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BEFORE THE ARIZONA CORPORATION COMMISSION

30HF

1 JEFF HATCH-MILLER
2 CHAIRMAN
3 WILLIAM A. MUNDELL
4 COMMISSIONER
5 MARC SPITZER
6 COMMISSIONER
7 MIKE GLEASON
8 COMMISSIONER
9 KRISTIN K. MAYES
10 COMMISSIONER
11

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Arizona Corporation Commission

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12 IN THE MATTER OF THE
13 INVESTIGATION INTO PREFERRED
14 CARRIER ARRANGEMENTS AND
15 OTHER POTENTIALLY ANTI-
16 COMPETITIVE PRACTICES INVOLVING
17 SERVICE TO RESIDENTIAL OR
18 BUSINESS DEVELOPMENTS

DOCKET NO. T-00000K-04-0927

NOTICE OF FILING

19 STAFF'S MOTION TO COMPEL

20 Staff of the Arizona Corporation Commission ("Commission Staff") hereby moves to
21 compel Cox Arizona Telcom, LLC ("Cox Telcom") to respond to Staff's First Set of Data
22 Requests in this matter.

23 I. Discussion.

24 On March 9, 2005, Staff of the Arizona Corporation Commission ("ACC Staff") sent Cox
25 Arizona Telcom, LLC ("Cox Telcom"), and other carriers, its First Set of Data Requests in this
26 matter, attached hereto as Exhibit 1. While many of the other carriers have responded, Cox
27 Telcom has failed to respond to any of the requests which were due on March 19, 2005.

28 Staff initially gave the Company some additional time to respond because of discovery
due to both the Department of Justice and Staff in the Accipiter Complaint matter, Docket No. T-
03471A-05-0064. However, approximately 7 weeks have passed since the requests were issued,
and the Company has not provided any responses whatsoever. Nor, has Cox Telcom provided
Staff with any updates recently on when it would be able to submit its responses to these data
requests.

1 Cox Telcom's continuing delay in this Docket as well as the Accipiter Complaint Docket
2 are of great concern to Staff. Staff's concern emanates from the fact that it is common knowledge
3 that most Preferred Provider Agreements with developers in Arizona have involved either Cox
4 Telcom and/or its affiliate CoxCom, or Qwest Corporation. In order for Staff to process this
5 Docket in a timely manner, the information requested of Cox Telcom is critical.

6 While Cox Telcom has not objected to the data requests propounded by Staff, the Staff
7 would note that all of the information requested from Cox Telcom is relevant to the issues raised
8 in the proceeding or is likely to lead to the discovery of admissible evidence or information.

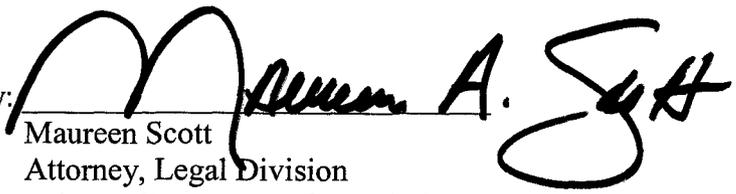
9 Nor, has Cox Telcom requested a Protective Agreement in this Docket. Therefore, any
10 further delay by Cox Telcom in responding to this discovery is not warranted in the opinion of
11 Staff.

12 Staff respectfully requests that the Hearing Division schedule, on an expedited basis early
13 next week, a procedural conference on Staff's Motion. Staff seeks an order from the Commission
14 directing Cox Telcom to immediately submit responses to Staff's First Set of Data Requests.

15 **II. Conclusion.**

16 For the reasons stated above, Staff requests that the Hearing Division rule on Staff's
17 Motion to Compel on an expedited basis, ordering Cox TelCom to immediately respond to Staff's
18 First Set of Data Requests.

19 RESPECTFULLY SUBMITTED this 25th day of April, 2005.

20
21 By: 
22 Maureen Scott
23 Attorney, Legal Division
24 Arizona Corporation Commission
25 1200 West Washington Street
26 Phoenix, Arizona 85007
27 (602) 542-6022
28

1
2 The original and thirteen (13) copies
3 of the foregoing Notice and Attachments
4 were filed this 25th day of April, 2005 with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington Street
7 Phoenix, AZ 85007

7 A copy of the foregoing Notice without Attachments
8 was mailed/hand-delivered this 26th day of April,
9 2005 to:

9 Curt Huttzell
10 Navajo Communications Company
11 4 Triad Center, Suite 200
12 Salt Lake City, UT 84180

12 James F. Booth
13 OnFiber Carrier Services, Inc.
14 7887 E. Belevue Avenue, Suite 820
15 Englewood, CO 8002

14 Thomas Bade
15 Arizona Dialtone
16 7170 Oakland Street
17 Chandler, AZ 85226

17 Letty Friesen
18 AT&T Communications of the Mountain States
19 TCG Phoenix, Inc.
20 1875 Lawrence Street
21 Suite 1503
22 Denver, CO 80202-1870

20 Curt Huttzell
21 Citizens Telecommunications of Arizona, LLC
22 4 Triad Center
23 Suite 200
24 Salt Lake City, UT 84180

23 Anthony Gillman
24 Verizon Select Services, Inc.
25 6665 N. MacArthur Blvd.
26 HQK02D84
27 Irving, TX 75039

26 James Falvey
27 e.spire Communication Services, Inc.
28 7125 Columbia Gate Drive
Suite 200
Columbia, MD 21046

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2 Denver, CO 80202
- 3 Karen S. Frame
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4 7901 Lowry Boulevard
5 Denver, CO 80230
- 6 Jacqueline Manogian
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17 San Diego, CA 92110
- 18 Fred Goodwin
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20 San Antonio, TX 78125-2109
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25 Suite 930
26 San Francisco, CA 94105
- 27 Kathy Hough
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Williams Communications, LLC
28 1 Technology Center, Mail Drop: TC-7B
Tulsa, OK 74103

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24 Jesse (Jay) B. Tresler
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14 San Francisco, CA 94111
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- Manager of Regulatory Affairs
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- Karen Ellison
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Copper Valley Telephone, Inc.
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EXHIBIT 1

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



BRIAN C. MCNEIL
Executive Secretary

ARIZONA CORPORATION COMMISSION

March 9, 2005

Mark DiNunzio
Cox Arizona Telecom, L.L.C.
1550 W. Deer Valley Rd.
MS:DV3-16, Bldg. C
Phoenix, AZ 85027

By United States Mail

Re: Staff's First Set of Data Requests to Cox Arizona Telecom, L.L.C. regarding the Investigation into Preferred Carrier Arrangements
Docket No.: T-00000K-04-0927

Dear Sir/Madam:

On December 23, 2004, the Staff ("Staff") of the Arizona Corporation Commission opened a generic docket for the purpose of investigating the use and operation of preferred carrier agreements in the local telecommunications market. To this end, Staff is soliciting information, comments and suggestions from facilities-based local exchange carriers in Arizona.

Please treat this as Staff's First Set of Data Requests to Cox Arizona Telecom, L.L.C. in the above-referenced matter.

For purposes of this data request set, the words "Cox Arizona Telecom, L.L.C.", "you" and "your" refer to Cox Arizona Telecom, L.L.C. and any representative, including every person and/or entity acting with, under the control of, or on behalf of Cox Arizona Telecom, L.L.C..

For each answer, please identify by name, title, and address each person providing information that forms the basis for the response provided.

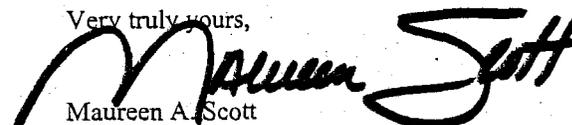
These data requests are continuing, and your answers or any documents supplied in response to these data requests should be supplemented with any additional information or documents that come to your attention after you have provided your initial responses.

Please respond within ten calendar days of your receipt of the copy of this letter. *Please provide one complete set of all responses, in both electronic and hard copy form, to each of the following addressees:*

- (1) Caroline Butler, Paralegal, Arizona Corporation Commission, 1200 W. Washington Street, Phoenix, AZ 85007; cbutler@cc.state.az.us
- (2) Wilfred Shand, Utilities Division, Arizona Corporation Commission, 1200 W. Washington Street, Phoenix, AZ 85007; wshand@cc.state.az.us

If you have any questions, you may contact me at (602) 542-6022.

Very truly yours,


Maureen A. Scott
Attorney, Legal Division

Enclosure

STAFF'S FIRST SET OF DATA REQUESTS REGARDING
THE ARIZONA CORPORATION COMMISSION'S
INVESTIGATION INTO PREFERRED CARRIER ARRANGEMENTS

Docket No.: T-00000K-04-0927

March 9, 2005

- STF 1-1 Does your company enter into preferred carrier agreements or other agreements with property owners (including developers) that address issues associated with:
- a. The installation of telecommunications network facilities?
 - b. The price associated with the installation of those facilities?
 - c. Marketing of telecommunications services?
 - d. Distribution of sales literature?
 - e. Statements regarding the developer's "preferred" provider of telecommunications services?
 - f. Incentives to the property owner to encourage end user customers to obtain telecommunications service from the "preferred" provider of telecommunications services?
- STF 1-2 If your response to STF 1-1 is yes, please describe any revenue sharing provisions from such agreements. Are such revenue sharing provisions a standard or typical provision in such agreements?
- STF 1-3 Does your company enter into marketing agreements with developers?
- STF 1-4 Please describe what you would characterize as a marketing agreement. Please describe in detail the provision of any marketing agreements that you have entered into. Is there any difference in your opinion between a marketing agreement and a preferred provider agreement? . If your response is yes, please explain.
- STF 1-5 Please provide the following information for each preferred provider agreement, preferred carrier agreement or marketing agreement with residential or business developments. Please provide all information in excel, spreadsheet, electronic file format. Each item named below should be taken to represent a column heading in an excel spreadsheet.
- a. The name and date of each agreement
 - b. The name of each party participating in the agreement
 - c. A contact name corresponding to the name of each party participating in the agreement.
 - d. The address of the contact name corresponding to the name of each party participating in the agreement.
 - e. The phone number of the contact name corresponding to the name of each party participating in the agreement.
 - f. The signing date (From) of the agreement

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- g. The ending date (To) of the agreement
- h. The number of residential units, family homes, main accounts or lines expected to be covered by the agreement.
- i. The number of business units, main accounts or lines expected to be covered by the agreement.

- STF 1-6 Have you entered into an agreement that prohibits property owners from marketing the services of other telecommunications service providers?
- STF 1-7 Can developers who have preferred carrier agreements or marketing agreements with you distribute, or allow to be distributed, the advertising literature of any other telecommunications company. If your response is "No," please indicate whether you consider such terms to be anti-competitive from the end-users' perspective and the rationale for your position.
- STF 1-8 Do your marketing agreements include services other than telecommunication services?
- STF 1-9 What consideration do developers receive as compensation for entering into either preferred carrier or marketing agreements with telecommunications carriers?
- STF 1-10 Do your agreements include such items as exclusive marketing rights which limits the ability of your competitors to market their services in areas where you have entered into agreements with the developer?
- STF 1-11 Should preferred provider agreements be allowed, and in your opinion, are they in the public interest? Please elaborate.
- STF 1-12 Provide a copy of a "typical" preferred carrier or marketing agreement that you have entered into, and any associated or related agreements governing your provision of service to a development or complex.
- STF 1-13 Are your preferred carrier/marketing agreements linked to the installation of facilities in a development? If so please describe the linkages.
- STF 1-14 What are your standard terms for the installation of facilities in a commercial and/or residential development?
- STF 1-15 Do you enter into preferred carrier or marketing agreements with apartment complexes?

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- STF 1-16 What are the benefits to the telecommunications company of entering into preferred carrier or marketing agreements? What are the benefits to the developer?
- STF 1-17 What is the standard term (months or years) of a preferred carrier or marketing agreement with a developer?
- STF 1-18 Are third party telecommunications companies allowed to provide service over facilities that are used to provide services that are covered by a preferred carrier or marketing agreement? If your response is "yes," under what rates, terms and conditions?
- STF 1-19 Do you enter into other agreements, other than preferred carrier or marketing agreements, with developers that relate to the provision of telecommunications services? If so, please describe these agreements.
- STF 1-20 What issues do you think the Commission should address with respect to preferred carrier or marketing agreements?
- STF 1-21 Do you believe the preferred carrier agreements or marketing agreements provide an impediment to the ability of end users to purchase telecommunications services in a competitive market? Please explain why you believe that they do or do not impede customers' access to a competitive telecommunications marketplace.
- STF 1-22 Do you believe that preferred carrier agreements are anti-competitive? Please explain the basis for your belief.
- STF 1-23 Do you believe that exclusive marketing agreements which prevent property owners, including developers, from marketing a competitor's service are anti-competitive? Please explain the basis for your belief.
- STF 1-24 Do your preferred carrier agreements or marketing agreements contain a condition that the terms and conditions of the agreement are confidential?
- STF 1-25 Describe the incentives that are included in your preferred carrier agreements or marketing agreements that the property owner or developer receives under the terms of the agreement.
- STF 1-26 Has your ability to access customers been impeded by the existence of a preferred provider or marketing agreement between one of your competitors and a property owner (including a developer)?

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- STF 1-27 Other than preferred carrier or marketing agreements, are there other customer access problems? For example, are there landlords that deny you access to customers in their buildings or landlords that charge high fees for access? Are there developers that impose restrictions on your ability to gain access to a right of way? Please describe any such restriction.
- STF 1-28 Are preferred carrier agreements utilized in other states as well, or is this phenomenon most prevalent in Arizona?
- STF 1-29 What benefits/advantages do carriers receive from preferred provider agreements?
- STF 1-30 What disadvantages do carriers experience by entering into these agreements?
- STF 1-31 How many preferred carrier agreements have you entered into?
- STF 1-32 Have the use of preferred provider agreements been addressed or investigated by any other regulatory agency to your knowledge? If you are aware of any such proceeding, please provide the name of the agency, the docket number of the proceeding and any other information you may have regarding the status of the case.
- STF 1-33 Have there been any court proceedings involving preferred provider agreements that you are aware of? If your response is yes, please provide a case number and cite, if available.
- STF 1-34 Are you aware of any states that have enacted laws concerning preferred provider agreements? If yes, please provide a copy of the state laws with your response.
- STF 1-35 Do you believe such arrangements should be, or are, unlawful? Please explain your response.
- STF 1-36 Do you provide services to any development or other complex that is under a preferred carrier agreement with another provider. Please explain.
- STF 1-37 Are business lines/customers treated differently than residential lines/customers under preferred provider agreements or exclusive marketing arrangements? If your response is yes, how does the treatment differ?

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March 9, 2005

- STF 1-38 Please provide a copy of any and all marketing literature distributed by the developer and your company regarding the provision of telephone service to a development covered by a preferred provider agreement or exclusive marketing arrangement.
- STF 1-39 Are there other issues associated with preferred carrier agreements or marketing agreements which the Commission should address?