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COMMUNICATIONS SOLUTIONS



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January 31, 2008

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007-2927

**Re: Responses of Citizens Communications to Staff's Preferred Providers
Agreements Issues List, Generic Investigation into Preferred Carrier
Arrangements, Docket No. T-00000K-04-0927, November 6, 2007**

Dear Commissioners and Staff:

Enclosed please find an original and thirteen copies of the responses of Citizens Communications ("Citizens") to the Staff's Preferred Providers Agreements Issues List in Docket No. T-00000K-04-0927, Generic Investigation into Preferred Carrier Arrangements. Citizens is responding on behalf of its three incumbent local exchange carrier ("ILEC") affiliates operating in Arizona: (1) Citizens Utilities Rural Company, d/b/a Frontier Citizens Utilities Rural, (2) Citizens Telecommunications of the White Mountains, d/b/a Frontier Communications of the White Mountains and (3) Navajo Communications Company, Inc.

Also, please include Citizens on the Commission's Service List in this Docket at the address above.

Sincerely,

Curt Huttsell, Ph.D.
Manager, Government and External Affairs

Arizona Corporation Commission
DOCKETED

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COMMUNICATIONS SECTION

**RESPONSES OF CITIZENS COMMUNICATIONS TO STAFF'S PREFERRED
PROVIDER AGREEMENTS ISSUES LIST
DOCKET NO. T-00000K-04-0927
NOVEMBER 6, 2007**

PPA 1-1 What do you believe the scope of this proceeding should be and what issues should the Commission address with respect to the use of preferred provider/preferred carrier/marketing agreements in master planned communities?

Response: The scope of this proceeding should include agreements between real estate developers and suppliers of communications services that limit the ability of competing communications suppliers to provide their services within master planned communities. The kinds of limitations that should be addressed include excluding competing suppliers from the development altogether, raising rivals' costs of entering the development and providing for exclusive marketing agreements. Raising rivals' costs involves keeping competitors out until after the streets are paved and sidewalks, driveways and curbs are installed. Raising rival's costs may also involve preventing telecommunications carriers from achieving economies of scope by excluding them from the provision of broadband and video services or requiring homeowners to pay fees for such services from the developer's chosen supplier whether they subscribe to them or not. Among the public interest issues at stake are the need to prohibit anticompetitive practices, make public arrangements that may be contrary to the interests of homeowners and enforce carrier-of-last-resort obligations.

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- PPA 1-2** Does your company enter into preferred provider/preferred carrier agreements with property owners/developers of master planned communities that address issues associated with:
- a. The installation of telecommunications network facilities?
 - b. The price associated with the installation of those facilities?
 - c. Marketing of telecommunications services?
 - d. Distribution of sales literature?
 - e. Statements regarding the property owner/developer's "preferred" provider of telecommunications services?
 - f. Incentives to the property owner/developer to encourage end user customers to obtain telecommunications service from the "preferred" provider of telecommunications services?

Response: Yes. Citizens has entered into arrangements with developers concerning preferential treatment in the marketing of telecommunications services on the developers' premises.

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NOVEMBER 6, 2007**

PPA 1-3 Please describe what you would characterize as a preferred provider/preferred carrier agreement. Please describe in detail the provisions of any preferred provider/preferred carrier agreement that you have entered into with property owners/developers of master planned communities.

Response: Preferred carrier agreements include arrangements between real estate developers and communications suppliers that restrict the ability of competing communications suppliers to provide their services within master planned communities, including excluding competitors from access to homes, homeowners and rights of way, limiting homeowners' choice of suppliers and preventing competitors from marketing communications services on developers' property.

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PPA 1-4 If your response to PPA 1-2 is in the affirmative, please describe any revenue sharing provisions from such agreements. Are revenue sharing provisions a standard or typical provision in such agreements.

Response: Citizens marketing arrangements with developers do not provide for sharing revenue. Citizens does not know if revenue sharing provisions are standard in or typical of preferred provider agreements.

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PPA 1-5 Please describe what you would characterize as a marketing agreement. Please describe in detail the provisions of any marketing agreement that you have entered into with property owners/developers of master planned communities.

Response: A marketing agreement within a master planned community would prevent rivals of a developer's chosen communications supplier from advertising their services on the developer's premises.

The details of the marketing agreements that Citizens has entered into with developers are proprietary and confidential. Citizens will provide the requested information to the Staff upon suitable arrangements to maintain its confidentiality.

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PPA 1-6 Please provide the following information for each preferred provider agreement/preferred carrier/marketing agreement with master planned communities signed since April 1, 1998 to current within the State of Arizona. Please provide all information in excel, spreadsheet, electronic file format. Each item named below should be taken to represent a column heading in an excel spreadsheet.

- a. The name and date of each agreement.
- b. The name of the master planned community.
- c. The name of each party participating in the agreement.
- d. A contact name corresponding to the name of each party participating in the agreement.
- e. The address of the contact name corresponding to the name of each party participating in the agreement.
- f. The phone number of the contact name corresponding to the name of each party participating in the agreement.
- g. The signing (From) date of the agreement.
- h. The ending date (To) of the agreement.
- i. The number of residential units, homes, main accounts or lines expected to be covered by the agreement.
- j. The number of business units, main accounts or lines expected to be covered by the agreement.

Response: The marketing agreements that Citizens has entered into with developers are proprietary and confidential. Citizens will provide the requested information to the Staff upon suitable arrangements to maintain its confidentiality.

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PPA 1-7 Have you entered into an agreement that prohibits property owners/developers from marketing the services of other telecommunications service providers within such master planned communities?

Response: Yes. Please see Citizens' response to PPA 1-2.

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PPA 1-8 Can property owners/developers who have preferred provider/preferred carrier or marketing agreements with you distribute, or allow to be distributed, the advertising literature of any other telecommunications company?

Response: Developers who have entered into marketing agreements with Citizens may not distribute the advertising literature of other communications suppliers.

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PPA 1-9 If your response to PPA 1-8 is negative, please indicate whether you consider such terms to be anti-competitive from the end-users' perspective and the rationale for your position.

Response: Citizens does not consider the marketing agreements it has entered into with developers anticompetitive. Citizens' rationale of this position is explained in response to PPA 1-23 below.

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PPA 1-10 Do your agreements include services other than telecommunications services?

Response: Yes.

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PPA 1-11 What consideration do property owners/developers of master planned communities receive as compensation for entering into either preferred provider/preferred carrier/marketing agreements with telecommunications carriers?.

Response: Developers may receive compensation in cash or in kind.

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PPA 1-12 Do your agreements include items such as exclusive marketing rights which limits the ability of your competitors to market their services in areas where you have entered into agreements with the property owners/developers of master planned communities?

Response: The term “exclusive marketing rights” is unclear, but Citizens’ marketing agreements with developers prohibit them from displaying signs on their premises advertising the services of competitors or distributing competitors’ marketing literature.

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PPA 1-13 Should preferred provider/preferred carrier/marketing agreements be allowed in master planned communities, and in your opinion, are they in the public interest? Please elaborate.

Response: Under current law, it may not be possible to prohibit developers/property owners and telecommunications carriers from signing preferred provider agreements. The act of designating a preferred provider for a development, in and of itself, is not necessarily harmful to competition or universal service. However, if a preferred provider agreement has the effect of establishing an exclusive provider for a development, then such an agreement would violate the principles of competition and universal service, which are the cornerstones of our national telecommunications policy. In extreme cases, such agreements may violate Section 253 of the Telecommunications Act of 1996 if they constitute unlawful barriers to entry and include participation by a municipal entity.

A developer may effectively create an exclusive provider in a number of ways including but not limited to: (a) restricting a provider's access to open trenches within the development for the placement of underground infrastructure, or providing access to open trenches on terms and conditions which are not substantially equivalent between providers; (b) establishing legal barriers to entry into the development; (c) imposing significant right-of-way fees; (d) entering into long-term contracts with providers through homeowners associations; (e) adopting covenants, conditions and restrictions ("CC&Rs") which favor one provider over another; (f) adopting CC&Rs which favor one telecommunications technology over another; (g) placing discretion in the hands of the developer/property owner regarding the types of telecommunications services that may be provided in the development; and (h) imposing construction requirements or other requirements that have the effect of favoring one provider over another.

Each of the above-listed practices can restrict or eliminate competition by increasing the costs of entry to a competitor, or in some cases, prohibiting entry to a development outright. In some cases, such practices may actually prohibit an incumbent local exchange carrier from acting as carrier of last resort. Clearly, restrictions on customer choice and access to universal service are contrary to the public interest. In addressing these issues, the Arizona Corporation Commission should focus its attention on anti-competitive practices that have the effect of creating a *de facto* exclusive provider, rather than solely on the existence of a preferred provider.

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PPA 1-14 Provide a copy of a "standard" preferred provider preferred carrier/marketing agreement that you have entered into, and any associated or related agreements governing your provision of service to a master planned community.

Response: The marketing agreements that Citizens has entered into with developers are proprietary and confidential. Citizens will provide the requested information to the Staff upon suitable arrangements to maintain its confidentiality.

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NOVEMBER 6, 2007**

PPA 1-15 What are your standard terms for the installation of facilities in a master planned community?

Response: The standard terms for the installation of facilities in a master planned community are contained in the respective tariffs of Citizens' three Arizona ILECs on file with the Arizona Corporation Commission and in Arizona Administrative Code R14-2-501 *et seq.*, and specifically, R14-2-506.

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NOVEMBER 6, 2007**

PPA 1-16 What are the benefits to the telecommunications service provider of entering into preferred provider/preferred carrier/marketing agreements in master planned communities? What are the benefits to the developer?

Response: Citizens believes the benefit to the preferred provider depends upon the specific structure and content of the agreement. Service provider benefits could include a more efficient marketing effort, higher market penetration within the development, larger customer revenue stream, and/or more efficient installation effort. Regarding disadvantages, Citizens believes that if these agreements are not structured properly the preferred carrier could potentially violate regulatory/legal prohibitions by exhibiting anticompetitive behavior.

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NOVEMBER 6, 2007**

PPA 1-17 What are the benefits to the property owner/developer of entering into preferred provider/preferred carrier/marketing agreements in master planned communities? What, if any, are the disadvantages?

Response: Citizens believes that within these agreements the developer often receives the benefit of cash or in-kind compensation and certain guarantees from the preferred carrier regarding quality of service, timeliness of service installation, etc.

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NOVEMBER 6, 2007**

PPA 1-18 What is the standard term (months or years) of a preferred provider/preferred carrier/marketing agreement with a property owner/developer of a master planned community?

Response: Citizens has not had enough experience with such agreements to express an opinion about "standard" terms.

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PPA 1-19 Are third party telecommunications companies allowed to provide service over facilities that are used to provide services that are covered by a preferred provider/preferred carrier/marketing agreement in master planned communities? If your response is in the affirmative, under what rates, terms and conditions is this allowed?

Response: The answer to this question would depend upon the specific agreement.

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NOVEMBER 6, 2007**

PPA 1-20 Do you enter into other agreements, other than preferred carrier or marketing agreements, with developers that relate to the provision of telecommunications services? If so, please describe these agreements.

Response: Incumbent local exchange carriers may, from time to time, enter into construction agreements with developers for the installation of telecommunications facilities in new developments. Such construction agreements are in accordance with tariffs approved by the Arizona Corporation Commission and the Commission's rules, including Arizona Administrative Code R14-2-506.

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NOVEMBER 6, 2007**

PPA 1-21 Do you believe the preferred carrier agreements or marketing agreements provide an impediment to the ability of end users to purchase telecommunications services in a competitive market? Please explain why you believe that they do or do not impede customers' access to a competitive telecommunications marketplace.

Response: Preferred carrier agreements may, but do not necessarily, impede the ability of end users to purchase telecommunications services in a competitive market. See Citizens' response to PPA 1-13.

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PPA 1-22 Do you believe that preferred carrier agreements are anti-competitive? Please explain the basis for your belief.

Response: Preferred carrier agreements can be implemented in such a way as to be anti-competitive. For additional information, see the response to PPA 1-13.

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DOCKET NO. T-00000K-04-0927
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PPA 1-23 Do you believe that exclusive marketing agreements which prevent property owners/developers from marketing a competitor's service in master planned communities are anti-competitive? Please explain the basis for your belief.

Response: No. Exclusive marketing arrangements whereby a telecommunications provider compensates a property owner/developer for the exclusive privilege of marketing its services on the developer's property are not anticompetitive. Exclusive marketing agreements allow telecommunications providers to take advantage of an advertising channel, and entering into such agreements is open to all. Advertising in this manner is no more anticompetitive than advertisers paying television networks for the exclusive privilege of marketing their products during a specific television program.

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PPA 1-24 Do your preferred carrier agreements or marketing agreements contain a condition that the terms and conditions of the agreement are confidential?

Response: Yes.

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DOCKET NO. T-00000K-04-0927
NOVEMBER 6, 2007**

PPA 1-25 Has the ability to access customers in master planned communities been impeded by the existence of a preferred provider/preferred carrier/marketing agreement between one of your competitors and a property owner/developer?

Response: Yes. Developers have entered into agreements with CLECs and denied Citizens Utilities Rural Company (d/b/a Frontier Citizens Utilities Rural) access to rights of way within master planned communities during construction. Consequently, Citizens Utilities Rural has been placed at a competitive disadvantage relative to the CLECs involved because it must now cut into streets, sidewalks, curbs and driveways before it can reach the affected homeowners.

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DOCKET NO. T-00000K-04-0927
NOVEMBER 6, 2007**

PPA 1-26 Other than preferred provider/preferred carrier/marketing agreements, are there other customer access problems in master planned communities?

Response: Yes, in some instances, developers are refusing to pay for underground telecommunications facilities in accordance with A.A.C. R14-2-506(E)(3)(a).

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NOVEMBER 6, 2007**

PPA 1-27 Are there property owners/developers of master planned communities that impose restrictions on your ability to gain access to a right of way? Please describe any such restriction.

Response: Yes, please see Citizens' response to PPA 1-25.

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PPA 1-28 Does your company utilize preferred provider/preferred carrier/marketing agreements in master planned communities within other states?

Response: Citizens respectfully declines to answer this question, as its practices in other states are not the subject of this proceeding.

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PPA 1-29 Has the use of preferred provider/preferred carrier/marketing agreements in master planned communities been addressed or investigated by any other regulatory agency to your knowledge? If you are aware of any such proceeding, please provide the name of the agency, the docket number of the proceeding, and any other information you may have regarding the status of the case.

Response: Citizens is aware that in October 2005, the North Carolina Public Utilities Commission ("NCPUC") adopted Rule R20-2 entitled *Fair Competition among Local Telecommunications Service Providers* ("Rule") which addresses preferred provider arrangements. A copy of that Rule, as well as information regarding the NCPUC complaint matter that preceded the Rule's adoption, is set forth in the comments already filed in this Docket by Accipiter Communications, Inc. on March 27, 2007.

More recently, on October 26, 2007, the Florida Public Service Commission issued an Order granting a petition by AT&T for relief from its carrier-of-last resort ("COLR") obligations as a result of a form of preferred provider arrangement that had been entered into between a developer and Comcast. Unlike Arizona, Florida has a statute that permits a local exchange carrier to be relieved of its COLR obligations under certain circumstances.

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NOVEMBER 6, 2007**

PPA 1-30 Have there been any court proceedings involving preferred provider/preferred carrier/marketing agreements in master planned communities that you are aware of? If your response is in the affirmative, please provide a case number and cite, if available.

Response: Citizens is not aware of any court proceedings involving preferred provider agreements.

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NOVEMBER 6, 2007**

PPA 1-31 Are you aware of any States that have enacted laws concerning the use of preferred provider/preferred carrier/marketing agreements in master planned communities? If yes, please provide a copy of the state laws with your response.

Response: Except as set forth in the Response to PPA 1-29 above, Citizens is not aware of any States that have enacted laws concerning the use of preferred provider agreements.

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PROVIDER AGREEMENTS ISSUES LIST
DOCKET NO. T-00000K-04-0927
NOVEMBER 6, 2007**

PPA 1-32 Do you believe such arrangements should be, or are, unlawful? Please explain your response.

Response: Citizens believes arrangements between developers and telecommunications companies that exclude competitors directly or raise rivals' costs are or should be unlawful. If such arrangements are permitted, then ILECs that have carrier-of-last-resort obligations should be relieved of them.

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PROVIDER AGREEMENTS ISSUES LIST
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PPA 1-33 Are business lines/customers treated differently than residential lines/customers within a master planned community that is under a preferred provider/preferred carrier/marketing agreement? If your response is in the affirmative, please explain how the treatment differs?

Response: The answer to this question would likely depend upon the terms of the preferred provider or exclusive marketing agreement. Citizens has no specific information concerning whether and how business customers may be treated differently than residential customers under such agreements.

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PROVIDER AGREEMENTS ISSUES LIST
DOCKET NO. T-00000K-04-0927
NOVEMBER 6, 2007**

PPA 1-34 Please provide a sample of all marketing literature distributed by the property owner/developer and your company regarding the provision of telephone service to a master planned community covered by a preferred provider/preferred carrier/marketing agreement.

Response: Citizens is in the process of collecting a sample.

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PROVIDER AGREEMENTS ISSUES LIST
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NOVEMBER 6, 2007**

PPA 1-35 Please provide copies of all unique marketing compensation schedules that were included in final preferred provider/preferred carrier/marketing agreements for all master planned communities served by your company. Each unique marketing compensation schedule should be accompanied with the name of the master planned community for which it applies. (For the purposes of this proceeding, please assume that a marketing compensation schedule is any description of revenue sharing terms and conditions or payments to property owners/developers of master planned communities by providers for services intended to increase or facilitate the penetration of telecommunications products and services.)

Response: The marketing agreements that Citizens has entered into with developers are proprietary and confidential. Citizens will provide the requested information to the Staff upon suitable arrangements to maintain its confidentiality.

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PROVIDER AGREEMENTS ISSUES LIST
DOCKET NO. T-00000K-04-0927
NOVEMBER 6, 2007**

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- PPA 1-36** Has your company ever entered into preferred provider/preferred carrier/marketing agreements for master planned communities that included capital contributions provided to your company or an affiliates? (For the purpose of this proceeding, please assume that a capital contribution is any payment of cash, check or bank transfer.) If your response is in the affirmative, please provide the following:
- a. The amount of capital contribution.
 - b. The name of the property owner/developer of the master planned community.
 - c. The name of the master planned community for which the capital contribution applies.

Response: No.

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PROVIDER AGREEMENTS ISSUES LIST
DOCKET NO. T-00000K-04-0927
NOVEMBER 6, 2007**

- PPA 1-37** Has your company ever engaged in discussions with property owners/developers of master planned communities that included any form of private easement? If your response is in the affirmative, please provide the following:
- a. The timeframe of such discussions.
 - b. The name of the property owners/developers involved in such discussions.
 - c. The name of the master planned community corresponding to such discussions.
 - d. Who initiated such discussions.
 - e. Whether or not your company entered into an agreement that included a private easement. If not, please explain why not.

Response: The meaning of the term "private easement" as used in PPA 1-37 is unclear; nevertheless, Citizens' has not initiated discussions with property owners/developers involving exclusive use of rights of way, nor would Citizens agree to such exclusivity.

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DOCKET NO. T-00000K-04-0927
NOVEMBER 6, 2007**

- PPA 1-38** Has your company ever entered into preferred provider/preferred carrier/marketing agreements with property owners/developers of master planned communities that included any form of private easement? If your response is in the affirmative, please provide the following:
- a. The timeframe of such agreements.
 - b. The name of the property owners/developers involved in such agreements.
 - c. The name of the master planned community corresponding to such agreements.

Response: The meaning of the term "private easement" as used in PPA 1-38 is unclear; nevertheless, Citizens' does not have agreements with property owners/developers involving exclusive use of rights of way, nor would Citizens agree to such exclusivity.

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PROVIDER AGREEMENTS ISSUES LIST
DOCKET NO. T-00000K-04-0927
NOVEMBER 6, 2007**

- PPA 1-39** Has your company ever engaged in discussions with property owners/developers of master planned communities that included any form of license fees required to provide telecommunications services? If your response is in the affirmative, please provide the following:
- a. The timeframe of such discussions.
 - b. The name of the property owners/developers involved in such discussions.
 - c. The name of the master planned community corresponding to such discussions.
 - d. Who initiated such discussions.
 - e. Whether or not your company entered into an agreement that included license fees. If not, please explain why not.

Response: The meaning of the phrase "license fees required to provide telecommunications services" as used in PPA 1-49 is unclear; nevertheless, Citizens has not initiated discussions with property owners/developers involving license fees to be paid property owners/developers for the right to provide telecommunications services, nor would Citizens agree to such fee.

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PROVIDER AGREEMENTS ISSUES LIST
DOCKET NO. T-00000K-04-0927
NOVEMBER 6, 2007**

PPA 1-40 Has your company ever entered into preferred provider/preferred carrier/marketing agreements with property owners/developers of master planned communities that included any form of license fees required to provide telecommunications services? If your response is in the affirmative, please provide the following:

- a. The timeframe of such agreements.
- b. The name of the property owners/developers involved in such agreements.
- c. The name of the master planned community corresponding to such agreements.

Response: The meaning of the phrase "license fees required to provide telecommunications services" as used in PPA 1-40 is unclear; nevertheless, Citizens' three Arizona ILECs have do not have agreements with developers involving license fees to developers for the right to provide telecommunications services, nor would Citizens agree to such fees.

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PROVIDER AGREEMENTS ISSUES LIST
DOCKET NO. T-00000K-04-0927
NOVEMBER 6, 2007**

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- PPA 1-41** For each master planned community, from April, 1998 to current, in which your company provides telecommunications services but is not or was not the preferred carrier, please provide the following information in excel, spreadsheet, electronic file format. (Each item named below should be taken to represent a column heading in an excel spreadsheet).
- a. The name of the master planned community.
 - b. The date when your company initiated service in the master planned community.
 - c. The name of the preferred provider/preferred carrier serving the master planned community.
 - d. Whether the services are provided via resale, facilities-based or both.
 - e. The number of units, homes, main accounts or lines being served by your company in the development.

Response: Please see Exhibit A.

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PROVIDER AGREEMENTS ISSUES LIST
DOCKET NO. T-00000K-04-0927
NOVEMBER 6, 2007**

PPA 1-42 Do you believe area code boundary changes for master planned communities that cover multiple area codes are in the public interest? If yes, please explain as completely as possible.

Response: Yes. As a result of its membership in ALECA, Citizens has learned of a master planned community split by two area codes. In this community consumers have been frustrated and confused by multiple area codes, even though those area codes may be included within the same local calling area. As an example of the difficulties created in this community, the PBX system within the community's school was initially provisioned incorrectly and failed to translate one of the community's area codes as a local call, therefore calls made from within the school could not complete to the residents located in that particular area code.

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PROVIDER AGREEMENTS ISSUES LIST
DOCKET NO. T-00000K-04-0927
NOVEMBER 6, 2007**

PPA 1-43 Would your company support the elimination of preferred provider/preferred carrier/marketing agreements in master planned communities under any circumstance? If yes, please explain as completely as possible.

Response: No. Citizens does not support eliminating preferred provider agreements under all circumstances but believes it is in the public interest to prohibit anticompetitive practices; that is, agreements erecting artificial barriers to entry or raising rivals' costs.

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DOCKET NO. T-00000K-04-0927
NOVEMBER 6, 2007**

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- PPA 1-44** Has your company ever considered but not proceeded with filing a complaint before any Commission or taking legal action in matters concerning a preferred provider/preferred carrier/marketing agreement or the provision of services for a master planned community? If yes, please explain:
- a. The name of the master planned community.
 - b. The relevant date(s) or timeframe.
 - c. Why the company chose not to file a complaint before the Commission or take legal action.

Response: Yes, Citizens has considered but not proceeded with filing a complaint against Aztech Communications (d/b/a Expand), an affiliate of the developer (Hoover Homes) of the El Rio Country Club development in Mohave County. Filing a complaint against Aztech is still under consideration, but Citizens much prefers the Commission proceed with an investigation of preferred provider agreements under a generic docket as recommended by Accipiter Communications in its March 22, 2007, comments in this docket.

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- PPA 1-45** Has your company ever filed a complaint with any Commission or taken legal action in matters concerning a preferred provider/preferred carrier/marketing agreement or the provision of services for a master planned community? If yes, please provide the following:
- a. The name of the master planned community.
 - b. The date the action or actions were taken.
 - c. A copy of each application filed with the Commission and/or each legal proceeding.

Response: No.

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**Exhibit A to Citizens Responses to Staff's PPA Issues List-- Dkt. No.
T-00000K-04-0927**

| Name of Development | Date Service Initiated | Name of Preferred Provider | Type of Service | Number of Lots |
|-----------------------------|-------------------------------|---------------------------------------|-------------------------------|-----------------------|
| El Rio Country Club | None by Frontier | Aztech Communications dba Expand | Facilities-Based | 155 Residential Lots |
| Sun Mission Resort | None by Frontier | Developer Provides a PBX-Like Service | Facilities-Based VoIP Service | 105 Residential Lots |
| Sun Mission Business Plaza | None by Frontier | Developer Provides a PBX-Like Service | Facilities-Based VoIP Service | 13 Commercial lots |
| Katherine Mine Road Housing | None by Frontier | NPG Cable | Facilities-Based | 68 Duplexes |