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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DOCKETED

2 COMMISSIONERS

3 MIKE GLEASON, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
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7 GARY PIERCE

2008 JUL -1 A 10: 56

AZ CORP COMMISSION  
DOCKET CONTROL

JUL -1 2008

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6 IN THE MATTER OF THE FORMAL  
7 COMPLAINT OF ACCIPITER  
8 COMMUNICATIONS, INC. AGAINST  
9 VISTANCIA, LLC, AND COX ARIZONA  
10 TELCOM, LLC.

DOCKET NO. T-03471A-05-0064

PROCEDURAL ORDER

10 BY THE COMMISSION:

11 On January 31, 2005, Accipiter Communications, Inc. ("Accipiter") filed with the Arizona  
12 Corporation Commission ("Commission") a formal complaint against Vistancia Communications,  
13 LLC and Shea Sunbelt Pleasant Point, LLC, both of which are now known as Vistancia, LLC  
14 ("Vistancia"), and Cox Arizona Telcom, LLC ("Cox"). The complaint arose out of Vistancia's  
15 controlling telecommunications providers' access to the Vistancia development in Peoria, Arizona,  
16 through a private easement arrangement and assessment of an access fee. Accipiter alleged that Cox  
17 and Vistancia had created the private easement arrangement to unlawfully stifle competition.<sup>1</sup> This  
18 docket remains open because, although Accipiter has entered into a Settlement Agreement with  
19 Vistancia and Cox, the Commission's Utilities Division Staff ("Staff") has continued to pursue the  
20 allegations against Cox.<sup>2</sup>

21 On May 23, 2008, as a result of a telephonic procedural conference on that day, a Procedural  
22 Order was issued requiring Cox to file, by June 27, 2008, a revised document log meeting specified  
23 requirements. The Procedural Order also required Staff to file, by July 18, 2008, any objections to  
24 Cox's assertion of privilege for any of the documents identified in the revised document log.

26 <sup>1</sup> Accipiter alleged that there was a scheme crafted by Vistancia and Cox to monopolize the telecommunications market  
27 within the Vistancia development by intentionally excluding competition and advancing the financial interests of  
28 Vistancia at the expense of customer choice. Accipiter also alleged that the Vistancia and Cox scheme supplanted the  
jurisdiction of the Commission.

<sup>2</sup> For additional procedural history, please see the Procedural Orders issued in this matter on March 27, 2008, and May  
23, 2008.

1 On June 24, 2008, Cox filed a Request for Additional Time to Submit Updated Privilege Log,  
2 requesting that its filing deadline be extended by three weeks.

3 As Staff has not filed an objection to Cox's request, and Cox had indicated during the  
4 procedural conference that it might need additional time to make the filing, it is reasonable to grant  
5 Cox additional time to file its revised document log.

6 IT IS THEREFORE ORDERED that Cox shall, by July 18, 2008, file a revised version of  
7 its document log that includes, for each document listed thereon, in addition to the information  
8 included in the original version of the document log, (1) the purpose for which the document was  
9 created; (2) the basis for the assertion of privilege; and (3) if the document was included on Staff's  
10 list, a reference to the document number on Staff's list. In addition, Cox shall ensure that the revised  
11 document log does not include any shading or gridlines and shall provide Staff with the cleanest  
12 possible hard copy of the revised document log.

13 IT IS FURTHER ORDERED that Staff shall, by August 8, 2008, file any objections to  
14 Cox's assertion of privilege for any of the documents identified in the revised document log. In its  
15 filing, Staff shall identify by distinct document number each document to which an objection applies.

16 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules  
17 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission  
18 *pro hac vice*.

19 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized  
20 Communications) applies to this proceeding and shall remain in effect until the Commission's  
21 Decision in this matter is final and non-appealable.

22 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive  
23 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

24 DATED this 1st day of July, 2008.

25  
26  
27   
28 SARAH N. HARPRING  
ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered  
2 this 1<sup>ST</sup> day of July, 2008, to:

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27 Debra Broyles  
28 Secretary to Sarah N. Harpring