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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

AZ CORP COMMISSION
DOCUMENT CONTROL

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 Telcom, 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 April 15, 2005, a Procedural Order was issued directing Staff to file by May 6, 2005, a pleading in response to the legal arguments raised by Accipiter and the various responsive pleadings filed by Cox and Accipiter. Staff was also directed to respond to the jurisdictional claims raised by Vistancia and Shea.

By Procedural Order issued May 2, 2005, a Procedural Conference was scheduled for May 4, 2005 to discuss procedural matters including a Motion to Compel discovery filed by Staff. The Procedural Conference was conducted as scheduled on May 4, 2005.

1 On May 20, 2005, Staff filed its Response to the jurisdictional claims raised by Cox,
2 Vistancia, and Shea.

3 On May 23, 2005, a letter was filed in the docket by Commissioner Marc Spitzer regarding
4 the effect of a Resolution approved by the City of Peoria.

5 On May 31, 2005, a Memorandum from the Commission's Chief Counsel was filed
6 responding to the "City of Peoria Issues."

7 On May 31, 2005, Cox filed a Reply to the Staff Response Regarding Accipiter Complaint.

8 Also on May 31, 2005, Accipiter filed a Response to Staff's Brief Regarding Cox's Motion to
9 Dismiss.

10 By Procedural Order issued June 2, 2005, oral arguments were scheduled for June 9, 2005 to
11 discuss the jurisdictional claims and legal arguments raised in the pleadings.

12 On June 6, 2005, Commissioner Spitzer filed a letter regarding a pending action in Federal
13 District Court alleging unfair competition under the 1996 Telecommunications Act.

14 On June 9, 2005, oral argument was conducted with respect to the jurisdictional issues raised
15 in various pleadings.

16 On June 9, 2005, Vistancia and Shea filed a letter indicating their intent to cancel the
17 easement arrangements approved by the City of Peoria and replace them with a public utility
18 easement.

19 On June 16, 2005, Vistancia and Shea filed a letter providing additional information to Staff
20 regarding the conversion of the private multi-use easement arrangements and public utility easements
21 discussed in the June 9, 2005 letter.

22 On June 16, 2005, Staff filed a Status Report on Settlement Negotiations indicating that
23 discussions between the parties had been productive, but additional time was needed to complete
24 negotiations.

25 Also on June 16, 2005, Accipiter filed a letter agreeing to continue to engage in settlement
26 discussions as long as such discussions appear to be fruitful. However, Accipiter reserved the right to
27 file an amended complaint.

28 On June 28, 2005, Commissioner Spitzer filed a letter in the docket raising concerns with the

1 concept of private easements and the offer of Vistancia and Shea to substitute those arrangements
2 with public utility easements, regardless of the outcome of a negotiated settlement.

3 Settlement discussions have continued over the past several months and, on October 27, 2005,
4 Staff filed a Request for a Procedural Conference. Staff states that the parties to the Complaint have
5 entered into a Memorandum of Understanding and will likely be executing a Settlement Agreement
6 in the near future. Although Staff is not a party to the anticipated Settlement Agreement, it requests a
7 Procedural Conference be scheduled to discuss the process that will be undertaken once a Settlement
8 is finalized.

9 IT IS THEREFORE ORDERED that a **Procedural Conference** shall be scheduled for
10 **November 17, 2005, at 10:00 a.m.**, at the offices of the Commission, 1200 West Washington,
11 Phoenix, Arizona 85007.

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

15 Dated this 15th day of November, 2005

17 
18 _____
19 DWIGHT D. NODES
ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

20 Copies of the foregoing mailed/delivered
this 15th day of November, 2005 to:

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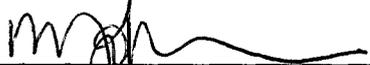
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