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BEFORE THE ARIZONA CORPORATION C

Arizona Corporation Commission

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COMMISSIONERS

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

DOCKETED

MAY 10 2005

DOCKETED BY

IN THE MATTER OF THE FORMAL
COMPLAINT OF ACCIPITER
COMMUNICATIONS, INC. AGAINST
VISTANCIA COMMUNICATIONS, L.L.C.,
SHEA SUNBELT PLEASANT POINT, L.L.C.
AND COX ARIZONA TELCOM, LLC.

Docket No. T-03471A-05-0064

NOTICE OF FILING

Pursuant to Administrative Law Judge Dwight Node's instructions, the Arizona Corporation Commission Staff ("Staff") hereby files a letter dated March 18, 2005, from Michael Grant, Attorney for Shea Sunbelt and Vistancia Communications, stating that they will not be participating in the Docket and that they will not be responding to Staff's First Set of Data Requests. Also enclosed are Staff's First Set of Data Requests to Shea Sunbelt and Vistancia Communications in this matter.

RESPECTFULLY SUBMITTED this 10th day of May, 2005.

By

Maureen Scott
Attorney, Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007
Telephone (602) 542-3402

Original and 13 copies of the foregoing
filed this 10TH day of May, 2005,
with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

1 Copy of the foregoing was mailed this
2 10th day of May, 2005, to:

3 Martin A. Aronson, Esq.
4 William A. Cleaveland, Esq.
5 Morrill & Aronson
6 One East Camelback Road, Suite 340
7 Phoenix, AZ 85012-1648
8 Counsel for Accipiter Communications, Inc.

9 Charles V. Gowder, President
10 Accipiter Communications, Inc.
11 2238 Loan Cactus Drive, Suite 100
12 Phoenix, AZ 85027

13 Michael W. Patten, Esq.
14 Roshka Heyman & DeWulf, P.L.C
15 One Arizona Center
16 400 East Van Buren Street, Suite 800
17 Phoenix, AZ 85004
18 Counsel for Cox Arizona Telcom

19 Michael M. Grant, Esq.
20 Gallagher & Kennedyt, PA
21 2575 E. Camelback Road
22 Phoenix, AZ 85016-9225
23 Attorneys for Shea and Vistancia Communications

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25
26
27
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GALLAGHER & KENNEDY

P.A.

ATTORNEYS AT LAW

MICHAEL M. GRANT
DIRECT DIAL: (602) 530-8291
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2575 EAST CAMELBACK ROAD
PHOENIX, ARIZONA 85016-9225
PHONE: (602) 530-8000
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COPY

March 18, 2005

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

Re: *Staff's First Sets of Data Requests to Shea Sunbelt Pleasant Point, LLC
and Vistancia Communications, LLC; Docket No. T-03471A-05-0064*

Dear Maureen:

We are the attorneys for Vistancia, L.L.C. f/k/a Shea Sunbelt Pleasant Point, L.L.C. ("Shea") and Vistancia Communications, L.L.C ("Vistancia"). We have received Staff's First Sets of Data Requests to Shea and Vistancia.

As we stated in our February 28, 2005 letter to Docket Control concerning this matter, a copy of which is attached hereto and incorporated herein by this reference, Shea and Vistancia are not public service corporations. Therefore, the Commission does not have personal jurisdiction over them, nor subject matter jurisdiction over the complaint in relation to them. Shea and Vistancia are not participating in this docket and will not be responding to Staff's Data Requests.

If you have any questions concerning this matter, please call.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

Mike

By:

Michael M. Grant

MMG/plp
17805-1/1258304

RECEIVED
MAR 21 2005
LEGAL DIV.
ARIZ. CORPORATION COMMISSION

COMMISSIONERS
HATCH-MILLER-CHAIRMAN
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. MCNEIL
Executive Secretary

ARIZONA CORPORATION COMMISSION

March 8, 2005

By email and United States Mail
grant@phxlaw.com

Michael M. Grant, Esq.
Gallagher & Kennedy
2575 E. Camelback Road
Phoenix, AZ 85016-9225

Shea Sunbelt Pleasant Point, LLC
6720 North Scottsdale Road, Suite 160
Scottsdale, AZ 85253-4424

RE: Staff's First Set of Data Requests to Shea Sunbelt Pleasant, LLC regarding the Formal Complaint of Accipiter Communications, Inc. Against Vistancia Communications, LLC, Shea Sunbelt Pleasant Point, LLC and Cox Arizona Telcom, LLC.
Docket No.: T-03471A-05-0064

Dear Mr. Grant:

Please treat this as Staff's First Set of Data Requests to Shea Sunbelt Pleasant Point, LLC, in the above-referenced matter.

For purposes of this data request set, the words "Shea", "you" and "your" refer to Shea Sunbelt Pleasant Point, LLC, and any representative, including every person and/or entity acting with, under the control of, or on behalf of Shea Sunbelt Pleasant Point, LLC, any of its affiliates.

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 electronic and hard copy format to each of the following addressees:*

- (1) Constance Fitzsimmons, Paralegal, Arizona Corporation Commission, 1200 W. Washington Street, Phoenix, AZ 85007; cfitzsimmons@cc.state.az.us
- (2) Richard Boyles, Engineering Division, Arizona Corporation Commission, 1200 W. Washington Street, Phoenix, AZ 85007; rboyles@cc.state.az.us

Sincerely,

Maureen A. Scott
Attorney, Legal Division
(602) 542-6022

MAS:daa
Enclosures

**ARIZONA CORPORATION COMMISSION STAFF'S
FIRST SET OF DATA REQUESTS TO
SHEA SUNBELT PLEASANT POINT, LLC
Docket No.: T-03471A-05-0064
March 8, 2005**

The following data requests are intended to explore allegations in Accipiter's Complaint that Shea Sunbelt and/or its affiliates, are facto public service corporations under Arizona law and are providing telecommunications services in Arizona without a Certificate of Convenience & Necessity.

- STF 1.1 Please provide a copy of any and all agreements between Shea Sunbelt Pleasant Point LLC, or any Shea affiliates, and Vistancia Communications relating to the provision of local and long distance telephone service in Arizona.
- STF 1.2 Please provide a copy of any and all agreements between Shea Sunbelt Pleasant Point LLC, or any Shea affiliates, and CoxCom relating to the provision of local and long distance telephone service in Arizona.
- STF 1.3 Please provide a copy of any and all agreements between Shea Sunbelt Pleasant Point LLC, or any Shea affiliates, and Cox Arizona Telcom relating to the provision of local and long distance telephone service in Arizona.
- STF 1.4 Please provide a copy of any and all agreements between Shea Sunbelt Pleasant Point LLC, or any Shea affiliates, and the City of Peoria relating to the provision of local and long distance telephone service in Arizona.
- STF 1.5 Please indicate what amount, if any, Shea Sunbelt Pleasant Point LLC, or any Shea affiliates, is to receive as a result of the provision of communications service (including the provision of local and long distance telephone service) to the Vistancia development.
- STF 1.6 Please indicate what amounts, if any, Shea Sunbelt Pleasant LLC, or any Shea affiliates, has received as a result of the provision of communications service (including the provision of local and long distance telephone service) and the payment of any access fees, for service to the Vistancia development.
- STF 1.7 Please list all of the investors and officers/directors of Shea Sunbelt Pleasant Point LLC, as well as the other entities listed in STF 1.20.
- STF 1.8 Please confirm or deny: Under that Common Services Easements and Restrictions ("CSER") Agreement dated June 10, 2003, Shea Sunbelt Pleasant Point, LLC is the Grantor of an exclusive easement over the In Gross Easement Area for the purpose of contracting with Communication Service Providers to provide Communication Services to the Vistancia development. Vistancia Communications is the Grantee under such Agreement.

**ARIZONA CORPORATION COMMISSION STAFF'S
FIRST SET OF DATA REQUESTS TO
SHEA SUNBELT PLEASANT POINT, LLC
Docket No.: T-03471A-05-0064
March 8, 2005**

- STF 1.9 Please refer to Section 2.08 of the CSER. Please indicate what criteria an Alternate Provider must meet to provide communications services to the Vistancia development.
- STF 1.10 Please indicate what if any ownership interest Shea Sunbelt Pleasant LLC, or any Shea affiliates, will have in any improvements made to provide communications services (including local and long distance telephone service) within the Vistancia development.
- STF 1.11 Please identify each and every contact between Shea Sunbelt Pleasant Point, LLC, or any Shea affiliates, and CoxCom and/or Cox Arizona Telcom regarding communications services (including local and long distance telephone service) within the Vistancia development.
- STF 1.12 Please identify each and every contact between any other subsidiary of, affiliate of, or representative entity for, Shea Sunbelt and CoxCom or Cox Arizona Telcom regarding the provision of communications services (including local and long distance telephone service) within the Vistancia development.
- STF 1.13 Please identify each and every contact between Shea Sunbelt Pleasant Point, LLC, or any Shea affiliates, and the City of Peoria regarding the provision of communications service (including local and long distance telephone service) within the Vistancia development.
- STF 1.14 For each and every contact identified in response to STAFF 1.11 through 1.13, please provide the following:
- a) The name and titles of the individual participating in the contact.
 - b) The date of such contact.
 - c) The subject matter of such contact.
 - d) A copy of all notes, minutes, hand-outs or any other documentation that was referred to during the contact or that resulted from the contact.
 - e) A copy of all workpapers that may have been developed in preparation for, or resulted from, the contact.
- STF 1.15 Please explain why a \$1,000,000.00 access fee is a condition precedent to the designation of a Mandatory Communication Provider only in both phases of the Vistancia development. Please explain the purpose of the access fee and why it is assessed on communication providers only.
- STF 1.16 Please indicate whether in the case of CoxCom or Cox Arizona Telcom, a \$1,000,000.00 payment (or two payments of \$500,000.00) was made to Shea Sunbelt Pleasant Point, LLC, or any Shea affiliates, to serve the entire Vistancia

**ARIZONA CORPORATION COMMISSION STAFF'S
FIRST SET OF DATA REQUESTS TO
SHEA SUNBELT PLEASANT POINT, LLC
Docket No.: T-03471A-05-0064
March 8, 2005**

development, or a \$500,000.00 payment was made to serve a portion of the development, or whether some portion of the access fee(s) were underwritten or written off by Shea Sunbelt Pleasant Point, LLC or any of its affiliates or subsidiaries.

- STF 1.17 Please indicate whether any other telecommunications provider has contacted Shea Sunbelt Pleasant Point, LLC, or any other Shea affiliates, about the provision of telephone service in the Vistancia development and the result of that contact. Please provide the names of all such providers and their contact information.
- STF 1.18 Under Arizona Law, a developer is required to provide rights-of-way and easements suitable to the utility at no cost and in reasonable time to meet service requirements. Please confirm or deny the following statement: Shea Sunbelt Pleasant Point LLC and its affiliates are in violation of Arizona Law which requires a developer to provide rights-of-way and easements suitable to a utility at no cost and in reasonable time to meet service requirements. Please explain your response.
- STF 1.19 Please indicate whether Shea Sunbelt Pleasant Point LLC or any of its affiliates assess property owners, whether business or residence, any fees relating to the provision of telephone service in the Vistancia development.
- STF 1.20 Please identify the degree of ownership interest any of the following entities, Shea Homes Southwest, Inc., and Sunbelt Holdings Management, Inc.; and Shea Homes Southwest, Inc., and Sunbelt Holdings Management, Inc., have in Vistancia Communications. Please provide copies of any agreements between any of these entities and Vistancia Communications which relate to the provision of communications service (including local and long distance telephone service) in the Vistancia development.
- STF 1.21 Can Wireless Companies provide communications services to the Vistancia development without entering into a nonexclusive licensing agreement with Vistancia Communications and without paying the access fees? Please explain your response.

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



BRIAN C. MCNEIL
Executive Secretary

ARIZONA CORPORATION COMMISSION

March 8, 2005

By email and United States Mail
grant@phxlaw.com

Michael M. Grant, Esq.
Gallagher & Kennedy
2575 E. Camelback Road
Phoenix, AZ 85016-9225

Vistancia Communications, LLC
6720 North Scottsdale Road, Suite 160
Scottsdale, AZ 85253-4424

RE: Staff's First Set of Data Requests to Vistancia Communications, LLC regarding the Formal Complaint of Accipiter Communications, Inc. Against Vistancia Communications, LLC, Shea Sunbelt Pleasant Point, LLC and Vistancia Communications, LLC.
Docket No.: T-03471A-05-0064

Dear Mr. Grant:

Please treat this as Staff's First Set of Data Requests to Vistancia Communications, LLC, in the above-referenced matter.

For purposes of this data request set, the words "Vistancia", "you" and "your" refer to Vistancia Communications, LLC, and any representative, including every person and/or entity acting with, under the control of, or on behalf of Vistancia Communications, LLC.

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, including attachments in both hard copy and electronic format addressees:*

- (1) Constance Fitzsimmons, Paralegal, Arizona Corporation Commission, 1200 W. Washington Street, Phoenix, AZ 85007; cfitzsimmons@cc.state.az.ua
- (2) Richard Boyles, Engineering Division, Arizona Corporation Commission, 1200 W. Washington Street, Phoenix, AZ 85007; rboyles@cc.state.az.us.

Sincerely,


Maureen A. Scott
Attorney, Legal Division
(602) 542-6022

MAS:daa
Enclosure

**ARIZONA CORPORATION COMMISSION STAFF'S
FIRST SET OF DATA REQUESTS TO
VISTANCIA COMMUNICATIONS, LLC
Docket No.: T-03471A-05-0064
March 8, 2005**

The following data requests are intended to explore allegations in Accipiter's Complaint that Vistancia Communications is a de facto public service corporation under Arizona law and is providing telecommunications services in Arizona without a Certificate of Convenience & Necessity.

- STF 1.1 Confirm or deny the following statement: Vistancia Communications is a public service corporation under Arizona Law.
- STF 1.2 Confirm or deny the following statement: Vistancia Communications provides telecommunications service as defined under Arizona Law.
- STF 1.3 Please state when Vistancia Communications was formed and for what purpose.
- STF 1.4 Confirm or deny that Vistancia Communications LLC is the Grantee of an easement under a Common Services Easements and Restrictions ("CSER") Agreement dated June 10, 2003 recorded on June 27, 2003, as Document No. 20030837106.
- STF 1.5 Confirm or deny that under Section 2.01 of the CSER, Vistancia Communications has the exclusive right to identify and contract with Communications Service Providers to provide or make available communications services to the Development within the In Gross Easement Area.
- STF 1.6 Confirm or deny that under Section 2.02 of the CSER, Vistancia Communications is given an exclusive and perpetual right, privilege and easement over, upon, under and across the Service Easement Area, subject to Section 2.13 of the CSER, to (a) construct, lay, install, own, operate, lease, license, franchise, alienate, assign, modify, alter, supplement, inspect, maintain, repair, reconstruct, replace, remove, relocate, expand or otherwise service in the Service Easement Area any and all necessary or desirable Facilities of any type used to provide or make available any Communication Services in the development, (b) to excavate and perform any necessary or desirable work upon and under the surface of the Service Easement Area as and when required to make available Communication Services or service the Facilities in the Development, and (c) to create and provide ingress and egress to and from the Service Easement Area at any time.
- STF 1.7 Confirm or deny that Section 2.03 of the CSER provides that "no other Communications Services use of the Combined Easement Area shall be made by any Person, including Grantor and its grantees, licensees, lessees, franchisees, successors or assigns.
- STF 1.8 Please indicate any and all entities that have been designated as Mandatory Communication Service Providers.

**ARIZONA CORPORATION COMMISSION STAFF'S
FIRST SET OF DATA REQUESTS TO
VISTANCIA COMMUNICATIONS, LLC
Docket No.: T-03471A-05-0064
March 8, 2005**

- STF 1.9 Please identify all Mandatory Communications Services. Please list each service falling within this term; and do not simply refer back to the CSER or its exhibits.
- STF 1.10 Please confirm or deny that Section 2.08 of the CSER provides that the list of Mandatory Communication Service Providers may be modified and supplemented by Grantee from time to time in Grantee's sole and absolute discretion.
- STF 1.11 Please indicate what conditions have to be met in order to be designated a Mandatory Communication Service Provider.
- STF 1.12 Please indicate how an Alternate Provider would be selected by the Grantor and Owners in the event a Mandatory Communication Service Provider is not identified or granted access.
- STF 1.13 Please indicate if under Section 2.09 of the CSER, a Mandatory Communication Provider could be terminated even though its rates were determined to be just and reasonable by the Arizona Corporation Commission. Please further indicate which entity makes the "just and reasonable" determination with regard to the Mandatory Communication Provider's rates. Please indicate whether these rates would be included in a tariff on file with and approved by the Arizona Corporation Commission?
- STF 1.14 Please indicate why the Combined Easement or exclusive grant is applicable only to communications services?
- STF 1.15 Please confirm or deny that the licensing agreement between Vistancia Communications and CoxCom conveys a nonexclusive right, privilege and license to CoxCom as a Mandatory Communication Provider.
- STF 1.16 Please identify any and all agreements that Vistancia Communications has entered into dealing with the provision of telecommunications services to the Vistancia community. Please indicate the date the agreement was entered into, the other party(s) to the agreement and the subject matter of such agreement. Please provide copies of all such agreements along with your responses to these data requests.
- STF 1.17 Please indicate whether communications providers are allowed access to the dedicated public utility easements available to other public utility companies providing services within the development. If not, why not?

**ARIZONA CORPORATION COMMISSION STAFF'S
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- STF 1.18 Please indicate whether Vistancia Communications has entered into any separate agreements with Cox Arizona Telcom regarding the provision of telecommunications service as defined under Arizona Law. Please provide a copy of all such agreements with your response to these data requests.
- STF 1.19 Please indicate whether Vistancia Communications has entered into a preferred provider agreement or exclusive marketing arrangement with either CoxCom or Cox Arizona Telcom. If your response is yes, please provide a copy of the preferred provider agreement or exclusive marketing arrangement with your response to this data request.
- STF 1.20 Please indicate whether Vistancia Communications has any ownership interest in the facilities used to provide telecommunications service to the Vistancia development. If the answer is yes, please describe in detail the nature of those ownership interests.
- STF 1.21 Please provide the names and addresses of all investors and/or officers and directors of Vistancia Communications.
- STF 1.22 Please indicate whether there is any lease arrangement between CoxCom or Cox Telcom and Vistancia Communications involving the provision of telecommunications service to the Vistancia development.
- STF 1.23 Please indicate with specificity the degree of control Vistancia Communications has over the provision of telecommunications service to the Vistancia development.
- STF 1.24 Please indicate whether Vistancia Communications has entered into agreements with any of the property owners in the development, whether business or residence, regarding the provision of telecommunications service. If your answer is yes, please provide copies of all such agreements.
- STF 1.25 Please indicate whether Vistancia Communications collects any revenues from the provision of telecommunications service in the Vistancia development. If your response is yes, please describe in detail and provide any agreements relating to your collection of revenues from the provision of telecommunications service within the development.
- STF 1.26 Please provide any documents, notes, memoranda, emails or other communications which pertain to the provision of telecommunications service within the Vistancia development.

**ARIZONA CORPORATION COMMISSION STAFF'S
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- STF 1.27 Please indicate whether Vistancia Communications in any way acts to "operate", "repair" or "maintain" the provision of telecommunications service within the Vistancia development. If your response to this question is yes, please describe Vistancia's involvement in detail and provide any agreements relating to its obligations in this regard.
- STF 1.28 Can Wireless Companies provide communications services to the Vistancia development without entering into a nonexclusive licensing agreement with Vistancia Communications and without paying the access fees? Please explain your response.
- STF 1.29 Please explain why a \$1,000,000.00 access fee is a condition precedent to the designation of a Mandatory Communication Provider only for both phases of the Vistancia development. Please explain the purpose of the access fee and why it is assessed on communication providers only.
- STF 1.30 Please indicate whether in the case of CoxCom or Cox Arizona Telcom, a \$1,000,000.00 payment (or two payments of \$500,000.00) was made to Vistancia Communications to serve the entire Vistancia development, or a \$500,000.00 payment was made to Vistancia Communications to serve a portion of the development, or whether some portion of the access fee(s) were underwritten or written off by Vistancia Communications.
- STF 1.31 Please indicate whether any other telecommunications provider has contacted Vistancia Communications about the provision of telephone service in the Vistancia development and the result of that contact. Please provide the names of all such providers and their contact information.
- STF 1.32 Under Arizona Law, a developer is required to provide rights-of-way and easements suitable to the utility at no cost and in reasonable time to meet service requirements. Please confirm or deny the following statement: Vistancia Communications is in violation of Arizona Law which requires a developer to provide rights-of-way and easements suitable to a utility at no cost and in reasonable time to meet service requirements. Please explain your response.
- STF 1.33 Does Vistancia Communications have its own permanent employees or does it utilize employees of Shea Sunbelt?
- STF 1.34 Please provide copies of any advertising brochures relating to the provision of communications services (including local and long distance telephone service) which Vistancia Communications provides to property owners in the Vistancia development.

**ARIZONA CORPORATION COMMISSION STAFF'S
FIRST SET OF DATA REQUESTS TO
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- STF 1.35 Please identify each and every contact between Vistancia Communications and the City of Peoria regarding the provision of communications service (including local and long distance telephone service) within the Vistancia development.
- STF 1.36 Please identify each and every contact between Vistancia Communications and Shea Sunbelt or any other Shea affiliate, regarding the provision of communications service (including local and long distance telephone service) within the Vistancia development.
- STF 1.37 Please identify each and every contact between Vistancia Communications and CoxCom and/or Cox Arizona Telcom regarding the provision of communications service (including local and long distance telephone service) within the Vistancia development.
- STF 1.38 For each and every contact identified in response to the above requests, please provide the following information:
- a. The name and titles of the individuals participating in the contact.
 - b. The date of such contact.
 - c. The subject matter of such contact.
 - d. A copy of all notes, minutes, hand-outs or any other documentation that was referred to during the contact or that resulted from the contact.
 - e. A copy of all workpapers that may have been developed in preparation for, or resulted from, the contract.