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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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57

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AZ CORP COMMISSION
DOCUMENT CONTROL

2006 MAY -9 P 4: 34

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

NOTICE OF FILING

Pursuant to the February 13, 2006 Procedural Order, Cox Arizona Telcom, LLC ("Cox") hereby files its responses to Staff's 11th set of data requests in this docket.

RESPECTFULLY SUBMITTED this 9th day of May 2006.

COX ARIZONA TELCOM, LLC.

By

Michael W. Patten
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Original and 13 copies of the foregoing filed this 9th day of May 2006 with:

Docket Control
Arizona Corporation Commission
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Phoenix, Arizona 85007

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1 Copy of the foregoing hand-delivered/mailed
2 this 9th day of May 2006 to:

3 Dwight Nodes, Esq.
4 Administrative Law Judge
5 Hearing Division
6 Arizona Corporation Commission
7 1200 West Washington Street
8 Phoenix, Arizona 85007

9 Maureen A. Scott, Esq.
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By *Mary Spolito*

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.1 Was the departure of the following employees from Cox service in any way related to their involvement in the Vistancia matter. If "yes," please explain:

- a. Dan Sjostrom
- b. Paul Drake
- c. Mary Kelly
- d. Jeff Walker

RESPONSE: Cox objects to this request on the grounds that it is vague and ambiguous, irrelevant and improperly seeks information regarding individual employee personnel files, which may constitute an invasion of privacy if disclosed. As a policy, Cox does not disclose such information absent a court order.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.2 In Cox's response to STF 9.7, 11 of 56 individuals are noted as "no longer with Cox." Please explain if the departure of any individuals in Cox's response to STF 9.7 is in any way related to their involvement in the Vistancia matter.

RESPONSE: Cox objects to this request on the grounds that it is vague and ambiguous, irrelevant and improperly seeks information regarding individual employee personnel files, which may constitute an invasion of privacy if disclosed. As a policy, Cox does not disclose such information absent a court order..

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
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Docket No. T-03471A-05-0064
MAY 9, 2006

The following requests pertain to the testimony of Tisha Christle filed 4/5/06:

STF 11.3 Referring to footnote 1 on page 3 – “In contrast to the \$2 million capital contribution that Cox requested from Shea, I learned later that Qwest - who Shea had also approached - sought a capital contribution of as much as \$15 million to build the telecommunications infrastructure at Vistancia.” – please explain:

- a. How Cox became aware that Shea had approached Qwest;
- b. Who informed Cox that Shea had approached Qwest; and
- c. When Cox became aware that Shea had approached Qwest.

RESPONSE: Cox objects to this request on the grounds that it is vague and ambiguous. Notwithstanding those objections and without waiving same, Cox states that Ms. Christle recalls that she was present at a meeting at which Shea representatives informed Cox that Qwest had informed Shea that it would require a substantial capital contribution to build out to Vistancia and that Qwest was not really interested in building out to Vistancia. Ms. Christle believes that the Shea Sunbelt representatives present at the meeting were Curt Smith, Mark Hammons, Rick Andrene, and John Graham, but she does not recall which representative(s) provided this information. Ms. Christle believed that Shea represented that Qwest had demanded a \$15 million capital contribution, because that number stuck in her mind. She does not have any independent recollection of when this meeting occurred, but had erroneously thought that it occurred in early Fall 2002. Handwritten notes reflecting the meeting were made by Dan Sjostrom, then senior financial analyst. (See C01258) Those notes indicate that the meeting occurred on July 8, 2002 and that Shea indicated that Qwest demanded a \$3-5M capital contribution.

RESPONDENT: Tisha Christle, Cox Communications Phoenix

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.4 Referring to footnote 1 on page 3, please explain:

- a. How Cox became aware of the capital contribution sought by Qwest;
- b. Who informed Cox of the capital contribution sought by Qwest; and
- c. When Cox became aware of the capital contribution sought by Qwest.

RESPONSE: See Response to STF 11.3 above.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.5 Referring to page 3 – “In the Fall of 2002, other Cox employees and I drafted residential and commercial agreements to document this understanding.” – please explain exactly which employees were involved in the stated actions.

RESPONSE: Cox objects to this request on the grounds that it is vague and ambiguous and may be seeking confidential attorney-client communications. Notwithstanding those objections and without waiving same, Cox states that Tisha Christle assumed primary responsibility for drafting the initial residential agreement (the Co-Marketing Agreement). Mary Kelley, then account executive, assumed primary responsibility for drafting the initial commercial agreement (the Property Access Agreement). Paul Drake, who supervised Ms. Christle, reviewed the drafts. Robert Carter, who supervised Mr. Drake, may or may not have reviewed the drafts.

Cox further states that Kristen Duggan Weathersby, Jennifer Hightower, and Mark Padilla, all in-house counsel in Atlanta, had preliminary involvement in providing legal oversight in early Fall of 2002. Ms. Weathersby's role was limited to providing preliminary, general support, and she did not review any of the draft agreements. Ms. Hightower's involvement was limited to reviewing an early draft of the Co-Marketing Agreement – a draft that did not include an MUE arrangement. Mr. Padilla's involvement was limited to involvement in the initial draft of the Master Property Access Agreement – a draft that did not include an MUE arrangement. In late September 2002, Linda Trickey joined Cox's legal department and shortly thereafter assumed responsibility for providing legal support for both the residential and commercial agreements. Ms. Trickey was the only Cox lawyer to review the revised agreements drafted by Shea that incorporated the MUE arrangement.

RESPONDENT: Tisha Christle, Cox Communications Phoenix
Cox Legal

COX ARIZONA TELCOM, LLC
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Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.6 Referring to page 3 – “Shea assured me that these new drafts of the agreements and the use of an MUE would not change the substance or the financial terms of the preferred provider arrangement that Cox had already negotiated with Shea.” – please explain:

- a. The names of any Shea individuals who provided the assurance stated above;
- b. The date or dates of when such Shea individuals provided the assurance stated above;
- c. The names and titles of any Cox individuals who corroborated the assurance provided by Shea individuals; and
- d. The dates when any Cox individuals provided such corroboration.

RESPONSE: Cox objects to this request on the grounds that it is vague and ambiguous and may be seeking confidential attorney-client communications. Notwithstanding those objections and without waiving same, Cox states that the events at issue took place in 2002 and 2003, and Ms. Christle has worked on a number of different matters for Cox over the tenure of her employment. Ms. Christle simply does not recall the details of who at Shea provided what information and when. Ms. Christle recalls that she had meetings with Shea Sunbelt representatives that were attended by Curt Smith, Mark Hammons, Rick Andrene, and John Graham, and that most of her telephone communications were with Mark Hammons. Ms. Christle simply recalls that, after Shea stated that it would revise the draft agreements to provide for the MUE arrangement that Shea intended to have approved by the City of Peoria, she felt comfortable because the developer assured her that the MUE arrangement had been found to be legal and that the deal already negotiated by Cox and Shea would not change in substance.

RESPONDENT: Tisha Christle, Cox Communications Phoenix

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.7 What accounting treating was given the \$3M capital contribution? For example, was the \$3M capital contribution booked as revenue? Please be as precise in your answer as possible.

RESPONSE: See Response to AFF 5.3.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.8 Is it Cox's position that the \$3M capital contribution (from Shea to Cox) with \$1M payment (from Cox to Shea) equates to the same financial terms as the \$2M capital contribution originally offered to Cox by Shea?

RESPONSE: Cox objects that this request is argumentative, vague and ambiguous, calls for speculation and calls for Cox's legal position. Cox intends to submit its legal position at the appropriate time. Notwithstanding those objections and without waiving same, see Response to STF 9.11. As provided in that response and the testimony of Tisha Christle and Linda Trickey, Cox did not request the MUE arrangement at Vistancia. The developer presented the redrafted documents incorporating the MUE, and the developer also incorporated terms that increased the upfront capital contribution to Cox from \$2 million to \$3 million and that assessed a \$1 million payment for access. Cox did not request these payment terms. Cox does not know how the developer decided to set its access fee at \$1 million. However, Cox had informed Shea that, given the costs of providing requested services out to remote Vistancia, it needed a \$2 million capital contribution. Shea then unilaterally in the negotiations increased the cost to Cox by imposing a \$1 million access fee. Presumably, Shea realized that, given the increased costs to Cox, Cox would not provide the requested services unless it received additional capital contribution to cover the increased costs. Cox accepted the new payment terms because Cox received the amount of capital contribution funds that it needed in light of the anticipated expenses, which included the \$1 million access fee. Again, Cox understood that the City of Peoria would have to approve the MUE arrangement, had been assured by Shea that the MUE arrangement was legal and had been told that the access fee would not change the substance (financial or otherwise) of the deal previously negotiated.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.9 Is it Cox's position that the \$3M capital contribution (from Shea to Cox) with \$1M payment (from Cox to Shea) allows for the same competitive private easement access as the \$2M capital contribution originally offered to Cox by Shea?

RESPONSE: See Response to 11.8.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.10 Referring to page 5 – “In fact, it was my understanding that Qwest had already informed Shea that it would not be interested in incurring the high costs necessary to service the area if it faced competition in Vistancia,” – please explain:

- a. How such an understanding was reached;
- b. Who provided the information leading to such an understanding;
- c. When such information was provided; and
- d. If any documentation is available to substantiate this understanding and, if so, please provide copies of all documents.

RESPONSE: Cox objects to this request on the grounds that it is vague and ambiguous. Notwithstanding those objections and without waiving same, see Response to STF 11.3.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.11 Referring to page 5, is Cox stating that Qwest stated or suggested it would provide services only with a 100% market share assurance in Vistancia?

RESPONSE: Cox objects to this request because it calls for speculation. Cox does not know what Qwest stated to Shea or intended. Cox refers to its response to STF 11.3 above.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.12 Referring to page 5, is Cox aware of any competitive assurances or competitive protections that Qwest requested to serve Vistancia?

RESPONSE: Cox objects to this request on the grounds that it is vague and ambiguous. Notwithstanding those objections and without waiving same, Cox states that it is aware Qwest was requesting a capital contribution to build out to Vistancia. Cox is aware that Qwest ceded its rights in Vistancia to Accipiter. Cox does not know if Qwest was seeking a preferred provider agreement or other competitive assurances or competitive protections.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.13 A Shea development "known as Surprise Farms" is referenced on page 6. Please explain why Surprise Farms is not included in the Cox response to Staff's Set 8 Data Request.

RESPONSE: Cox objects to this request as vague and ambiguous. Notwithstanding such objections, Cox believes Staff is referencing responses to Staff's data request STF 8-2. That specific request asked for names and contact information for all developers and homebuilders with whom Cox entered into preferred marketing agreements entered into from July 2003 and February 2005. The Surprise Farms development was signed by Cox in March 2001 and therefore would not qualify to be listed in the original data request.

RESPONDENT: Mark DiNunzio
Director, Regulatory Affairs

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.14 Please provide any documentation to support the statement on page 9 – “we were open to learning about different ways of legally providing services.”

RESPONSE: Cox objects that this request is vague and ambiguous as to what the request means when it requests documentation to support the statement. Notwithstanding this objection and without waiving it, Cox states that it is aware of no documentation other than whatever may be in the documents already provided.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.15 Previous information from Cox has indicated that the private easement arrangement was used in Indiana or Illinois (Cox response to STF 4.2). In pages 4 and 9, Ms. Christle's testimony refers to an arrangement, services, methods or approaches used in "other parts of the country". Please clarify if the references are to:

- a. More than one state. If "yes," please name all States.
- b. More than one area within only one State. If "yes," please name all such areas.

RESPONSE: Ms. Christle recalls only generally that Shea informed her that the MUE arrangement was being legally used in another state. She does not recall whether the state was Indiana or Illinois, and she does not know how many areas within that state the MUE arrangement is legally being used.

RESPONDENT: Tisha Christle, Cox Communications Phoenix

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.16 Please name every Cox in-house counsel who provided advice or counsel to Ms. Christle, or any other Cox individual involved in the Vistancia matter, from Spring 2002 until the private easement agreement was signed in July 2003.

RESPONSE: Cox objects that this request is overly broad, unduly burdensome and irrelevant to the extent that it seeks information about counsel who provided advice unrelated to Vistancia and regarding counsel who provided advice with respect to Vistancia that is unrelated to the issues here. Notwithstanding this objection and without waiving it, Cox refers to its Response to STF 11.5.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.17 Please name every Cox outside counsel who provided advice or counsel to Ms. Christle or any other Cox individual involved in the Vistancia matter, from Spring 2002 until the private easement agreement was signed in July 2003.

RESPONSE: Cox objects that this request is overly broad, unduly burdensome and irrelevant to the extent that it seeks information about counsel who provided advice unrelated to Vistancia and regarding counsel who provided advice with respect to Vistancia that is unrelated to the issues here. Notwithstanding this objection and without waiving it, Cox states that no outside counsel provided advice relating to Vistancia during the time period stated.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.18 Ms. Christle states on page 13 – “I also understood that Shea needed the marketing fees made by Cox to be reflected as licensing fees in order to effectuate the full intent of the MUE granted by the City of Peoria.” If Cox originally paid marketing fees that by virtue of the MUE became licensing fees, is it true that Cox eventually obtained marketing services from Shea without any payment? If “no”, please clarify Cox’s understanding of the differences between a licensing fee and a marketing fee.

RESPONSE: Cox objects that this request is argumentative, vague and ambiguous and calls for a legal conclusion. Cox intends to submit its legal position at the appropriate time. Notwithstanding those objections and without waiving same, Cox answers “no.” It was Cox’s expectation that, as in traditional preferred provider agreements, the developer receives payment for its marketing services in the form of revenue sharing in exchange for the build-out commitment, and the amount of revenue sharing due, if any, is dependent on penetration rates.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.19 If the answer to STF 11.18 is "yes", please explain how receiving marketing services from Shea without payment for such services is not anti-competitive.

RESPONSE: See Response to STF 11.18.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
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STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.20 Ms. Christle states on page 14 that Vistancia “was very far from Cox’s existing facilities.” Please clarify if that statement refers to Cox’s data, voice or video facilities.

RESPONSE: The statement refers to facilities for all three services.

RESPONDENT: Tisha Christle, Cox Communications Phoenix

COX ARIZONA TELCOM, LLC
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Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.21 Please provide one Arizona map in PDF, TIF or JPG format that shows the relative location of the (1) Vistancia development, (2) the Rancho Sahuarita development and (3) Class 5 DS0 and DS1 Telephone End-Offices that serve the respective developments.

RESPONSE: Cox objects to this request on the grounds that it is vague and ambiguous and irrelevant. Notwithstanding those objections and without waiving same, Cox requests clarification on subsection 3 above given that Cox's network is not structured like Qwest's network and does not have "Class 5 DS0 and DS1 Telephone End Offices."

RESPONDENT: Mark DiNunzio, Cox Arizona Telcom

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.22 Using the map requested in STF 11.21, please explain the mileage distance from the Vistancia development (zip code 85383) and the Rancho Sahuarita development (zip code 85629) to Cox's Class 5 DS0 and DS1 Telephone End-Offices that serve the respective developments.

RESPONSE: See Response to STF 11.21.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.23 Does Cox believe that providing telecommunications services to the Vistancia development is more costly than the Rancho Sahuarita development? If "yes", please explain the relative costs as clearly as possible and provide support for that belief.

RESPONSE: Cox objects to this request on the grounds that it is argumentative, vague and ambiguous and irrelevant, particularly because it pertains generally to preferred provider agreements and not to the issues in this docket.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
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Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.24 Keeping in mind Ms. Christle's statement on page 14 – "We understood that Qwest was not willing to provide telephone services that far out." Why does Cox believe that Qwest would have had more difficulty and incurred more cost to serve the Vistancia development than areas already served by Qwest in north Scottsdale, Carefree, and Anthem?

RESPONSE: Cox objects that the request is irrelevant and calls for speculation as to matters relating to a third party.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.25 Cox required a \$2M capital contribution for Vistancia. What was the comparable capital contribution for the Rancho Sahuarita development?

RESPONSE: Cox objects to this request on the grounds that it is vague and ambiguous, irrelevant and overbroad.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
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Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.26 Please provide an estimated local exchange residence market share comparison between Rancho Sahuarita and Vistancia as of March 30, 2006?

RESPONSE: Cox objects to this request on the grounds that it is vague and ambiguous, irrelevant, overbroad and unduly burdensome.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
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Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.27 Regarding page CX00806, submitted by Cox to the DOJ and copied to Staff (see STF 10.2), please explain:

- a. If Ms. Christle was personally involved in the development of information contained in CX00806; and
- b. If the above answer is "no," please explain when Ms. Christle became aware of the information in CX00806

RESPONSE: a. No.
b. The letter to homebuyers that bears production number CX00806 is a standard form letter that is provided in all developments serviced by Cox under a preferred provider arrangement. It has been used in marketing materials provided to builders, who may or may not actually give it to homebuyers, for as long as Ms. Christle has worked as a senior accountant executive at Cox.

RESPONDENT: Tisha Christle, Cox Communications Phoenix

COX ARIZONA TELCOM, LLC
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Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.28 Ms. Christle states on page 15 – "...Cox had no ability to exclude competitors from Vistancia and that Cox had no agreement with Shea to do so..." Please explain the above statement in light of the customer letter used to communicate with Vistancia new home buyers (CX00806, STF 10.2) which states in part "...Cox Communications has been selected by Vistancia to provide you with the latest in communications services."

RESPONSE: Cox objects that this request is vague and ambiguous, argumentative and calls for Cox's legal position. Cox intends to submit its legal position at the appropriate time. Notwithstanding those objections and without waiving same, see Responses to STF 10.2 and 11.27.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
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Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.29 Please provide copies of any letters, such as CX00806, sent to home buyers since September 1, 2005. If the letters are not individually dated, please take care to provide dates when the letters were in use.

RESPONSE: Cox objects that this request is overly broad, unduly burdensome, and irrelevant. Notwithstanding this objection and without waiving it, Cox states that the letter is taken from a standard template used by Cox in other developments where Cox has a preferred provider arrangement. See also Response to STF 10.2.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
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Docket No. T-03471A-05-0064
MAY 9, 2006

The following requests pertain to the testimony of Linda Trickey filed 4/5/06:

STF 11.30 If Cox's in-house or outside counsel did not verify the MUE structure's legal standing, please explain the statement on page 6 to 7 – "...it was reasonable to allow Shea to revise the agreements..."

RESPONSE: Cox objects that this request is argumentative and calls for Cox's legal position. Cox intends to submit its legal position at the appropriate time.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
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Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.31 Please explain if Cox in-house or outside counsel ever discussed the MUE structure in the context of the 1996 Telecommunications Act?

- a. If "yes," please provide any supporting documentation; and
- b. If "no," please explain why compliance with the 1996 Telecommunications Act was not a concern.

RESPONSE: Cox objects to the extent that the request calls for privileged, protected attorney-client communications and/or work product.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
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Docket No. T-03471A-05-0064
MAY 9, 2006

- STF 11.32 Please explain if any Cox direct employees or contract employees ever discussed the MUE structure in the context of the 1996 Telecommunications Act?
- a. If "yes," please provide any supporting documentation; and
 - b. If "no," please explain why compliance with the 1996 Telecommunications Act was not a concern

RESPONSE: Cox objects to the extent that the request calls for privileged, protected attorney-client communications and/or work product. Cox further objects that the request is overly broad, unduly burdensome and irrelevant in that it would require Cox to conduct unreasonably expansive factual investigations of no value to this matter. Notwithstanding this objection and without waiving it, Cox is aware of no such discussions.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
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STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

The following requests pertain to the testimony of Ivan Johnson filed 4/5/06:

STF 11.33 Please explain the formula, methodology and reasoning used to determine the \$250,000 settlement payment from Cox to Accipiter.

RESPONSE: Cox objects to this request on the grounds that it is vague and ambiguous. Cox also objects to the extent it seeks confidential attorney-client communications. Notwithstanding those objections and without waiving same, Cox states that the settlement payment amount was reached through arm's length negotiation with Accipiter Communications.

RESPONDENT: Ivan Johnson, Cox Communications Phoenix

COX ARIZONA TELCOM, LLC
RESPONSES TO
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Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.34 Regarding the statement on page 4 – “In many cases, property owners have simply refused access to more than one provider.” – please:

- a. Name all property owners who have refused access to more than one telecommunications provider;
- b. Name all associated developments which have refused access to more than one telecommunications provider; and
- c. Provide dates of when such events, as noted above, occurred.

RESPONSE: Cox objects to this request on the grounds that it is vague and ambiguous, irrelevant, overbroad and unduly burdensome. Notwithstanding those objections and without waiving same, Cox states that it has conducted no specific studies or surveys. Rather, the statement is based on general knowledge of the competitive conditions in the market. Such circumstances, for example, have led to FCC Dockets investigating and addressing the issues. See, for example, FCC 00-0366 and FCC 99-141.

RESPONDENT: Ivan Johnson, Cox Communications Phoenix
Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.35 Regarding the statement on page 4 – “In other cases, property owners extract a payment for access by some providers while allowing access to other providers who do not have to pay.” – please:

- a. Name all property owners who have extracted payments as noted above;
- b. Name all associated developments in which payments as noted above occurred; and
- c. Provide dates of when such events, as noted above, occurred.

RESPONSE: See Response to STF 11-34.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.36 Since Cox states on page 11 that – “Accipiter was not authorized to serve a large portion of the Vistancia development until February of 2005, and much of the paving that had occurred in that portion was not the area where Accipiter already had a CC&N.” – does Cox believe that some consideration should be made to the ILEC that was authorized to serve the noted above?

RESPONSE: Cox objects to this request on the grounds that it is vague and ambiguous, irrelevant and overbroad. Notwithstanding those objections and without waiving same, no.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.37 Is Cox by its position on page 11, lines 11 - 12 and 19 - 20, indicating that another ILEC should be a party in this matter?

RESPONSE: Cox objects to this request on the grounds that it is vague and ambiguous, irrelevant and overbroad. Notwithstanding those objections and without waiving same, no.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.38 Is the statement on page 16 – "...a small provider with little name recognition." - intended to mean that Accipiter has little name recognition. If "yes," please provide the factual support, such as marketing surveys, for stating that Accipiter has little name statement.

RESPONSE: Yes. That statement reflects Mr. Johnson's belief based on his decades of experience in the Arizona communications business – particularly in the Phoenix metropolitan area -- and the fact he had never heard of Accipiter Communications prior to the Vistancia dispute.

RESPONDENT: Ivan Johnson, Cox Communications Phoenix

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.39 Regarding the statement on page 22 – “Indeed, I understand that the Vistancia developers approached both Qwest and Accipiter about providing service before turning to Cox -- both wanted substantial concessions to bring service to the area in terms of construction costs.” – please explain:

- a. How Cox obtained the understanding stated above;
- b. Which individuals at Cox or working for Cox obtained the understanding stated above;
- c. The date or dates when Cox obtained the understanding stated above; and
- d. The “substantial concessions” wanted by Qwest and/or Accipiter, e.g., the dollars and/or terms and conditions.

RESPONSE: Cox objects to this request on the grounds that it is vague and ambiguous. Notwithstanding those objections and without waiving same, the statement is Mr. Johnson’s general understanding of why Shea eventually approached Cox to inquire about Cox’s willingness to provide service to Vistancia. See also Response to STF 11.3.

RESPONDENT: Ivan Johnson, Cox Communications Phoenix

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.40 Please clarify if and how Cox's compliance programs have been modified as a result of events related to the Vistancia development.

RESPONSE: Cox intends to conduct antitrust training in a number of markets, including the Cox markets in Arizona, in 2006 as a matter of due course and as part of Cox's overall ongoing compliance program.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S ELEVENTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
MAY 9, 2006

STF 11.41

Please explain if the statement on page 4 of Ms. Christle's testimony - "Even today, I do not really understand how or why the Agreements could be found to prevent or limit Shea's right to license other entities to provide services in Vistancia in competition with Cox, because the Agreements are expressly non-exclusive as to access to Vistancia." - reflects an acceptable understanding of the compliance training referenced by Mr. Johnson on page 24.

RESPONSE:

Cox objects to this request on the grounds that it is argumentative, vague and ambiguous and seeks a legal opinion.

RESPONDENT:

Cox Legal