

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

ORIGINAL



ARIZONA CORPORATION COMMISSION



0000022645

Arizona Corporation Commission  
**DOCKETED**

MAY 31 2005

**MEMORANDUM**

**TO:** Chairman Jeff Hatch-Miller  
Commissioner William A. Mundell  
Commissioner Marc Spitzer  
Commissioner Mike Gleason  
Commissioner Kris Mayes

**FROM:** Christopher C. Kempley *CKK*  
Chief Counsel, Legal Division

**DATE:** May 31, 2005

**RE:** Accipiter v. Cox Arizona Telecom, et al.  
Docket No. T-03471A-05-0064  
City of Peoria Issues

DOCKETED BY *CKK*

ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL

2005 MAY 31 P 3:04

RECEIVED

This memorandum is in response to Commissioner Spitzer's request for analysis from the Legal Division concerning the City of Peoria's (the "City") role in this matter, made in his letter to the Commissioners dated May 17, 2005. As explained in Staff's Response filed May 20, 2005, Staff is very troubled by the entire situation concerning telecommunications service in Vistancia. Staff's Response recommends that the Commission take strong and swift action to remedy this situation, which we believe to be contrary to the public interest. Staff's Response did not recommend taking action against the City. As you note, the City's participation in this matter may be troubling in its own right. However, we are concerned that attempting to take action against the City would raise thorny jurisdictional issues. Article XV, Section 2 of the Arizona Constitution excludes municipal corporations from the definition of public service corporations. It is certainly true that the Commission may sometimes exercise jurisdiction over entities that are not public service corporations, if necessary to carry out the Commission's duties. See Response at 19-20. However, whether such authority could extend to municipal corporations is untested.

The Commission has a long history of mutual respect and comity with other public bodies. In light of this and the unsettled jurisdictional questions, Staff has elected not to recommend that the Commission take action against the City, in part because Staff believes that full relief can be granted through action against Cox Arizona Telecom, LLC, Vistancia Communications, Inc., their affiliates, and the joint venture. Assuming that the Commission's objectives can be fully met without litigating the difficult and unsettled jurisdictional issues, Staff believes we have chosen an appropriate course of action.

Commissioner Marc Spitzer

May 31, 2005

Page 2

Your letter also asks about obtaining discovery from Peoria. As a municipal corporation, Peoria is subject to Arizona's Public Records Law. We understand from counsel for Accipiter that Accipiter is preparing a public records request directed to the City. While it is true that the Commission might also be able to obtain information from the City by subpoena, public records requests appear to be a more swift and sure method.

Please let me know if you have any further questions about this matter.

cc: Executive Secretary Brian C. McNeil  
Administrative Law Judge Dwight Nodes  
Director Ernest G. Johnson, Utilities Division  
Docket Control  
All Parties of Record