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BEFORE THE ARIZONA CORPORATION COMMISSION

2005 JAN 13 P 2:58

JEFF HATCH-MILLER

Chairman

MARC SPITZER

Commissioner

WILLIAM MUNDELL

Commissioner

MIKE GLEASON

Commissioner

KRISTIN MAYES

Commissioner

AZ CORP COMMISSION  
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Arizona Corporation Commission

DOCKETED

JAN 13 2005

DOCKETED BY

IN THE MATTER OF QWEST  
CORPORATION'S FILING AMENDED  
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

**QWEST CORPORATION'S MOTION  
TO COMPEL DATA REQUEST  
RESPONSES FROM COX ARIZONA  
TELECOM, L.L.C. AND REQUEST  
FOR EXPEDITED HEARING**

Pursuant to Rule 37 of the Arizona Rules of Civil Procedure and Rule 14-3-101 of the Arizona Administrative Code, Qwest Corporation ("Qwest") moves the Administrative Law Judge ("ALJ") for an order compelling Cox Arizona Telecom, L.L.C. ("Cox") to respond to certain data requests on an expedited basis for the reasons described herein.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Factual Background**

(Qwest's Fourth Set of Data Requests to Cox)

On November 23, 2004, Qwest served Cox with its fourth set of data requests, which were specifically targeted at the direct testimony of Cox's expert witness, F. Wayne Lafferty. Qwest's Data Request No. 4.22 to Cox is attached hereto as Exhibit A. Cox provided a response on December 8, 2004, attached hereto as Exhibit B, but the

1 response was deficient as described below.

2        No. 4.22:     The answer to this request is non-responsive. Qwest asked if all of  
3                             Cox's services in Arizona are priced above the direct costs of each  
4                             service, and not for an explanation of what Arizona law permits.

5 On December 22, 2004, Cox provided a supplemental response, attached hereto as  
6 Exhibit C.

7                             (Qwest's Eighth Set of Data Requests to Cox)

8        On December 23, 2004, Qwest served Cox with its Eighth set of Data Requests,  
9 which are specifically designed to obtain information concerning Cox's direct costs –  
10 both recurring and non-recurring – for certain services, including primary residential  
11 lines, additional residential lines, primary business lines, additional business lines,  
12 intrastate long distance and voice messaging. In addition, Qwest sought to determine the  
13 extent to which Cox prices its non-telecommunications services above cost. Qwest's  
14 Eighth set of Data Requests, attached hereto as Exhibit D, is specifically targeted to  
15 address issues first raised in Qwest Data Request 4.22. Cox objected to Data Request  
16 Nos. 8.2 and 8.3 on the grounds that they are vague and ambiguous, overbroad, irrelevant  
17 and unduly burdensome. Cox's response is attached hereto as Exhibit E.

18        Qwest communicated with Cox's counsel on January 7, 2005, attempting to  
19 resolve the impasse. See Exhibit F. However, on January 10, 2005, Cox's counsel  
20 reiterated Cox's original objections to Data Request Nos. 8.2 and 8.3. See Exhibit G.

21 **II.     Discovery Obligations**

22        Rule 26 provides that parties may obtain discovery "regarding any matter, not  
23 privileged, which is relevant to the subject matter involved." Ariz. R. Civ. P. 26(b)(1).  
24 Relevancy of evidence is found if it has "any tendency to make the existence of any fact  
25 that is of consequence to the determination of the action more probable or less probable  
26 than it would be without the evidence." Ariz. R. Evid. 401. Evidence need not be

1 admissible in order to be discovered – it need only be “reasonably calculated to lead to  
2 the discovery of admissible evidence.” Ariz. R. Civ. P. 26(b)(1). Rule 37 states that  
3 where a party fails to respond to an interrogatory or request for production, the party  
4 serving such discovery may move for an order compelling the non-responsive party to  
5 answer. Ariz. R. Civ. P. 37(a).

6 The Arizona Rules of Civil Procedure advocate a policy of full disclosure between  
7 parties. The purpose of discovery is to “provide a vehicle by which one party may be  
8 fairly apprised of the other’s case and be prepared to meet it if he can.” *Kott v. City of*  
9 *Phoenix*, 158 Ariz. 415, 418, 763 P.2d 235, 238 (1988) citing *Watts v. Superior Court*, 87  
10 Ariz. 1, 347 P.2d 565 (1959). Discovery promotes the efficient and speedy disposition of  
11 [an action], minimizes surprise, and prevents a hearing or trial from becoming a guessing  
12 game. See *Cornet Stores v. Superior Court*, 108 Ariz. 85, 86, 492 P.2d 1191, 1193  
13 (1972). In light of Arizona’s policy of full disclosure, a party must respond to a data  
14 request “unless it appears affirmatively that the evidence sought is patently objectionable  
15 and inadmissible.” *Id.* at 87, 492 P.2d at 1194 (citations omitted).

16 **III. Cox Has Failed To Adequately Respond To Qwest’s Data Requests.**

17 With these basic and familiar principles in mind, the Hearing Division should  
18 order Cox to respond to Qwest Data Request Nos. 8.2 and 8.3. Here, it is Cox’s burden  
19 to demonstrate that the data requests seek information that in no manner could lead  
20 Qwest to relevant evidence. This it cannot do because the information Qwest seeks is, in  
21 fact, relevant to these proceedings.

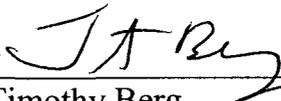
22 Qwest’s Eighth set of Data Requests to Cox, as further clarified in Qwest’s  
23 January 7, 2005 e-mail to Cox’s counsel, clearly demonstrate that such requests are clear  
24 and reasonably calculated to lead to admissible evidence for the following reason – the  
25 information is important to Qwest’s rebuttal and cross-examination efforts. Qwest is  
26 interested in whether Cox offers any of its services (cable TV, telephone or internet)

1 below cost to its customers and is subsidizing those services with revenues from other  
2 above-cost services. This information will be used in supporting the position that  
3 Qwest's services should not be subjected to a service-by-service imputation test, as that  
4 represents less pricing flexibility than Qwest's competitors enjoy.

5 Based on the foregoing, Qwest requests that the ALJ set a hearing and grant  
6 Qwest's motion, on an expedited basis, ordering Cox to respond to Qwest Data Request  
7 Nos. 8.2 and 8.3.

8 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of January, 2005.

9 FENNEMORE CRAIG

10 By:   
11 Timothy Berg  
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*Attorneys for Qwest Corporation*

21 ORIGINAL and 15 copies hand-delivered for  
22 filing this 13<sup>th</sup> day of January, 2005 to:

23 Docket Control  
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25 1200 W. Washington St.  
26 Phoenix, AZ 85007

1 COPY of the foregoing delivered  
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9 Utilities Division  
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10 1200 W. Washington St.  
Phoenix, AZ 85007

11 COPY of the foregoing mailed  
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18 Phoenix, Arizona 85004

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20 20401 North 29<sup>th</sup> Avenue  
Phoenix, Arizona 85027

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Phoenix, Arizona 85004

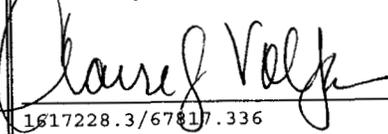
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Arizona Utility Investors Association  
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- 13 Phoenix, AZ 85004
  
- 14 Albert Sterman, Vice President  
Arizona Consumers Council
- 15 2849 E. 8<sup>th</sup> Street  
Tucson, AZ 85716
  
- 16
- 17 Accipiter Communications, Inc.  
2238 W. Lone Cactus Dr., Ste.100  
Phoenix, AZ 85027
  
- 18
- 19 Alliance Group Services, Inc.  
1221 Post Road East  
Westport, CT 06880
  
- 20
- 21 Archtel, Inc.  
1800 West Park Drive, Ste. 250  
Westborough, MA 01581
  
- 22
- 23 Brooks Fiber Communications of Tucson, Inc.  
201 Spear Street, 9<sup>th</sup> Floor  
San Francisco, CA 94105
  
- 24
- 25 Centruytel  
PO Box 4065  
Monroe, LA 71211-4065
  
- 26

- 1 Citizens Utilities Rural Co. Inc.  
Citizens Communications Co. of Arizona
- 2 4 Triad Center, Suite 200  
Salt Lake City, UT 84180
- 3
- 4 Citizens Telecommunications Co. of the White Mountains, Inc.  
4 Triad Center, Ste. 200  
Salt Lake City, UT 84180
- 5
- 6 Comm South Companies, Inc.  
2909 N. Buckner Blvd., Ste. 200  
Dallas, TX 75228
- 7
- 8 Copper Valley Telephone, Inc.  
PO Box 970  
Willcox, AZ 85644
- 9
- 10 Electric Lightwave, Inc.  
4 Triad Center, Ste. 200  
Salt Lake City, UT 84180
- 11
- 12 Eschelon Telecom of Arizona, Inc.  
730 Second Avenue South, Ste.1200  
Minneapolis, MN 55402
- 13
- 14 Ernest Communications, Inc.  
5275 Triangle Pkwy, Ste. 150  
Norcross, GA 30092-6511
- 15
- 16 Intermedia Communications, Inc.  
3608 Queen Palm Drive  
Tampa, FL 33619-1311
- 17
- 18 Level 3 Communications, LLC  
1025 Eldorado Blvd.  
Broomfield, CO 80021
- 19
- 20 Max-Tel Communications, Inc.  
105 N. Wickham  
PO Box 280  
Alvord, TX 76225
- 21
- 22 MCI WorldCom Communications  
201 Spear Street, 9<sup>th</sup> Floor  
San Francisco, CA 94105
- 23
- 24 MCIMetro  
201 Spear Street, 9<sup>th</sup> Floor  
San Francisco, CA 94105
- 25
- 26

- 1 Metropolitan Fiber Systems of Arizona, Inc.  
201 Spear Street, 9<sup>th</sup> Floor
- 2 San Francisco, CA 94105
- 3 Midvale Telephone Exchange  
PO Box 7
- 4 Midvale, ID 83645
- 5 Navajo Communications Co., Inc.  
4 Triad Center, Suite 200
- 6 Salt Lake City, UT 84180
- 7 Nextlink Long Distance Svcs.  
3930 E. Watkins, Ste. 200
- 8 Phoenix, AZ 85034
- 9 North County Communications Corporation  
3802 Rosencrans, Ste. 485
- 10 San Diego, CA 92110
- 11 One Point Communications  
Two Conway Park
- 12 150 Field Drive, Ste. 300  
Lake Forest, IL 60045
- 13 Opex Communications, Inc.  
500 E. Higgins Rd., Ste. 200
- 14 Elk Grove Village, IL 60007
- 15 Pac-West Telecomm, Inc.  
1776 W. March Lane, #250
- 16 Stockton, CA 95207
- 17 The Phone Company/Network Services of New Hope  
6805 Route 202
- 18 New Hope, PA 18938
- 19 Rio Virgin Telephone Co.  
Rio Virgin Telephone and Cablevision  
PO Box 189
- 20 Estacada, OR 97023-000
- 22 South Central Utah Telephone Association, Inc.  
PO Box 226
- 23 Escalante, UT 84726-000
- 24 Southwestern Telephone Co., Inc.  
PO Box 5158
- 25 Madison, WI 53705-0158
- 26

- 1 Special Accounts Billing Group  
1523 Withorn Lane
- 2 Inverness, IL 60067
  
- 3 Touch America  
130 N. Main Street
- 4 Butte, MT 59701
  
- 5 Table Top Telephone Co, Inc.  
600 N. Second Avenue
- 6 Ajo, AZ 85321-0000
  
- 7 Valley Telephone Cooperative, Inc.  
752 E. Malley Street
- 8 PO Box 970
- 9 Willcox, AZ 85644
  
- 10 Verizon Select Services Inc.  
6665 MacArthur Blvd, HQK02D84
- 11 Irving, TX 75039
  
- 12 VYVX, LLC  
One Williams Center, MD 29-1
- 13 Tulsa, OK 74172
  
- 14 Western CLEC Corporation  
3650 131<sup>st</sup> Avenue SE, Ste. 400
- 15 Bellevue, WA 98006
  
- 16 Williams Local Network, Inc.  
One Williams Center, MD 29-1
- 17 Tulsa, OK 74172
  
- 18 XO Arizona Inc.  
3930 Watkins, Ste. 200
- 19 Phoenix, AZ 85034

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1617228.3/67817.336

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- 23
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# EXHIBIT

A

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 MARC SPITZER  
Chairman  
3 WILLIAM MUNDELL  
Commissioner  
4 JEFF HATCH-MILLER  
Commissioner  
5 MIKE GLEASON  
Commissioner  
6 KRISTIN MAYES  
Commissioner

7  
8 IN THE MATTER OF QWEST  
CORPORATION'S FILING AMENDED  
9 RENEWED PRICE REGULATION PLAN.

DOCKET NO. T-01051B-03-0454

10 IN THE MATTER OF THE  
11 INVESTIGATION OF THE COST OF  
12 TELECOMMUNICATIONS ACCESS.

DOCKET NO. T-00000D-00-0672

13  
14 **QWEST'S FOURTH SET OF DATA  
15 REQUESTS TO COX ARIZONA,  
16 L.L.C. [RE: LAFFERTY TESTIMONY]**

17 Qwest Corporation ("Qwest") hereby submits its fourth set of data requests to Cox  
18 Arizona, L.L.C. ("Cox"), the Barrington-Wellesley Group, and F. Wayne Lafferty in the  
19 above-captioned docket and requests that full and complete responses be made by Friday,  
20 December 3, 2004.

21 **DEFINITIONS**

22 As used herein, the following terms have the meaning as set forth below:

23 1. The term "you," and "your" shall mean Cox, the Barrington-Wellesley  
24 Group, and F. Wayne Lafferty (defined *infra*) in the above captioned proceedings, as well  
25 as any parent, subsidiaries, and affiliates, former and present officers, attorneys,  
26 employees, servants, agents and representatives, and any person acting on their behalf for  
any purpose.

2. "List," "describe," "detail," "explain," "specify" or "state" shall mean to set  
forth fully, in detail, and unambiguously each and every fact of which you, your company

- 1 particularity all of the reasons and factual bases supporting your answer.
- 2 4-19. Is it your understanding that VoIP service providers do not provide independent  
3 power sources (such as battery backup) in the event of power outages? If your  
4 answer is "yes" (*i.e.*, you do not believe VoIP providers currently offer  
5 independent power sources), please state in detail and with particularity all of the  
6 reasons and factual bases supporting your answer.
- 7 4-20. Please identify the number of residential retail access lines provided by Cox in  
8 Arizona, based on the most current month for which such counts are available.
- 9 4-21. Please identify the number of business retail access lines provided by Cox in  
10 Arizona, based on the most current month for which such counts are available.
- 11 4-22. At page 31 of the Lafferty Testimony, Mr. Lafferty states, "cross subsidization  
12 between a competitor's various services is also prohibited." Do you contend that  
13 all of Cox's services (on a standalone basis) in Arizona are priced at levels above  
14 Cox's direct costs of providing those services? Please state in detail and with  
15 particularity all of the reasons and factual bases supporting your answer.  
16 Additionally, please produce any studies supporting your answer.
- 17 4-23. Please explain your basis for the statement at page 33 of the Lafferty Testimony  
18 that Qwest's competitive zones proposal "could result in two customers on the  
19 same street receiving different prices for the same service." In particular, please  
20 identify where in Qwest's petition or testimony such a degree of pricing flexibility  
21 is articulated.
- 22 4-24. In several places (*e.g.*, page 34) the Lafferty Testimony suggests that the majority  
23 of Qwest's residential customers subscribe to service on a standalone basis  
24 (subscribe to nothing more than an access line). Please identify any information  
25 provided by Qwest in its testimony or discovery responses indicating that the  
26 majority of Qwest's residential customers subscribe only to a line (and do not use  
or subscribe to discretionary services other than the access line).
- 4-25. At page 35 of the Lafferty Testimony, Mr. Lafferty discusses generally the theory  
of predatory pricing. Would you agree that firms engage in price predation with a  
goal of driving competitors from the market and that this strategy also involves  
subsequent price increases by the firm to recoup losses incurred during the  
predation? Do you maintain that Qwest has the ability to drive competitors from  
the market via price predation, and then subsequently increase prices to recover  
the lost revenue? Please state in detail and with particularity all of the reasons and  
factual bases supporting your answer.

# **EXHIBIT**

**B**

**Cox Arizona Telcom, L.L.C.'s  
Responses To Qwest Corporation's 4<sup>th</sup> Set Of Data Requests  
Docket No. T-01051B-03-0454  
December 8, 2004**

4.22

At page 31 of the Lafferty Testimony, Mr. Lafferty states, "cross subsidization between a competitor's various services is also prohibited." Do you content that all of Cox's services (on a standalone 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.

**RESPONSE:**

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.

**RESPONDENT:**

Wayne Lafferty

# **EXHIBIT**

# **C**

**Cox Arizona Telcom, L.L.C.'s  
Supplemental Responses To Qwest Corporation's 4<sup>th</sup> Set Of Data Requests  
Docket No. T-01051B-03-0454  
December 22, 2004**

4.22                   At page 31 of the Lafferty Testimony, Mr. Lafferty states, "cross subsidization between a competitor's various services is also prohibited." Do you content that all of Cox's services (on a standalone 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.

**RESPONSE:**           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.

**RESPONDENT:**       Wayne Lafferty

**SUPPLEMENTAL  
RESPONSE:**

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.

**RESPONDENT:**       Wayne Lafferty

# EXHIBIT

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

MARC SPITZER  
Chairman  
WILLIAM MUNDELL  
Commissioner  
JEFF HATCH-MILLER  
Commissioner  
MIKE GLEASON  
Commissioner  
KRISTIN MAYES  
Commissioner

IN THE MATTER OF QWEST  
CORPORATION'S FILING AMENDED  
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

**QWEST'S EIGHTH SET OF DATA  
REQUESTS TO COX ARIZONA,  
L.L.C.**

Qwest Corporation ("Qwest") hereby submits its eighth set of data requests to Cox Arizona, L.L.C. ("Cox"), the Barrington-Wellesley Group, and F. Wayne Lafferty in the above-captioned docket and requests that full and complete responses be made by Monday, January 3, 2005.

**DEFINITIONS**

As used herein, the following terms have the meaning as set forth below:

1. The term "you," and "your" shall mean Cox, the Barrington-Wellesley Group, and F. Wayne Lafferty (defined *infra*) in the above captioned proceedings, as well as any parent, subsidiaries, and affiliates, former and present officers, attorneys, employees, servants, agents and representatives, and any person acting on their behalf for any purpose.

2. "List," "describe," "detail," "explain," "specify" or "state" shall mean to set forth fully, in detail, and unambiguously each and every fact of which you, your

1 company or your agents or representatives have knowledge which is relevant to the  
2 answer called for by the data request.

3       3.     The terms "document," "documents," or "documentation" as used herein  
4 shall include, without limitation, any writings and documentary material of any kind  
5 whatsoever, both originals and copies (regardless of origin and whether or not including  
6 additional writing thereon or attached thereto), and any and all drafts, preliminary  
7 versions, alterations, modifications, revisions, changes and written comments of and  
8 concerning such material, including, but not limited to: correspondence, letters,  
9 memoranda, internal communications, notes, reports, directions, studies, investigations,  
10 questionnaires and surveys, inspections, permits, citizen complaints, studies, papers, files,  
11 books, manuals, instructions, records, pamphlets, forms, contracts, contract amendments  
12 or supplements, contract offers, tenders, acceptances, counteroffers or negotiating  
13 agreements, notices, confirmations, telegrams, communications sent or received, print-  
14 outs, diary entries, calendars, tables, compilations, tabulations, charts, graphs, maps,  
15 recommendations, ledgers, accounts, worksheets, photographs, tape recordings, movie  
16 pictures, videotapes, transcripts, logs, work papers, minutes, summaries, notations and  
17 records of any sort (printed, recorded or otherwise) of any oral communications whether  
18 sent or received or neither, and other written records or recordings, in whatever form,  
19 stored or contained in or on whatever medium including computerized or digital memory  
20 or magnetic media that: (a) are now or were formerly in your possession, custody or  
21 control; or (b) are known or believed to be responsive to these interrogatories, regardless  
22 of who has or formerly had custody, possession or control.

23       4.     The terms "identify" and "identity" when used with reference to a natural  
24 person means to state his or her full name, present or last known address, present or last  
25 known telephone number, present or last known place of employment, position or  
26 business affiliation, his or her position or business affiliation at the time in question, and

1 a general description of the business in which he or she is engaged.

2 5. The terms "identify" and "identity" when used with respect to any other  
3 entity means to state its full name, the address of its principal place of business and the  
4 name of its chief executive officers.

5 6. The terms "identify" and "identity" with respect to a document mean to  
6 state the name or title of the document, the type of document (e.g., letter, memorandum,  
7 telegram, computer input or output, chart, etc.), its date, the person(s) who authored it,  
8 the person(s) who signed it, the person(s) to whom it was addressed, the person(s) to  
9 whom it was sent, its general subject matter, its present location, and its present  
10 custodian. If any such document was but is no longer in your possession or subject to  
11 your control, state what disposition was made of it and explain the circumstances  
12 surrounding, and the authorization for, such disposition, and state the date or approximate  
13 date of such disposition.

14 7. The terms "identify" and "identity" with respect to any non-written  
15 communication means to state the identity of the natural person(s) making and receiving  
16 the communication, their respective principals or employers at the time of the  
17 communication, the date, manner and place of the communication, and the topic or  
18 subject matter of the communication.

19 8. The term to "state the basis" for an allegation, contention, conclusion,  
20 position or answer means: (a) to identify and specify the sources therefore; (b) to identify  
21 and specify all facts on which you rely or intend to rely in support of the allegation,  
22 contention, conclusion, position or answer; and (c) to set forth and explain the nature and  
23 application to the relevant facts of all pertinent legal theories upon which you rely for  
24 your knowledge, information and/or belief that there are good grounds to support such  
25 allegation, contention, conclusion, position or answer.

26



1 should information supplied in the responses prove to be incorrect or incomplete.

2 B. The response to each data request provided should first restate the question  
3 asked and also identify the person(s) supplying the information and the name of the  
4 witness or witnesses who will be prepared to testify concerning the matters contained in  
5 any response or document produced.

6 C. In answering these data requests, furnish all information that is available to  
7 you or may be reasonably ascertained by you, including information in the possession of  
8 any of your agents or attorneys, or otherwise subject to your knowledge, possession,  
9 custody or control.

10 D. If in answering these data requests you encounter any ambiguity in  
11 construing the request or a definition or instruction relevant to the inquiry contained  
12 within the request, set forth the matter deemed "ambiguous" and set forth the  
13 construction chosen or used in responding to the request.

14 E. If you object to any part of a request, answer all parts of such requests to  
15 which you do not object, and as to each part to which you do object, separately set forth  
16 the specific basis for the objection.

17 F. In the event you assert that the data requested is privileged, you should  
18 identify any such data and any supporting documents in your written response, by date,  
19 and provide a general description of its content. You should also identify all persons who  
20 participated in the preparation of the document and all persons, inside or outside Cox,  
21 who received a copy, read or examined any such document. In addition, you should  
22 describe, with particularity, the grounds upon which privilege is claimed.

23 G. In the event that you assert that the requested data are not relevant or  
24 material to any issue in the above-captioned matter, you should indicate in your written  
25 response to the specific basis for such assertion.

26

1 H. In the event you assert that the requested data are public information  
2 otherwise available to Qwest, you should identify the following in your written response:

- 3 1. The title or description of the data claimed to be public information;
- 4 2. The specific page and line number on which the requested material  
5 can be found;
- 6 3. The address of the office(s) and/or location(s) nearest downtown  
7 Denver where the document or file containing the requested material  
8 is maintained for public inspection.

9 I. In the event that you assert that the requested data are not available in the  
10 form requested, you should disclose the following in your written response thereto:

- 11 1. The form in which the requested data currently exists (identifying  
12 documents by title or description);
- 13 2. The earliest dates, time period, and location that representatives of  
14 Qwest may inspect Cox files, records or documents in which the  
15 requested data currently exist.

16 J. If any request calls for a document that has been destroyed, placed beyond  
17 your control, or otherwise disposed of, identify with specificity each such document and  
18 describe in detail any such destruction, placement or disposition.

### DATA REQUESTS

19 8-1. In answering this request, please review your response and supplemental  
20 response to Qwest Data Request No. 4-18. Please identify in detail and with  
21 particularity all of the reasons and factual bases that support your response and  
22 supplemental response to Qwest Data Request No. 4-18 and provide any  
23 supporting documentation. Identify whether or not your response and  
24 supplemental response to Qwest Data Request No. 4-18 is based solely upon  
25 your own personal opinion.

26 8-2. 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:

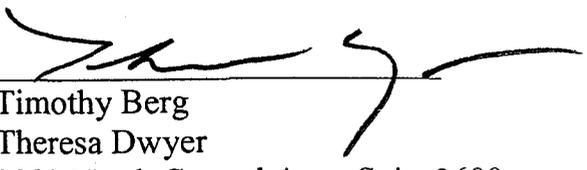
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- a. Cox primary residential telephone line;
- b. Cox additional residential telephone line (any line in addition to the primary line at a customer's location);
- c. Cox primary business telephone line;
- d. Cox additional business telephone line (any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

8-3. In answering this request, please review your response and supplemental response to Qwest Data Request No. 4-22. Please identify whether your non-telecommunications services (e.g., basic cable television service, broadband internet service, etc.) are priced above cost.

RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of December, 2004.

FENNEMORE CRAIG

By: 

Timothy Berg  
Theresa Dwyer  
3003 North Central Ave., Suite 2600  
Phoenix, Arizona 85012-2913  
(602) 916-5421

-and-  
Norman G. Curtright  
QWEST CORPORATION  
4041 N. Central Avenue, Suite 1100  
Phoenix, AZ 85012  
(602) 630-1182

*Attorneys for Qwest Corporation*

1 ORIGINAL +1 COPY mailed and e-mailed  
this 23<sup>rd</sup> day of December, 2004 to:

2 Michael W. Patten (mpatten@rhd-law.com)  
3 Roshka Heyman & DeWulf, PLC  
4 One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004

5 Mark A. DiNunzio (mark.dinunzio@cox.com)  
6 Cox Arizona Telcom, LLC  
20401 North 29<sup>th</sup> Avenue  
7 Phoenix, Arizona 85027

8 COPY of the foregoing mailed  
this 23<sup>rd</sup> day of December, 2004 to:

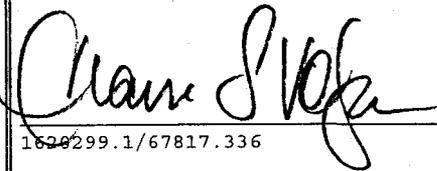
9 F. Wayne Lafferty  
10 Director  
11 Barrington-Wellesley Group  
2940 Cedar Ridge Drive  
McKinney, Texas 75070

12 Barrington-Wellesley Group  
13 2940 Cedar Ridge Drive  
McKinney, Texas 75070

14 COPY of the foregoing mailed  
15 this 23<sup>rd</sup> day of December, 2004 to:

16 Maureen A. Scott  
Legal Division  
17 ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
18 Phoenix, AZ 85007

19 Scott S. Wakefield, Chief Counsel  
Daniel W. Pozefsky, Esq.  
20 RUCO  
1110 West Washington, Suite 220  
21 Phoenix, AZ 85007

22  
23   
24 1629299.1/67817.336

25

26

# **EXHIBIT**

**E**

**Cox Arizona Telcom, L.L.C.'s  
Responses To Qwest's 8<sup>th</sup> Set Of Data Requests  
Docket No. T-01051B-03-0454  
January 5, 2005**

8.2 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.

**RESPONSE:** Cox objects to this request on the grounds that it is vague and ambiguous, overbroad, irrelevant and unduly burdensome.

**RESPONDENT:**

**Cox Arizona Telcom, L.L.C.'s  
Responses To Qwest's 8<sup>th</sup> Set Of Data Requests  
Docket No. T-01051B-03-0454  
January 5, 2005**

8.3 In answering this request, please review your response and supplemental response to Qwest Data Request No. 4-22. Please identify whether your non-telecommunications services (e.g., basic cable television service, broadband internet service, etc.) are priced above cost.

**RESPONSE:** Cox objects to this request on the grounds that it is vague and ambiguous, overbroad, irrelevant and unduly burdensome.

**RESPONDENT:**

# EXHIBIT

F

**WILSON, JILL**

---

**From:** WILSON, JILL on behalf of BERG, TIM  
**Sent:** Friday, January 07, 2005 2:37 PM  
**To:** 'mpatten@rhd-law.com'  
**Subject:** Docket No. T-01051B-03-0454 - Qwest Price Cap Plan

Dear Mike:

As you are aware, Administrative Law Judge Rodda issued a procedural order that encourages the parties to attempt to resolve discovery disputes before filing a Motion to Compel. I have received your client's January 5, 2005 responses to Qwest's sixth, seventh and eighth set of data requests. Unfortunately, Cox's objections to Qwest Data Requests Nos. 8.2 and 8.3 are unacceptable.

Qwest Data Request No. 8.2 specifically asks for the direct costs (both recurring and non-recurring) of 6 specific products, and is thus not vague or ambiguous. This information is relevant in order for Qwest to compare its own pricing structures with a competitor. Further, this information should be relatively easy to produce. Similarly, Qwest Data Request No. 8.3 specifically asks whether non-telecommunication services are priced above cost - the question is neither vague nor ambiguous. Qwest believes that this information is relevant in determining whether Qwest is at a competitive disadvantage, which is directly relevant in this docket. Again, this pricing information should be relatively easy to produce.

Please discuss these data requests with your client. Should Cox continue in its objections, Qwest is prepared to file a Motion to Compel for the information sought by these data requests. I am hopeful that we can avoid having to resort to such measures. Please respond within three calendar days of this e-mail. In the meantime, if you have any questions, please do not hesitate to contact me.

Tim

# EXHIBIT

# G

## WILSON, JILL

---

**From:** Michael Patten [mpatten@rhd-law.com]  
**Sent:** Monday, January 10, 2005 5:14 PM  
**To:** BERG, TIM  
**Subject:** RE: Docket No. T-01051B-03-0454 - Qwest Price Cap Plan

Tim,

Cox stands by its objections. For example, re 8.2, a single competitor's direct costs (whatever Qwest intends by that term) is irrelevant for a comparison to Qwest's own "pricing" structure or any other issue in this docket. Qwest certainly has access to Cox's (and any other CLEC's) pricing structure through the tariffs on file at the Commission. Moreover, re 8.3, the cost and pricing of Cox's non-telecommunications service is equally irrelevant to the Qwest's competitive zone proposal that is based on the existence of other telecommunications providers. That proposal notes only that the lack of flexible pricing in the face of other CLECs puts Qwest at a competitive disadvantage -- that is wholly unrelated to non-telecommunications services. Qwest has not sought any other relief to eliminate any other perceived competitive disadvantages.

There are many additional reasons that Cox stands by its objections. We are willing to listen to other rationales to overcome our objections, but, at this point, we have heard nothing to change our position.

Please contact me if you have further comments or questions.

Mike

-----Original Message-----

**From:** WILSON, JILL [mailto:JWILSON@FCLAW.COM] On Behalf Of BERG, TIM  
**Sent:** Friday, January 07, 2005 2:37 PM  
**To:** Michael Patten  
**Subject:** Docket No. T-01051B-03-0454 - Qwest Price Cap Plan

Dear Mike:

As you are aware, Administrative Law Judge Rodda issued a procedural order that encourages the parties to attempt to resolve discovery disputes before filing a Motion to Compel. I have received your client's January 5, 2005 responses to Qwest's sixth, seventh and eighth set of data requests. Unfortunately, Cox's objections to Qwest Data Requests Nos. 8.2 and 8.3 are unacceptable.

Qwest Data Request No. 8.2 specifically asks for the direct costs (both recurring and non-recurring) of 6 specific products, and is thus not vague or ambiguous. This information is relevant in order for Qwest to compare its own pricing structures with a competitor. Further, this information should be relatively easy to produce. Similarly, Qwest Data Request No. 8.3 specifically asks whether non-telecommunication services are priced above cost - the question is neither vague nor ambiguous. Qwest believes that this information is relevant in determining whether Qwest is at a competitive disadvantage, which is directly relevant in this docket. Again, this pricing information should be relatively easy to produce.

Please discuss these data requests with your client. Should Cox

continue in its objections, Qwest is prepared to file a Motion to Compel for the information sought by these data requests. I am hopeful that we can avoid having to resort to such measures. Please respond within three calendar days of this e-mail. In the meantime, if you have any questions, please do not hesitate to contact me.

Tim

The information contained in this message may be protected by the attorney-client privilege. Please immediately reply to the sender of this e-mail if you have received it in error, then delete it. Thank you.

For more information on Fennemore Craig, P.C., please visit us at [www.fennemorecraig.com](http://www.fennemorecraig.com).