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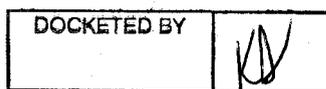
April 29, 2005

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Arizona Corporation Commission  
1200 W. Washington  
Phoenix, Arizona 85007

Arizona Corporation Commission

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RE: Cox Arizona Telcom, L.L.C. *et al*  
Docket No. T-03471A-05-0064

Dear Colleagues and Parties to the Docket:

Currently, this case is set as a non-hearing item. Since there is a possibility this matter may be decided on the pleadings, I am compelled to write to you to highlight an issue I believe should be addressed.

While this matter may raise possible anti-trust concerns, we are not the appropriate governmental agency to evaluate that issue. We are, however, an apt forum to address whether *or not* the facts in this case establish the Respondents' actions are in conflict with the 1996 Telecom Act *and/or* ACC rules. I fully expect that the parties will articulate their respective positions regarding the fostering or chilling of competition in the telecommunications industry in Arizona.

The specific issue I raise herein is whether or not Vistancia Communications, LLC ("Vistancia") and Shea Sunbelt Pleasant Point, LLC Homes ("Shea") are public service corporations based upon the facts and circumstances of this case. Both Vistancia and Shea have disputed that the ACC has jurisdiction over them as public service corporations.

In a letter dated April 22, 2005, the attorney for Vistancia states that Vistancia grants easements to service providers that furnish telecommunications services in the Vistancia development and that Vistancia does not transmit messages or furnish telephone services.<sup>1</sup> Counsel cites a number of cases, including *Ariz. Corp. Com'n v. Nicholson*, 108 Ariz. 317, 497 P.2d 815 (1972), for the proposition that to conclude that Vistancia is a public service corporation in this case would be an "invasion of private right" and a "strained construction" of the Constitution.

<sup>1</sup> I note the use of the word "Communications" in the name of the business which argues that it is not a public service corporation providing telecommunications services.

In *Nicholson*, the Court concluded that a trailer park owner who also provided water to individuals who rented trailer spaces was not operating as a public service corporation.<sup>2</sup> The Court concluded that the owner's incidental but necessary water service, while engaged in the business of renting trailer spaces, did not bring the trailer park's actions under ACC jurisdiction. However, the Court went on to say:

“The Commission uses the example of a land developer who also supplied water to the lots and this operation is generally held to be the activity of a public service corporation. Again the developer is in two businesses. While concededly he is forced to supply water in order to sell the lots; after the sale of the lots a new business relationship occurs - - the business of supplying water.”

The seminal question in my mind in this docket is whether the developers' foray into the telecommunications industry is more akin to the land developer described above or to the trailer park owner in *Nicholson*? Are the developers engaged in two businesses, land development and telecommunications services? Do the contracts between Cox Arizona Telecom, LLC, Vistancia and Shea and their associated activities and interests, including a revenue sharing plan, rise to the level that public regulation and protection must outweigh an “invasion of private right”? And finally, why shouldn't developers who enter into the telephone business be governed by the same rules as telecommunications companies, including applying for a certificate of convenience and necessity?

Very truly yours,



Marc Spitzer  
Commissioner

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<sup>2</sup> The rental fee per month included charges for all services the park provided including trailer space, garbage pickup, water use, mail delivery etc.