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BEFORE THE ARIZONA CORPORATION COMMISSION

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2005 JAN 26 P 4: 34
AZ CORP COMMISSION
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Arizona Corporation Commission
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JAN 26 2005

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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

**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.

1 possible relevance of its overreaching data requests is misplaced.

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

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

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

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

1 discovery of smaller tenant lease terms, including rental rates. The Court of Appeals noted that the
2 smaller tenant lease terms were irrelevant to a valuation based on fair market rental value of a
3 major anchor tenant and, therefore, upheld the denial of discovery.

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

13 Request 8.3

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

17 Relief Requested

18 The Commission should deny Qwest's motion to compel.
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26 ¹ Moreover, Cox Telcom is not the entity that possesses the information sought by Request
27 No.8.3.

1 RESPECTFULLY SUBMITTED January 26, 2005.

2 COX ARIZONA TELCOM, LLC

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EXHIBIT

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF QWEST CORPORATION'S
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IN THE MATTER OF THE INVESTIGATION OF
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DIRECT TESTIMONY

OF

F. WAYNE LAFFERTY

ON BEHALF OF

COX ARIZONA TELCOM, L.L.C.

November 18, 2004

(CONFIDENTIAL VERSION)

1 reclassify competitive zones as non-competitive. However, this control would only
2 provide prospective relief and would not monitor Qwest's performance during the time a
3 zone was deemed competitive. Re-regulation could also be disruptive to customers,
4 especially if Qwest is forced to increase rates to eliminate discriminatory situations.
5

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

8 A. As proposed, Qwest would enjoy significantly less oversight than its competitors.
9 Competitors are required to file tariffs specifying the maximum allowable rate.⁴⁴ Their
10 rates must not be less than their total service long-run incremental cost of providing the
11 service. Cross subsidization between a competitor's various services is also prohibited.
12 Changes to competitors' prices can only be made if the resulting price is below the
13 maximum tariff published rate and above the cost based price floor. Increases above the
14 competitor's maximum tariff price must be submitted to the Commission for approval.⁴⁵
15

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

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

⁴⁴ Commission Rule R14-2-1109.

⁴⁵ Commission Rule R14-2-1110.