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BEFORE THE ARIZONA CORPORATION COMMISSION

31EX

2002 AUG 22 A 10:37

WILLIAM A. MUNDELL
Chairman

JIM IRVIN
Commissioner

MARC SPITZER
Commissioner

Arizona Corporation Commission
AZ CORP COMMISSION DOCUMENT CONTROL

DOCKETED

NOV - 4 2004

DOCKETED BY
CKW

AZ CORP COMMISSION
DOCUMENT CONTROL

2004 NOV - 4 P 4:23

RECEIVED

IN THE MATTER OF THE APPLICATION OF ACCIPITER COMMUNICATIONS, INC., TO EXTEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY IN MARICOPA COUNTY	DOCKET NO. T-02847A-02- <u>0641</u> APPLICATION
--------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------

INTRODUCTION

Pursuant to the provisions of A.R.S. §§ 40-281 *et seq.*, and A.A.C. R14-2-502(A), Accipiter Communications, Inc., ("Accipiter" or the "Company"), hereby petitions the Arizona Corporation Commission ("Commission") for an order extending the Company's Certificate of Convenience and Necessity ("CC&N") in Maricopa County to include that portion of the proposed master-planned development known as Lakeland Village/White Peak Ranch (the "Extension Area") which is not already included within the Company's existing CC&N. Although the requested Extension Area is included on the service area maps of Qwest Corporation ("Qwest"), Qwest has no telecommunications facilities and no customers within the Extension Area. Thus, Accipiter requests that the Commission order the modification of Qwest's service area maps to remove the Extension Area. Further, Accipiter requests that the Commission authorize the Company to charge those rates and charges in the Extension Area that are contained in the Company's tariffs on file with the Commission. This Application is supported by the following facts and information:

Snell & Wilmer
 LLP
 LAW OFFICES
 One Arizona Center, 400 E. Van Buren
 Phoenix, Arizona 85004-2202
 (602) 382-6000

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SECTION I

Pursuant to a CC&N granted by the Commission in Decision No. 59346 (*Docket No. U-2847-95-026*) dated October 11, 1995, Accipiter provides local exchange carrier services to approximately 78 customers with approximately 164 access lines in portions of Maricopa and Yavapai Counties, including Castle Hot Springs and Lake Pleasant Regional Park.

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SECTION II

Lakeland Village/White Peak Ranch is a multi-phased, master planned development that will be located southeast of Lake Pleasant Regional Park. The majority of the Lakeland Village/White Peak Ranch development is located within Accipiter's existing CC&N, and the Extension Area is contiguous to the southern boundary of the Company's existing CC&N. With this application, Accipiter seeks to extend its existing CC&N to include the entire development so that all residents of Lakeland Village/White Peak Ranch can receive local telecommunications service from a single provider. A map depicting the requested Extension Area is attached hereto as Exhibit "A" and incorporated herein by this reference. Specifically, Accipiter seeks to extend its CC&N to include the following areas:

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Township 5 North, Range 1 West, G&SRB&M

- All of Section 25.
- All of Section 26, except Maricopa County Assessors Office Parcel Nos. 503-89-008-L and 503-89-008-M as depicted on the map attached hereto as Exhibit "B" and incorporated herein by this reference.
- All of Section 35, except Lot 1 which is owned by the Arizona State Land Department as depicted on the map attached hereto as Exhibit "C" and incorporated herein by this reference.

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Township 5 North, Range 1 East, G&SRB&M

- The west ½ of the west ½ of Section 30.

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SECTION VI

Accipiter is an established local exchange carrier in Arizona, with demonstrated financial stability. Financial data for Accipiter is contained in the Company's annual reports on file with the Commission. As a rural local exchange carrier, Accipiter has access to low-cost loans through the U.S. Department of Agriculture, Rural Utilities Service, which will accrue significant benefits to the Company's customers.

SECTION VII

With plans for the Lakeland Village/White Peak Ranch development moving forward expeditiously, a public convenience and necessity exists for public telephone service in the requested Extension Area. Accipiter has the requisite managerial expertise, technical expertise and financial wherewithal to provide a superior level of service to customers in the Extension Area.

SECTION VIII

The requested service area is located entirely within the incorporated limits of the City of Peoria ("Peoria"). Although Accipiter has previously contacted Peoria regarding a municipal franchise for those portions of the Company's existing CC&N which lie within the city limits, Peoria has no current process in place for granting franchises. If and when Peoria adopts a process for granting franchises, Accipiter will apply for a franchise to use the public rights-of-way. No other city, county or state agency approvals are required.

SECTION IX

Accipiter is providing a copy of this Application to Qwest simultaneous with this filing. The Company will provide such other notice of this Application as the Commission may order.

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SECTION X

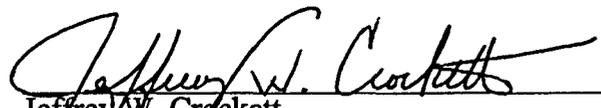
All correspondence regarding this Application should be directed to the Company's attorney as follows:

Jeffrey W. Crockett
SNELL & WILMER
One Arizona Center
Phoenix, Arizona 85004-2202
Phone: (602) 382-6234
Fax: (602) 382-6070
E-mail: jcrockett@swlaw.com

CONCLUSION

WHEREFORE, Accipiter Communications, Inc., respectfully requests that the Commission expeditiously set this Application for hearing and issue its Order: (i) authorizing the extension of Accipiter's CC&N to include the above-described Extension Area within Maricopa County; (ii) ordering the modification of Qwest's service area maps to remove the Extension Area; and (iii) authorizing Accipiter to impose those rates and charges in the Extension Area that are contained in the Company's tariffs on file with the Commission.

RESPECTFULLY SUBMITTED this 22nd day of August, 2002.



Jeffrey W. Crockett
SNELL & WILMER
One Arizona Center
Phoenix, Arizona 85004
(602) 382-6234
Attorneys for Accipiter Communications, Inc.

ORIGINAL and ten (10) copies
of the foregoing filed this 22nd day
of August, 2002, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Snell & Wilmer

LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

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COPY mailed this 22nd day
of August, 2002, to:

Timothy Berg, Esq.
FENNEMORE CRAIG PC
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012
Attorneys for Qwest Corporation



Crocketj\PHX\1215280.1

EXHIBIT A

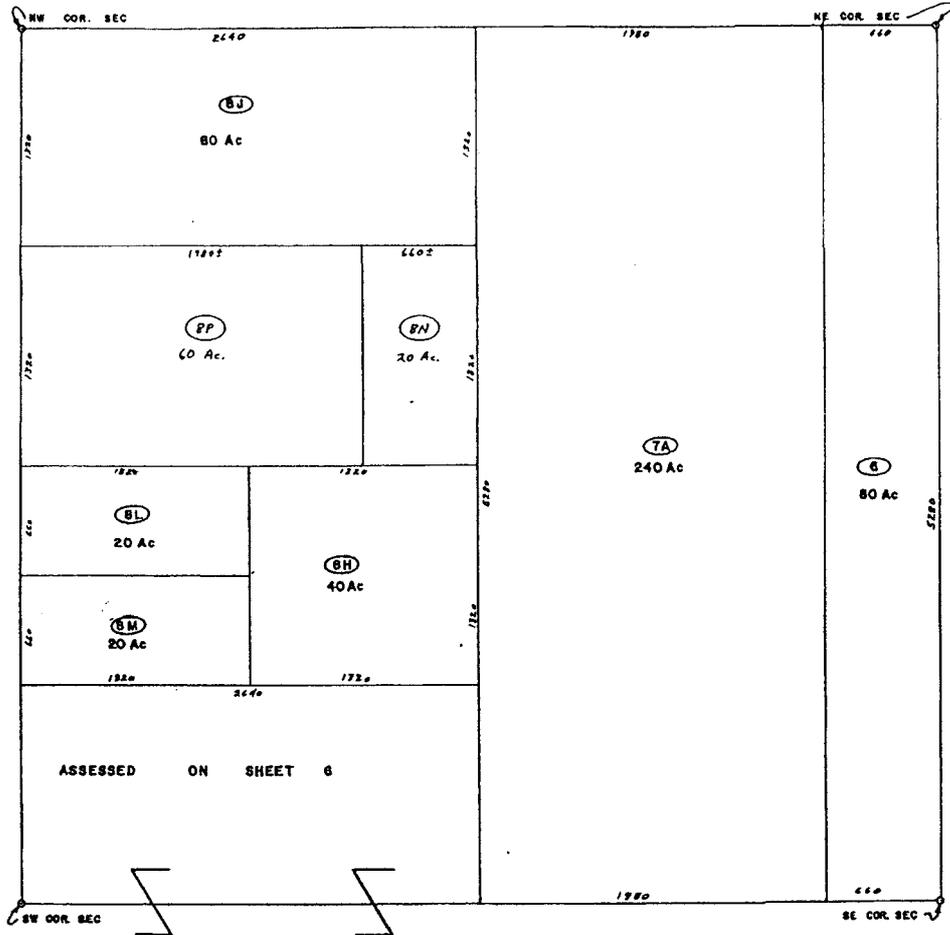
EXHIBIT B

SEC. 26 T. 5 N R. 1 W

BOOK 50
MAP 88
SHEET 5

PARCEL NO. 503-89-008-L

PARCEL NO. 503-89-008-M

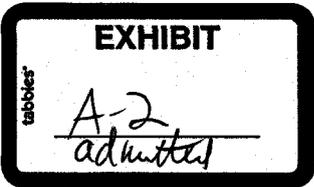


MARICOPA COUNTY ASSESSORS OFFICE
SCALE 1" = 400'

REVISIONS:

No.	Date	By	Description
1	11-1-89	...	...
2	11-1-89	...	...
3	11-1-89	...	...
4	11-1-89	...	...
5	11-1-89	...	...
6	11-1-89	...	...
7	11-1-89	...	...
8	11-1-89	...	...
9	11-1-89	...	...
10	11-1-89	...	...

EXHIBIT C



BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

COMMISSIONERS

MARC SPITZER-Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

2004 MAY 12 A 11:49

AZ CORP COMMISSION
DOCUMENT CONTROL

Table with 2 columns: Case description (IN THE MATTER OF THE APPLICATION OF ACCIPITER COMMUNICATIONS, INC., TO EXTEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY IN MARICOPA COUNTY) and Docket information (DOCKET NO. T-02847A-02-0641, NOTICE OF AMENDMENT OF THE LEGAL DESCRIPTION FOR THE REQUESTED EXTENSION AREA IN ACCIPITER'S APPLICATION TO EXTEND ITS CC&N).

On August 22, 2002, Accipiter Communications, Inc., ("Accipiter" or the "Company"), filed an application ("Application") with the Arizona Corporation Commission ("Commission") seeking an extension of the Company's Certificate of Convenience and Necessity ("CC&N") in Maricopa County to include that portion of the proposed master-planned development known as Vistancia¹ (the "Extension Area") which is not already included within the Company's existing CC&N. Although the requested Extension Area is currently included in the service area maps of Qwest Corporation ("Qwest"), Qwest has no telecommunications facilities and no customers within the Extension Area. On September 24, 2003, Qwest filed a Motion to Intervene in the docket, and Qwest's motion was granted in a procedural order dated April 1, 2004. On December 22, 2003, Qwest filed its response ("Qwest Response") to Accipiter's application, stating that Qwest met with Accipiter and agreed to transfer to Accipiter the following four sections of Qwest's service area to Accipiter, as described in Exhibit A to the Qwest Response: Sections 25,

¹ The Vistancia development was referred to in Accipiter's Application as Lakeland Village/White Peak Ranch, which was an earlier name for the project. However, the name of the development is "Vistancia."

Snell & Wilmer LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

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1 26 and 35 in Township 5 North, Range 1 West, and Section 30 in Township 5 North, Range 1
2 East.

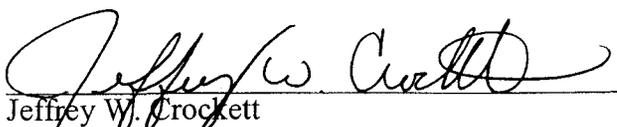
3 In its Application, Accipiter had excluded from the requested Extension Area three parcels
4 within Sections 26 and 35, Township 5 North, Range 1 West, and a large part of Section 30,
5 Township 5 North, Range 1 East. However, Accipiter now seeks to amend its Application and
6 the requested Extension Area to include all of Sections 26 and 35, Township 5 North, Range 1
7 West, and all of Section 30, Township 5 North, Range 1 East, so that all parts of Qwest's service
8 area within the requested Extension Area will be included in Accipiter's CC&N. A revised map
9 of the requested Extension Area is attached hereto as Exhibit "A."

10 Vistancia is located in the City of Peoria in the newly emerging growth area of the
11 northwest Phoenix metropolitan area. Vistancia consists of 7,100 acres, and at build-out will
12 include more than 17,000 housing units, 820 acres dedicated to commercial, mixed-use and
13 business park facilities, school sites, golf courses, parks and other amenities. The majority of the
14 Vistancia development is already located within Accipiter's CC&N, and the Extension Area is
15 contiguous to the southern boundary of Accipiter's existing CC&N. With its Application,
16 Accipiter seeks to extend its CC&N to include the entire development so that all residents of
17 Vistancia will have access to a single incumbent local exchange carrier.

18 Vistancia opened for business in February 2004, and by the end of April 2004, sales had
19 already exceeded 350 homes according to a press release issued by the developers. A number of
20 developers have completed model homes, and sales are brisk. Clearly, there is a present need for
21 telecommunications services within Vistancia, and the public convenience and necessity will be
22 served by the extension of Accipiter's CC&N to include the requested Extension Area.
23 Accordingly, Accipiter requests that the Commission proceed with the expeditious processing of
24 its Application.
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RESPECTFULLY SUBMITTED this 12th day of May, 2004.



Jeffrey W. Crockett
SNELL & WILMER
One Arizona Center
Phoenix, Arizona 85004
(602) 382-6234
Attorneys for Accipiter Communications, Inc.

ORIGINAL and thirteen (13) copies
of the foregoing filed this 12th day
of May, 2004, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COPY mailed this 12th day
of May, 2004, to:

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Ernest Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Timothy Berg, Esq.
FENNEMORE CRAIG PC
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012
Attorneys for Qwest Corporation

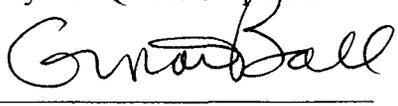
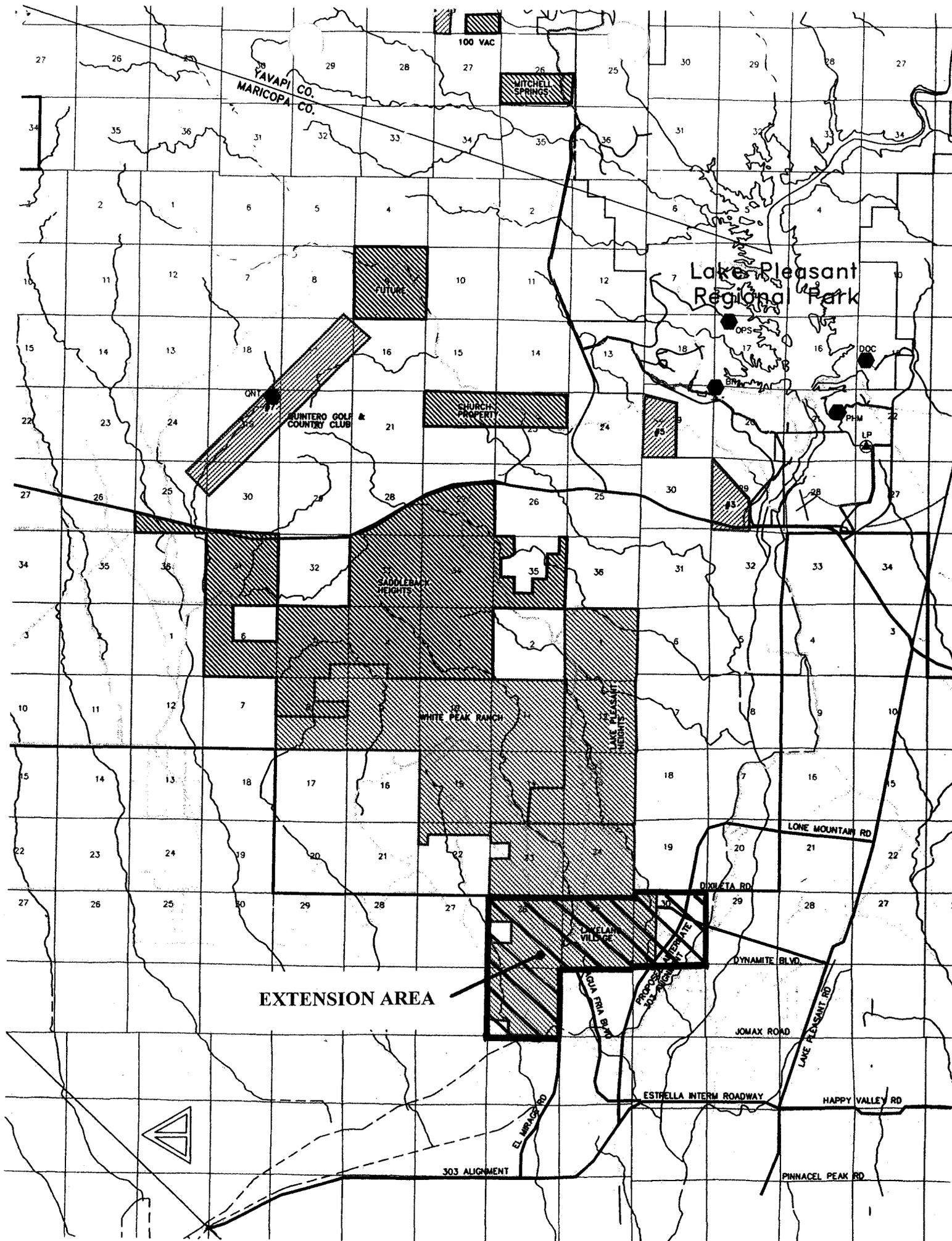


EXHIBIT A



YAVAPI CO.
MARICOPA CO.

100 VAC

MITCHELL SPRINGS

Lake Pleasant Regional Park

BUNTERO GOLF & COUNTRY CLUB

CHURCH PROPERTY

SADDLEBACK HEIGHTS

WHITE PEAK RANCH

LAKE PLEASANT HEIGHTS

DINELAN VILLAGE

EXTENSION AREA

303 ALIGNMENT

EL PASO RD

AGUA FRIA BLVD

PROSPERITY BLVD

DIXIE TA RD

DYNAMITE BLVD

JOMAX ROAD

ESTRELLA INTERM ROADWAY

HAPPY VALLEY RD

PINNACEL PEAK RD

LONE MOUNTAIN RD

LAKE PLEASANT RD



1 26 and 35 in Township 5 North, Range 1 West, and Section 30 in Township 5 North, Range 1
2 East.

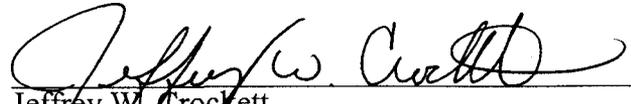
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RESPECTFULLY SUBMITTED this 12th day of May, 2004.



Jeffrey W. Crockett
SNELL & WILMER
One Arizona Center
Phoenix, Arizona 85004
(602) 382-6234
Attorneys for Accipiter Communications, Inc.

ORIGINAL and thirteen (13) copies
of the foregoing filed this 12th day
of May, 2004, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COPY mailed this 12th day
of May, 2004, to:

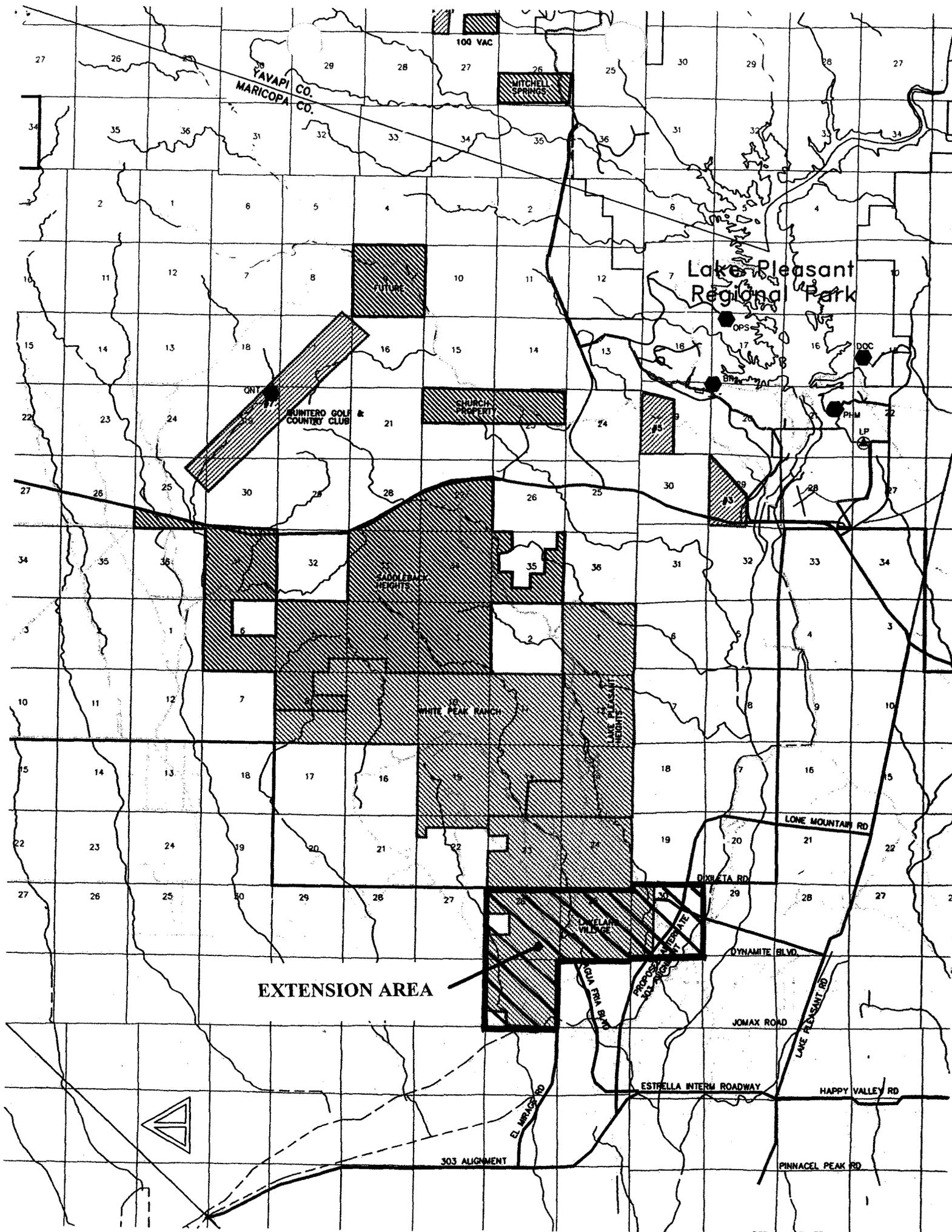
Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Ernest Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Timothy Berg, Esq.
FENNEMORE CRAIG PC
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012
Attorneys for Qwest Corporation



EXHIBIT A



YAVAPI CO.
MARICOPA CO.

100 VAC

MITCHELL SPRINGS

Lake Pleasant
Regional Park

HUNTERD GOLF COUNTRY CLUB

FUTURE

CHURCH PROPERTY

SADDLEBACK HEIGHTS

WHITE PEAK RANCH

SHELBY VILLAGE

EXTENSION AREA

303 ALIGNMENT

LONE MOUNTAIN RD

DIABLO RD

DYNAMITE BLVD

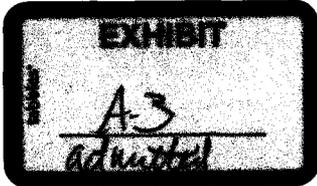
JOMAX ROAD

ESTRELLA INTERM ROADWAY

HAPPY VALLEY RD

PINNACEL PEAK RD





BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2004 OCT 19 P 4:06

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

AZ CORP COMMISSION
DOCUMENT CONTROL

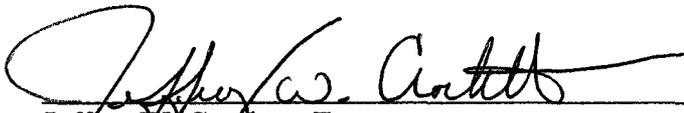
IN THE MATTER OF THE APPLICATION OF
ACCIPITER COMMUNICATIONS, INC. TO
EXTEND ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY IN MARICOPA COUNTY

DOCKET NO. T-02847A-02-0641
NOTICE OF FILING PROOF OF
PUBLICATION

In accordance with the Procedural Order dated September 17, 2004, in this docket, Accipiter Communications published notice of the above-captioned application and the hearing to be held regarding the same in *The Arizona Republic* on October 1, 2004. An Affidavit of Publication from *The Arizona Republic* is attached hereto as Attachment 1. In addition, Accipiter mailed a copy of the notice via first class mail to each of the Company's customers on September 30, 2004. A copy of a letter from Charles Gowder, President and CEO of Accipiter Communications, attesting to the customer notification is attached hereto as Attachment 2.

RESPECTFULLY submitted this 19th day of October, 2004.

SNELL & WILMER


Jeffrey W. Crockett, Esq.
One Arizona Center
Phoenix, Arizona 85004-2202
Attorneys for Accipiter Communications, Inc.

ORIGINAL and thirteen (13) copies
filed with Docket Control this 19th
day of October, 2004.

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

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1 A COPY of the foregoing was
2 hand-delivered this 19th day of
3 October, 2004, to:

4 Dwight D. Nodes
5 Assistant Chief Administrative Law Judge
6 Hearing Division
7 ARIZONA CORPORATION COMMISSION
8 1200 West Washington Street
9 Phoenix, Arizona 85007

10 Christopher Kempley, Chief Counsel
11 Legal Division
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
14 Phoenix, Arizona 85007

15 Ernest Johnson, Director
16 Utilities Division
17 ARIZONA CORPORATION COMMISSION
18 1200 West Washington Street
19 Phoenix, Arizona 85007

20 COPY mailed this 19th day of October,
21 2004, to:

22 Timothy Berg
23 FENNEMORE CRAIG, P.C.
24 3003 North Central Ave., Suite 2600
25 Phoenix, Arizona 85012-2913

26 
Crocketj\PHX\1583951.1

ATTACHMENT 1

PUBLIC NOTICE OF HEARING ON APPLICATION BY ACCIPITER COMMUNICATIONS, INC. FOR EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE IN MARICOPA COUNTY, ARIZONA (DOCKET NO. T-02847A-02-0641)

On August 22, 2002, as amended on May 12, 2004, Accipiter Communications, Inc. ("Accipiter") filed an application in the above-captioned docket seeking to extend its Certificate of Convenience and Necessity ("CC&N") to provide local exchange telecommunications service to an area in northwest Maricopa County, Arizona. The requested CC&N extension area is for a development in Peoria, Arizona known as Vistancia.

The application is available for inspection during regular business hours at the Commission's offices at 1200 West Washington Street, Phoenix, Arizona 85007, and at the offices of Accipiter Communications, Inc., 238 West Lone Cactus Drive, Suite 100, Phoenix, Arizona 85027.

The Commission will hold a hearing in this matter on October 21, 2004, at 10:00 a.m., or as soon thereafter as is practical, at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona. As a property owner or customer you may have the right to intervene in the proceeding. If you do not want to intervene, you may appear at the hearing and make a statement on your own behalf. Intervention shall be permitted to any person entitled by law to intervene and having a direct and substantial interest in this matter. Persons desiring to intervene must file a written notice to intervene with the Commission, which motion should be sent to the Applicant or their counsel and to all parties of record, and which, at a minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervenor and of any party upon whom service of documents is to be made if different than the intervenor.
2. A short statement of the proposed intervenor's interest in the proceeding (e.g. a customer of the Applicant, a shareholder or member of the Applicant, etc.).

A statement certifying that a copy of the motion to intervene has been mailed to the company or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before October 15, 2004. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. However failure to intervene will not preclude any customer from appearing at the hearing and making a statement on such customer's own behalf. However, you will not receive any further notice of the proceeding unless requested by you.

If you have any questions or concerns about this Application or have any objections to its approval, or wish to make a statement in support of it, you may write the Consumer Services Section of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007, or call 1-800-222-7000 or appear at the hearing and make comment.

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format by contacting the ADA Coordinator, voice phone number 602/542-3831. Requests should be made as early as possible to allow time to arrange the accommodation.

Mass October 1, 2004

THE ARIZONA REPUBLIC

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

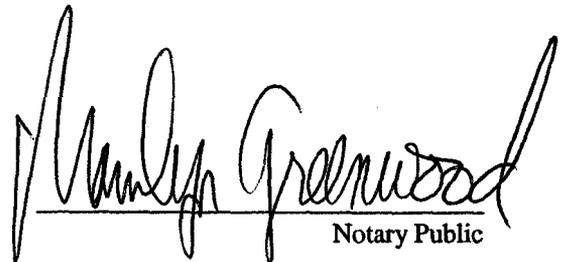
TOM BIANCO, being first duly sworn, upon oath deposes and says: That he is the advertising manager of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, a newspaper of general circulation in the State of Arizona, and that the copy hereto attached is a true copy of the advertisement published in the said paper, named below, on the dates as indicated below:

The Arizona Republic

October 1, 2004



Sworn to before me this
18TH day of
October A.D. 2004


Notary Public

ATTACHMENT 2

September 30, 2004

Jeffrey W. Crockett, Esq.
SNELL & WILMER
One Arizona Center
400 East Van Buren
Phoenix, Arizona 85004-2202

This letter is written to attest that Accipiter Communications, Inc. mailed all customers "Public Notice of Hearing on application by Accipiter Communications, Inc. for extension of its Certificate of Convenience and Necessity to provide local exchange Telecommunications service in Maricopa County, Arizona" (Docket No. T-02847A-02-0641). The mailing was sent by first class mail and sent on September 30, 2004.

Questions may be directed to Charles Gowder, 928.501.5000.

Charles Gowder
President/CEO
Accipiter Communications, Inc.

602.382.-6070

COPY

EXHIBIT
A-4
Admitted

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2003 DEC 22 P 4:31

- 1 MARC SPITZER
Chairman
- 2 WILLIAM A. MUNDELL
Commissioner
- 3 MIKE GLEASON
Commissioner
- 4 JEFF HATCH-MILLER
Commissioner
- 5 KRISTIN K. MAYES
Commissioner

Arizona Corporation Commission

DOCKETED

DEC 22 2003

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY 

IN THE MATTER OF THE APPLICATION
OF ACCIPITER COMMUNICATIONS, INC.
TO EXTEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
MARICOPA COUNTY

Docket No. T-02847A-02-0641

QWEST CORPORATION'S RESPONSE
TO ACCIPITER'S APPLICATION

Qwest Corporation ("Qwest") hereby files this Response to the Accipiter Communications, Inc. ("Accipiter") Application in the above-captioned proceeding.

On August 22, 2002, Accipiter filed with the Arizona Corporation Commission ("Commission") an Application to: (1) extend its Certificate of Convenience and Necessity ("CC&N") into areas of Maricopa County, (2) to delete that area from Qwest's Metropolitan Exchange Service area, and (3) authorizing Accipitor to charge its existing rates and charges in the new service territory.

Upon receipt of the Application, Qwest moved to intervene in this docket and confirmed that four sections of the area requested to be added to Accipiter's certificate were located within the service areas of Qwest. Accipitor did not allege that Qwest was unwilling or unable to provide service to customers in those four sections.

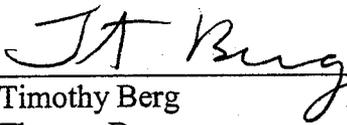
Subsequently, Qwest and Accipiter met to resolve their issues raised by their Application.

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Qwest has agreed to transfer four (4) sections (described on Exhibit A hereto) of its service area to Accipiter. Qwest believes that this transfer should be approved by the Commission.

RESPECTFULLY SUBMITTED this 22nd day of December, 2003.

FENNEMORE CRAIG, P.C.

By 
Timothy Berg
Theresa Dwyer
3003 North Central, Suite 2600
Phoenix, Arizona 85012
Attorneys for Qwest Corporation

ORIGINAL +13 copies filed this 22nd day of December, 2003:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, AZ

COPY hand-delivered this 22nd day of December, 2003:

Dwight Nodès
Arizona Corporation Commission
Hearing Division
1200 West Washington
Phoenix, AZ

COPY mailed this 22nd day of December, 2003:

Jeffrey W. Crockett, Esq.
SNELL & WILMER
One Arizona Center
Phoenix, Arizona 85004-2202

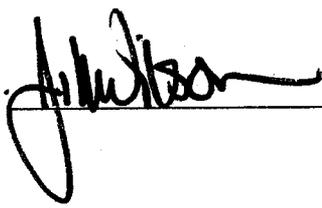
By: 

EXHIBIT A

Legal Description

Township 5 North, Range 1 West – Sections 25, 26, and 35 - Township 5 North, Range 1 East –
Section 30

EXHIBIT
A-5
[Signature]

Crockett, Jeff

From: VOLPE, CLAIRE [CVOLPE@FCLAW.com] on behalf of DWYER, THERESA [TDWYER@FCLAW.com]
Sent: Wednesday, October 20, 2004 3:20 PM
To: dnodes@cc.state.az.us; Crockett, Jeff; ckempley@cc.state.az.us; ejohnson@cc.state.az.us; mscott@cc.state.az.us
Cc: norm.curtright@qwest.com; monica.lucktritz@qwest.com
Subject: Accipiter CC&N, ACC Docket No. T-02847A-02-0641

Please be advised that Qwest Corporation is in agreement with the Staff Report issued on September 7, 2004 in the above-referenced matter. Therefore, Qwest will not be appearing at the hearing in this docket set for October 21, 2004.

If you have any questions or concerns, please feel free to contact me. Thank you.

Theresa Dwyer
FENNEMORE CRAIG
3003 N. Central Ave., Ste. 2600
602-916-5396
fax: 602-916-5596
tdwyer@fclaw.com

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, please visit us at <http://www.fennemorecraig.com>.



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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

Arizona Corporation Commission

DOCKETED

MAY 28 2002

DOCKETED BY *[Signature]*

IN THE MATTER OF ACCIPITER
COMMUNICATIONS INCORPORATED -
MOTION TO AMEND DECISION NO. 59346

DOCKET NO. T-02847A-95-0026

DECISION NO. 64843

ORDER

Open Meeting
May 14 and 15, 2002
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On May 10, 2001, Accipiter Communications Incorporated ("ACI") filed a Motion to Amend Decision No. 59346 (October 11, 1995).
2. ACI's filing requests that Decision No. 59346 be amended such that both existing and new customers within its service area will have extended area service ("EAS" or "local calling") with the Phoenix metropolitan calling area.
3. Decision No. 59346 addressed ACI's January 18, 1995 filing with the Commission for a Certificate of Convenience and Necessity ("CC&N") to provide telecommunications service in portions of Maricopa and Yavapai Counties in Arizona.
4. In 1995, U S WEST Communications, Inc. ("U S WEST") now known as Qwest Corporation ("Qwest"), was serving a small number of customers in the territory ACI was requesting a CC&N to serve (30 access lines at the time Decision No. 59346 was issued). These customers were being served out of U S WEST's Agua Fria and Circle City offices and these customers had two way local calling with the Phoenix metropolitan calling area.

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1 5. During the proceedings, U S WEST and ACI reached an agreement stating that
2 customers within what is now ACI's service territory would be transferred from U S WEST to ACI.
3 At the time ACI's CC&N was granted, a portion of the service territory was within the city limits of
4 the City of Peoria.

5 6. In the ACI CC&N proceeding, Staff supported the continuation of EAS between existing
6 customers in ACI's proposed service territory and the Phoenix metro calling area. ACI opposed
7 continuation of EAS between its proposed service territory and the Phoenix metropolitan calling area.
8 In the final Settlement Agreement, the parties agreed that EAS would be discontinued, but that for the
9 first five years of ACI providing service, the Company would offer discounts on local service rates
10 to existing customers.

11 7. ACI indicates that it believes EAS should now be offered between its service territory
12 and the Phoenix metro calling area for a number of reasons. ACI believes that its service territory has
13 an increasingly strong identification with the Phoenix metro calling area.

14 8. Since 1995, the City of Peoria has annexed a sizable portion of ACI's service territory,
15 significantly expanding the portion of ACI's service territory which is within the city boundaries. ACI
16 anticipates further expansions of the City of Peoria within the Company's service territory.

17 9. ACI states that it is having difficulty competing with alternative communication
18 providers, such as wireless companies and EAS would enable ACI's lines to compete more effectively.
19 ACI anticipates that such growth would strengthen ACI's financial condition. ACI has indicated that
20 the growth in access lines within its service territory has lagged the growth level expected at the time
21 its CC&N was granted. As of June 30, 2001, ACI was serving 187 access lines within its service
22 territory.

23 10. Further, ACI believes that EAS between its service territory and the Phoenix metro
24 calling area is reasonable given the previous history of EAS within its service territory.

25 11. Regarding costs, ACI has indicated that it is not requesting any cost consideration in this
26 proceeding and neither is Qwest, the local exchange company serving the Phoenix metro calling area.
27 ACI also states that it will not require additional facilities to offer EAS service to its customers.

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ORDER

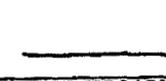
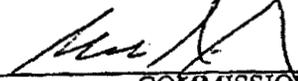
THEREFORE, IT IS ORDERED that the filing be and hereby is approved.

IT IS FURTHER ORDERED that the Phoenix local calling area shall be expanded to include Accipiter's service area within 120 days of this Order.

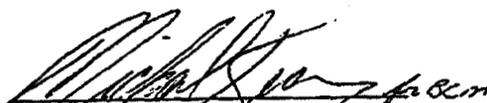
IT IS FURTHER ORDERED that Accipiter shall change the name of its "Lake Pleasant" rate center to "Phoenix 928" in the local exchange routing guide within 120 days of this Order.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

		
CHAIRMAN	COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 28th day of MAY, 2002.


BRIAN C. McNEIL
Executive Secretary

DISSENT: 
EGJ:RGG:hmJFW

Page 5

Docket No. T-02847A-95-0026

1 SERVICE LIST FOR: Accipiter Communications Incorporated
DOCKET NO. U-2847-95-026

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Chief Counsel
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1200 West Washington
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Decision No. 64843

S-1

COPY

MEMORANDUM

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2004 SEP - 7 A 11: 26

AZ CORP COMMISSION
DOCUMENT CONTROL

TO: Docket Control

FROM: Ernest G. Johnson
Director
Utilities Division

EA for EGJ

DATE: September 7, 2004

RE: STAFF REPORT FOR ACCIPITER COMMUNICATIONS, INC.'S APPLICATION
TO EXTEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY IN
MARICOPA COUNTY (DOCKET NO. T-02847A-02-0641)

Attached is the Staff Report for Accipiter Communications, Inc.'s Application to extend its Certificate of Convenience and Necessity in Maricopa County. Staff recommends approval of the Application with conditions.

EGJ:RLB:red

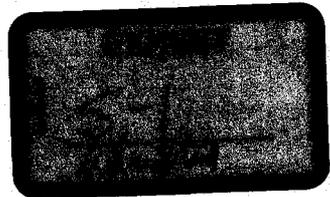
Originator: Richard Boyles

Arizona Corporation Commission

DOCKETED

SEP - 7 2004

DOCKETED BY	<i>CR</i>
-------------	-----------



Service List for: ACCIPITER COMMUNICATIONS, INC.
Docket No. T-02847A-02-0641

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Ms. Lyn Farmer, Chief Hearing Officer
Hearing Division
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**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

ACCIPITER COMMUNICATIONS, INC.

DOCKET NO. T-02847A-02-0641

**APPLICATION TO EXTEND ITS CERTIFICATE OF CONVENIENCE AND
NECESSITY IN MARICOPA COUNTY**

AUGUST 2004

STAFF ACKNOWLEDGMENT

The Staff Report for Accipiter Communications, Inc. (Docket No. T-02847A-02-0641) was the responsibility of the Staff member listed below. Richard Boyles was responsible for the review and analysis of the Company's Application.



Richard Boyles
Utilities Engineer—Telecommunications

**EXECUTIVE SUMMARY
ACCIPITER COMMUNICATIONS, INC.
DOCKET NO. T-02847A-02-0641**

Accipiter Communications, Inc. ("Accipiter") was granted a Certificate of Convenience and Necessity ("CC&N") by the Commission in Decision No. 59346 dated October 11, 1995, to provide local exchange carrier services in portions of Maricopa and Yavapai Counties, including Castle Hot Springs and Lake Pleasant Regional Park. At the time of the filing of this Application, Accipiter was providing services to approximately 78 customers with approximately 164 access lines.

Accipiter is seeking to extend its CC&N in Maricopa County to include that portion of the proposed master-planned development known as Lakeland Village/White Peak Ranch ("Extension Area")¹ which is not already included within its existing CC&N. The requested extension area is included in the Phoenix Metro service area map of Qwest Corporation ("Qwest"). Accipiter asserts, and Qwest agrees, that Qwest has no telecommunications facilities and no customers within the extension area.

Subsequent to Accipiter's Application, Qwest and Accipiter met to resolve their issues raised by the Application. Qwest has agreed to transfer the four (4) sections of its service area containing the extension area to Accipiter. Further, Qwest believes this transfer should be approved by the Commission.

Finally, Accipiter requests that the Commission authorize Accipiter to charge those rates and charges in the extension area that are contained in its tariffs on file with the Commission.

Staff determined that Cox Communications ("Cox") is presently serving customers in the extension area and has correctly assigned numbers from the 623 area code of the Phoenix local calling area. To insure these customers are not impacted by the transfer of the four sections from Qwest to Accipiter, Staff recommends that Accipiter create a new exchange for the four sections and that the new exchange remain in the 623 NPA and the Phoenix rate center. Therefore, Staff recommends that Accipiter's Application be approved with conditions.

¹ The Extension Area has subsequently become known as "Vistancia".

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B. STAFF RECOMMENDATIONS AND THE PUBLIC INTEREST.....	5
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I. Procedural History

On August 22, 2002, Accipiter Communications, Inc. ("Accipiter" or "the Company") filed an Application requesting extension of its Certificate of Convenience and Necessity ("CC&N") in Maricopa County.

On August 29, 2002, Qwest Corporation ("Qwest") filed a Motion for Leave to Intervene.

On December 17, 2002, Accipiter filed a letter stating it agreed "that the applicable time frames for determining sufficiency and for processing Accipiter's application as set forth in A.A.C. R14-2-510(E) would be tolled until such time as Accipiter and Qwest have had an opportunity to conclude their discussions, and if necessary, Accipiter has notified Commission staff that Accipiter intends to proceed with its application."

On December 22, 2003, Qwest filed a Response to Accipiter's Application ("Response"). In its Response, Qwest stated that it agreed to transfer the four sections which comprise the Extension Area to Accipiter.

On February 19, 2004, Qwest filed a letter requesting that Qwest's Motion to Intervene be granted.

On April 1, 2004, the Motion to Intervene filed by Qwest was granted.

On May 12, 2004, Accipiter filed an Amendment² to its Application which stated, in part, that the Company was amending the legal description of the requested extension area and requested "that the Commission proceed with the expeditious processing of its Application".

On June 10, 2004, Staff filed a Letter of Sufficiency on Accipiter's Application.

II. Background

Accipiter was granted a Certificate of Convenience and Necessity ("CC&N") by the Commission in Decision No. 59346 dated October 11, 1995, to provide local exchange carrier services in portions of Maricopa and Yavapai Counties, including Castle Hot Springs and Lake Pleasant Regional Park. At the time of the filing of this Application, Accipiter was providing services in its certificated area to approximately 78 customers with approximately 164 access lines.

Accipiter is seeking to extend its CC&N in Maricopa County to include that portion of the proposed master-planned development known as Lakeland Village/White Peak Ranch³ which is not already included within its existing CC&N (the "Extension Area"). That portion of the development is included in Qwest's Phoenix Metro service area map.

² Notice of Amendment of the Legal Description for the Requested Extension Area in Accipiter's Application to Extend Its CC&N ("Amendment").

³ The master-planned development has subsequently become known as "Vistancia".

The Vistancia⁴ development is located in the northwest portion of the Phoenix metropolitan area and is within the City of Peoria. "Vistancia consists of 7,100 acres, and at build-out will include more than 17,000 housing units, 820 acres dedicated to commercial, mixed use business park facilities, school sites, golf courses, parks and other amenities."⁵ The majority of the development is located within Accipiter's certificated service area; however, as already discussed, a portion lies within the four (4) sections of Qwest's service area which are the subject of the Accipiter's Application.

Accipiter asserts, and Qwest agrees, that Qwest has no telecommunications facilities and no customers within the extension area.

Subsequent to Accipiter's Application, Qwest and Accipiter met to resolve their issues raised by the Application. Qwest has agreed to transfer the four (4) sections of its service area containing the extension area to Accipiter.

III. Position of the Parties

A. Accipiter

Accipiter states that it has been contacted by Shea Homes, the developer of Vistancia who expressed a desire that the entire development be served by a single local exchange carrier. Accipiter further asserts that a single provider would eliminate customer confusion and inconvenience that would likely occur from bifurcating the development and that it would be more cost effective for the Company to provide service to the extension area since it would be providing service to the majority of the development.⁶

In its response to data request RLB 2-6, the Company states that public reports for the development would need to differentiate between the area that was served by Accipiter and what was served by Qwest, construction agreements would need to be negotiated by developers with two ILECs instead of one and that there may be a needless duplication of telecommunications infrastructure to serve the development.

The Company states that it intends to install state-of-the-art telecommunications facilities. For example, in its response to RLB 1-4, the Company asserts that it constructs facilities that employ "fiber-to-the-curb design combined with state-of-the-art carrier electronics capable of delivering a wide array of telephony and broadband services." Further, in a letter to Shea Homes dated June 8, 2002, The Company characterizes its network as one that combines state-of-the-art digital electronics with fiber-to-the curb connectivity and that is capable of delivering the full range of traditional telephone voice and high speed services as well as a variety of new broadband and video products.

⁴ Vistancia was referred to in the Company's initial Application as Lakeland Village/White Peak Ranch.

⁵ Amendment, Page 2, lines 11-13.

⁶ See Application, Section III, page 3.

Finally, the Company believes that its access to low-cost loans through the U.S. Department of Agriculture, Rural Utilities Service, would provide benefits to its customers. For the above stated reasons, Accipiter believes the public interest will be served by approval of its Application.

B. Qwest

In response to Staff discovery, Qwest stated that it did not have facilities of any type in the Extension Area⁷. Qwest also states that it would provide service to the Extension Area should Accipiter's Application not be approved and that it would provide service in the same manner as it does in the rest of its serving area⁸. Qwest also responded that it had engaged in discussion with Shea Homes regarding the provision of service in the Extension Area⁹. Qwest's initial position was that it intended to provide service to the area. However, Qwest subsequently revised its position and in its response to STF 01-002 states "there is a qualified, certified carrier that desires to provide service within this area and Qwest has made a business decision to agree to Accipiter's request."

On December 23, 2003, Qwest reiterated its position in its Response to Accipiter's Application. The Response, in general, states that 1) Qwest moved to intervene in this matter, 2) the four sections to be added to Accipiter's CC&N were located in Qwest service area, 3) Accipiter did not allege that Qwest was unwilling or unable to provide service to the area, 4) Qwest and Accipiter met to resolve issues raised by the Application and 5) Qwest had agreed to transfer the four sections of its service area to Accipiter. Qwest further states its belief that the transfer should be approved by the Commission.

IV. Staff Analysis and Recommendations

A. Staff Analysis

The Extension Area is physically located in the 623 NPA portion of the Phoenix rate center and is included in the Metro Phoenix local calling area. Although Accipiter's service area is located in the 928 NPA, Accipiter's exchange has two-way extended area service with Phoenix and thus, is part of the Metro Phoenix local calling area.

During its review of Accipiter's Application, Staff became aware that a competitive carrier, Cox Arizona Telecom, L.L.C. ("Cox"), was providing service in the Extension Area. Cox is assigning numbers from its available 623 numbering resources which is appropriate for the area and consistent with its obligations under federal and state rules.

A transfer of the Extension Area from Qwest to Accipiter raises rate center and numbering issues. To address these issues Cox and Accipiter, since they would both have

7 Response to STF 01-004.

8 Response to STF 01-002 and STF 01-003.

9 Response to STF 01-008.

customers in the Extension Area should the Application be approved, were asked to comment on four alternatives for the Extension Area. These were:

- a) The area code be changed to 928 and the rate center be Lake Pleasant.
- b) The area code remain 623 and a new rate center and exchange in the 623 NPA be established by Accipiter.
- c) The area code remain 623 and Accipiter establish a new exchange in the 623 NPA of the Phoenix rate center.
- d) Some other alternative.

Accipiter expressed a slight preference for "option b" but indicated it has the ability to implement any of the options. Accipiter also indicated that it thought "option b" was less likely to cause customer confusion. Accipiter offered no alternative for "option d".

Cox did not recommend a particular option. In regards to "option a", Cox expressed concern that existing Cox customers would be forced to take a new number in the 928 area code, absent some form of grandfathering of the existing numbers assigned to customers. With regards to "option b", Cox notes issues surrounding porting of numbers since numbering rules do not allow porting between rate centers. Cox did not identify particular issues with "option c" or make a recommendation for "option d".

Staff believes "option a" is problematic due to potential issues involving number changes, grandfathering of numbers and related customer confusion and/or costs. Staff believes "option b" is problematic due to issues relating to inefficient use of numbers (office codes are rate center specific), inability to port or pool numbers across rate centers and customer confusion (for example a number in the 623 NPA of Phoenix rate center could not be ported to the Accipiter 623 NPA rate center). Staff believes that "option c" would be the least problematic since there would appear to be no numbering issues and it should be less likely to cause customer confusion. In response to a subsequent data request, the Company stated its preference that the area remain in the 623 NPA, a new exchange be created in the Phoenix rate center as stated in "option c"¹⁰.

Accipiter and Qwest are both incumbent local exchange carriers and would need to build facilities to serve the Extension Area. Qwest would extend facilities from adjacent sections where the company is currently providing service. Similarly, Accipiter would extend its facilities from adjacent sections in its service area. It is Staff's understanding that end-user customers would not be subject to construction charges from either company. Accipiter's proposed fiber-to-the-curb network may be robust in terms of potential future service offerings. Staff is not aware of the type of network Qwest might construct since a design for the Extension Area had not yet been performed¹¹. The scope of local calling area would be the same with either service provider.

¹⁰ Response to RLB 3-10.

¹¹ Response to STF 3-001.

Within the Phoenix Metro area customers have a variety of service providers to choose from; incumbent LEC, competitive LEC, and wireless for example. While having two incumbent local exchange carriers providing service to different portions of the overall development might not necessarily be more complex or confusing from a customer perspective, Staff concurs with the Company that having one incumbent local exchange carrier could provide more clarity for customers.

Accipiter states that over a five year period the Company would invest approximately 5.1 million dollars to place new facilities in the Extension Area. The Company further states that it has RUS funds currently available for this construction. In addition, the Company states that it could begin offering service to customers within 120 days of a Commission Decision approving the transfer. This is comparable to the 180 days allowed by Qwest's Tariff.

B. Staff Recommendations and the Public Interest

In support of its Application, Accipiter believes that the following factors should be considered by the Commission: 1) having one ILEC with carrier-of-last-resort obligations serving the entire master planned development will lead to less customer confusion, 2) benefits derived from its state-of-the-art telecommunications facilities, 3) that it may be more cost effective for the company to be the service provider and 4) Accipiter's access to federally-guaranteed loans. Together, the Company believes that these are sufficient reasons to find the public interest will be served by grant of the requested CC&N transfer. Further, Qwest has agreed to the proposed transfer of the Extension Area to Accipiter. While Staff does not oppose the transfer, Staff believes it must also take into consideration the impact such a grant would have on Cox customers who are presently receiving service in the Extension Area.

In weighing Public Interest, Staff believes there are factors which relate to numbering that should be implemented as a condition of approval of the transfer of the Extension Area. Leaving the 623 area code and Phoenix rate center boundaries as they currently exist minimizes impacts on customers, continues to promote efficient use of numbering resources and does not reduce the opportunity for competition through the use of number portability. For these reasons, Staff recommends that transfer of the Extension Area from Qwest to Accipiter be approved subject to the following conditions.

- 1) Accipiter establish a new exchange for the Extension Area.
- 2) The new exchange be made part of the Phoenix rate center.
- 3) The area code for the Extension Area remain 623.
- 4) Accipiter request its NPA 623 numbers for the Extension Area at the thousands-block level from the national pooling administrator.

In addition, Staff makes the following additional recommendations.

- 5) Accipiter and Qwest update their respective Tariffs within thirty (30) days of a Commission Decision to reflect the transfer of service area.

- 6) Accipiter charge its existing rates and charges in the Extension Area until further Order of the Commission.

V. Conclusion

Staff is not aware of any customer opposition to Accipiter's Application. Staff recommends that the Commission find that Accipiter's Application to Extend Its Certificate of Convenience and Necessity is in the public interest. Staff further recommends that the Accipiter's Application to Extend Its Certificate of Convenience and Necessity be approved subject to the conditions discussed above.

Snell & Wilmer

L.L.P.
LAW OFFICES

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Phoenix, Arizona 85004-2202
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November 14, 2002

PHOENIX, ARIZONA

TUCSON, ARIZONA

IRVINE, CALIFORNIA

SALT LAKE CITY, UTAH

DENVER, COLORADO

LAS VEGAS, NEVADA

HAND DELIVERED

Maureen A. Scott
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

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LEGAL DIV.
ARIZ. CORPORATION COMMISSION

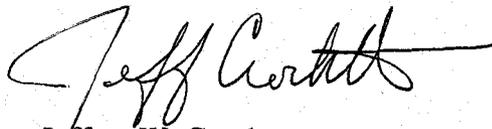
Re: Accipiter Communications' Responses to the Commission Staff's First Set of Data Requests (RLB 1-1 through RLB 1-12) in Docket No. T-02847A-02-0641

Dear Maureen:

Enclosed is an original and one copy of Accipiter Communications' responses to Commission Staff's First Set of Data Requests (RLB 1-1 through RLB 1-12) in Docket No. T-02847A-02-0641. In accordance with your letter dated August 29, 2002, I have also provided two copies to Richard Boyles.

Very truly yours,

SNELL & WILMER



Jeffrey W. Crockett

JWC:gdb

Enclosures

cc (with enclosures): Rob Richards
Richard Boyles (2 sets of enclosures)

1267358.1

**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S FIRST SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
AUGUST 29, 2002**

RLB 1-1

Has Accipiter engaged in any discussions with QWEST regarding the proposed "Extension Area" prior to this filing? If yes, what was the nature of those discussions and provide copies of any notes or other records produced as a result of the discussions.

Response.

Yes. Accipiter had two meetings and several telephonic discussions involving QWEST earlier this year regarding the provisioning of service within the proposed extension area, and the new master-planned community generally. However, those discussions did not ultimately progress toward an agreement regarding the provisioning of service within the proposed extension area. On November 1, 2002, Accipiter met again with representatives of QWEST to discuss a mutually acceptable agreement regarding the provisioning of service within the proposed extension area. The parties have agreed to meet again within the very near future to continue their discussions. Accipiter does not have meeting notes from the meetings and discussions with Qwest.

Prepared by: Rob Richards, President
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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S FIRST SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
AUGUST 29, 2002**

RLB-2 **What are the reasons for parcel numbers 503-89-008L and 503-89-008M being excluded from the proposed "Extension Area"?**

Response.

Parcels 503-89-008L and 502-89-008M were not included in the proposed extension area because the parcels are not included within the proposed Lakeland Village master-planned development. Accipiter has not contacted the owners of the two parcels regarding this filing, nor have the owners requested inclusion of their parcels in the proposed extension area. However, Accipiter would consider including the two parcels as part of the extension area.

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S FIRST SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
AUGUST 29, 2002**

RLB 1-3 **What are the reasons for Lot 1 of T5N, R1W, Section 35 being excluded from the proposed "Extension Area"?**

Response.

Lot 1 of T5N, R1W, Section 35 was not included in the proposed extension area because the property is not included within the proposed Lakeland Village master-planned development. Accipiter has not contacted the Arizona State Land Department regarding this filing, nor has the Department requested inclusion of the property in the proposed extension area. However, Accipiter would consider including the property as part of the extension area.

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
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DOCKET NO. T-02847A-02-0641
AUGUST 29, 2002**

RLB 1-4 Describe with specificity the manner in which the proposed "Extension Area" would be served by Accipiter (i.e. technology, facility routes, capacities, advanced service capability, etc.).

Response.

Accipiter will construct facilities consistent with its existing network which employs a fiber-to-the-curb design combined with state-of-the-art carrier electronics capable of delivering a wide array of telephony and broadband services.

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S FIRST SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
AUGUST 29, 2002**

RLB 1-5 **If the Company's Application were to be approved, would its existing 928 NPA numbering resources be utilized in the "Extension Area"?**

Response.

Yes. Accipiter would utilize the 928 NPA in the proposed extension area. As of September 17, 2000, Accipiter and QWEST have completed "EAS" or "Local Calling" with the Phoenix metropolitan calling area.

However, Accipiter would not oppose and has the ability to serve the extension area utilizing a 623 NPA. (*see* Decision No. 64843, Docket No. T-02847A-95-0026).

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S FIRST SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
AUGUST 29, 2002**

RLB 1-6 What is the development schedule for White Peak Ranch?

Response.

The White Peak Ranch property is located within the existing CC&N of Accipiter. Accipiter understands that construction on the White Peak Ranch property will begin after development of the Lakeland Village property. Preliminary estimates by the developer are that both the Lakeland Village and White Peak Ranch properties will be built-out within seven to ten years.

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S FIRST SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
AUGUST 29, 2002**

RLB 1-7 What is the development schedule for Lakeland Village?

Response.

Preliminary estimates by the developer are that construction on the Lakeland Village property will begin in 2003 with built-out to be completed in seven to ten years.

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S FIRST SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
AUGUST 29, 2002**

RLB 1-8

Please identify the name of the cable company that will be providing service to the master-planned community. Is it anticipated that the cable company will offer voice and data services in addition to its video offering?

Response.

Accipiter believes that Cox Communications will be the cable provider within the master-planned community. Accipiter anticipates that Cox would offer data and video services. Accipiter does not know whether Cox is certificated to provide competitive voice services in the master-planned community, or whether Cox would offer voice services.

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S FIRST SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
AUGUST 29, 2002**

RLB 1-9

If the Company's Application were to be approved, does the Company anticipate filing a Financing Application in order to construct the new facilities? If yes, what is the anticipated level of new debt to be acquired?

Response.

Accipiter currently uses the U.S. Department of Agriculture, Rural Utilities Service, for funding of necessary debt. Accipiter anticipates the need for an additional \$15 to \$20 million in borrowing over the next several years in order to complete construction of the facilities necessary to serve the new master-planned community, including the proposed extension area. If required, Accipiter will file a financing application with the Commission.

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S FIRST SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
AUGUST 29, 2002**

**RLB 1-10 Provide a map showing the location of roads and individual lots for
Lakeland Village.**

Response.

Such detailed maps are not currently available to Accipiter.

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S FIRST SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
AUGUST 29, 2002**

RLB 1-11 Is Accipiter's switch located at the switch center identified on the map that was provided with the Company's Application? If yes, how will the switch be interconnected to the distribution facilities in the master-planned community? If no, please indicate its location.

Response.

Yes. Accipiter Communications' switch is located at the switch centered identified on the map. In order to serve the new master-planned community, Accipiter will expand existing transport facilities between the switch and the Accipiter's existing distribution facilities.

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S FIRST SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
AUGUST 29, 2002**

RLB 1-12 Has Accipiter been engaged in any discussions with Shea Homes regarding the provision of service by Accipiter in the proposed "Extension Area"? If yes, what were the issues, including any costs attributable to the developer that were discussed and the outcome of these discussions?

Response.

A meeting was held with Shea Homes in June 2002 to discuss Accipiter's services. Please see the attached letter dated June 8, 2002, to Byron Augustine of Shea Homes.

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1243318.1



8 June 2002

Byron Augustine
Director Information Technology
Shea Homes
8800 North Gainey Center Drive
Suite 350
Scottsdale, Arizona 85258

Dear Mr. Augustine:

I would first like to thank you for taking time to meet and discuss the Shea Homes Lakeland Village and White Peaks Ranch projects. I greatly appreciated the opportunity to learn more about these exciting projects.

As a full service local exchange carrier Accipiter offers a complete menu of telecommunications products and services to both business and residential subscribers. Accipiter's network combining state-of-the-art digital electronics with "fiber to the curb" connectivity to subscribers is not only capable of delivering the full compliment of traditional POTS (plain old telephone services) and various high capacity special circuits (T1's - DS3's - Frame Relay - etc) it is robust enough to deliver virtually any of the PANS (pretty amazing new stuff) services such as variety of broadband (DSL) and video products. Looking to the future - with the almost exponential advances being made in "fiber-to-the-home" technology - Accipiter is actively reviewing the feasibility of deploying a total fiber-optic network throughout the newly developing portions of the company's service territory. Irrespective of the design specifics - Accipiter will continue to expand and operate its telecommunications network ever mindful of the need to deliver quality dependable services today with the capability of offering the services of the future.

During our discussion I outlined our corporate strategy whereby Accipiter will build and operate a state-of-the-art network - be the direct provider of telecommunications services - and partner with other ventures to offer enhanced services - such as video and broadband - over the Company's network. We believe such a strategy is the very best way to guarantee that subscribers have access to a wide variety of content at the best possible value. This strategy also insures that subscribers - both business and residential - have the greatest flexibility to choose the services they want and need and enables. This "open-door/open-pipe" strategy will allow subscribes to choose from a wide range of products and services and will enable them to gain access new products and services from this rapidly changing marketplace and not be dependant on Accipiter having to make major changes to the network.

Accipiter understands the critical nature of not only creating an environment that will allow subscribers the utmost in choice and flexibility – but one that will greatly simplify their lives. We believe we can enhance Shea's ability to market homes and plan on being at the table with the residents of Lakeland Village and White Peaks Ranch from day one. Accipiter will assist Shea's sales staff outline and explain the various telecommunications, broadband and video services available – will immediately assign a telephone number and will monitor the construction process to insure that all the services chosen by the new residents are up and working prior to moving day.

In addition to the myriad service choices subscribers will have numerous options regarding billing and conducting business with Accipiter. The subscriber will choose whether they want a consolidated or separate bill for each of the various service components. Subscribers will also have the choice of viewing and paying their bill on line should they wish even to the point of eliminating the paper version – we will just send them an email each cycle informing them their bill is available on line. Also, subscribers will be able to order and/or change services online as well as the old fashion way – over-the-phone.

I thank you again for the opportunity to meet – I look forward to working with Shea Homes to bring exciting new technologies and services to Lakeland Village and White Peaks Ranch. Please don't hesitate to contact me should you have any questions.

Sincerely,

Rob Richards
President & General Manager

Snell & Wilmer
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June 7, 2004

Jeffrey W. Crockett (602) 382-6234
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JUN - 9 2004

LEGAL DIV.
ARIZ CORPORATION COMMISSION

Maureen A. Scott
Attorney, Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007-2927

Re: Accipiter Communications, Inc.'s Responses to Staff's Second Set of Data Requests (Docket No. T-02847A-02-0641)

Dear Maureen:

Pursuant to your letter dated May 28, 2004, enclosed is one copy of Accipiter Communications, Inc.'s responses to Commission Staff's Second Set of Data Requests (2-1 through 2-7) in the above-referenced docket. I have also mailed copies to Richard Boyles and David Ronald.

Very truly yours,

SNELL & WILMER

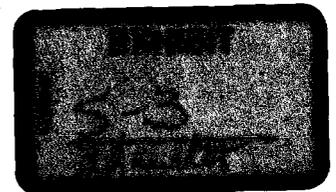

Jeffrey W. Crockett

JWC:gdb

Enclosures

cc (with enclosures): Richard Boyles, Utilities Division
David Ronald, Legal Division

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S SECOND SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
MAY 28, 2004**

RLB 2-1

It is Staff's belief and understanding that Cox Communications has provided service to certain customers located in some parts of the Company's requested CC&N extension area (T-5-N, R-1-W, Sections 25, 26 and 35 and T-5-N, R-1-E, Section 30). It is also Staff's belief and understanding that Cox is assigning numbers from the 623 NPA of the Phoenix rate center as the area is currently part of Qwest's Metro Phoenix Exchange. Please respond to the following questions accordingly.

Is it also the Company's understanding that Cox has placed telecommunications facilities and begun offering service in all, or some part, of the requested CC&N extension area utilizing numbers from the 623 NPA? If no, what is the company's basis for its response?

Response.

Yes, Accipiter Communications believes that Cox has begun placing telecommunications facilities in some parts of Accipiter's requested CC&N extension area. Accipiter does not know whether Cox has begun offering telephone service in the requested CC&N extension area, or whether Cox is utilizing numbers from the 623 NPA of the Phoenix rate center.

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S SECOND SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
MAY 28, 2004**

RLB 2-2

Should the Company's Application be approved, which of the following scenarios for the extension area does the Company recommend be part of any such Order:

- (a) The area code be changed to 928 and the rate center be Lake Pleasant.
- (b) The area code remain 623 and a new rate center and exchange in the 623 NPA be established by Accipiter.
- (c) The area code remain 623 and Accipiter establish a new exchange in the 623 NPA of the Phoenix rate center.
- (d) Some other alternative (please explain with specificity).

The Company's response to the above should include, but not be limited to, any impacts on its, or another carrier's, ability to utilize numbers through number portability and number pooling and any benefits derived from such by current or future customers in the extension area.

Response.

Accipiter Communications could implement any of options (a), (b) or (c) above, and will comply with whatever option the Commission orders. Although Accipiter is largely indifferent to the options above, the Company has a slight preference for option (b) above because it would not require changes to existing area code boundaries, and because the Company believes that it is less likely to cause customer confusion. Accipiter does not believe that any of the options would have a negative impact on the ability of Accipiter or other carriers to port numbers. Accipiter does not know whether the selection of one option over another would have an impact on number pooling.

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S SECOND SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
MAY 28, 2004**

RLB 2-3 **What are the "pros and cons" for the alternatives not recommended by the company in its response to RLB-2.2?**

Response.

Accipiter Communications has the ability to implement any of the options listed in RLB 2-2, and the Company is largely indifferent to the options, although the Company expressed a preference for option (b) in its response to RLB 2-2. The Company's switch can accommodate any of the three options, and switch programming costs are not likely to differ significantly between options.

One "con" associated with option (a) is that the area code boundary maps would need to be changed. Another "con" is that option (a) might lead to some customer confusion. For example, some people may believe that a call to a 928 area code at Vistancia is a toll call, when in fact, it would not be.

Accipiter views option (c) as similar to option (b).

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S SECOND SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
MAY 28, 2004**

RLB 2-4 **How would current and future Cox customers be impacted, either positively or negatively, by the Company's response to RLB-2.2?**

Response.

Accipiter does not have sufficient information to determine whether the selection of option (b) would have specific positive or negative impacts on current and future Cox customers. However, the Company believes that the selection of option (b) would have similar impacts on Cox and Accipiter.

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S SECOND SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
MAY 28, 2004**

RLB 2-5 Please explain with specificity why it would be in the public interest to adopt the Company's recommendation as stated in its response to RLB-2.2

Response.

The selection of option (b) will not require changes to the existing area code boundaries. In addition, by retaining the 623 area code, Accipiter believes that less customer confusion would result, although the Company would not anticipate significant customer confusion under any of the options. Certainly, Accipiter will comply with whatever area code boundaries and rate centers the Commission may order.

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S SECOND SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
MAY 28, 2004**

RLB 2-6

Using the Phoenix Metro area as an example, there are instances where multiple incumbent local exchange carriers provide service within the same city, multiple carriers provide service within a neighborhood or area codes differ on either side of a street. What is unique about the requested extension area that would support a public interest finding in favor of the proposed transfer of service territory from Qwest to Accipiter.

Response.

While there may be limited instances where two incumbent local exchange carriers ("ILECs") serve within the same city in the Phoenix metro area, Accipiter is not aware of any master planned development in the Phoenix metro area which is split between two ILECs. Certainly, there are instances in the Phoenix metro area where a competitive local exchange carrier ("CLEC") is providing service in a neighborhood served by Qwest (the ILEC), or where a customer on one side of the street has Qwest and a customer on the other side of the street has a CLEC, such as Cox. This competition was made possible by the Telecommunications Act of 1996.

However, there can be only one ILEC serving a geographic area, and that ILEC has carrier-of-last-resort obligations. Currently, the carrier-of-last-resort obligations in the Vistancia master planned community are split between Accipiter and Qwest (although Qwest has no facilities within the development). Qwest has responded in this docket that it does not oppose the transfer of that portion of its CC&N within the development to Accipiter, because the largest portion of Vistancia is already in Accipiter's CC&N, and because Accipiter has existing facilities in the vicinity. Accipiter believes that two different ILECs serving different parts of the same master planned development will lead to customer confusion. Public reports for the development would need to differentiate between subdivisions served by Accipiter and those served by Qwest. Developers would need to negotiate construction agreements with two ILECs, instead of one. There may be needless duplication of telecommunications infrastructure to serve the development.

As set forth in Accipiter's application, the Company intends to install state-of-the-art telecommunications facilities. In addition, the Company

**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S SECOND SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
MAY 28, 2004**

has access to low cost construction funds through federally-guaranteed loans. For all of these reasons, the public interest will be served by the grant of the requested CC&N transfer from Qwest to Accipiter.

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**RESPONSES OF ACCIPITER COMMUNICATIONS, INC., TO THE
ARIZONA CORPORATION COMMISSION UTILITIES DIVISION
STAFF'S SECOND SET OF DATA REQUESTS IN
DOCKET NO. T-02847A-02-0641
MAY 28, 2004**

RLB 2-7 Is the Company's switch currently equipped for, or capable of, number portability and number pooling? If yes, is the Company currently doing either or both? If no, what is the estimated cost and timeframe necessary to implement these capabilities? Also, has the Company ever received a bona-fide request for number portability (identify if affirmative)?

Response.

Accipiter's switch is currently equipped for, and capable of, both number portability and number pooling. However, Accipiter is not currently implementing number portability or number pooling because the Company has not received a bona-fide request.

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AUG 20 2004

LEGAL DIV.
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August 20, 2004

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AUG 20 2004

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LEGAL DIV.
ARIZ. CORPORATION COMMISSION

Re: Accipiter Communications, Inc.'s Responses to Staff's Third Set of Data Requests (Docket No. T-02847A-02-0641)

Dear Maureen:

Pursuant to your letter dated August 5, 2004, enclosed is one copy of Accipiter Communications, Inc.'s responses to Commission Staff's Third Set of Data Requests (RLB 3-1 through 3-9) in the above-referenced docket. I have also hand-delivered copies to Richard Boyles and David Ronald.

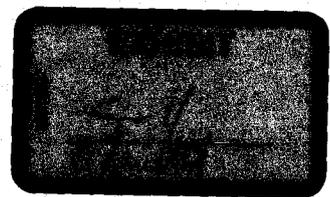
Very truly yours,

SNELL & WILMER


Jeffrey W. Crockett

JWC:gdb
Enclosures
cc (with enclosures): Richard Boyles, Utilities Division
David Ronald, Legal Division

Crocketj\PHX\1524739.1



**ARIZONA CORPORATION COMMISSION STAFF'S
THIRD SET OF DATA REQUESTS
REGARDING THE APPLICATION OF
ACCIPITER COMMUNICATIONS, INC.
DOCKET NO. T-02847A-02-0641
AUGUST 5, 2004**

RLB 3-1 What is the estimated investment the Company believes is necessary to place facilities in the four sections it is requesting be transferred from Qwest ("the Extension Area") to Accipiter?

Response: Accipiter estimates investment to place facilities in the proposed four sections over the initial five-year period to be approximately \$5.14M.

Prepared by: Mr. Jim Weimer
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ARIZONA CORPORATION COMMISSION STAFF'S
THIRD SET OF DATA REQUESTS
REGARDING THE APPLICATION OF
ACCIPITER COMMUNICATIONS, INC.
DOCKET NO. T-02847A-02-0641
AUGUST 5, 2004

RLB 3-2 Does the Company have the ability to fund the amount identified in the Company's response to RLB 3-1 without new financing? If yes, please describe how?

Response: Yes. Accipiter has previously secured a B-Loan through Rural Utilities Service ("RUS"), an agency of the United States Department of Agriculture, for the initial five-year construction period. The RUS B-Loan funds are currently available to Accipiter upon request.

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**ARIZONA CORPORATION COMMISSION STAFF'S
THIRD SET OF DATA REQUESTS
REGARDING THE APPLICATION OF
ACCIPITER COMMUNICATIONS, INC.
DOCKET NO. T-02847A-02-0641
AUGUST 5, 2004**

- RLB 3-3 If the Company's response to RLB 3-2 is no, please indicate:
- a) The proposed source of the new financing.
 - b) Whether preliminary approval of a loan sufficient to cover the amount stated in the Company's response to RLB 3-1 has been received from the lender?
 - c) When a financing application would be submitted to the Commission for approval.
 - d) How long after Commission approval of a financing application would it take for funds to be made available from the Company's financing source to allow construction of facilities in the Extension Area to begin.

Response: Not applicable.

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ARIZONA CORPORATION COMMISSION STAFF'S
THIRD SET OF DATA REQUESTS
REGARDING THE APPLICATION OF
ACCIPITER COMMUNICATIONS, INC.
DOCKET NO. T-02847A-02-0641
AUGUST 5, 2004

RLB 3-4 Should the Commission approve the transfer of the Extension Area to Accipiter, when would the Company be able to start offering service to customers in the Extension Area?

Response: Accipiter could begin offering service to customers within 120 days of the date of a Commission decision in this docket.

Prepared by: Mr. Jim Weimer
Assistant Manager - Operations
Accipiter Communications, Inc.
2238 West Lone Cactus Road, Suite 100
Phoenix, Arizona 85027

**ARIZONA CORPORATION COMMISSION STAFF'S
THIRD SET OF DATA REQUESTS
REGARDING THE APPLICATION OF
ACCIPITER COMMUNICATIONS, INC.
DOCKET NO. T-02847A-02-0641
AUGUST 5, 2004**

RLB 3-5 Would the Company use internal employees or a make use of a contactor(s) to install new facilities in the Extension Area?

Response: Accipiter plans to use a combination of contractors and internal employees to install the new facilities in the proposed Extension Area. The practice of using outside contractors in addition to internal employees is relatively common in the telecommunications industry.

Prepared by: Mr. Jim Weimer
Assistant Manager - Operations
Accipiter Communications, Inc.
2238 West Lone Cactus Road, Suite 100
Phoenix, Arizona 85027

**ARIZONA CORPORATION COMMISSION STAFF'S
THIRD SET OF DATA REQUESTS
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ACCIPITER COMMUNICATIONS, INC.
DOCKET NO. T-02847A-02-0641
AUGUST 5, 2004**

RLB 3-6 Given the size of the Company's current customer base and operations, please describe with specificity how the Company anticipates it would expand its operations, if necessary, in order to serve new customers in the Extension Area. Please include time frames and operations functions such as provisioning (*i.e.* order taking), installation and maintenance and repair.

Response: Accipiter currently has in place robust operations support systems (*i.e.*, billing, customer service, provisioning, etc.) that can accommodate the expected growth within the Extension Area. However, Accipiter anticipates that it will ultimately need to increase internal staffing in order to support service installations in the Extension Area. Accipiter also plans to use out-source contracts to assist with order taking, provisioning, facility installation and repairs.

Accipiter recognizes that at some point it will need to increase its operations capabilities in order to meet the customer service demands associated with the addition of the Extension Area. Decisions regarding additional hiring will be made as Accipiter is able to observe the pace of development within the Extension Area. The actual number of new employees and the timing of hiring cannot be determined at this time with any specificity. However, the Company is committed to hiring the necessary employees to provide excellent service and customer support throughout all of its certificated territory.

Prepared by: Mr. Jim Weimer
Assistant Manager - Operations
Accipiter Communications, Inc.
2238 West Lone Cactus Road, Suite 100
Phoenix, Arizona 85027

**ARIZONA CORPORATION COMMISSION STAFF'S
THIRD SET OF DATA REQUESTS
REGARDING THE APPLICATION OF
ACCIPITER COMMUNICATIONS, INC.
DOCKET NO. T-02847A-02-0641
AUGUST 5, 2004**

RLB 3-7 At a minimum, it appears the Company would be competing with Cox for voice and data services in the Extension Area. What percentage of the potential customers in the Extension Area does the Company believe it will capture? Describe with specificity the basis for the Company's projection.

Response: Accipiter is preparing to compete with Cox and Qwest by offering a full range of state-of-the art voice and data services. Accipiter believes it can capture 40% to 60% of the potential customers, and will aggressively compete to reach a higher penetration rate. This estimate is based upon advice received from Accipiter's telecommunications consultant, which considered penetration rates in similar markets in the southwestern United States.

Prepared by: Mr. Jim Weimer
Assistant Manager - Operations
Accipiter Communications, Inc.
2238 West Lone Cactus Road, Suite 100
Phoenix, Arizona 85027

**ARIZONA CORPORATION COMMISSION STAFF'S
THIRD SET OF DATA REQUESTS
REGARDING THE APPLICATION OF
ACCIPITER COMMUNICATIONS, INC.
DOCKET NO. T-02847A-02-0641
AUGUST 5, 2004**

RLB 3-8 Should the Company's projected penetration levels for the Extension Area not be achieved, describe how the Company would manage the placement of new facilities to minimize the potential for stranded investment which in turn might have a negative impact on customer rates in the future.

Response: Accipiter believes that the estimated penetration rate identified in response to data request RLB 3-7 is realistically achievable. The Vistancia master-planned development features top-rated builders in one of the fastest growing real estate markets in the United States. Further, the community is located within the fast-growing west valley of the Phoenix metropolitan market. Accipiter believes that demand for homes, schools, businesses, municipal facilities, etc., at Vistancia will remain brisk. Accipiter also believes that demand for its planned fiber-to-the-home telecommunications service will be robust, and that the company will achieve its estimated penetration rate.

Accipiter is currently refining a strategic construction plan to address the economical placement of backbone plant and other plant within the Extension Area as development proceeds. Although Accipiter believes that its estimated penetration levels will be achieved, any adverse impact associated with lower penetration levels would be mitigated by the company's access to federal universal service support. Accipiter does not foresee any negative impact on customer rates in the future as a result of extension into the Extension Area. To the contrary, Accipiter believes that the expansion of its additional customer base to include customers in the Extension Area will strengthen the company.

Prepared by: Mr. Jim Weimer
Assistant Manager - Operations
Accipiter Communications, Inc.
2238 West Lone Cactus Road, Suite 100
Phoenix, Arizona 85027

ARIZONA CORPORATION COMMISSION STAFF'S
THIRD SET OF DATA REQUESTS
REGARDING THE APPLICATION OF
ACCIPITER COMMUNICATIONS, INC.
DOCKET NO. T-02847A-02-0641
AUGUST 5, 2004

RLB 3-9 How would the investment amount identified in RLB 3-1 increase the amount the Company receives in Federal high-cost support? Please state in terms of dollars per line and annual total for each of the first two years after new facilities are put in service in the Extension Area.

Response: The Company projects an increase in Federal high-cost support in the range of \$1.3M to \$2.5M per year, based upon the amount identified in the answer to RLB 3-1. The actual amount of support that Accipiter would receive per year per line will vary based upon a rather complex formula. Without specific assumptions regarding customer growth in the Extension Area, it is not possible to precisely project the amount of annual per line support.

Prepared by: Mr. Jim Weimer
Assistant Manager - Operations
Accipiter Communications, Inc.
2238 West Lone Cactus Road, Suite 100
Phoenix, Arizona 85027

ARIZONA CORPORATION COMMISSION STAFF'S
THIRD SET OF DATA REQUESTS
REGARDING THE APPLICATION OF
ACCIPITER COMMUNICATIONS, INC.
DOCKET NO. T-02847A-02-0641
AUGUST 5, 2004

RLB 3-10 Should the transfer of the Extension Area be approved, and if the Extension Area were designated as a new exchange in the 623 NPA of Phoenix rate center, are there any insurmountable negative consequences to the Company? For example, but not limited to, any issues related to the NECA pool, RUS funding, Federal Universal Support, interconnection or the PTSN, etc.

Response: The Company would prefer that the area code remain in the 623 NPA. Accipiter would establish a new exchange in the 623 NPA of the Phoenix rate center because that would not require changes to existing area code boundaries, and because the Company believes that it is less likely to cause customer confusion. Accipiter does not believe that this option would have any negative consequences pertaining to the NECA pool, RUS funding, Federal Universal Support, interconnection, or the PTSN.

Prepared by: Mr. Jim Weimer
Assistant Manager - Operations
Accipiter Communications, Inc.
2238 West Lone Cactus Road, Suite 100
Phoenix, Arizona 85027

June 15, 2004



RECEIVED

JUN 16 2004

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

Hand Delivered
Maureen Scott, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Re: Cox Arizona Telcom, LLC: Application of Accipiter
Communications, Inc.
Docket Number T-02847A-02-0641

Dear Ms. Scott:

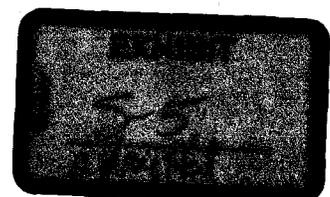
Enclosed are Cox Arizona Telcom's responses to Staff's First Set of Data Requests. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. DiNunzio".

Mark A. DiNunzio
Manager, Regulatory Affairs

Cc: Richard Boyles, ACC Utilities Division
David Ronald, ACC Legal Division



**COX ARIZONA TELCOM, LLC'S RESPONSES
TO STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO. T-02847A-02-0641**

JUNE 15, 2004

Staff RLB-1.1: Is the company aware of an Application by Accipiter Communications, Inc. that seeks to transfer four (4) sections of Qwest's Metro Phoenix Exchange to Accipiter?

RESPONSE: Yes.

Response Provided by: Mark DiNunzio, Regulatory Manager
Cox Arizona Telcom

**COX ARIZONA TELCOM, LLC'S RESPONSES
TO STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO. T-02847A-02-0641**

JUNE 15, 2004

Staff RLB-1.2: Has the Company placed telecommunications facilities within T-5-N, R-1-W, Sections 25, 26 and 35 and T-5-N, R-1-E Section 30?

RESPONSE: Yes.

Response Provided by: Mark DiNunzio, Regulatory Manager
Cox Arizona Telcom

**COX ARIZONA TELCOM, LLC'S RESPONSES
TO STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO. T-02847A-02-0641**

JUNE 15, 2004

Staff RLB-1.3: If the Company's response to RLB-1.2 is yes, for the sections listed in RLB-1.2 please identify as of May 31, 2004, the following:

- a) The specific sections in which the Company has installed its facilities.

RESPONSE: Cox has installed facilities in of the sections that have been identified in RLB-1.2.

- b) The number of potential customers located within each section.

RESPONSE: Cox anticipates that the number of potential customers that will be located in each section to be anywhere from 1,000 to 1,200.

- c) The number of customers being provided service, the quantity of lines and the date service was initiated.

RESPONSE: There are currently 5 business customers with a total of 382 lines. These customers are served by Cox fiber and digital access technologies (e.g., DS1, DS3, etc.). The time frame of installation ranges from 12/18/03 through 1/29/04 with one customer currently still pending installation.

- d) An estimate of the number of customers (and lines) the Company anticipates may request service in June, July and August of 2004.

RESPONSE: Cox anticipates that approximately 75-100 customers may request service for each month. The number of lines per month is estimated to be approximately 105-140 lines. As this is a new development, these estimates could be low.

Response Provided by: Mark DiNunzio, Regulatory Manager
Cox Arizona Telcom

**COX ARIZONA TELCOM, LLC'S RESPONSES
TO STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO. T-02847A-02-0641**

JUNE 15, 2004

Staff RLB-1.4: If the Company's response to RLB-1.2 is yes, what is the area code for the numbers the Company is assigning, or plans to assign, to customers.

RESPONSE: Cox is currently assigning the 623 area code to those new customers who request service. It will continue to assign 623 numbers until such time an order from the Commission warrants a change.

Response Provided by: Mark DiNunzio, Regulatory Manager
Cox Arizona Telcom

**COX ARIZONA TELCOM, LLC'S RESPONSES
TO STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO. T-02847A-02-0641**

JUNE 15, 2004

Staff RLB-1.5: Has the Company communicated any information to current or potential future customers that suggests, in any manner, that the customer's area code and number could be subject to change should Accipiter's Application be approved? If yes, please provide a copy of any such communication.

RESPONSE: No.

Response Provided by: Mark DiNunzio, Regulatory Manager
Cox Arizona Telcom

**COX ARIZONA TELCOM, LLC'S RESPONSES
TO STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO. T-02847A-02-0641**

JUNE 15, 2004

Staff RLB-1.6: What is the Company's position in regards to Accipiter's Application to transfer the sections referenced in RLB-1.2 from Qwest to Accipiter?

RESPONSE: Cox takes no position with respect to the transfer of sections from the Qwest serving area to Accipiter.

Response Provided by: Mark DiNunzio, Regulatory Manager
Cox Arizona Telcom

**COX ARIZONA TELCOM, LLC'S RESPONSES
TO STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO. T-02847A-02-0641**

JUNE 15, 2004

Staff RLB-1.7: With regards to the Company's response to RLB-1.6, please explain with specificity why the Company believes it would be in the public interest to either approve or deny Accipiter's Application.

RESPONSE: With respect to Cox's ability to serve, Cox understands that the Vistancia master planned community is currently split between the Accipiter and Qwest serving areas. This situation currently results in customers who move within the Vistancia community to have the potential to either receive a 623 area code telephone number if they reside within the Qwest serving area, or a 928 area code telephone number should they move to a residence within Accipiter's serving area. Cox's ability to serve in both areas is not impacted since we can issue new customers with either a 623 or 928 number.

Having the entire Vistancia development within one area code boundary is in the best interest of consumers since it would allow all residents to have the same area code.

Response Provided by: Mark DiNunzio, Regulatory Manager
Cox Arizona Telcom

**COX ARIZONA TELCOM, LLC'S RESPONSES
TO STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO. T-02847A-02-0641**

JUNE 15, 2004

Staff RLB-1.8: What is the Company's position in regards to the area code that should be assigned to the four sections referenced in RLB-1.2 should Accipiter's Application be approved?

RESPONSE: Cox takes no position on which area code should be assigned to the four sections listed in the Accipiter filing. Cox does, however, requests that the Commission consider the effect on customers who already have been assigned a 623 area code and who would be required to change their telephone number should the decision be made to change it to a 928 area code. Customers would have to receive a new telephone number since they would be unable to port their existing 623-telephone number into the new 928-rate center established by Accipiter. This creates customer costs, confusion and irritation. For business customers, increased costs and other financial impacts will create significant hardships for these businesses attributed to advertising, signage, new stationary, business cards and other business related items. These are the same issues the Commission dealt with when it adopted the Phoenix three-way area code split a number of years ago.

Cox recommends that should the Commission recommend granting the Accipiter filing and having those four sections become part of the 928 area code, the Commission has the ability to "grandfather" all existing numbers assigned 623 to remain as such. Once service is disconnected at that specific address, future number assignments would be assigned using a 928 area code. This would lessen customer disruption and limit the number of complaints from consumers.

Response Provided by: Mark DiNunzio, Regulatory Manager
Cox Arizona Telcom

**COX ARIZONA TELCOM, LLC'S RESPONSES
TO STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO. T-02847A-02-0641**

JUNE 15, 2004

Staff RLB-1.9: If the Company's response to RLB-1.8 recommends an area code other than the one currently being used, or planned to be used, by Cox for number assignment to customers located in these sections, please explain with specificity why it would be in the public interest for affected customers to under go such a change.

RESPONSE: As stated in the response to RLB-1.8, Cox believes the best solution would be to grandfather all existing 623 area code telephone numbers until such time a service address disconnects telephone service. In this way, the Commission will lessen the amount of hardship and confusion for customers and still grant Accipiter's application.

Response Provided by: Mark DiNunzio, Regulatory Manager
Cox Arizona Telcom

**COX ARIZONA TELCOM, LLC'S RESPONSES
TO STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO. T-02847A-02-0641**

JUNE 15, 2004

Staff RLB-1.10: Should Accipiter's Application to transfer the four sections be approved, how does the Company believe it and its customers would be impacted by each of the following scenarios?

- a) The area code was changed to 928 and the rate center was Lake Pleasant.

RESPONSE: If the Commission changes the entire area to 928 and assigns the Lake Pleasant rate center, the result will be that all current customers assigned a 623 area code will be forced to take a new 928 telephone number since their current 623 telephone number will be issued out of a different rate center. Customers required to change numbers would experience the costs and other impacts as described in the response to RLB-1.8. This recommendation would lessen the burden on getting numbers assigned from the 623 pool as all new numbers would be assigned from the numbers in the 928 Lake Pleasant rate center.

In addition, Cox would recommend that if the Commission proceeds with this option, current local calling into and out of this 928 Lake Pleasant area stay in place.

- b) The area code remain 623 and a new rate center and exchange in the 623 NPA was established by Accipiter.

RESPONSE: If the Commission orders Accipiter to create a new 623 rate center and exchange in the 623 NPA, Cox would recommend that this new rate center allow calls to and from this rate center to be local calling. This would be consistent with the current 623 rate center and eliminate any customer confusion if there was a difference in the way these calls were to be treated.

While the creation of a new rate center in 623 would result in the assignment of new NXXs, the issue of porting numbers is still problematic since customers are still not able to port existing 623 numbers from one rate center to a different rate center even with the same NPA.

- c) The area code remain 623 and Accipiter established the transferred area as a new exchange in the Phoenix rate center.

RESPONSE: The establishment of a new exchange in the Phoenix rate center while retaining a 623 area code is an alternative the Commission could consider. This approach would not require Cox to request numbers out of the current 623 exchange while lessening the effect on numbering exhaust issues. It would also

**COX ARIZONA TELCOM, LLC'S RESPONSES
TO STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO. T-02847A-02-0641**

JUNE 15, 2004

allow customers to port their current telephone numbers within the current 623 Phoenix rate center.

d) Some other alternative (please explain with specificity).

RESPONSE: Cox has no other alternative proposal it wishes to offer at this time. As it stated in its response to RLB-1.8, Cox proposes to grandfather all existing customers who have been assigned a 623 number in the requested extension area. As these service address numbers are disconnected, new numbers can be assigned. All other Cox concerns related to the scenarios described in RLB-1.10 (a), (b) and (c) have been discussed in those sections.

The Company's response to the above should include, but not be limited to, any impacts on its ability to efficiently utilize numbers through number portability and number pooling and any benefits derived from such by current or future customers.

Response Provided by: Mark DiNunzio, Regulatory Manager
Cox Arizona Telcom

**COX ARIZONA TELCOM, LLC'S RESPONSES
TO STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO. T-02847A-02-0641**

JUNE 15, 2004

Staff RLB-1.11: Does the Company believe it would be competitively disadvantaged should it not be able to port numbers, upon customer request, between itself and Accipiter in the extension area? Please explain in detail.

RESPONSE: Cox believes it could be competitively disadvantaged with respect to it being able to port numbers. Assume a Cox customer who currently has a 623 number wishes to relocate to the requested Accipiter extension area and port their number. If the Commission grants Accipiter's application and assigns this territory to the 928 Lake Pleasant rate center, Cox customers will be unable to port their number due to the new NPA. Accipiter's customers already in the 928 Lake Pleasant rate center would not experience this issue since they would be able to port and keep their current number.

This above analogy would also apply if Accipiter were to create a new rate center and exchange in the current 623 area code. If a Cox customer is currently has a 623 number and wishes to port to the new Accipiter 623 rate center, the difference between the two separate rate centers will not allow the number to be ported. This will result in more confusion with the consumer who may not understand why numbers in the same area code cannot be ported.

In summary, Cox believes that the least amount of customer confusion, disruption and costs associated with having customers change their phone number would be to grandfather all current customers with their 623 number. As these customers disconnect, all new customers at that specific service address will be assigned the appropriate NPA number. This approach will result in the least amount of disruption and still be a viable alternative for customers however the Commission ultimately decides this docket.

Response Provided by: Mark DiNunzio, Regulatory Manager
Cox Arizona Telcom

3033 North Third Street, Suite 1010
Phoenix, Arizona 85012
Office 602-630-1183
Fax 602-235-3107

John Duffy
Manager - Policy and Law

September 9, 2002



RECEIVED

SEP 09 2002

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

Maureen A. Scott, Attorney
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

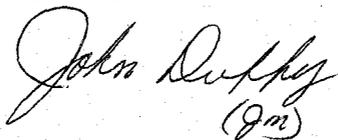
Dear Ms. Scott:

RE: Qwest Corporation
Docket No. T-02847A-02-0641

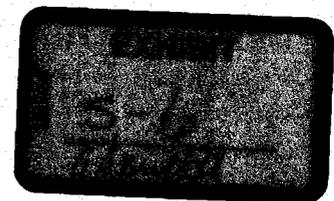
Enclosed please find Qwest Corporation's responses to STF 01-001, -002, -003, -004, -005, -006, -007 and -008 in Staff's first set of data requests in the above referenced docket.

If you have questions, please contact me.

Very truly yours,



Enclosures



Arizona
T-02847A-02-0641
STF 01-001

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 001

Has Qwest engaged in any discussions with Accipiter regarding the proposed "Extension Area" prior to this filing? If yes, what was the nature of those discussions and provide copies of any notes or other records produced as a result of the discussions.

RESPONSE:

Yes. Accipiter approached Qwest to discuss a joint venture with Qwest to provide enhanced services within the development. No decision was reached by the two companies and the matter was dropped.

Respondent: John Duffy

Arizona
T-02847A-02-0641
STF 01-002

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 002

If Accipiter's Application were not approved, will Qwest provide service to that portion of the master-planned referred to as the "Extension Area"? If no, describe with specificity why not and the legal basis for such a decision.

RESPONSE:

Yes.

Respondent: Maryann Klasinski, Manager

Arizona
T-02847A-02-0641
STF 01-003

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 003

Describe with specificity the manner in which the proposed "Extension Area" would be served by Qwest (i.e. technology, facility routes, capacities, advanced service capability, etc.).

RESPONSE:

Qwest will provide service in this area in the same manner as it does in the rest of its serving area. When Qwest receives information regarding the size and layout of the development, Qwest will be able to determine exactly how service will be provided.

Respondent: Maryann Klasinski, Manager

Arizona
T-02847A-02-0641
STF 01-004

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 004

Does Qwest have any facilities of any type currently located in the area referred to as the "Extension Area"? If yes, please describe and identify any customer locations where service is being provided.

RESPONSE:

No.

Respondent: Maryann Klasinski, Manager

Arizona
T-02847A-02-0641
STF 01-005

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 005

Does Qwest have any facilities of any type currently located in sections adjacent to the area referred to as the "Extension Area"? If yes, please describe and identify any customer locations where service is being provided.

RESPONSE:

There are individual customers served by Qwest in adjacent sections. To provide the facilities serving these customer locations would require a special study.

Respondent: Maryann Klasinski, Manager

Arizona
T-02847A-02-0641
STF 01-006

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 006

Is Qwest aware of any master-planned communities where telephone service is provided by more than one ILEC? If yes, please identify the communities and their locations.

RESPONSE:

At this time, Qwest is not aware of any master-planned communities where telephone service is provided by more than one ILEC; however, Qwest is aware of one which is in the planning stage.

Respondent: Maryann Klasinski, Manager

Arizona
T-02847A-02-0641
STF 01-007

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 007

Would Qwest voluntarily agree to transfer the "Extension Area" to Accipiter?
Please explain the Company's response.

RESPONSE:

No. Qwest does not want to transfer the "Extension Area" to Accipiter.
Qwest intends to provide service to the area.

Respondent: Maryann Klasinski, Manager

Arizona
T-02847A-02-0641
STF 01-008

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 008

Has Qwest been engaged in any discussions with Shea Homes regarding the provision of service by Qwest in the proposed "Extension Area"? If yes, what were the issues, including any costs attributable to the developer, that were discussed and the outcome of these discussions?

RESPONSE:

Yes, Qwest has engaged in discussion with Shea Homes regarding the provision of service in the proposed "Extension Area". PAHDs (Provisioning Agreement for Housing Developments), types of available services, and joint trenching were discussed.

Respondent: Maryann Klasinski, Manager

FILE COPY

5-7

4041 North Central Avenue
Phoenix, Arizona 85012
Office 602-630-8221
Fax 602-235-3107

Reed Peterson
Manager - Public Policy



January 23, 2004

David Ronald, Attorney
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

RECEIVED

JAN 23 2004

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

Dear Mr. Ronald:

RE: Qwest Corporation
Docket No. T-02847A-02-0641

Enclosed please find Qwest Corporation's responses to STF 02-001, -002, -003, -004, -005, -006 and -007 in Staff's second set of data requests in the above referenced docket.

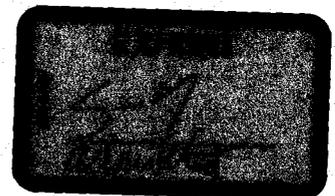
If you have questions, please contact me.

Very truly yours,

Reed Peterson
(RM)

Enclosures

cc: Richard L. Boyles, Engineering Department
Maureen Scott, Attorney



Arizona
T-02847A-02-0641
STF 02-001

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 001

Why does Qwest believe the transfer of four sections of its service area to Accipiter Communications ("Accipiter") is in the public interest?

RESPONSE:

In the particular circumstances of this application, there is a qualified, certified carrier that desires to provide service within this area and Qwest has made a business decision to agree to Accipiter's request. This agreement was made verbally and is conditioned on the requirement that Accipiter take over the entire area within Sections 25, 26, and 35 in Township 5 North, Range 1 West and Section 30 in Township 5 North, Range 1 East. Thus, Accipiter would become the certified ILEC for the entire area, versus carving out only those parcels outlined in their application. Qwest has no facilities and serves no customers in these sections. To Qwest's knowledge, no other parties have objected to or expressed support for the transfer.

Respondent: Reed Peterson

Arizona
T-02847A-02-0641
STF 02-002

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 002

Provide a copy of all Agreements between Qwest and Accipiter relating to the transfer of the four sections.

RESPONSE:

Please see Qwest's response to STF 2-1.

Arizona
T-02847A-02-0641
STF 02-003

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 003

Accipiter's Application excluded parcel numbers 503-89-008-L and 503-89-008-m from T5, R1W, Section 26. Qwest's response (filed December 22, 2003) does not exclude these parcels. Is Qwest providing any service to customers located on these properties? If yes, describe how these customers would be served in the future should the transfer be approved.

RESPONSE:

Please see Qwest's response to STF 2-1.

Arizona
T-02847A-02-0641
STF 02-004

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 004

Accipiter's Application excluded lot 1 from T5N R1W Section 35. Qwest's response does not exclude that parcel. Is Qwest providing any service to customers located on this property? If yes, describe how these customers would be served in the future should the transfer be approved.

RESPONSE:

Please see Qwest's response to STF 2-1.

Arizona
T-02847A-02-0641
STF 02-005

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 005

Accipiter's Application included only the west half of the west half of T5N R1E Section 30. Qwest's response does not exclude that portion of the section. Is Qwest providing any service to customers located on this area? If yes, describe how these customers would be served in the future should the transfer be approved.

RESPONSE:

Please see Qwest's response to STF 2-1.

Arizona
T-02847A-02-0641
STF 02-006

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 006

Has any current or potential future customer located in the proposed transfer area expressed support for the transfer? If yes, please explain.

RESPONSE:

Please see Qwest's response to STF 2-1.

Arizona
T-02847A-02-0641
STF 02-007

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 007

Has any current or potential customer located in the proposed transfer area expressed support for the transfer? If yes, please explain.

RESPONSE:

Please see Qwest's response to STF 2-1.