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BEFORE THE ARIZONA CORPORATION COMMISSION

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, L.L.C., AND COX ARIZONA  
TELCOM, L.L.C.

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., Shea Sunbelt Pleasant Point, L.L.C.<sup>1</sup>, and Cox Arizona Telcom, L.L.C. ("Cox") (collectively "respondents").

Various pleadings and letters have been filed in this docket, and several procedural conferences have been conducted to discuss the legal issues raised by the Complaint.

On November 8, 2005, Accipiter filed a Notice of Withdrawal with Prejudice. Accipiter indicated that its request to withdraw was based on its Settlement Agreement with the respondents.

On November 17, 2005, a procedural conference was held in this matter. During the procedural conference, the respondents argued that the Complaint should be dismissed, with prejudice. Staff, on the other hand, proposed, among other things, that: the docket should remain open to address policy issues raised by the Complaint; the settlement agreement should be made public; and a hearing should be held to determine the reasonableness of the settlement.

Pursuant to Procedural Order issued November 18, 2005, Staff filed a Supplemental Memorandum on December 19, 2005 addressing the issues raised at the November 17, 2005 procedural conference, including Staff's proposal for processing the Complaint filed in the docket.

<sup>1</sup> Vistancia Communications, L.L.C. and Shea Sunbelt Pleasant Point, L.L.C. are now known as Vistancia, L.L.C ("Vistancia"). The case caption has been amended accordingly.

1 On January 17, 2006, Cox filed a Response to Staff's Supplemental Memorandum. Cox  
2 indicated its disagreement with certain points in Staff's Memorandum, but indicated its willingness to  
3 participate in a hearing process and submit testimony to: explain the reasonableness of the Settlement  
4 Agreement; explain whether the Settlement Agreement addresses the issues and concerns raised in  
5 this docket and whether it is in the public interest; and whether the Complaint should be dismissed.

6 By Procedural Order issued January 19, 2006, a procedural conference was scheduled for  
7 February 3, 2006.

8 During the February 3, 2006 procedural conference, a number of issues were discussed  
9 including: the scope of the proceeding; the appropriate roles and participation by Staff, Accipiter, and  
10 Cox; whether Vistancia and the City of Peoria should be joined as necessary or indispensable parties  
11 and/or whether individuals associated with those entities may be subpoenaed to testify; whether  
12 information provided by Cox to Staff under a protective agreement, including internal Cox e-mails  
13 and the amount paid to Accipiter under the Settlement Agreement, should be made public; and dates  
14 for the hearing and for filing testimony. At the conclusion of the procedural conference, Cox was  
15 directed to file a response by February 10, 2006, regarding its position on the continued  
16 confidentiality of the payment to Accipiter and the internal e-mails provided to Staff. Following a  
17 discussion on the record, Cox and Staff agreed to testimony filing dates and a hearing date.

18 IT IS THEREFORE ORDERED that, in accordance with the directive during the February 3,  
19 2006 procedural conference, Cox shall file a response by February 10, 2006, regarding its position on  
20 the continued confidentiality of the payment to Accipiter and the internal e-mails provided to Staff.

21 IT IS FURTHER ORDERED that **the hearing in this matter shall be scheduled to**  
22 **commence on August 14, 2006, at 10:00 a.m.**, at the offices of the Commission, 1200 West  
23 Washington Street, Phoenix, Arizona 85007.

24 IT IS FURTHER ORDERED that Cox shall file its Direct Testimony by 4:00 p.m., on March  
25 31, 2006.

26 IT IS FURTHER ORDERED that Staff shall file its Rebuttal Testimony by 4:00 p.m., on May  
27 26, 2006.

28

1 IT IS FURTHER ORDERED that Cox shall file its Surrebuttal Testimony by 4:00 p.m., on  
2 July 12, 2006.

3 IT IS FURTHER ORDERED that Staff shall file its Rejoinder Testimony by 4:00 p.m., on  
4 July 21, 2006.

5 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,  
6 except that all motions to intervene must be filed on or before March 31, 2006.

7 IT IS FURTHER ORDERED that Cox shall provide public notice of the hearing in this  
8 matter, in the following form and style, with the heading in no less than 12 point bold type and the  
9 body in no less than 10 point regular type:

10 **PUBLIC NOTICE OF HEARING REGARDING COMPLAINT FILED BY ACCIPITER**  
11 **COMMUNICATIONS, INC. WITH THE ARIZONA CORPORATION COMMISSION**  
12 **AGAINST COX ARIZONA TELCOM, L.L.C., VISTANCIA COMMUNICATIONS, L.L.C.,**  
13 **AND SHEA SUNBELT PLEASANT POINT, L.L.C. (JOINTLY NOW KNOWN AS**  
14 **VISTANCIA, L.L.C.)**  
15 **(DOCKET NO. T-03471A-05-0064)**

16 On January 31, 2005, Accipiter Communications, Inc. ("Accipiter") filed with the  
17 Arizona Corporation Commission ("Commission") a formal complaint against  
18 Vistancia Communications, L.L.C., Shea Sunbelt Pleasant Point, L.L.C. (Vistancia  
19 Communications and Shea Sunbelt are now known as Vistancia, L.L.C., or  
20 "Vistancia"), and Cox Arizona Telcom, L.L.C. ("Cox"). Pursuant to a Settlement  
21 Agreement between Accipiter, Cox, and Vistancia, Accipiter has requested to  
22 withdraw, and Cox and Vistancia have requested that the Complaint be dismissed.  
23 However, the Commission's Staff requested that a hearing be held regarding whether  
24 the Settlement Agreement is in the public interest and with respect to other matters  
25 related to the underlying agreement between Cox and Vistancia that gave rise to  
26 Accipiter's Complaint.

27 The Complaint and subsequent filings in this docket are available for inspection during  
28 regular business hours at the Commission's Docket Control offices in Phoenix, at 1200  
West Washington Street, Phoenix, Arizona. Copies of all filings by all parties in this  
proceeding are also available on the Commission's website at [www.cc.state.az.us](http://www.cc.state.az.us) using  
the eDocket function.

**The Commission will hold a hearing on this matter beginning August 14, 2006,  
at 10:00 a.m., at the Commission's office, 1200 West Washington Street, Phoenix,  
Arizona. Public comments will be taken at the commencement of the hearing.**

The law provides for an open public hearing at which, under appropriate  
circumstances, interested parties may intervene. Intervention shall be permitted to  
any person entitled by law to intervene and having a direct and substantial interest in  
the matter. Persons desiring to intervene must file a written motion to intervene with  
the Commission, which motion should be sent to the Applicants or its counsel and to  
all parties of record, and which, at the minimum, shall contain the following:



1 Copies of the foregoing mailed/delivered  
2 this 4 day of February, 2006 to:

3 Martin A. Aronson  
4 William D. Cleaveland  
5 MORRILL & ARONSON, P.L.C.  
6 One East Camelback Road, Ste. 340  
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9 Michael M. Grant  
10 GALLAGHER & KENNEDY, P.A.  
11 2575 East Camelback Road  
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13 Attorneys for Vistancia, L.L.C.

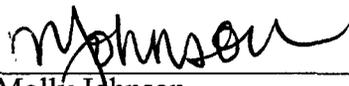
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2627 N. Third Street, Ste. Three  
Phoenix, Arizona 85004-1104

24  
25 By:   
26 Molly Johnson  
27 Secretary to Dwight D. Nodes  
28