



0000088519

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

DOCKETED

2008 SEP -9 P 3:52

SEP -9 2008

AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS:

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

DOCKETED BY

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

**COX ARIZONA TELCOM, LLC'S
RESPONSE TO REQUEST FOR PROCEDURAL SCHEDULE**

Cox Arizona Telcom, LLC ("Cox") hereby responds to Staff's September 4, 2008 Request for a Procedural Schedule.

Cox believes it is premature to set the dates for resuming this hearing. Rather Cox requests that a procedural conference be set approximately two weeks after an order is issued on the attorney-client privilege issues in order to address issues related to the hearing.

Cox's proposal is appropriate for several reasons. First, the ruling on the attorney-client privilege may change the scope of the hearing in terms of issues, witnesses that will appear and duration of the hearing. Due process requires adequate time to prepare for the hearing based on impact of the attorney-client privilege ruling.

Second, Cox may appeal the attorney-client privilege ruling depending on the outcome of the ruling. It would be inefficient to schedule a hearing and begin preparation now if the hearing will only be suspended again pending the appeal.

Third, at this point, it is uncertain what witnesses will appear at the hearing. Staff had previously identified additional witnesses it may seek to call. Given the nature of this proceeding and the proposed penalty, it would be appropriate to schedule a procedural conference to clearly identify who will be testifying to allow the parties adequate time to prepare.

ROSHKA DeWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Cox also objects to Staff's asserted linkage between two complaints filed by Cox's
2 competitors as a rationale to press forward quickly on this docket, and to Staff's suggestion that
3 Cox has engaged in repeated violations of Commission orders based entirely on allegations of
4 Cox's competitors. The two complaints involve completely different issues – one arising out of an
5 interconnection agreement dispute, one arising out of a preferred marketing arrangement. Given
6 the scope of the proposed penalty in this docket, the timing of this docket should not be driven by
7 completely different and unrelated allegations by a competitor in another docket. Rather the
8 timing should be dictated by due process. Cox believes its proposal for a procedural conference
9 will facilitate determining the appropriate scope and timing of the hearing.

10 WHEREFORE Cox requests that the Hearing Division set a procedural conference for two
11 weeks after the attorney-client privilege ruling is issued for purposes of addressing the appropriate
12 scope and timing of the resumption of the hearing in this docket.

13 RESPECTFULLY SUBMITTED this 9th day of September 2008.

14 COX ARIZONA TELCOM, LLC.

15
16 By 
17 Michael W. Patten
18 Roshka DeWulf & Patten, PLC
19 One Arizona Center
20 400 East Van Buren Street, Suite 800
21 Phoenix, Arizona 85004

22 and

23 William J. Maledon
24 Dawn L. Dauphine
25 OSBORN MALEDON, P.A.
26 2929 North Central Ave., Suite 2100
27 Phoenix, Arizona 85012

Attorneys for Cox Arizona Telcom, LLC

ROSHKA DeWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Original and 13 copies of the foregoing
2 filed this 9th day of September 2008 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7
8 Copy of the foregoing hand-delivered/mailed
9 this 9th day of September 2008 to:

10 Dwight Nodes, Esq.
11 Sarah Harpring, Esq.
12 Administrative Law Judges
13 Hearing Division
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, Arizona 85007

17 Maureen A. Scott, Esq.
18 Legal Division
19 Arizona Corporation Commission
20 1200 West Washington Street
21 Phoenix, Arizona 85007

22 Ernest G. Johnson
23 Director, Utilities Division
24 Arizona Corporation Commission
25 1200 West Washington Street
26 Phoenix, Arizona 85007

27 William D. Cleaveland
28 David Miles, PLLC
29 560 West Brown Road, Third Floor
30 Mesa, Arizona 85211

31 Michael M. Grant, Esq
32 Gallagher & Kennedy
33 2575 East Camelback Road
34 Phoenix, Arizona 85016

35
36
37 By Mary Spolito