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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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AZ CORP COMMISSION  
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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

BRIEF OF COMMISSION STAFF

I. INTRODUCTION.

The proposed Settlement Agreement is the result of 28 weeks of negotiation between eight Parties.<sup>1</sup> Every significant interest is represented except for RUCO, which withdrew from the meetings approximately eight weeks after they began and now challenges the proposed Agreement. The remaining eight Parties, representing Qwest, retail competitors of Qwest, wholesale customers of Qwest, an investor group, and Commission Staff continued their negotiations for an additional twenty weeks after the RUCO withdrawal,<sup>2</sup> and the resulting settlement has been described as a "hard won agreement" in which participants were "tested to the edge."<sup>3</sup>

RUCO's concerns with the Settlement Agreement are not well-founded and oftentimes contradict its own filed testimony in this Docket and others. RUCO's primary objection to the Agreement is its belief that radical change, rather than compromise, is necessary. (Tr. at 24-25). Yet at the same time, RUCO criticizes the Settlement Agreement for going too far and giving Qwest too

<sup>1</sup> "Settlement negotiations began on February 10, 2005 and culminated with the filing of the Settlement Agreement on August 26, 2005. RUCO withdrew from the settlement negotiations in April, but the Parties continued working until agreement was reached on every detail of the Settlement Agreement." (Ex. DOD-4 at 2).

<sup>2</sup> Participants: Staff, Qwest, the Department of Defense and all other Federal Executive Agencies, MCI, Inc., Time Warner Telecom of Arizona, Cox Arizona Telecom, the Arizona Utility Investors Association and XO Communications Services.

<sup>3</sup> (Tr. at 225).

1 much pricing flexibility. RUCO advocates rejection of the Settlement Agreement because it does not  
2 contain deaveraged pricing which would allow for higher rates in rural areas of the state and lower  
3 rates in urban areas of the state. Yet the evidence indicates that there was considerable disagreement  
4 among the parties in this proceeding over almost every facet of such a Plan. RUCO criticizes the  
5 Agreement because it does not “promote competition” or “revamp” the Arizona Universal Service  
6 Fund. But, this proceeding was designed to review Qwest’s Price Cap Plan, and not to promote  
7 competition or “revamp” the Arizona Universal Fund.<sup>4</sup> RUCO is concerned that ratepayers are not  
8 receiving the full value associated with the \$12 Million April 1, 2005 productivity offset. Yet,  
9 RUCO advocated an approximate \$160 Million revenue deficiency in this case which could have a  
10 much more severe impact upon consumers’ rates since it is over 13 times the amount of the  
11 productivity offset.

12 The Parties are confident that the record in this matter and the presentation to the Commission  
13 of 19 experts and witnesses and 111 exhibits, clearly supports each provision of the Settlement.<sup>5</sup>  
14 Given the difficulty in reaching agreement, the complexity of the compromises, the length of the  
15 preceding litigation, the desire to keep further litigation to a minimum and the benefits to consumers,  
16 the Parties request that the Commission approve the Settlement Agreement.

17 **II. THE SETTLEMENT AGREEMENT IS IN THE PUBLIC INTEREST.**

18 **A. The Process was Open and All Active Intervenors Participated.**

19 Each provision of the Agreement was a compromise of the Parties’ litigation positions.  
20 Regarding compromises reached, one of the participants, Time Warner’s expert, Mr. Brian Thomas,  
21 “believes that the balance struck and the level of regulation agreed upon was an appropriate  
22 resolution.”<sup>6</sup> Another competitor, XO’s expert, Rex Knowles, stated “[n]o interested party or  
23 stakeholder was excluded from the negotiation process and the Settlement Agreement represents a  
24 fair compromise of disputed issues.”<sup>7</sup> XO’s counsel, Ms. Burke, attested “the process was very open,  
25 transparent and thorough.”<sup>8</sup> Finally, Mr. Lee, the Department of Defense’s expert, offered an

26 <sup>4</sup> (Tr. at 23).

27 <sup>5</sup> ACC Docket No. T-01051B-03-0454, T-00000D-00-0672.

28 <sup>6</sup> (Ex. TWTA-3 at 5).

<sup>7</sup> (Ex. XO-1 at 4).

<sup>8</sup> (Tr. at 32).

1 observation, "the rejection of this intensely negotiated Settlement Agreement would place a chill over  
2 the prospects for the resolution of complex matters through good faith negotiation in the future."<sup>9</sup>

3 **B. The Settlement Agreement's Provisions Reflect a Balanced Outcome for**  
4 **Consumers, the Company and its Competitors.**

5 **1. The agreed upon revenue deficiency is less than 10% of Qwest's original**  
6 **request and less than 20% percent of RUCO's stated revenue deficiency.**

7 Qwest entered these negotiations requesting \$325 Million in additional revenue. RUCO  
8 countered with a recommendation for increased revenues of \$159.5 Million, and Commission Staff  
9 proposed \$3.5 Million. The parties ultimately agreed upon \$31.8 Million. Since Qwest is entitled to  
10 raise their rates to compensate for any recognized revenue deficiency, the relatively small figure is a  
11 benefit to the consumer. This final revenue deficiency figure was less than 10% of Qwest's request  
12 and less than 20% of RUCO's recommendation.

13 RUCO originally agreed with Staff that R14-2-103 information was necessary and required  
14 because Qwest was asking for changes to the Plan that would allow it to recoup significant additional  
15 revenues: Qwest's assertions of a revenue deficiency of over \$300 Million; and the Company's  
16 request to eliminate the inflation/productivity offset. (January 29, 2004 OM Tr. at 80-81; May 4,  
17 2004 OM Tr. at 36; *See also*, RUCO's Response to Emergency Motion to Suspend the Inflation  
18 Minus Productivity Factor Adjustment, February 8, 2005). RUCO and Staff were both in agreement  
19 at the outset of this case that given the fair value requirement in Arizona law, for the Commission to  
20 approve a change in rates, there must be an examination of the company's fair value rate base and a  
21 determination of a reasonable rate of return. *Id.*

22 RUCO argued at the hearing, however, that the revenue deficiency calculation is  
23 "hypothetical." (Tr. at 446-50, 488-89). Staff does not agree. Given that such an examination is  
24 required under Arizona law when there is a change in rates, the calculation is anything but  
25 "hypothetical". Given that the Company is allowed a fair rate of return on its investment and that it  
26 sought changes to the Plan that would have given it the potential to collect significant additional  
27 revenue, this calculation is required in Staff's opinion. Given that RUCO and others advocated that

28 <sup>9</sup> (Ex. DOD-4 at 4).

1 the Company be allowed to recoup any revenue deficiency through the Price Cap Plan, Staff believes  
2 that the calculation is necessary.

3 **2. The Settlement Agreement resolves important accounting issues that have**  
4 **been in dispute for sometime relating to depreciation, OPEBs and**  
5 **Software in a manner that Staff believes is favorable to consumers.**

6 The Settlement Agreement resolves what have been contentious accounting issues between  
7 Staff and the Company. The Agreement provides that Qwest shall be treated as having adopted on  
8 April 1, 2001, Statement of Financial Accounting Standards ("SFAS") 106 to account for Other Post  
9 Employment Benefits ("OPEBs"), with a ten year amortization of Qwest's December 31, 2000  
10 Accumulated Post-Retirement Benefit Obligation ("APBO") starting April 1, 2001.

11 In addition, under the proposed Agreement, Qwest is treated as having adopted on January 1,  
12 2001, the American Institute of Certified Public Accountants' Statement of Position 98-1 ("SOP 98-  
13 1") to account for the costs of internal use computer software, effective January 1, 2001. These  
14 resolutions are to be reflected in any operating rate base or revenue requirement calculations that  
15 Qwest submit to the Commission in the future.

16 The parties also agreed to a revised set of depreciation rates and amortizations. These will  
17 result in approximately a \$255 Million reduction in annual intrastate depreciation expense for each  
18 year of the first five years, and approximately a \$224 Million annual reduction below the test year  
19 level in intrastate depreciation expense thereafter. The rates and amortizations and corresponding  
20 reductions in intrastate depreciation expense are to be used for all subsequent proceedings.

21 Finally, Qwest agreed on a going forward basis, to charge Qwest Broadband Services, Inc.  
22 ("BSI") for the cost of installing pedestals and cabinets used by BSI in accordance with the FCC's  
23 affiliate billing rules and will continue to bill BSI for all other costs in accordance with these same  
24 rules. Further, in determining the revenue deficiency, Qwest's failure to bill BSI for pedestals and  
25 cabinets was taken into account.

26 **3. The Price Cap Plan caps basic telephone rates for another 3 years or for**  
27 **the term of the Plan.**

28 The proposed Price Cap Plan again contains what Staff believes is a significant benefit to  
consumers; no increase to existing residential and business basic rates which are a hard capped for

1 the next 3 years. While Qwest can decrease the rates for basic residential and business telephone  
2 service, it cannot under the proposed Plan, increase the rates beyond levels existing at the time the  
3 Plan is approved. When viewed in combination with the existing Price Cap Plan, this means that  
4 residential and business consumers will have not seen an increase in their basic rates for  
5 approximately 7 years. Further, capping of basic rates at existing levels gives consumers a hedge  
6 against inflation.

7 In addition, the proposed Agreement contains a rate increase moratorium for the term of the  
8 Plan. This means that Qwest cannot request an increase to its rates for at least another 3 years.

9  
10 **4. Price increases beyond existing levels under the Plan are limited to Baskets  
2, 3 and 4.**

11 The proposed Agreement allocates all price increases beyond existing levels, due to the  
12 increase in revenue requirement, to Baskets 2 and 3. Moreover, a lesser amount is allocated to  
13 Basket 2, the Basket containing less competitive services. For Year 1, an amount not to exceed a  
14 \$1.8 Million increase is to be allocated to Basket 2. The remainder of the aggregate \$31.8 Million<sup>10</sup>  
15 not used for Basket 2 may be allocated by the Company to Basket 3.

16 In Years 2 and beyond, the amount of the overall net revenue increase from price changes to  
17 be allocated to Basket 2 shall not exceed \$13.8 Million. The remainder of the aggregate \$43.8  
18 Million<sup>11</sup> not used for Basket 2 shall be allocated to Basket 3.

19 Basket 4 wholesale service prices are capped at the tariffed or contract price levels for the  
20 term of the Renewed Price Cap Plan, or until contracts are renegotiated, or the FCC, the Commission  
21 or the courts determine that other prices are appropriate.

22 **5. The Settlement Agreement contains many important consumer benefits.**

23 Besides the hard cap on existing local service basic rates for residential and business  
24 customers for another 3 years; the moratorium on future requests for rate increases for the next 3  
25 years; the caps on increases to rates in Basket 2; specification of maximum rates for Baskets 2 and 3;  
26

27 <sup>10</sup> Year 1 contains an offset of \$12 Million in revenue requirement as a credit to consumers for the April 1, 2005  
Productivity Adjustment.

28 <sup>11</sup> The \$43.8 Million contains a \$12 Million offset for the \$12 Million Switched Access Charge reduction. Thus,  
the \$43.8 consists of the \$31.8 Million revenue deficiency plus the \$12 Million Switched Access Charge reduction.

1 the reduced revenue requirement of \$31.8 Million, the proposed Settlement Agreement contains other  
2 important consumer benefits.

3 The proposed Settlement Agreement contains a full \$12 Million offset to Qwest's revenue  
4 requirement in Year 1 of the Plan to give consumers credit for the April 1, 2005 Productivity  
5 Adjustment.

6 Section 13 of the Settlement Agreement results in a reduction in Zone Charges by 50%. This  
7 change will result in projected savings to consumers of \$2 million.<sup>12</sup>

8 It also results in a \$.50 reduction to both Non-Published and Non-Listed Residential  
9 Telephone Number Service. Non-Published Listings and Non-Listed Numbers were also added to  
10 Basket 1 and their rates became hard capped. The reduction to these rates results in a savings to  
11 consumers of \$2.5 million.<sup>13</sup>

12 It calls for an increase to Qwest's contribution to the Telephone Assistance Plan for the  
13 Medically Needy ("TAP") of \$1.0 Million. Thus, Qwest will be obligated under the proposed  
14 Agreement to contribute \$2.0 Million annually to this Program in the future.

15 Combined, these changes alone produce over \$5 Million per year of benefits to consumers.

16 Section 14 of the Settlement Agreement provides for Directory Assistance to be capped at its  
17 existing rate of \$1.15 per call, which shall include: (a) the current one call allowance per month  
18 without charge, (b) two inquiries per usage, and (c) call completion.

19 Under Section 15 of the proposed Agreement, Qwest is subject to increased service quality  
20 standards.

21 Under Section 16 of the Agreement, Qwest is obligated to increase the line extension credit  
22 from \$3,000 to \$5,000 for underserved customers which will benefit consumers without telephone  
23 service.

24 ...  
25 ...  
26 ...

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28 <sup>12</sup> (Ex. S-38 at 16).  
<sup>13</sup> (Ex. Q-35 at 5-6).

1                   **6. The Company obtains needed pricing flexibility to more effectively respond to**  
2                   **competition.**

3                   The Settlement Agreement recognizes that local service competition has increased since  
4 adoption of the current Price Cap Plan in 2001. The Settlement Agreement allows Qwest pricing  
5 flexibility consistent with the level of competition it now faces.

6                   The current price cap plan has three baskets: Basket 1 contains hard capped services and  
7 services with a 25% price cap limit for any one year; Basket 2 contains wholesale services; and  
8 Basket 3 contains competitive services with no price limit per service.

9                   The proposed Settlement Agreement distributes the services currently in Basket 1 into two  
10 separate baskets, Baskets 1 and 2, and moves the wholesale services into Basket 4.

- 11                   ▪ Basket 1 – hard capped retail services;
- 12                   ▪ Basket 2 - retail services with 25% individual price increase limit; subject to  
13 overall cap on rate increases; subject to maximum rate filings;
- 14                   ▪ Basket 3 - retail services with no price limit per service; but subject to overall  
15 cap on rate increases and subject to maximum rate filings;
- 16                   ▪ Basket 4 - wholesale services. Capped at current contract or tariff levels until  
17 the contracts are renegotiated or the Commission, Courts or FCC determine  
18 that other prices are appropriate.

19                   The Parties agreed that even though competition has increased substantially, this is a  
20 transitory period and constraints are still appropriate. Thus, Baskets 2 and 3 are subject to an overall  
21 cap on rate increases and individual maximum rates for each service. In addition, the services  
22 contained in Basket 2 are subject to a 25% individual price increase limit per year.

23                   The Company obtained additional pricing flexibility for additional business and residential  
24 lines and PBX trunks by their placement in Basket 2. In addition, Local Service packages have been  
25 placed in Basket 3 but, they are subject to certain safeguards.

26                   **7. Rural consumers will benefit by the Plan's provisions.**

27                   Rural consumers will benefit in many ways by the Plan's provisions. First, like urban  
28 consumers, the basic rates of both residential and business rural consumers will be hard-capped at  
existing levels. Thus, the basic rates of rural customers cannot increase beyond existing levels for the  
term of the Plan.

1 Continuation of state-wide averaged rates will ensure that rural customers receive the benefits  
2 of competitive pressures in the urban markets. Price decreases in urban markets will translate into  
3 price decreases for rural customers as well. They also ensure that basic local rates will remain  
4 affordable in rural areas, and will not increase significantly due to the increased costs usually  
5 associated with serving rural customers.

6 Rural customers benefit by the reduction in Zone Charges. Under Section 13 of the  
7 Agreement, Zone Charges are reduced by half. The current Zone 1 Charge of \$1.00 will be reduced  
8 to \$0.50. The current Zone 2 charge of \$3.00 will be reduced to \$1.50.

9 Many rural customers are also likely to benefit by the increase in the Line Extension credit  
10 from \$3,000 to \$5,000.

11 RUCO's proposal for geographic deaveraging coupled with 3 price cap baskets would set the  
12 stage for rate increases in basic rates in rural areas up to 25% per year. (Ex. RUCO-12 at 26).

13 **8. The Settlement Agreement will result in the dismissal of litigation now**  
14 **pending in the Arizona Superior Court and Court of Appeals on the**  
15 **Productivity Adjustment.**

16 The Settlement Agreement will result in the dismissal by Qwest of two pending court appeals  
17 of Commission Decision Nos. 66772 and 67047, which are collectively referred to as the  
18 "Consolidated Appeals." Under Section 28 of the Agreement, Qwest will dismiss the Consolidated  
19 Appeals following the issuance of a Commission Order approving the Settlement Agreement,  
20 provided that (i) the period of time set forth in A.R.S. Section 40-253 for the filing of an application  
21 for rehearing has expired and no individual or entity has filed any such application, or (ii) if there has  
22 been an application for rehearing, it has been fully denied by the Commission or by operation of law.

23 These appeals challenge determinations by the Commission that required Qwest to make  
24 productivity adjustments for years 2004 and 2005. While Staff believes that the Commission  
25 correctly interpreted the existing Price Cap Plan's provisions in this regard, there is always a risk with  
26 any litigation that a Court may not agree. The Settlement Agreement resolves these outstanding  
27 issues and removes the risk associated with an adverse Court decision.

27 ...  
28 ...

1                   **9. The Settlement Agreement is beneficial to competitors.**

2           One of Qwest's competitors' objectives was to reduce access rates which they considered  
3 "uneconomic, anticompetitive and discriminatory."<sup>14</sup> They contended that they could not effectively  
4 compete if Qwest is allowed total pricing control over this component of their business.<sup>15</sup> The \$12  
5 million switched access rate reduction, according to MCI's expert, is "an appropriate compromise."<sup>16</sup>

6           The Department of Defense and all other Federal Executive Agencies supports reduced  
7 switched access rates because "the biggest component of long distance rates is the access."<sup>17</sup>

8           The sole objecting intervenor to this provision is again RUCO, which opposes the access rate  
9 reduction on the grounds that it discourages competition in the rural areas. RUCO contends that by  
10 reducing the amount of cost support provided by switched access charges, this rate reduction makes it  
11 less profitable for competitive local exchange carriers ("CLECs") to serve high cost rural areas.<sup>18</sup> A  
12 facilities based CLEC, however, would actually have its own terminating access charges in place. In  
13 addition, Staff is not aware that the level of switched access charges in an exchange has prevented  
14 any CLEC from entering a market. Moreover, those advocating most strongly in favor of the  
15 reduction provide services both as a CLEC and an interexchange carrier ("IXC"). Staff believes that  
16 this access rate reduction is the right step to take in the industry and is consistent with the objectives  
17 set forth in the existing Plan and with trends at the federal level.

18           Qwest also agreed to make available to other carriers DS1 private line services on a contract  
19 basis. This contract will provide for reductions on DS1 channel terminations and transport mileage  
20 charges, subject to certain volumes of purchases, in Tucson and Phoenix.<sup>19</sup> This will allow  
21 competitors to access many office buildings through the leased circuits provided by Qwest and will  
22 allow enhanced competitive choices for consumers.<sup>20</sup>

23 ...

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25 <sup>14</sup> (MCI Settlement Test. Summary)  
26 <sup>15</sup> The last Price Cap Plan contained an objective to ultimately bring the level of intrastate Switched Access  
27 Charges in parity with interstate Switched Access Charges.  
<sup>16</sup> (Ex. MCI-3 at 4-5).  
<sup>17</sup> (Tr. at 218).  
<sup>18</sup> (Ex. RUCO-14 at 23).  
28 <sup>19</sup> (Ex. TWTA-3 at 4).  
<sup>20</sup> *Id.* at 5.

1                   **10. Qwest withdraws its request for \$64 Million in AUSF under the**  
2                   **Settlement Agreement.**

3                   In addition, under Section 19 of the proposed Agreement, Qwest agrees to withdraw its  
4 request for \$64 Million of Arizona Universal Service Fund (“AUSF”) support. Had Qwest’s request  
5 been granted, it would have been borne by all consumers in the state through an increased surcharge  
6 on their bills. The Settlement Agreement ensures that this will not happen.

7                   **III. RUCO’S CONCERNS REGARDING THE SETTLEMENT AGREEMENT ARE**  
8                   **UNFOUNDED.**

9                   In its Testimony in opposition to the Settlement Agreement, RUCO identified the following  
10 six concerns with the Agreement:

- 11                   1) The agreement, as a whole, does not address the current status of competition  
12 in Arizona, nor will it do anything to further competition in Arizona’s telecom  
13 industry;
- 14                   2) Inappropriate placement of certain services in certain baskets;
- 15                   3) Lack of geographic distinction in classifying competitive services;
- 16                   4) The degree to which pricing freedom is allowed in Basket 2;
- 17                   5) The agreement results in a modified price cap plan that, when compared to the  
18 existing plan, negatively impacts residential ratepayers; and
- 19                   6) The manner in which the issue of the April 1, 2005 productivity adjustment  
20 (required under the existing plan) is resolved by the settlement.

21 (Ex. RUCO-8 at 2).

22                   The Staff’s Brief will address each of these concerns below.

23                   **A. The Purpose of this Proceeding Was to Review Qwest’s Price Cap Plan; Not to**  
24                   **Promote Competition.**

25                   RUCO’ first stated concern is “the agreement, as a whole, does not address the current status  
26 of competition in Arizona, nor will it do anything to further competition in Arizona’s telecom  
27 industry.” *Id.* Not only is this an inaccurate statement, but it reflects a misunderstanding of what this  
28 proceeding is about. This same theme was apparent in RUCO’s counsel’s opening  
statement:

1 For the next couple of days, we should be here to analyze and facilitate the state of  
2 competition in the Arizona telecommunications market and its future in Arizona. As  
3 competition continues to intensify in Arizona, we owe it to the public, we owe it to  
ourselves, to step back, take a comprehensive look at where we are and where we've  
gone.

4 (Tr. at 22).

5 This proceeding concerns an Application filed by Qwest to renew, with modifications, its  
6 Price Cap Plan. This is not a generic proceeding designed to examine the state of competition in  
7 Arizona's telecom markets. The Commission has a separate docket open to examine competition in  
8 Arizona markets.<sup>21</sup> Further, the Commission has processed many other dockets in the recent past  
9 designed to promote competition in Arizona telecom markets.<sup>22</sup>

10 Another reason offered by RUCO for rejection of the Plan, is that it does not "revamp" the  
11 current Arizona Universal Service Fund. (Ex. RUCO-14 at 19).

12 In the absence of a state USF which adequately alleviate the high costs of serving rural  
13 customers, there is relatively little potential for competition in the lower density,  
14 higher cost parts of the state. As I explained in my direct testimony, if the  
15 Commission wants to ensure that rural areas generate revenues which are sufficient to  
cover the relatively high cost of serving these areas, it should revamp the Arizona  
universal service fund to provide an appropriate mechanism for dealing with these cost  
disparities.

16 However, this is not a generic proceeding designed to review and modify the Arizona  
17 Universal Service Fund ("AUSF"), either. The Commission has a separate docket open to examine  
18 the AUSF. Moreover, the AUSF is currently structured in a competitively neutral manner to ensure  
19 affordable rates in high cost areas. It is not a fund that was designed to promote competition and the  
20 Commission has made no determination that the fund should be used in this manner. (Tr. at 327).

21 Further, changes to the AUSF will affect telecommunications providers throughout Arizona,  
22 most of which are not a party in this docket. Although RUCO believes this issue should be addressed  
23 in this docket as a means for improving competition in the rural areas, it would not be fair and would  
24 not make sense to address this issue outside of the generic docket.

25 ...

26 ...

27

28 <sup>21</sup> ACC Docket No. T-00000I-04-0749.

<sup>22</sup> ACC Docket Nos. T-00000A-97-0238; T-00000A-00-0194; T-00000A-03-0369; and T-00000K-04-0927.

1           **B. A Diverse Group of Parties Agreed to the Price Cap Plan's Basket Structure and**  
2           **Placement of Services.**

3           RUCO's second concern is their belief that there has been "inappropriate placement of certain  
4 services in certain baskets." (Ex. RUCO-8 at 2). This concern is unfounded. RUCO's expert, Dr.  
5 Johnson, agreed with the parties, "competitive conditions in the state have intensified since the  
6 Commission approved the current plan."<sup>23</sup> It is for this reason that some services were shifted from  
7 one basket to another in the Settlement Agreement.

8           The Parties agreed to the following limited redistribution of services: First, all services  
9 (except the six identified below that were placed in Basket 3) that were subject to the 25% annual  
10 price increase cap in Basket 1 of the initial Plan were placed into Basket 2 which is subject to the  
11 same constraint on annual price increases. In addition, two hard-capped services from Basket 1 were  
12 moved to Basket 2: PBX lines and additional residential and business lines.

13           The following six services subject to the 25% annual price increase cap were moved from  
14 Basket 1 to Basket 3: (1) Standby Line Service; (2) Home Business Service; (3) Uniform Call  
15 Distribution Service; (4) Uniform Access Solution Service; (5) Code Billing; and (6) Service  
16 Packages.

17           First, RUCO alleges that the Settlement Agreement inappropriately moves some services  
18 "that are currently subject to a hard cap" to Basket 2, where they will be subject to price increases of  
19 25% per year. *Id.* RUCO witness Johnson identifies additional local exchange lines used by  
20 residential and small business customers as being one of two services inappropriately placed in  
21 Basket 2 under the proposed Settlement Agreement. Yet, the testimony in the record clearly  
22 demonstrates that Qwest is facing a dramatic increase of competition in this market. (Ex. Q-36 at 13-  
23 14). The testimony establishes that the rise in wireless phones is impacting the additional line market  
24 more than any other right now. (Ex. S-39 at 10). Qwest is also facing increased competition by Cox  
25 in this market. *Id.* Thus, given these alternatives and the degree to which competition has increased  
26 in this market, Basket 2 placement is certainly appropriate.

27           RUCO also takes issue with moving PBX trunks to Basket 2. PBX trunks are used  
28 exclusively by business customers and primarily by larger business customers. *Id.* Staff's analysis

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<sup>23</sup> (Ex. RUCO-14 at 10).

1 indicated that there are legitimate competitive alternatives for Qwest's PBX trunk service. *Id.*  
2 Again, given these circumstances, placement in Basket 2 was appropriate.

3 RUCO witness Johnson also takes issue with the six services that are being moved from  
4 Basket 1 to Basket 3, apparently believing that Qwest will be able to achieve "monopoly profit-  
5 maximizing price levels" on these services in the future. (Ex. RUCO-14 at 13). Yet, Dr. Johnson's  
6 concerns are belied by the record evidence.

7 For Standby Line Service, the testimony of Qwest's witnesses indicates that the customer  
8 base has declined by 50% over the past three years.<sup>24</sup> For Home Business Service, Qwest's customer  
9 base has nearly disappeared.<sup>25</sup> According to the testimony of Qwest witnesses, for Uniform Call  
10 Distribution Service, Qwest had a small portion of this business in 2000 and it has since decreased  
11 20%.<sup>26</sup> Qwest's testimony indicates that for Uniform Access Solution Service, its customer base has  
12 declined precipitously over past three years.<sup>27</sup> With respect to Code Billing, Qwest's testimony  
13 indicates that demand is de minimis.<sup>28</sup>

14 Finally, Dr. Johnson's testimony reflects a misunderstanding of the Agreement's treatment of  
15 Service Packages. Qwest's testimony indicates that it has lost a substantial portion of this business.<sup>29</sup>  
16 Dr. Johnson testified "[t]he limited degree of competition which currently exists for local exchange  
17 services is not sufficient to justify giving Qwest complete freedom to increase prices for these local  
18 exchange service packages." (Ex. RUCO-14 at 14). But, as Staff witness Rowell testified, the  
19 proposed Settlement Agreement does not give Qwest complete freedom to increase prices for its  
20 packages. (Ex. S-39 at 11). Section 23 of the proposed Settlement Agreement includes safeguards  
21 that specifically apply to packages that would make unlimited price increases impossible. The price  
22 of a package is capped at the sum of the highest prices of the individual services in the package. *Id.*

23 ...

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26 <sup>24</sup> (Ex. Q-36 at 16).

27 <sup>25</sup> *Id.* at 18.

28 <sup>26</sup> *Id.* at 20.

29 <sup>27</sup> *Id.* at 22.

<sup>28</sup> *Id.* at 24.

<sup>29</sup> *Id.* at 26-27.

1           C.    Geographic Zones Have Not Worked Well in Some Jurisdictions and the  
2                    Evidence Does Not Support a Workable Geographic Zone Proposal or that It  
3                    Would Benefit Consumers.

4           RUCO recommends that the Commission also reject the Settlement Agreement because it  
5 does not incorporate geographic zones. However, the geographic zone concept put forward by Qwest  
6 was not supported by either Staff or RUCO; and there was much division over how such an approach  
7 should be structured and implemented. Nor is there any evidence in the record to suggest that such  
8 an approach would benefit consumers more than the current approach, which does not incorporate  
9 geographic zones. In fact, one of Staff's witnesses who has had direct experience with competitive  
10 zones testified that in Utah they have not worked well, and the Commission has encountered a lot of  
11 problems in implementing the concept. When asked about his experience with competitive zones,  
12 Staff witness Dunkel testified as to the many problems encountered in Utah. *See*, Tr. at 2.

13           While Staff did not oppose the competitive zone "concept" in its Direct Testimony filed in  
14 this case in response to Qwest's Application, Staff witness Rowell pointed out many problems with  
15 Qwest's proposal and suggested that if the Commission adopted such a proposal, further proceedings  
16 would be necessary. *Id.* at 309-12.

17           Q.    As a general proposition, would you agree that Qwest would be better  
18                   able to respond to its competitors where geographic pricing is allowed as  
19                   opposed to the situation where pricing is the same?

20           A.    Well, under the current situation, perhaps not, because the competitors that  
21                   Qwest is facing here have statewide tariffs as well. Which particularly if  
22                   you look at the residential market, their primary competitor is Cox and  
23                   Cox doesn't have any geographic pricing flexibility within the tariffs at  
24                   this point. So Cox and Qwest are sort of on equal footing in that respect.

25           Q.    Why, the, was Staff not opposed to the general idea of competitive zone  
26                   pricing?

27           A.    Well, you know, as Staff of the utilities division, we're charged with  
28                   balancing the interests of the company and the customers. I know that's a  
29                   cliché but it's true. That's what we have to do. And to say we weren't  
30                   generally opposed to it really doesn't – it really doesn't give an accurate  
31                   depiction of Staff's position.

32                   While we didn't generally oppose it, we did point out several problems we  
33                   saw with Qwest's proposal, and we advocated a separate proceeding to  
34                   address all of those problems.

35                   So we believed – you know, in balancing the interests of the customers  
36                   and the company, we saw that the company needed additional flexibility

1 and we were willing to work with the company to get them there, but we  
2 weren't willing to take what they – their original position on its face either  
– in specifics or in sort of a general sense, either.

3 RUCO also did not support Qwest's competitive zone proposal. (Ex. RUCO-14 at 18-19).  
4 While RUCO offered testimony on the type of competitive zone proposal it favored, RUCO's  
5 testimony on this point fell far short of a comprehensive plan that could be implemented in the  
6 context of this case. *Id.* at 19-20. However, the complexity of RUCO's suggestions was of such  
7 magnitude, that the Company was not in favor of it. (Ex. Q-35 at 16). RUCO's witness Johnson  
8 suggested the use of wire centers of which there are approximately 130 in Arizona. (Tr. at 459-62).  
9 Those individual 130 wire centers would each be placed in separate baskets depending upon the  
10 degree of competition in each. Proceedings would be held to reclassify wire centers as competitive or  
11 noncompetitive. (Tr. at 456-57). RUCO's suggestions were unworkable given the complexity of  
12 structuring competitive zones in the manner suggested by RUCO, the need for endless proceedings  
13 and litigation and the many unanswered questions surrounding it. In addition, there were concerns  
14 regarding administration of such a plan; along with administration of similar plans likely to be  
15 implemented by Qwest's competitors.

16 There was also considerable disagreement between the parties on the geographic area that  
17 should comprise a competitive zone, the criteria for determining whether a zone was competitive, the  
18 safeguards that would be needed, that in the end the parties determined the current price cap plan was  
19 better and more workable. Finally, there has been relatively little discussion or evidence on the  
20 customer confusion that may result from such a deaveraged rate plan. Consumers are not familiar  
21 with the concept of wire centers and may not understand why basic rates are lower in one part of  
22 Phoenix and not another. Rural customers may not understand why their rates are considerably  
23 higher than the rates of urban customers. Customers may not understand why they are experiencing a  
24 succession of rate increases every year which is possible under such a Plan. Considerable consumer  
25 education would be necessary before such a plan could be implemented. In sum, Staff believes that  
26 the provisions of the Settlement Agreement which provide for the continuation of statewide averaged  
27 rates for the term of the Plan are in the public interest.

1           **D. The Degree of Pricing Flexibility Afforded Qwest under the Agreement Is**  
2           **Appropriate.**

3           RUCO next takes issue with the degree of pricing flexibility afforded Qwest under the  
4 Agreement. (Ex. RUCO-8 at 2). Dr. Johnson makes many statements throughout his testimony as to  
5 the “high degree of pricing freedom” that would be granted Qwest under the proposed settlement not  
6 being consistent with the limited, inconsistent state of competition in much of Qwest’s Arizona  
7 service territory. *See, e.g.*, Ex. RUCO-14 at 3. However, it is paradoxical to Staff, that RUCO is  
8 claiming this as a basis for the Commission to reject the Settlement Agreement, when the degree of  
9 flexibility afforded under RUCO’s proposal was far greater than anything ever envisioned by the  
10 proposed Settlement Agreement.

11           More specifically, RUCO criticizes the Basket structure under the proposed Settlement  
12 Agreement claiming that under both Baskets 2 and 3 Qwest has too much flexibility to extract  
13 monopoly profits. Yet the proposed Basket structure advocated by RUCO contained much more  
14 pricing flexibility than is contained in the proposed Settlement Agreement, and would allow the  
15 Company to raise basic local service rates in all areas of the state by a significant amount over the  
16 term of the Plan, or more in the Phoenix and Tucson metropolitan areas.

17           RUCO proposed the following 3 Baskets: (1) Moderate Pricing Flexibility Services Basket  
18 (25% individual rate cap and an overall revenue cap and GDP-PI minus 4.2 percent productivity  
19 offset<sup>30</sup>); (2) High Pricing Flexibility Services Basket (25% individual rate cap that **increases**  
20 **annually by two times the change in GDP-PI**; and (3) Total Pricing Flexibility Services Basket  
(Individual rate caps pursuant to A.A.C. R14-2-1109 and R14-2-1110 and **no** overall revenue cap).

21           RUCO witness Johnson testified that the Phoenix and Tucson metropolitan areas should be  
22 placed in the High Pricing Flexibility Services Basket which has a 25% individual rate cap that  
23 increases annually by two times the change in GDP-PI. (Ex. RUCO-12 at 26). He further testified  
24 that all other wire centers in the state should be placed in the Moderate Pricing Flexibility Services

25 \_\_\_\_\_  
26 <sup>30</sup> For comparison purposes with the current plan, the current plan capped the calculation at zero so that if inflation  
27 was greater than productivity, there would not be an increase resulting from application of the productivity factor. Dr.  
28 Johnson’s proposal would not contain this cap which was agreed to by the Company. Another point of comparison that  
should be considered is that the quantity of services in Basket 1 would decline under RUCO’s proposal as well, which  
would also decrease the level of any offset. RUCO also offered no support for the productivity factor of 4.2% and  
acknowledged in its testimony that existing plans in other states which still have productivity factors, had lower factors,  
which would decrease the level of any offset.

1 Basket which also includes a 25% individual rate cap. *Id.* Thus, Dr. Johnson's proposal would  
2 subject even the most monopolistic wire centers in the state to potential local service price changes of  
3 up to 25% per year.

4 When questioned about this disparity in his filed testimony, Dr. Johnson replied as follow:

5 Q. If you go back to Mr. Rowell's characterization of your various baskets, the 25  
6 percent individual rate cap that's contained in baskets – in the first two baskets,  
is that on a per-year basis?

7 A. Yes. So the end result is that you would not want to put something into a  
8 basket like that, whether it's our basket or a slightly different named basket in  
the settlement plan unless you're confident that the competition is already  
9 strong enough to preclude those kinds of extreme rate changes.

10 Q. Okay. Extreme rate changes. Let me refer you to page 26 of your surrebuttal  
testimony. Could you please read lines 15 through 22.

11 A. Given current market conditions and uncertainties concerning future trends and  
12 competition, RUCO recommends that residential local exchange services be  
placed in the moderate pricing flexibility basket within all wire centers except  
13 for Phoenix main and Tucson main.

14 Within these two wire centers residential local services should initially be  
placed in the high pricing flexibility basket.

15 Once experience has been gained with the impact of this reassignment, it  
16 would be reasonable to consider a request for movement into the total pricing  
flexibility basket.

17 Q. So, Dr. Johnson, it's your testimony, then, based upon what you just said, that  
18 the residential local exchange services and all wire centers except Phoenix  
main and Tucson, but then also Phoenix main and Tucson, since they would be  
19 in the high pricing flexibility basket, be subject to extreme rate changes?

20 A. Yes, that's true in a sense. But the thrust is that based on the trends – and I  
21 believe the data since my testimony was filed confirms that I was correct about  
the trends, that there is enough competition in Phoenix main and Tucson main  
22 that we were willing to use that as the guinea pig, shall we say, where we tried  
giving the company more freedom.

23 We really don't think they're going to be raising rates 25 percent in an area  
where they've already lost half the market.

24 Q. Is it wise, Dr. Johnson, do you think, to subject that many residential  
25 customers to extreme pricing changes and to utilize them as a guinea pig?

26 A. It is wise to avoid extreme price change and that's what we're doing.

27 \* \* \* \* \*

1 Q. I believe you said all other wire centers other than Phoenix and Tucson main  
2 would go into the moderate pricing flexibility basket, and that also allows for a  
3 25 percent individual rate increase per year.

4 A. That is a basket in which all of the services that are not competitive are being  
5 placed in.

6 Now, to the extent the company then has some flexibility in deciding to what  
7 extent they want to raise residential prices given the competition they're facing  
8 from Cox versus raising business services, or allowing business services, they  
9 would have some flexibility to do that, I agree.

10 But that is a situation – if you look at the data, okay, in which – given the rate  
11 caps that are in effect for the service, we did not think that was unreasonable.

12 (Tr. at 459-62).

13 In spite of this Dr. Johnson states: “The high degree of pricing freedom that would be granted  
14 Qwest under the proposed settlement is not consistent with the limited inconsistent state of  
15 competition in much of Qwest’s Arizona service territory.” (Ex. RUCO-14 at 3; Ex. S-39 at 6).  
16 Apparently, Dr. Johnson does not recognize that under the Settlement Agreement, all basic local rates  
17 for residential and business customers are capped at their current levels. Moreover, as discussed  
18 earlier, both Baskets 2 and 3 contain a cap on the level of rate increases. In addition, the services in  
19 Basket 2 are individually capped so that they may not increase over 25% per year. Finally, the  
20 services in both Baskets 2 and 3 are subject to maximum rate levels which the Company may  
21 increase only with Commission approval.

22 The following side by side comparison demonstrates that RUCO’s basket proposal contains  
23 considerably more pricing flexibility than that provided for under the Settlement Agreement.

24 **RUCO Basket Proposal**

25 Moderate Pricing Flexibility 25 percent individual rate cap and an  
26 overall revenue cap - GDP-PI minus 4.2  
27 percent productivity offset.<sup>31</sup>

28 High Pricing Flexibility 25 percent individual rate cap and an  
29 overall revenue cap that increases  
30 annually by two times the change in  
31 GDP-PI.<sup>32</sup>

32 ...

31 (Ex. RUCO-10 at 184).  
32 *Id.* at 188.

1 Total Pricing Flexibility

Individual rate caps pursuant to A.A.C. R14-2-1109 and R-14-2-1110 and no overall revenue cap.<sup>33</sup>

2  
3 **Settlement Agreement Baskets**

4 Hard-Capped Retail Services

All services are hard-capped for the duration of the Plan at their existing levels.

5  
6 Limited Pricing Flexibility Retail Services

Additional revenue for this Basket is capped at \$13.8 M. Services subject to a 25 percent individual price increase cap. Services subject to maximum rate requirements.

7  
8  
9 Flexibly-Priced Competitive Services

Additional revenue for this Basket is capped at \$30.0 M plus the remainder of the \$13.8 Million not used for Basket 2. Services subject to maximum rate requirements.

10  
11  
12 Wholesale Services

Prices are capped at the tariffed or contract price levels until contracts are renegotiated or the Commission, Courts or FCC determine that other prices are appropriate.

13  
14  
15 **E. The Agreement Benefits Residential Consumers.**

16 RUCO asserts “[t]he agreement results in a modified price cap plan that, when compared to  
17 the existing plan, negatively impacts residential ratepayers.” (Ex. RUCO-8 at 2).

18 **1. The productivity adjustment is no longer appropriate.**

19 One of RUCO’s primary criticisms with the Settlement Agreement is that the Plan agreed to  
20 by the parties does not include a productivity adjustment. The reasons why a productivity factor is no  
21 longer appropriate were perhaps best summarized by Staff witness Rowell at the hearing:

22 The most significant change to the plan discussed in my testimony is the elimination  
23 of the productivity adjustment factor.

24 Staff advocated elimination of the productivity adjustment factor primarily because of  
Qwest’s loss of revenues and customers.

25 ...

26 ...

27 

---

<sup>33</sup> *Id.* at 190.

1 In an environment where revenues are growing, a productivity adjustment might be  
2 appropriate to provide incentives for the company to operate efficiently. However, in  
3 an environment where revenues are declining and customers are being lost, a  
4 productivity adjustment is no longer appropriate. In such an environment, competition  
5 provides an incentive for the company to operate efficiently.

6 (Tr. at 306-307).

7 Staff believes that Qwest's inability to meet its revenue requirement would be exacerbated if  
8 the productivity adjustment were continued throughout a renewed price cap plan. Qwest's revenues  
9 declined severely from 2001-2004 due to increases in competition, and this trend does not seem  
10 likely to reverse.

11 The sole critic of canceling the productivity adjustment has been RUCO. According to their  
12 expert, Dr. Johnson, "[a]n offset continues to be appropriate . . . it is not inappropriate for these cost  
13 reductions to be passed through to consumers, even if it results in a net reduction in Qwest's revenues  
14 (e.g., where Qwest's market share is declining)."<sup>34</sup> Dr. Johnson agreed that during the current price  
15 plan, "because inflation has been low relative to the productivity factor, Qwest has been forced to  
16 lower its prices."<sup>35</sup>

17 It is for these reasons that the Parties determined that continuation of the productivity  
18 adjustment mechanism would be counter productive to the goal of assisting Qwest, as the provider of  
19 last resort, to meet its revenue requirement. In addition, Staff believes it is counterproductive to  
20 require a productivity adjustment on top of a large revenue deficiency.

21 **2. There are many benefits to residential ratepayers under the Settlement  
22 Agreement.**

23 Staff counsel's opening statement enumerated all of the many benefits to residential  
24 ratepayers under the Settlement Agreement:

25 The settlement reduces the company's claimed revenue deficiency of over  
26 \$300 million to \$31.8 million. It reduces the revenue deficiency calculated by  
27 RUCO of \$160 million down to \$31.8 million. That is good for consumers in  
28 Arizona.

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<sup>34</sup> (Ex. RUCO-10 at 94).

<sup>35</sup> *Id.* at 26.

1 It eliminates the company's request for AUSF funds of \$64 million in this  
2 proceeding. AUSF issues affect more than just Qwest, and they are being  
resolved in the generic docket. This is good for consumers in the state of  
Arizona.

3 It provides for no increase in basic rates beyond current levels for another three  
4 years. It also provides a moratorium on Qwest's ability to request rate  
increases. This is good for Arizona consumers.

5 It reduces the company's revenue requirement in year one of the plan by \$12  
6 million to account for the 2005 productivity adjustment, and results in  
dismissal of the associated appeals by the company. This is good for  
7 consumers in Arizona.

8 Basic rates will continue to be calculated on a statewide basis rather than at  
[on] the [de]average[d] basis under a competitive zone approach. This is good  
9 for consumers in Arizona because they will continue to benefit by the  
company's responses to competitive conditions in non-rural markets.

10 The existing service quality tariff is strengthened to encourage the company to  
11 give consumers the highest quality service available. This is good for  
consumers in the state.

12 Qwest will increase the line extension credit from \$3,000 to \$5,000. This is  
13 good for underserved customers in the state.

14 Qwest directory assistance rates will remain at existing levels, and Qwest will  
15 continue the monthly one free call allowance. This is good for consumers in  
the state.

16 Qwest depreciation expenses will be reduced by 255 million annually for the  
17 first five years, and 225 million annually thereafter. This is good for  
consumers in the state.

18 The services in Basket 2 and 3 will be subject to both maximum rate levels and  
an overall revenue cap. This is good for customers.

19 The company will implement other important consumer benefits equal to  
20 approximately 5.5 million a year. These include a reduction in zone increment  
21 charges by 50 percent, a reduction in non-published and non-listed number  
rates by 50 cents, and an increase in funding for the medically needy program  
22 of \$1 million annually with additional publicity. This is good for Arizona  
consumers.

23 The company will be allowed to include package offerings in Basket 3,  
24 allowing it to more effectively respond to competition. This is good for  
consumers, including rural consumers.

25 Switched access rates will be reduced by 12 million a year with no effect on  
26 basic rates. This is good for consumers. And to the extent this reduction is  
passed on to consumers through lower toll rates, this is good also.

27 The agreement spreads the revenue increase allowed through the plan to  
28 Baskets 2 and 3 only.

1 Finally, the agreement limits the amount of the revenue increase that may be  
2 applied to Basket 2, which contains less competitive services. Basket 2 also  
3 caps the increase on any individual service by 25 percent per year. This is  
4 good for consumers.

5 (Tr. at 34-36).

6 **F. RUCO's Proposal with Respect to the April 1, 2005 Productivity Adjustment Is**  
7 **not Required under the Existing Plan's Provisions.**

8 Last, RUCO takes issue with "[t]he manner in which the issue of the April 1, 2005  
9 productivity adjustment (required under the existing plan) is resolved by the settlement." (Ex.  
10 RUCO-8 at 2).

11 Qwest has the option under the current price plan of reducing prices in Basket 1, which  
12 include services which are hard capped as well as takes services subject to the 25% individual annual  
13 rate increase cap. During the three years that the productivity adjustment was applied, Qwest reduced  
14 the rates of 15 different services, none of which was residential basic service.<sup>36</sup> Of these fifteen  
15 services, 60% are within the proposed Basket 2 of the Settlement Agreement. Thus, the Settlement  
16 Agreement applies the \$12 Million offset to Basket 2 because it is consistent with how the  
17 Productivity Adjustment had been applied in the past.

18 RUCO argues that this settlement term does not provide credit for the "full" value of the April  
19 1, 2005 adjustment. To the contrary, the compromise that the Parties reached shields the ratepayers  
20 from \$12 million of the rate increase otherwise possible in Year 1 of the renewed Plan. Staff believes  
21 that the provisions of the proposed Settlement Agreement satisfy the April 1, 2005 productivity  
22 adjustment because there is an immediate \$12.0 Million reduction in Qwest's revenue requirement  
23 for Year 1 of the Plan.

24 RUCO instead recommends that residential and business basic rates be reduced by an amount  
25 equal to a twelve month amortization of the value of the April 1, 2005 productivity adjustment that

26 <sup>36</sup> Year 1, 2002 - (1) non-recurring charges for business and residence custom calling and listings, (2) basic  
27 business services non-recurring and recurring rates, (3) digital switched service and uniform access solution rates;  
28 Year 2, 2003 - (1) residential additional line rate, (2) basic business service non-recurring and recurring rates, (3) custom  
calling feature recurring rates, (4) market expansion line rates, (5) hunting service rates, (6) residence package rates;  
Year 3, 2004 - (1) residential additional line rates, (2) basic business service recurring rates, (3) business listing service  
rates, (4) market expansion line rates, (5) basic exchange enhancement rates, (6) residential package rates. (Ex. S-38 at 4-  
5).

1 was foregone during the suspension period.<sup>37</sup> Yet, this recommendation is not consistent with the  
2 current price plan provisions since the Company has the discretion to apply the offset to any services  
3 in Basket 1 that it desires. Given Qwest's history with past adjustments, it is unlikely that any  
4 adjustment would have been made to basic residential and business rates. At no time since the  
5 current plan was approved has the residential basic rate decreased as a result of the operation of the  
6 productivity adjustment. Staff does not believe that RUCO's proposal to apply the entire \$12 Million  
7 adjustment to basic rates reflects what was likely to occur had Qwest made the April 1, 2005  
8 adjustment.

9 Moreover, one of the concerns expressed in Decision 67734 was the potential for customer  
10 confusion with a temporary rate decrease followed by a subsequent rate increase. Staff believes  
11 RUCO's proposal could cause customer confusion.<sup>38</sup>

#### 12 IV. CONCLUSION.

13 The Arizona Supreme Court has noted, "[i]t has always been the policy of the law to favor  
14 compromise and settlement; and it is especially important to sustain that principle in this age of  
15 voluminous litigation. . ." *Dansby v. Buck*, 92 Ariz. 1, 11, 373 P.2d 1, 8 (1962). This case has  
16 already had voluminous litigation and threatens to generate much more, since the controversy began  
17 two and one half years ago and there are now two consolidated cases pending before the Appellate  
18 Court.<sup>39</sup>

19 Based on the foregoing and given the difficulty the Parties encountered in reaching  
20 agreement, the complexity of the compromises, the length of the preceding litigation, the desire to  
21 keep further litigation to a minimum, and the benefit to consumers, the Parties request that the  
22 Commission approve the Settlement Agreement.

23  
24 ...  
25 ...  
26

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27 <sup>37</sup> *Id.* at 6.  
28 <sup>38</sup> (Ex. Q-37 at 7).  
<sup>39</sup> *Qwest v. Arizona Corporation Commission*, et. al., Nos. 1-CA-CC 04-0001, 1-CA-CC 04-0002 (Consolidated).

1  
2 RESPECTFULLY submitted this 2<sup>nd</sup> day of December, 2005.  
3

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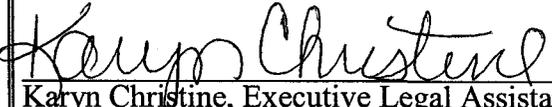
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