

ORIGINAL



0000020301

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

2580

COMMISSIONERS

2005 APR 15 P 1:34

DOCKETED

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

AZ CORP COMMISSION  
DOCUMENT CONTROL

APR 15 2005

DOCKETED BY  
KV

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 TELECOM, LLC.

DOCKET NO. T-03471A-05-0064

PROCEDURAL ORDER

**BY THE COMMISSION:**

On January 31, 2005, Accipiter Communications, Inc. ("Accipiter") filed with the Arizona Corporation Commission ("Commission") a formal complaint against Vistancia Communications, L.L.C. ("Vistancia"), Shea Sunbelt Pleasant Point, L.L.C. ("Shea Sunbelt"), and Cox Arizona Telecom, L.L.C. ("Cox").

On February 22, 2005, Cox filed a Motion to Dismiss stating that Accipiter's Complaint fails to state claims upon which relief can be granted; seeks relief beyond the jurisdiction of the Commission; and seeks relief without the joinder of indispensable parties.

On February 28, 2005, counsel for Vistancia and Shea Sunbelt filed a letter to the Commission stating that Vistancia and Shea Sunbelt are not public service corporations and do not hold Certificates of Convenience and Necessity from the Commission and therefore the Commission has no jurisdiction over them.

On March 28, 2005, Accipiter filed a Response in Opposition to Cox's Motion to Dismiss.

Also on March 28, 2005, counsel for the Commission's Utilities Division Staff ("Staff") filed a Notice of Appearance in this matter.

On April 8, 2005, Staff counsel filed a letter directed to counsel for Vistancia and Shea Sunbelt asking for an explanation within 10 days as to why Vistancia is not acting as a public service corporation under Arizona law.

On April 12, 2005, Cox filed a Reply in Further Support of its Motion to Dismiss.

1 IT IS THEREFORE ORDERED that Staff shall file by May 6, 2005 a pleading in response to  
2 the legal arguments raised in Accipiter's Complaint and the various responsive pleadings filed by  
3 Cox and Accipiter. Staff shall also respond to the jurisdictional claims raised by Vistancia and Shea  
4 Sunbelt.

5 IT IS FURTHER ORDERED that interested parties shall file a response to Staff's pleading by  
6 no later than May 20, 2005.

7 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
8 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
9 hearing.

10 Dated this 15<sup>th</sup> day of April, 2005

11  
12 

13 DWIGHT D. NODES  
14 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

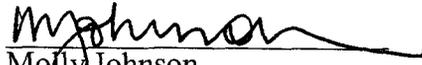
15 Copies of the foregoing mailed/delivered  
this 15 day of April, 2005 to:

16 Martin A. Aronson  
17 William D. Cleaveland  
18 MORRILL & ARONSON, P.L.C.  
19 One East Camelback Road, Ste. 340  
Phoenix, AZ 85012  
Attorneys for Accipiter Communications, Inc.

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

20 Michael M. Grant  
21 GALLAGHER & KENNEDY, P.A.  
22 2575 East Camelback Road  
23 Phoenix, AZ 85016-9225  
24 Attorneys for Vistancia Communications,  
25 L.L.C.  
26 and Shea Sunbelt Pleasant Point, L.L.C.

Ernest G. Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
Phoenix, AZ 85007

27 By:   
28 Molly Johnson  
Secretary to Dwight D. Nodes