BY THE COMMISSION:

On January 13, 2005, Qwest Corporation ("Qwest") filed a Motion to Compel Data Request Responses from Cox Arizona Telecom, LLC ("Cox Telecom"). Qwest requested that the Commission order Cox to respond to data requests that seek cost information concerning Cox Telecom's telephone services as well as cost information concerning cable and broadband services provided by Cox Telecom's affiliate.

On January 28, 2005, Cox filed a Response to Qwest's Motion.

Pursuant to Procedural Order dated January 25, 2005, oral argument on the Motion was heard on February 1, 2005.

Qwest states that on November 23, 2004, it served Cox Telecom with its fourth set of data requests which it claims were targeted at the direct testimony of Cox Telecom's witness, F. Wayne Lafferty that was filed on November 28, 2004. Qwest's Data Request No. 4.22 referred to page 31 of Mr. Lafferty's testimony, which states "cross subsidization between a competitor's various services is also prohibited." Data Request No. 4.22 asked:

Do you contend that all of Cox's services (on a stand alone basis) in Arizona are priced at levels above Cox's direct costs of providing those services? Please state in detail and with particularity all of the reasons and factual bases supporting your answer. Additionally, please produce any
studies supporting your answer.

On December 8, 2004, Cox Telecom responded to Qwest Data Request No. 4.22 as follows:

Cox objects to this request on the grounds that it is vague and ambiguous (for example, as to what is meant by “standalone basis” or “direct costs”). Notwithstanding those objections and without waiving same, A.A.C. R14-2-1109.C states, in part, that a competitive telecommunications service shall not be subsidized by a noncompetitive telecommunications service. Cox’s telecommunications services are priced in accordance with applicable law, such as A.A.C. R14-2-1109 and A.R.S. § 40-334.

On December 22, 2004, Cox Telecom supplemented its response with the following:

Cox objects to this request on the grounds that it is vague and ambiguous (for example, as to what is meant by “standalone basis” or “direct costs”). Notwithstanding those objections and without waiving same, Cox responds that Cox’s telecommunications services are priced above Cox’s direct costs.

On December 23, 2004, Qwest served Cox Telecom with its Eighth set of Data Requests.

Qwest’s Data Request No. 8.2 states:

In answering this request, please review your response and supplemental response to Qwest Data Request No. 4-22. Please identify your direct costs (both recurring and non-recurring) for the following:

a. Cox primary residential telephone line;
b. Cox additional residential telephone line (any line in addition to the primary line at a customer’s location);
c. Cox primary business telephone line;
d. Cox additional business telephone line (any line in addition to the primary line at a business location);
e. Cox intrastate long distance; and
f. Cox voice messaging.

Qwest’s Data Request No. 8.3 asks Cox Telecom to “identify whether your non-telecommunications services (e.g. basic cable television service, broadband internet service, etc.) are priced above cost.

Cox objected to Data Requests Nos. 8.2 and 8.3 on the grounds they are vague and ambiguous, overbroad, irrelevant and unduly burdensome.

Qwest argues that it is entitled to the information sought in Data Requests 8.2 and 8.3 because the information sought is relevant to these proceedings, and the data requests are clear and reasonably
calculated to lead to admissible evidence. Qwest explains that it is interested in whether Cox offers any of its services (cable TV, telephone or internet) below costs to its customers and is subsidizing those services with revenues from other above-cost services. Qwest states that the information will be used to support Qwest’s position that Qwest’s services should not be subjected to a service-by-service imputation test, as that represents less pricing flexibility than Qwest’s competitors. Qwest claims that Cox Telecom cannot raise the issue of cross-subsidization and then limit Qwest’s ability to determine how much of a problem cross-subsidization is for Cox.

Cox Telecom argues that the information Qwest seeks through Data Requests 8.2 and 8.3 is not relevant to the issues raised in Qwest’s Renewed Price Cap Plan, as Qwest is trying to obtain Cox Telecom pricing information in the context of a Qwest rate case. Cox is concerned that Qwest’s proposed renewed price cap plan be fair to competitors. According to Cox Telecom, Mr. Lafferty’s testimony, upon which Qwest bases its data requests, merely states that current Commission rules prohibit cross subsidization between a competitor’s various services, and did not place Cox Telecom’s costs at issue in this proceeding. Cox Telecom argues that even if Qwest believes that the rules affecting CLECs provide more pricing flexibility to CLECs than Qwest believes it will have under R14-2-1310, that belief does not justify burdensome discovery of highly proprietary information from a single CLEC. Moreover, Cox Telecom asserts that if the Commission believes that a CLEC is ignoring Commission rules and pricing services too low, the appropriate course of action is to bring an order to show cause. Cox Telecom believes that to allow such overreaching and burdensome discovery of highly sensitive CLEC cost information will have a chilling effect on CLEC participation in this and other proceedings.

We agree with Cox Telecom that the cost information sought in Qwest Date Requests 8.2 and 8.3 is not reasonably calculated to the discovery of admissible evidence. Mr. Lafferty’s testimony raises the issue of whether cross subsidization prohibitions would apply equally to Qwest and its competitors under Qwest’s proposed renewed price cap plan. The question is fair, reasonable and necessary to evaluate Qwest’s proposals in this proceeding. By raising the issue, Cox Telecom did not open the door to subject itself to discovery of its highly sensitive cost information. Cox Telecom’s costs of services or its compliance with Commission rules are not at issue in this
proceeding.

IT IS THEREFORE ORDERED that Qwest's Motion to Compel Data Requests from Cox Telecom is denied.

DATED this 17th day of February, 2005.

Jane Rodda
ADMINISTRATIVE LAW JUDGE

Copy of the foregoing mailed/delivered this 17th day of February 2005, to:

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