statements of the parties. Here we are  
17 compelled to Qwest Witness Arnold's testimony at Exhibit Q-2, pg. 4 (Arnold November 20, 2000  
18 Rebuttal testimony), Docket No. T-01051B-99-0105: "There is no ambiguity about what happens at  
19 the end of the initial three year term of the plan. Quite simply, the hard caps on individual services,  
20 as well as the Price Cap Index for Basket 1 services would continue to apply and Qwest would not be  
21 free to charge 'what the market would bear', as RUCO alleges."

#### 22 Required Financial Filings

23 The Settlement Agreement calls for Qwest to file nine months prior to the expiration of the  
24 Price Cap Plan, or by July 1, 2003, an application for extension or revision of the plan, which shall  
25 include the following information:

- 26 a. A detailed statement of price and revenue changes effected during the initial term of  
27 the Price Cap Plan;
- 28 b. A statement of the aggregate investment and retirements in plant, and associated

1 depreciation for the preceding calendar year;

2 c. A statement of the operating income and return on investment for the preceding  
3 calendar year;

4 d. Service quality comparative data during the initial term of the Price Cap Plan as  
5 specified by Staff; and

6 e. Updated analysis of productivity data applicable to the Price Cap Plan.

7 The Settlement Agreement also provides that "Staff may request and Qwest will provide,  
8 pursuant to A.R.S. § 40-204, such other additional information as Staff determines necessary for the  
9 analysis of Qwest's application."<sup>2</sup> Staff believes that a full R14-2-103 filing is required.

10 With its Notice of Filing Renewed Price Cap Plan, Qwest submitted financial information for  
11 Arizona for the year 2002, which Qwest stated was "preliminary and subject to change to reflect  
12 ongoing audit adjustments and any future restatement of Qwest's financial statements." Qwest's  
13 Notice of Filing at Page 2. Qwest has yet to file accurate Arizona financial statements as required  
14 under the Settlement Agreement. While arguably Qwest may have complied with the terms of the  
15 Settlement Agreement by filing the preliminary financial information, until Qwest files restated and  
16 accurate Arizona financial statements, the information before us does not allow Staff or other parties  
17 to proceed with an evaluation of Qwest's proposed modifications to the Plan.

18 The Commission cannot order termination of the Plan, or adopt a modified Plan without  
19 making a finding of fair value and a determination that the rates adopted therein are just and  
20 reasonable. Whether the Commission and Qwest ultimately continue under some sort of Price Cap  
21 Plan, or whether we return to traditional rate of return regulation, the Commission must make a  
22 finding of fair value and Qwest must provide whatever information is necessary to make such a  
23 determination. Qwest must file the restated Arizona numbers as required under the Settlement  
24 Agreement as soon as possible. In addition, since it is clear what Qwest is requesting will result in  
25 major rate and revenue increase for the Company, Qwest must comply with all applicable

26  
27 <sup>2</sup> A.R.S. § 40-204 provides in relevant part: "Every public service corporation shall furnish to the commission, in the form  
28 and detail the commission prescribes, tabulations, computations, annual reports, monthly or periodical reports of earnings  
and expenses, and all other information required by it to carry into effect the provisions of this title and shall make  
specific answers to all questions submitted by the commission."

1 Commission rules governing applications for rate increases. The Price Cap Plan provides that  
 2 "Unless expressly provided herein, this Price Cap Plan is not intended to alter or eliminate the  
 3 application of current Commission rules and orders to Qwest." See Decision No. 63487, Ex. A, At.  
 4 A, subpart 7a. Nonetheless, the Staff should have flexibility to determine if certain information under  
 5 R14-2-103 may not be necessary for Commission action on the renewed Plan. The Hearing Division  
 6 shall establish a procedural schedule in contemplation of Qwest's filing pursuant to R14-2-103. The  
 7 parties should still proceed pursuant to Attachment A, subpart 6c of the Settlement Agreement to  
 8 discuss Qwest's proposed changes to the Price Cap Plan.

9 Under the terms of the Settlement Agreement, Staff is entitled to request whatever  
 10 information it believes is necessary for its analysis. Thus, Qwest has agreed to provide Staff with the  
 11 information that would be required under R14-2-103, if Staff believes such information is necessary  
 12 for its analysis. Because at this point, Qwest is seeking to continue some sort of Price Cap  
 13 Regulation, Staff should review the information required under R14-2-103 to determine if the form of  
 14 the information that must be provided pursuant to that rule is best suited to Staff's task of reviewing  
 15 the experience under the current Price Cap Plan and for evaluating a modified plan. After Staff's  
 16 evaluation and determination of what information is required (which may or may not mirror the  
 17 requirements of R14-2-103), Qwest shall promptly file such information.

18 \* \* \* \* \*

19 Having considered the entire record herein and being fully advised in the premises, the  
 20 Commission finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. In Decision No. 63487 (March 30, 2001), the Commission approved a Settlement  
 23 Agreement in Qwest's then pending rate case which adopted a Price Cap Plan for Qwest.

24 2. On July 1, 2003, Qwest filed its Renewed Price Regulation Plan in accordance with  
 25 the provisions of the Second Revised Settlement Agreement approved in Decision No. 63487.

26 3. On October 2, 2003, Staff filed a Request For Procedural Conference.

27 4. Pursuant to our October 10, 2003 Procedural Order, the Commission convened a  
 28 Procedural Conference on October 20, 2003, for the purpose of discussing procedures to govern

1 Commission review of the Price Cap Plan.

2 5. On November 7, 2003, Qwest filed a Motion to Clarify, Or In the Alternative, To  
3 Terminate Price Cap Plan. In its Motion, Qwest requested that the Commission clarify that after the  
4 expiration of the initial term of the Price Cap Plan on March 30, 2003, the following conditions apply  
5 until the Commission enters an order approving a revised plan or setting new rates for Qwest:

6 (a) No further adjustment of the Price Cap Index for Basket 1 Services will be  
7 made pursuant to 2(b) of the Price Cap Plan after March 30, 2004;

8 (b) No further annual reduction in the level of access charges under the Settlement  
9 Agreement and the Price Cap Plan will be made after April 1, 2004; and

10 (c) The procedures for changes in Qwest's rates and charges, including the hard  
11 caps imposed on the specific Basket 1 Services, continue to apply until superceded by  
12 a revised plan approved by the Commission or a Commission order setting new rates  
13 and charges for Qwest.

14 6. On November 17, 2003, RUCO and AT&T filed Responses to Qwest's Motion.

15 7. On November 21, 2003, WorldCom and Staff filed Responses to the Motion.

16 8. On December 1, 2003, Qwest filed a Reply.

17 9. The Price Cap Plan has an initial term of three years from the effective date as  
18 specified in the Commission's Order approving the Settlement Agreement and Plan. However the  
19 plan is clear that the terms and conditions shall continue in effect until the Commission modifies or  
20 terminates the Plan, this includes the adjustments to Basket 1 and switched access charges.

21 10. Renewal or modification of the Price Cap Plan at the end of the initial term is subject  
22 to approval by the Commission. Until the Commission approves a renewal or modified Price Cap  
23 Plan, or orders a termination of the Plan after its term, the Plan, including the hard caps on Basket  
24 One Services set forth in paragraph 2(c)(1) shall continue in effect.

25 11. The language of the Price Cap Plan is clear that Qwest must make the adjustment for  
26 the third year of the Plan, (from April 1, 2003 to April 1, 2004), effective April, 1, 2004. The  
27 Continuation Clause of the Agreement also clearly requires the existing Plan to remain in effect until  
28 the Commission renews the existing Plan, approves a new or revised Plan, or terminates the existing  
Plan. To the extent there is any ambiguity, statements of the parties support the position that Basket  
One Inflation/Productivity mechanism remains in place pending Commission action on a new Plan.



1 IT IS FURTHER ORDERED that Qwest shall file restated and accurate Arizona financial  
2 statements as required by the Settlement Agreement as soon as possible. If Qwest is unable to file the  
3 necessary financial information by January 15, 2004, it shall by that date file an explanation why  
4 such information is not available and an estimate of when it will be filed.

5 IT IS FURTHER ORDERED that discovery shall proceed to the extent possible pending  
6 Qwest filing its restated and accurate financial statements.

7 IT IS FURTHERED ORDERED that the Hearing Division shall immediately schedule a  
8 Procedural Conference for the purpose of setting a procedural schedule, including discovery  
9 timeframes, testimony deadlines and hearing dates for Commission consideration of the Qwest's  
10 Renewed Price Cap Plan. Nothing herein is entitled to preclude continued negotiation by the parties  
11 pursuant to Attachment A, paragraph 6c of the Agreement with respect to the appropriate terms and  
12 conditions for renewal or modification of Qwest's Price Cap Plan.

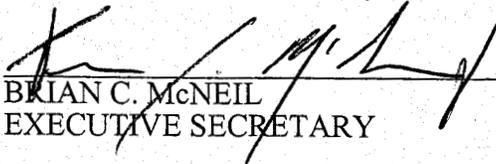
13 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

15   \_\_\_\_\_  
16 CHAIRMAN COMMISSIONER COMMISSIONER

17 \_\_\_\_\_  
18 COMMISSIONER  COMMISSIONER  
19

20 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
21 Secretary of the Arizona Corporation Commission, have  
22 hereunto set my hand and caused the official seal of the  
23 Commission to be affixed at the Capitol, in the City of Phoenix,  
24 this 10<sup>th</sup> day of February, 2004.

25   
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

26 DISSENT 

27 DISSENT   
28

1 SERVICE LIST FOR: QWEST CORPORATION

2 DOCKET NO.: T-01051B-03-0454

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**DISSENT**  
**Commissioner Mike Gleason**  
**T-01051B-03-0454**

I must respectfully dissent. By this Order, the Commission incorrectly requires an adjustment to the Price Cap Index for Basket 1 revenue and a five million dollar decrease in intrastate switched access charges on March 30, 2004. First, the Order ignores the plain language of the Commission's Order approving the Plan. Second, this Decision is contrary to case law. Finally, the Decision creates poor public policy by establishing new rates while Qwest's Application for a new Price Cap Plan is under Commission review and while the Commission is considering generic changes to access charges in another docket.

In Decision No. 63487, the Commission approved Qwest's Price Cap Plan. The Price Cap Plan has a term of three years. (Decision No. 63487 at pp. 4 & 10) "Renewal or modification of the Price Cap Plan at the end of the initial term is subject to approval by the Commission. Until the Commission approves a renewal [sic] or modified Price Cap Plan, or orders a termination of the Plan after its term, the Plan, including the hard caps on Basket One Services set forth in paragraph 2(c)(i) shall continue in effect." (Price Cap Plan Settlement at p. 6) In today's Decision, the Commission ignores the language calling for annual adjustments to Basket 1 revenue "for the initial three year term of the plan." (Price Cap Plan Attachment A, paragraph 2(b)(i)) The Commission also disregards the Plan's language calling for reductions in intrastate switched access charges at the start of the second and third years of the Plan. (Price Cap Plan Settlement at p. 3)

This Order is constitutionally infirm. By requiring further adjustments and reductions on March 30, 2004, the Commission is effectively creating new rates. To approve these changes without any examination of the costs of the utility, without any determination of the utility's investment and without any inquiry into the effect on Qwest's rate of return is in violation of the Commission's constitutional obligations. Article XV, §3 directs the Commission to prescribe just and reasonable rates. In setting just and reasonable rates, the Commission shall determine the utility's fair value. (Scates v. Arizona Corporation Commission, 118 Ariz. 531, 533-534 (Ariz. App. 1978)) The Arizona Supreme Court struck down the Commission's attempt to *reduce* a utility's rates without making a fair value determination.

“While our constitution does not establish a formula for arriving at fair value, it does require such value to be found and used as the base in fixing rates. The reasonableness and justness of the rates must be related to this finding of fair value.” (Simms v. Round Valley Light & Power, 80 Ariz. 145, 151 (1956))

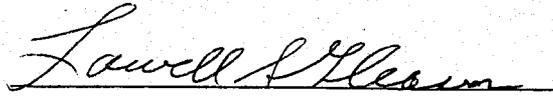
Today’s Decision adjusts Basket 1 revenue while the Commission is considering Qwest’s Application for a new Price Cap Plan. While the final outcome of this docket is not known, it is likely that – after considering Qwest’s financial position and making a fair value determination – the Commission will establish a new Basket 1 revenue requirement. This may result in a revenue requirement that is different than the revenue adjustment ordered by the Commission in today’s Decision. It is conceivable that today’s Decision to *reduce* Basket 1 revenue will be followed later this year with an Order to *increase* Basket 1 revenue. In the alternative, the Commission could decide to leave Basket 1 revenue at the level established in this Order and allow Qwest to make up the difference with increased revenue from the other baskets. This would be an inequitable proposal and would create an additional barrier for CLECs to enter the highly competitive telecommunications market. Either result does not result in good public policy.

The Order also reduces intrastate switched access charge revenue by five million dollars. The Commission is currently reviewing overall access charge reforms in a pending docket. (Dkt. No. T-00000D-00-0672) Today’s Decision results in a piece-meal attempt at access charge reform while failing to provide a thoughtful analysis on whether this reduction is fair and reasonable to both Qwest and the IXC’s.

### ***Filing Financial Information***

Finally, the Order calls for Qwest to provide financial information for a traditional rate case pursuant to ACC Rule R14-2-103. The Order criticizes Qwest for failing to file this information in a timely manner. However, the Commission-approved Plan did not require Qwest to file such information. Qwest contends that filing this additional information will result in further delay in establishing a new Plan. Staff alleges that even with this filing requirement, the parties can expedite their review of this docket. I caution my fellow Commissioners against “fast-tracking” this matter. This Commission should carefully examine Qwest’s filings. There should be no

short cuts. In the interest of the ratepayers, we should establish a complete record. As it has done in other matters, the Commission should take every opportunity to ensure that no remnants of the financial misconduct by former Qwest executives linger within the pending Application.

  
Lowell S. Gleason

