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ARIZONA CORPORATION COMMISSION

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0600

May 17, 2005

Chairman Jeff Hatch-Miller
Commissioner William Mundell
Commissioner Mike Gleason
Commissioner Kris Mayes

Re: Cox Arizona Telcom, L.L.C. et al (Accipiter Complaint)
Docket No. T-03471A-05-0064

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Dear Colleagues:

One issue in this case is whether Shea Sunbelt Pleasant Point, LLC ("Shea") and Vistancia Communications, LLC ("Vistancia") are public service corporations under Arizona law. Questions also arise from the Multi-Use Easements and Indemnity Agreement dated July 2, 2003 (the "Resolution") between Shea, Vistancia and the City of Peoria, approved by Peoria City Council on July 1, 2003. This Commission should be concerned about the effects of the Resolution on telecommunications competition in the Vistancia master planned development, Commission oversight of telecom providers and the Commission's interest in the rights of telephone customers in the development.

In the Resolution, Shea and Vistancia purport to indemnify the City of Peoria from potential unspecified claims and damages. Clearly, the parties contemplated that the Resolution could give rise to litigation.

The City of Peoria's provisioning of utility services to its residents is normally outside this Commission's jurisdiction. Adoption of the Resolution, however, places the City in a different role. I would appreciate some discussion from my colleagues and analysis by our legal division as to the following. Assuming the legal propriety of the Resolution is at issue, is the City of Peoria an indispensable party to the docket? Absent a formal exercise of jurisdiction, is there a means by which the Commission may obtain discovery from Peoria, informal or otherwise.

I am both mindful and respectful of Peoria's authority as a municipality. However, the Resolution anoints the arrangement among Shea, Vistancia and the Cox entities with the *imprimatur* of government approval.

I believe these substantive and procedural matters should be analyzed early, rather than late, in this proceeding.

Very truly yours,

Marc Spitzer
Commissioner

Arizona Corporation Commission
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