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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

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JEFF HATCH-MILLER, Chairman
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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

PROCEDURAL ORDER

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.

1
2 On December 8, 2004, Cox Telecom responded to Qwest Data Request No. 4.22 as follows:

3 Cox objects to this request on the grounds that it is vague
4 and ambiguous (for example, as to what is meant by
5 "standalone basis" or "direct costs"). Notwithstanding
6 those objections and without waiving same, A.A.C. R14-2-
7 1109.C states, in part, that a competitive
8 telecommunications service shall not be subsidized by a
9 noncompetitive telecommunications service. Cox's
10 telecommunications services are priced in accordance with
11 applicable law, such as A.A.C. R14-2-1109 and A.R.S. §
12 40-334.

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

9 Cox objects to this request on the grounds that it is vague
10 and ambiguous (for example, as to what is meant by
11 "standalone basis" or "direct costs"). Notwithstanding
12 those objections and without waiving same, Cox responds
13 that Cox's telecommunications services are priced above
14 Cox's direct costs.

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

14 Qwest's Data Request No. 8.2 states:

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

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

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

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

27 Qwest argues that it is entitled to the information sought in Data Requests 8.2 and 8.3 because
28 the information sought is relevant to these proceedings, and the data requests are clear and reasonably

1 calculated to lead to admissible evidence. Qwest explains that it is interested in whether Cox offers
2 any of its services (cable TV, telephone or internet) below costs to its customers and is subsidizing
3 those services with revenues from other above-cost services. Qwest states that the information will
4 be used to support Qwest's position that Qwest's services should not be subjected to a service-by-
5 service imputation test, as that represents less pricing flexibility than Qwest's competitors. Qwest
6 claims that Cox Telecom cannot raise the issue of cross-subsidization and then limit Qwest's ability
7 to determine how much of a problem cross-subsidization is for Cox.

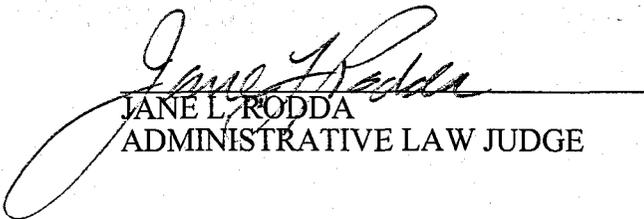
8 Cox Telecom argues that the information Qwest seeks through Data Requests 8.2 and 8.3 is
9 not relevant to the issues raised in Qwest's Renewed Price Cap Plan, as Qwest is trying to obtain Cox
10 Telecom pricing information in the context of a Qwest rate case. Cox is concerned that Qwest's
11 proposed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

22 We agree with Cox Telecom that the cost information sought in Qwest Date Requests 8.2 and
23 8.3 is not reasonably calculated to the discovery of admissible evidence. Mr. Lafferty's testimony
24 raises the issue of whether cross subsidization prohibitions would apply equally to Qwest and its
25 competitors under Qwest's proposed renewed price cap plan. The question is fair, reasonable and
26 necessary to evaluate Qwest's proposals in this proceeding. By raising the issue, Cox Telecom did
27 not open the door to subject itself to discovery of its highly sensitive cost information. Cox
28 Telecom's costs of services or its compliance with Commission rules are not at issue in this

1 proceeding.

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

4 DATED this 17th day of February, 2005.

5
6 
7 JANE L. RODDA
8 ADMINISTRATIVE LAW JUDGE

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

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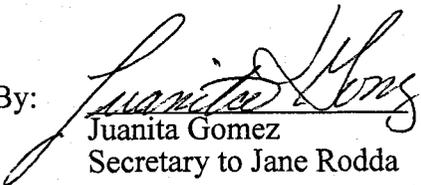
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