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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

COMMISSIONERS

DOCKETED

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

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AZ CORP COMMISSION  
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IN THE MATTER OF THE FORMAL  
COMPLAINT OF ACCIPITER  
COMMUNICATIONS, INC. AGAINST  
VISTANCIA, LLC, AND COX ARIZONA  
TELCOM, LLC.

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

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

<sup>1</sup> Accipiter alleged that there was a scheme crafted by Vistancia and Cox to monopolize the telecommunications market within the Vistancia development by intentionally excluding competition and advancing the financial interests of 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. Staff did not file an objection to Cox's  
3 request.

4 On July 1, 2008, a Procedural Order was issued requiring Cox to file the revised version of its  
5 document log by July 18, 2008, and requiring Staff to file any objections by August 8, 2008.

6 On July 18, 2008, Cox filed a revised privilege log.

7 On August 8, 2008, Staff filed Staff's Request for Extension of Time, asking that its filing  
8 deadline for objections be extended to August 15, 2008.

9 On August 11, 2008, Cox filed a Response to Staff's Request for Extension of Time, stating  
10 that Cox does not object to Staff's requested extension of time.

11 Because Cox does not object to Staff's requested extension of time, and the extension  
12 requested is brief, it is reasonable to grant Staff additional time to review and compile any objections  
13 to the revised privilege log.

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

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

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

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28 ...

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

3 DATED this 12<sup>th</sup> day of August, 2008.

4  
5  
6   
7 SARAH N. HARPRING  
8 ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered  
10 this 12<sup>th</sup> day of August, 2008, to:

11 William D. Cleaveland  
12 DAVIS MILES, PLLC  
13 560 West Brown Road, Third Floor  
14 P.O. Box 15070  
15 Mesa, AZ 85211  
16 Attorney for Accipiter Communications, Inc.

Janice Alward, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

17 Michael M. Grant  
18 GALLAGHER & KENNEDY, P.A.  
19 2575 East Camelback Road  
20 Phoenix, AZ 85016-9225  
21 Attorney for Vistancia, LLC

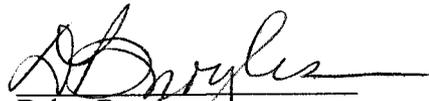
Ernest G. Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

22 Michael W. Patten  
23 ROSHKA DEWULF AND PATTEN, PLC  
24 400 East Van Buren Street, Suite 800  
25 Phoenix, AZ 85004  
26 Attorney for Cox Arizona Telcom, LLC

27 William J. Maledon  
28 Dawn L. Dauphine  
OSBORN MALEDON, P.A.  
2929 North Central Avenue, Suite 2100  
Phoenix, AZ 85012  
Attorneys for Cox Arizona Telcom, LLC

Mark DiNunzio  
COX ARIZONA TELCOM, LLC  
1550 West Deer Valley Road  
MS: DV3-16, Building C  
Phoenix, AZ 85027

Patrick Sherrill, President and CEO  
ACCIPITER COMMUNICATIONS, INC.  
2238 West Lone Cactus Drive, Suite 100  
Phoenix, AZ 85027

By:   
Debra Broyles  
Secretary to Sarah N. Harpring