BEFORE THE ARIZONA CORPORATION COMMISSION

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

Docket No. T-01051B-03-0454

Docket No. T-00000D-00-0672

IN THE MATTER OF QWEST CORPORATION’S  
FILING OF RENEWED PRICE REGULATION  
PLAN

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

COX ARIZONA TELCOM, LLC’s  
RESPONSE TO QWEST CORPORATION’S MOTION TO COMPEL

Cox Arizona Telcom, LLC (“Cox Telcom”) responds to Qwest Corporation’s (Qwest) motion to compel Cox Telcom to produce: (i) cost information concerning Cox Telcom’s telephone service and (ii) cost information concerning cable and broadband services that are provided by Cox Telcom’s affiliate. Qwest is pursuing this cost information in a docket that addresses Qwest’s telephone rates, not Cox Telcom’s rates or video/broadband rates. The information sought by Qwest does not address the issues presented in Qwest’s Renewed Price Cap Plan. The Commission should deny Qwest’s motion to compel.

Background

In this docket, Qwest is basically seeking a new price cap for Qwest’s non-competitive rates, increased flexibility for pricing Qwest’s competitive rates and the creation of “competitive zones” for Qwest in areas in which there is at least one other competitor. One of the issues raised by flexible pricing is the nature of the parameters for flexible pricing, including a rule setting a price floor and a rule regarding cross-subsidization. Currently, CLECs are subject to such rules in Commission Rules R14-2-1109.A and -1009.C.
The genesis of the trail of data requests that ultimately led to Qwest Request Nos. 8.2 and 8.3 – the requests at issue here – was a general statement by Cox witness Wayne Lafferty in his direct testimony about existing Commission pricing rules for CLECs. Among other things, Mr. Lafferty stated that “cross subsidization between a competitor’s various services is also prohibited.” [A copy of the relevant excerpt of Mr. Lafferty’s Direct Testimony is attached as Exhibit A] In its Request No. 4.22, Qwest cited that testimony and then asked a confusing question about Mr. Lafferty’s contention concerning that testimony. As set forth in Cox Telcom’s initial response to Qwest Request No. 4.22, Cox explained that the basis of Mr. Lafferty’s statement was simply A.A.C. R14-2-1109.C.

Unsatisfied with that response, Qwest pressed for additional response to the portion of Request No. 4.22 that Cox had objected to as vague and ambiguous. Yet, Qwest never clarified what it meant by “direct costs”, “stand alone basis” or “all of Cox services in Arizona” nor refined the confusing nature of the request. Cox Telcom again objected and then, without waiving the objection, indicated that it was pricing its telecommunications services above “direct costs”. Assuming that Qwest was inquiring through Request No. 4.22 as to whether Cox was complying with Commission Rules, that inquiry was wholly irrelevant to this proceeding.

In spite of the irrelevance of its inquiry in Request No. 4.22, Qwest pressed forward with more intrusive, more irrelevant and burdensome discovery. In Request No. 8.2, Qwest asked Cox Telcom to provide Cox Telcom’s recurring and nonrecurring “direct costs” for certain of Cox Telcom’s telecommunications service. In Request No. 8.3, Qwest asked about the “direct costs” of video and high speed internet services, which are actually provided by an affiliate of Cox Telcom.

**Argument**

**Request No. 8.2**

Qwest’s attempts to discover Cox Telcom’s highly proprietary cost of service information in Qwest’s own Price Cap docket is simply overreaching. Qwest (at 4) provides only a brief and somewhat cryptic justification for discovery – the cost information for a specific CLEC will somehow help set the general parameters for Qwest’s flexible pricing. Qwest’s brief assertion of
possible relevance of its overreaching data requests is misplaced.

First, with respect to pricing parameters that are to be applied to Qwest – and any inequity between those parameters and the CLEC pricing rules – Qwest already knows the applicable CLEC pricing rules. CLECs are currently subject to specific parameters on pricing that are set forth in the Commission rules, such as R14-2-1109, and in other statutes, such as A.R.S. § 40-334. Even if Qwest believes those CLEC rules provide more pricing flexibility to CLECs than Qwest believes it will have under R14-2-1310, that belief does not justify burdensome discovery into the cost information of a single CLEC.

Second, if Qwest is complaining about what price floor and imputation parameters it currently faces – or will face – for its competitive services, then it effectively is seeking to overrule R14-2-1310 – which sets forth the current applicable Commission rules on price floors and imputation for ILECs. A challenge to the propriety of a rule does not give Qwest carte blanche to conduct burdensome discovery of highly-proprietary information of its competitors.

Third, if the Commission believes that a CLEC is ignoring the Commission’s rules and setting its prices too low – and should be charging consumers more – the Commission can bring an order to show cause with respect to those concerns. However, the pricing by a specific CLEC simply is not the issue in this docket.

Finally, Qwest has overstated their right to discovery, particularly in these circumstances. Discovery into the “direct costs” of a single CLEC’s telecommunications services is irrelevant to the issues in this docket. Arizona courts have rejected discovery into matters having no bearing on the relevant issues of a case. See, e.g., Magna Investment & Development Corp. v. Pima County, 128 Ariz. 291, 296, 625 P.2d 354, 359 (Ct. App. 1981). In Magna Investment, Magna had sued Pima County seeking to reduce the valuation of its department store for tax purposes. Magna owned the anchor tenant in El Con Mall in Tucson. Magna submitted a valuation based on the fair market rental value of its leasehold. In attempting to justify its higher valuation of the anchor tenant leasehold, Pima County sought discovery into the lease terms of smaller tenants in the mall, which generally had higher rent than the anchor. However, the trial court refused to compel
discovery of smaller tenant lease terms, including rental rates. The Court of Appeals noted that the smaller tenant lease terms were irrelevant to a valuation based on fair market rental value of a major anchor tenant and, therefore, upheld the denial of discovery.

The Magna Investment decision is instructive in this discovery dispute. Here, Cox Telcom’s actual costs have no bearing on the legal parameters to be set on Qwest’s flexible pricing. All CLECs, including Cox Telcom, are already subject to Commission rules on competitive pricing parameters. Cox Telcom’s actual costs also have no bearing on whether Qwest should have areas designated as “competitive zones” for flexible pricing if another CLEC is competing with Qwest in that area. The issue there is the presence of a CLEC, not the CLEC’s cost of service. Finally, Cox Telcom’s actual costs certainly have no bearing on Qwest’s own revenue requirements or the appropriate rates for Qwest’s non-competitive services. Discovery of Cox Telcom’s actual costs should be denied.

**Request 8.3**

Qwest’s Request 8.3 — seeking cost information about video and high speed internet services provided by *an affiliate* of Cox Telcom — is even more overreaching than Request No. 8.2 and should be rejected for similar reasons.¹

**Relief Requested**

The Commission should deny Qwest’s motion to compel.

¹ Moreover, Cox Telcom is not the entity that possesses the information sought by Request No.8.3.
RESPECTFULLY SUBMITTED January 26, 2005.

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EXHIBIT

"A"
BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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KRISTIN MAYES

IN THE MATTER OF QWEST CORPORATION’S FILING OF A 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

DIRECT TESTIMONY

OF

F. WAYNE LAFFERTY

ON BEHALF OF

COX ARIZONA TELCOM, L.L.C.

November 18, 2004

(CONFIDENTIAL VERSION)
reclassify competitive zones as non-competitive. However, this control would only provide prospective relief and would not monitor Qwest’s performance during the time a zone was deemed competitive. Re-regulation could also be disruptive to customers, especially if Qwest is forced to increase rates to eliminate discriminatory situations.

Q. How do Qwest’s proposed tariff and pricing obligations for competitive zones compare to existing rules for competitors in Arizona?

A. As proposed, Qwest would enjoy significantly less oversight than its competitors. Competitors are required to file tariffs specifying the maximum allowable rate. Their rates must not be less than their total service long-run incremental cost of providing the service. Cross subsidization between a competitor’s various services is also prohibited. Changes to competitors’ prices can only be made if the resulting price is below the maximum tariff published rate and above the cost based price floor. Increases above the competitor’s maximum tariff price must be submitted to the Commission for approval.

Q. Is Qwest’s proposal to allow unlimited price changes with no advance notice or commission oversight adequate?

A. No. At a minimum Qwest should follow the existing pricing rules for competitors found in Sections R14-2-1109 and R14-2-1110. Competitive neutrality requires Qwest not be afforded flexibility that is not available to its competitors. Qwest has not specified whether it proposes that its maximum rates would be established in tariffs for competitive

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44 Commission Rule R14-2-1109.
45 Commission Rule R14-2-1110.