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GALLAGHER & KENNEDY
P.A.
ATTORNEYS AT LAW

MICHAEL M. GRANT
DIRECT DIAL: (602) 530-8291
E-MAIL: MMG@GKNET.COM

2575 EAST CAMELBACK ROAD
PHOENIX, ARIZONA 85016-9225
PHONE: (602) 530-8000
FAX: (602) 530-8500
WWW.GKNET.COM

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April 22, 2005

Docket No.: T-03471A-05-0064

Arizona Corporation Commission
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VIA FACSIMILE – (602) 542-4870
AND U.S. MAIL

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Re: Your Letter of April 8, 2005 Concerning Vistancia Communications, L.L.C. ("Vistancia")

Dear Ms. Scott:

We are the attorneys for Vistancia and received your April 8, 2005 letter on April 12, 2005. In the letter, you asked that we provide Staff an explanation as to why "Vistancia is not acting as a public service corporation under Arizona law." As stated previously, on the express understanding that this letter is not a consent to Commission jurisdiction over Vistancia, we are providing this response to Staff's request.

Article 15, Section 2 of the Constitution, as relevant here, defines a public service corporation as "[a]ll corporations other than municipal engaged...in transmitting messages or furnishing public... telephone service..." Vistancia does not transmit messages and it does not furnish public telephone service. It neither owns nor has it constructed any telecommunications facilities which would allow it to conduct either activity. No consumer receives or will receive telecommunications services from Vistancia. In short, it simply does not conduct any of the activities nor does it have the capabilities necessary to render it a public service corporation under Article 15, Section 2.

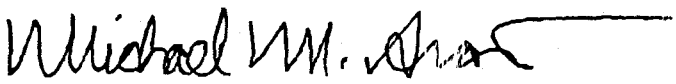
Instead, Vistancia grants easements to third-party communications service providers which furnish telecommunications services in the Vistancia development. In that regard, Vistancia is no different than any other private property owner which grants rights to utility

providers to construct facilities and furnish service. Any providers granted easement rights, of course, must be properly certificated and meet all of the requirements of the Commission and other relevant regulatory agencies in order to provide service.

As stated previously, however, Vistancia does not transmit messages nor furnish public telephone service. To conclude on these facts that Vistancia is a public service corporation would be an "invasion of private right" and an exceptionally "strained construction" of the Constitution—both of which have been rejected repeatedly by the Arizona courts. *Southwest Gas Corp. v. Ariz. Corp. Com'n.*, 169 Ariz. 279, 286, 818 P.2d 714, 721 (App. 1991); *Ariz. Corp. Com'n. v. Nicholson*, 108 Ariz. 317, 321, 497 P.2d 815, 819 (1972); and *General Alarm v. Underdown*, 76 Ariz. 235, 238, 262 P.2d 671, 673 (1953).

Very truly yours,

GALLAGHER & KENNEDY, P.A.



By:
Michael M. Grant

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