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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

AZ CORP COMMISSION
DOCUMENT CONTROL

2005 DEC 30 P 1:12

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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

**ACCIPITER'S RESPONSE TO SUPPLEMENTAL STAFF MEMORANDUM
REGARDING ISSUES IN NOVEMBER 18, 2005 PROCEDURAL ORDER.**

Accipiter makes this filing to clarify its position on certain issues regarding the settlement that it reached with the named Respondents in this docket.

1. Confidentiality Is Not Accipiter's Demand.

There appears to be some confusion in the procedural order and in some other filings made by others in the docket regarding Accipiter's position on the issue of confidentiality. It has never been Accipiter's point that the Settlement Agreement or any

1 other documents in this matter need to be confidential. However, Accipiter entered into
2 an enforceable Settlement Agreement that contains a confidentiality provision.
3 Additionally, Accipiter entered into a protective agreement with Cox as a condition to
4 being allowed to view numerous Cox documents that had been confidentially provided to
5 the Commission Staff and the Department of Justice. Having made these commitments,
6 Accipiter intends to honor their confidentiality provisions.

7 That being said, Cox's decision to waive confidentiality and publicly file the
8 Settlement Agreement document was done with the consent and blessing of Accipiter.
9 Accipiter supports and encourages such decisions favoring openness in the Commission's
10 docket.

11 **2. Accipiter Takes No Position Regarding the Remaining Parties.**

12 Accipiter was strongly encouraged by the Commissioners and the Staff to explore
13 settlement of its multiple disputes, many of which fall squarely within the Commission's
14 jurisdiction, and some of which arguably lie outside the Commission's jurisdiction.
15 Heeding this advice, Accipiter diligently pursued negotiations meeting many times in
16 search of common ground on which Accipiter could resolve its concerns. The
17 negotiations proceeded with both the Respondents and the Staff meeting, sometimes
18 separately and sometimes as a collective group. These negotiations resulted in the
19 Settlement Agreement between Accipiter, Cox, and Vistancia, LLC. However, the
20 settlement explicitly does not include the Commission Staff, which is also a party in this
21 docket.

22 Accipiter filed its Notice of Withdrawal because, as set out in the Settlement
23 Agreement, Accipiter resolved its claims against the Respondents. However, except to
24 point out that Accipiter should not be considered indispensable and should not be
25 compelled to remain in the docket as party, Accipiter does not take any position on how
26

1 this docket should be addressed procedurally or whether any other concerns of the
2 Commission or the remaining parties including the Staff should be addressed.

3 RESPECTFULLY SUBMITTED this 30th day of December, 2005.

4 MORRILL & ARONSON, P.L.C.

5 By William D. Cleaveland
6 Martin A. Aronson
7 William D. Cleaveland
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10 Attorneys for Accipiter Communications, Inc.
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10 ORIGINAL and 13 copies of the foregoing
11 filed this 30th day of December, 2005 with:

12 Docket Control
13 Arizona Corporation Commission
14 1200 West Washington Street
15 Phoenix, Arizona 85007

16 COPY of the foregoing hand-delivered
17 this 30th day of December, 2005 to:

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19 Assistant Chief Administrative Law Judge
20 Hearing Division
21 Arizona Corporation Commission
22 1200 West Washington Street
23 Phoenix, Arizona 85007

24 Christopher C. Kempley, Esq.
25 Chief Counsel, Legal Division
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6 COPY of the foregoing mailed
7 this 30th day of December, 2005 to:

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