

ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS
MIKE GLEASON - Chairman
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JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED

DEC - 1 2008

DATE: DECEMBER 1, 2008
DOCKET NO: T-02847A-08-0164 AND T-01051B-08-0164
TO ALL PARTIES:

DOCKETED BY
KK MA

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Opinion and Order on:

ACCIPITER COMMUNICATIONS, INC. AND
QWEST CORPORATION
(CC&N EXTENSION/DELETION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

DECEMBER 10, 2008

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

DECEMBER 16, 2008 AND DECEMBER 17, 2008

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

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

8 IN THE MATTER OF THE JOINT APPLICATION
9 OF ACCIPITER COMMUNICATIONS, INC. AND
10 QWEST CORPORATION FOR ACCIPITER TO
11 EXTEND ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY AND TO DELETE A PORTION
OF ITS CERTIFICATE OF CONVENIENCE AND
NECESSITY IN FAVOR OF QWEST AND FOR
QWEST TO EXTEND ITS SERVICE AREA AND
DELETE A PORTION OF ITS SERVICE AREA IN
FAVOR OF ACCIPITER.

DOCKET NO. T-02847A-08-0164

DOCKET NO. T-01051B-08-0164

DECISION NO. _____

OPINION AND ORDER

12 DATE OF HEARING: October 21, 2008

13 PLACE OF HEARING: Phoenix, Arizona

14 ADMINISTRATIVE LAW JUDGE: Sarah N. Harpring

15 APPEARANCES: Mr. Bradley S. Carroll, and Mr. Jeffrey W. Crockett,
16 Snell & Wilmer, LLP, on behalf of Accipiter
Communications, Inc.;

17 Mr. Norman Curtright, Qwest Corporation Legal
18 Department, on behalf of Qwest Corporation; and

19 Ms. Maureen Scott, Senior Staff Counsel, Legal
20 Division, on behalf of the Utilities Division of the
Arizona Corporation Commission.

21 **BY THE COMMISSION:**

22 On March 18, 2008, Accipiter Communications, Inc., dba Zona Communications
23 ("Accipiter") and Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission
24 ("Commission") a Joint Application requesting an order (1) deleting a portion of Qwest's service area
25 ("Accipiter extension area") and extending Accipiter's Certificate of Convenience and Necessity
26 ("CC&N") service area to include it, (2) deleting a portion of Accipiter's CC&N service area
27 ("Qwest extension area") and adding it to Qwest's service area, (3) authorizing Accipiter to charge in
28 the Accipiter extension area the rates and charges included in existing Accipiter tariffs on file with

1 the Commission, (4) authorizing Qwest to charge in the Qwest extension area the rates and charges
2 included in existing Qwest tariffs on file with the Commission, and (5) stating that the Commission
3 does not object to the Federal Communications Commission's ("FCC's") granting a waiver of the
4 Study Area boundary freeze to allow Accipiter and Qwest to modify their respective Study Areas
5 consistent with the transfer of the Accipiter extension area and Qwest extension area.

6 On April 15, 2008, Commission Utilities Division Staff ("Staff") issued a Letter of
7 Insufficiency and First Set of Data Requests to Accipiter and Qwest.

8 On May 9, 2008, Qwest filed responses to the First Set of Data Requests.

9 On May 14, 2008, Accipiter filed responses to the First Set of Data Requests.

10 On June 11, 2008, Staff issued a Second Letter of Insufficiency and Second Set of Data
11 Requests to Accipiter.

12 On June 23, 2008, Accipiter filed responses to the Second Set of Data Requests.

13 On July 23, 2008, Staff issued a Letter of Sufficiency to Accipiter and Qwest stating that the
14 Joint Application had met the sufficiency requirements as outlined in Arizona Administrative Code
15 ("A.A.C.") R14-2-502.

16 On July 25, 2008, a Procedural Order was issued scheduling a hearing in this matter for
17 October 10, 2008, and establishing other procedural requirements and deadlines.

18 On July 30, 2008, Accipiter filed a Motion to Modify Procedural Schedule, requesting to have
19 the hearing date and associated procedural deadlines continued by at least 10 days, because of the
20 unavailability of Accipiter's counsel, and agreeing to a tolling of the timeframe for the period of the
21 continuance. Accipiter stated that neither Qwest nor Staff objected to the continuance.

22 On July 30, 2008, a Procedural Order was issued rescheduling the hearing for October 21,
23 2008; modifying the associated procedural deadlines accordingly; and extending the timeframe for
24 this matter by 11 days.

25 On August 28, 2008, at the request of counsel for Accipiter, a telephonic procedural
26 conference was held to discuss notice publication requirements.

27 On September 11, 2008, Accipiter and Qwest filed Notice of Filing Affidavits of Mailing and
28 Affidavit of Publication.

1 On September 15, 2008, Staff filed a Staff Report recommending that the Joint Application be
2 approved.

3 On September 24, 2008, comments in support of the Joint Application were filed.

4 On September 25, 2008, Accipiter filed Comments Regarding the Staff Report.

5 On October 21, 2008, a full evidentiary hearing in this matter proceeded before a duly
6 authorized Administrative Law Judge of the Commission at the Commission's offices in Phoenix,
7 Arizona.

8 * * * * *

9 Having considered the entire record herein and being fully advised in the premises, the
10 Commission finds, concludes, and orders that:

11 **FINDINGS OF FACT**

12 1. On March 18, 2008, Accipiter and Qwest filed with the Commission a Joint
13 Application requesting an order (1) deleting the Accipiter extension area from Qwest's service area
14 and extending Accipiter's CC&N service area to include it, (2) deleting the Qwest extension area
15 from Accipiter's CC&N service area and adding it to Qwest's service area, (3) authorizing Accipiter
16 to charge in the Accipiter extension area the rates and charges included in existing Accipiter tariffs on
17 file with the Commission, (4) authorizing Qwest to charge in the Qwest extension area the rates and
18 charges included in existing Qwest tariffs on file with the Commission, and (5) stating that the
19 Commission does not object to the FCC's granting a waiver of the Study Area boundary freeze to
20 allow Accipiter and Qwest to modify their respective Study Areas consistent with the transfer of the
21 Accipiter extension area and Qwest extension area.

22 2. Accipiter is a Nevada corporation, authorized to transact business in Arizona, and is in
23 good standing with the Commission's Corporations Division.

24 3. Pursuant to a CC&N initially granted by the Commission in Decision No. 59346
25 (October 11, 1995), Accipiter is an incumbent local exchange carrier ("ILEC") providing local
26 exchange services and other telecommunications services in a service area of approximately 1,100
27 square miles within Maricopa and Yavapai Counties. As of the hearing, Accipiter was providing
28 service to approximately 191 customers with 309 access lines, split almost evenly between business

1 and residential access lines.

2 4. Accipiter is a rural carrier, eligible for U.S. Department of Agriculture Rural Utilities
3 Service ("RUS") financing, and receives Universal Service Fund ("USF") support.

4 5. Qwest is a Colorado corporation, authorized to transact business in Arizona, and is in
5 good standing with the Commission's Corporations Division.

6 6. Qwest is an ILEC and, along with its predecessors, has been providing local exchange
7 services in Arizona since before Arizona's statehood. Qwest's Arizona service area is designated in
8 service area maps incorporated into its tariffs and approved by the Commission. As of June 30, 2008,
9 Qwest was providing service to approximately 1.5 million access lines.

10 7. On July 23, 2008, Staff issued a Letter of Sufficiency to Accipiter and Qwest stating
11 that the Joint Application had met the sufficiency requirements as outlined in A.A.C. R14-2-502.

12 8. On July 25, 2008, a Procedural Order was issued scheduling a hearing in this matter
13 for October 10, 2008, and establishing other procedural requirements and deadlines.

14 9. On July 30, 2008, Accipiter filed a Motion to Modify Procedural Schedule, requesting
15 to have the hearing date and associated procedural deadlines continued by at least 10 days, because of
16 the unavailability of Accipiter's counsel, and agreeing to a tolling of the timeframe for the period of
17 the continuance. Accipiter stated that neither Qwest nor Staff objected to the continuance.

18 10. On July 30, 2008, a Procedural Order was issued rescheduling the hearing for October
19 21, 2008; modifying the associated procedural deadlines accordingly; and extending the timeframe
20 for this matter by 11 days.

21 11. On August 28, 2008, at the request of counsel for Accipiter, a telephonic procedural
22 conference was held to discuss notice publication requirements. Accipiter and Qwest appeared
23 through counsel, and Staff did not appear.¹ During the procedural conference, it was determined that
24 Accipiter and Qwest would have notice of the application published in the statewide edition of *The*
25 *Arizona Republic* with a smaller font size than had been ordered in the prior Procedural Orders, but
26 with the publishing deadline unchanged.

27

28 ¹ Staff had been provided notice of the procedural conference by counsel for Accipiter, but counsel for Staff was unexpectedly unavailable.

1 12. On September 11, 2008, Accipiter and Qwest filed Notice of Filing Affidavits of
2 Mailing and Affidavit of Publication. The filing showed that notice of the application had been
3 mailed first class to all property owners in the Qwest extension area on August 25, 2008; that notice
4 of the application had been mailed first class to all property owners in the Accipiter extension area on
5 September 2, 2008; and that notice had been published in the statewide edition of *The Arizona*
6 *Republic* on September 1, 2008.

7 13. On September 15, 2008, Staff filed a Staff Report recommending that the Joint
8 Application be approved. In the Staff Report, Staff noted that the area code for the Accipiter
9 extension area would change from 623 to 928, although this would have no effect on the scope of the
10 local calling area for future customers, as Accipiter's exchanges are part of the Phoenix local calling
11 area. Staff explained that because Accipiter exchanges in the 928 area code are in a different rate
12 center from Qwest, in the 623 area code, there would be a restriction on local number portability
13 between the two.

14 14. On September 24, 2008, Christopher J. Cacheris, Vice President, Harvard
15 Investments, filed comments on behalf of Lake Pleasant 5000 LLC, a property owner in the Accipiter
16 extension area, in support of the Joint Application. Mr. Cacheris also requested that the Accipiter
17 extension area retain a 623 area code.

18 15. On September 25, 2008, Accipiter filed Comments Regarding the Staff Report.
19 Accipiter stated that it supports the Staff Report, but requests that the Commission Order include a
20 provision allowing the Accipiter extension area to remain in the 623 area code.

21 16. On October 21, 2008, a full evidentiary hearing in this matter proceeded before a duly
22 authorized Administrative Law Judge of the Commission at the Commission's offices in Phoenix,
23 Arizona. Accipiter, Qwest, and Staff appeared through counsel and presented testimony. Accipiter
24 and Staff also presented evidence in the form of exhibits.

25 17. Staff's Consumer Services Section reports that no complaints, inquiries, or opinions
26 have been filed regarding the Joint Application.

27 18. Staff's Compliance Section reports that neither Accipiter nor Qwest has any
28 delinquencies.

1 **The Accipiter Extension Area**

2 19. The Accipiter extension area is composed of 11 ½ Sections in Maricopa County with
3 the following legal description: Township 6 North, Range 2 West, Gila and Salt River Base and
4 Meridian, Sections 4-9, 17, and 18; and Township 7 North, Range 2 West, Gila and Salt River Base
5 and Meridian, Sections 31-33 and the western ½ of Section 34. Exhibit A, attached hereto and
6 incorporated herein, shows the Accipiter extension area. The Accipiter extension area does not
7 include any land located within the incorporated limits of a municipality.

8 20. Most of the Accipiter extension area² consists of land intended to be used for a
9 development now referred to as the Lake Pleasant 5000 property, but formerly known as the GW
10 Holdings property. The developer for the Lake Pleasant 5000 property intends to build a residential
11 development with 8,500 homes, but is still in the planning stage and does not have a firm timetable
12 for development due to the current state of the housing industry. (Tr. At 23.)

13 21. The remainder of the Accipiter extension area consists of an additional contiguous 3 ½
14 Sections that are intended to “square off” Accipiter’s CC&N service area. The entire northern border
15 and three quarters of the eastern border of the Accipiter extension area are contiguous to Accipiter’s
16 current service area. The remaining area is contiguous to Qwest’s service area.

17 22. The Accipiter extension area has only two owners of record—Lake Pleasant 5000,
18 LLC,³ and a couple. (Tr. At 26, 27.) Although notice was provided to the couple, Accipiter did not
19 hear from them regarding the Joint Application. (Tr. at 26.)

20 23. Qwest does not have facilities in place to serve the Accipiter extension area, does not
21 have any agreements with developers to serve the area, and does not serve any customers in the area.
22 Qwest stated that it is not aware of any unserved potential customers in the Accipiter extension area.

23 24. According to Staff, the Accipiter extension area currently has only marginal wireless
24 service.

25 25. Accipiter has facilities in its Lake Pleasant Exchange area that can be efficiently
26

27 ² Nine of approximately 11 square miles consist of the Lake Pleasant 5000 property. (Tr. At 26.)

28 ³ Lake Pleasant 5000, LLC, and Harvard Investments, the developer for the property, are affiliated. (Tr. At 26.)
Accipiter’s witness testified that he believes Harvard Investments is a holding company that uses subsidiaries such as
Lake Pleasant 5000, LLC, for their special projects. (Tr. At 28.)

1 extended to serve the Accipiter extension area. Accipiter currently plans to begin construction in
2 mid-2009 of an interexchange fiber optic cable route from its network at Quintero westward along
3 Highway 74 to its Sun Valley service area. This fiber optic cable, which is to be built regardless of
4 the status of the Lake Pleasant 5000 development, will pass within one mile of the Lake Pleasant
5 5000 development's southern border. Accipiter plans to leave an access point along the fiber optic
6 route so that when the Highway 74 access for the Lake Pleasant 5000 development is constructed,
7 Accipiter can splice in the fiber route to extend facilities northward within the developer-defined
8 public utility right-of-way.

9 26. Accipiter plans to construct fiber-to-the-home network facilities to serve the Lake
10 Pleasant 5000 development with basic telephone, custom calling and CLASS telephone features, long
11 distance, and broadband Internet services. Accipiter also plans to provide high-capacity data circuits,
12 which are required for some business applications.

13 27. The developer for the Lake Pleasant 5000 property has confirmed in writing that it
14 desires Accipiter to serve the Lake Pleasant 5000 property. (Ex. A-2.)

15 28. In Decision No. 68913 (August 29, 2006), the Commission ordered Accipiter to file,
16 within 24 months after the effective date of the Decision, a CC&N extension application for the GW
17 Holdings Property, as a condition precedent to drawing on the loan approved in that Decision for the
18 \$2,051,400 that Accipiter projected would be needed for the infrastructure to serve the GW Holdings
19 property. Accipiter intends for the Joint Application to meet the filing obligation of Decision No.
20 68913 and stated that the \$2,051,400 is sufficient to construct facilities to serve the Lake Pleasant
21 5000 development property.

22 29. Staff stated in the Staff Report that the Joint Application meets the filing obligation of
23 Decision No. 68913. Staff also stated that the additional 3 ½ Sections are a reasonable addition to the
24 area requested because it should be less costly for Accipiter than it would be for Qwest to provide
25 service to those Sections.

26 **Qwest Extension Area**

27 30. The Qwest extension area is composed of 2 ¾ Sections in Maricopa County with the
28 following legal description: Township 3 North, Range 2 West, Gila and Salt River Base and

1 Meridian, Sections 29 and 32, the western $\frac{1}{2}$ of Section 28, and the southeastern $\frac{1}{4}$ of Section 31.
2 Exhibit A shows the Qwest extension area. The Qwest extension area does not include any land
3 located within the incorporated limits of a municipality.

4 31. The Qwest extension area consists of four parcels owned by two property owners.
5 Qwest mailed notice of the Joint Application to the property owners, but did not receive any
6 response.

7 32. The Qwest extension area is bounded by the White Tank Mountain Regional Park to
8 the west and by Qwest's service area to the south and east. According to Staff, it consists primarily
9 of county land, with only four parcels owned by other private or public entities.

10 33. Accipiter does not currently have any facilities or customers in the Qwest extension
11 area and states that it is unaware of any unserved potential customers in the area. Qwest testified that
12 the area is a fairly remote, undeveloped area. (Tr. at 40.)

13 34. Qwest is currently serving one customer within the Qwest extension area, in Township
14 3 North, Range 2 West, Section 29 of the Gila and Salt River Base and Meridian, and has been since
15 before Accipiter's CC&N service area included that Section.⁴ When Qwest discovered in
16 approximately July 2007 that it was serving a customer in that Section, Qwest notified Accipiter and
17 proposed that Accipiter transfer that Section to Qwest at the same time as Qwest transferred the Lake
18 Pleasant 5000 area to Accipiter.

19 35. Qwest currently has a 100-pair cable running through the Qwest extension area on
20 Olive Road turning onto White Tank Mountain Road into the non-contiguous territory in Section 18.

21 36. The Qwest extension area is currently assigned a 928 area code, and would change to
22 a 623 area code as a result of the transfer to Qwest. This would have no impact on the existing
23 customer, who already is assigned a Qwest number with a 623 area code.

24 37. Staff notes that the Qwest extension area includes $1\frac{3}{4}$ Sections in addition to the 1
25 Section in which the current Qwest customer exists. Staff explained that the additional $1\frac{3}{4}$ Sections
26 square off Qwest's service area and are a reasonable addition to the Qwest extension area because it

27
28 ⁴ The one customer operates a dude ranch on leased property. (Tr. at 39-40.)

1 will be less costly for Qwest than it would be for Accipiter to provide service to those Sections.

2 **Rates and Charges**

3 38. The Joint Application requests that Accipiter and Qwest each be authorized to charge
4 their existing rates and charges on file with the Commission in their respective extension areas.

5 39. For residential customers in the Qwest extension area, Accipiter's basic service rate is
6 \$16.78, and Qwest's basic service rate will be \$13.18. For business customers in the Qwest
7 extension area, Accipiter's basic service rate is \$35.78, and Qwest's basic service rate will be \$30.40.

8 40. For residential customers in the Accipiter extension area, Qwest's basic service rate is
9 \$14.68, and Accipiter's basic service rate will be \$16.78. For business customers in the Accipiter
10 extension area, Qwest's basic service rate is \$31.90, and Accipiter's basic service rate will be \$35.78.

11 41. Staff explained that Qwest's tariff includes a Provisioning Agreement for Housing
12 Developments ("PAHD") that may require payment by a developer for some of the cost to construct
13 new facilities. At this time, as there are no known development plans for the Qwest extension area,
14 the PAHD will not have an impact.

15 42. Staff explained that because Accipiter uses RUS financing, Accipiter is precluded
16 from charging construction or line extension charges. Thus, although Accipiter's basic monthly rates
17 are somewhat higher than are Qwest's, the increase in cost is offset somewhat by the benefit of not
18 being required by Accipiter to pay construction or line extension charges. Staff stated that Accipiter
19 has informed the Lake Pleasant 5000 property developer of the difference in the basic service rates
20 and also that Accipiter's rates for basic service bundled with other calling features are generally
21 lower than are the costs for comparable Qwest bundles.

22 43. The difference in basic service rates would only impact future customers as
23 development occurs, as the one existing customer in the Qwest extension area is already paying
24 Qwest rates.

25 **Request for Statement Regarding Boundary Freeze Waiver**

26 44. The Joint Application requests that the Decision in this matter include an ordering
27 paragraph stating that the Commission does not object to the FCC's granting a waiver of the Study
28 Area boundary freeze to allow Accipiter and Qwest to modify their respective Study Areas to reflect

1 the transfer of the extension areas.

2 45. Staff explained that the FCC froze Study Area boundaries as of November 15, 1984,
3 to prevent holding companies from setting up high cost exchanges as separate companies within the
4 holding companies' existing territories to maximize high-cost support. Staff stated that in reviewing
5 Study Area waiver petitions, the FCC considers (1) whether the change in Study Area boundaries will
6 adversely affect the USF, (2) whether a state commission with regulatory authority over the
7 transferred area has opposed the transfer, and (3) whether the transfer is in the public interest.

8 46. Accipiter and Qwest each have only one Study Area within Arizona.

9 47. Accipiter testified that the FCC waiver would allow Accipiter to include the Accipiter
10 extension area within its Study Area and thus in its cost study. (Tr. At 18.) Without the waiver,
11 Accipiter would be required to make a separate cost study for the Accipiter extension area, would not
12 be able to receive federal USF on its costs, and would have to file separate National Exchange Carrier
13 Association ("NECA") tariffs⁵ for it, all of which would be administratively burdensome. (Tr. At 18,
14 28.) Accipiter also testified that the FCC waiver would ultimately allow Accipiter to receive federal
15 USF for the Accipiter extension area. (*Id.*)

16 48. Staff states that because there are no Qwest customers or Qwest facilities in the
17 Accipiter extension area, there will be no immediate impact on the USF if the transfer from Qwest to
18 Accipiter is approved. Likewise, Staff states, because there are no Accipiter customers or Accipiter
19 facilities in the Qwest extension area, there will be no immediate impact on the USF if the transfer
20 from Accipiter to Qwest is approved. According to Staff, the one Qwest customer located in the
21 Qwest extension area would have only a *de minimis* impact on Qwest's Study Area, and Qwest does
22 not receive high-cost-loop support for its rural service area because its costs are averaged statewide.

23 49. Accipiter states that to the extent its initial investment to serve the Accipiter extension
24 area increases its average investment per access line, its federal USF could increase. However,
25 according to Accipiter, this will decrease as the development begins to achieve density and the
26 average investment per access line is thus decreased. Staff stated that any future change in the

27 _____
28 ⁵ NECA represents small rural carriers' interests before the federal government and files with the federal government consolidated tariffs that all of the represented carriers participate in. (Tr. At 28-29.)

1 amount of funding received by Accipiter would be of *de minimis* impact to the High Cost Fund.

2 50. Staff explained that “federal universal service policy promotes the availability of
3 communications services in an efficient, widespread manner and with adequate facilities at
4 reasonable charges.” Staff believes that the transfer of the two extension areas will allow each area to
5 be served by the provider who can most efficiently provide service.

6 51. Qwest testified that the FCC waiver of the Study Area boundary freeze would benefit
7 Qwest because Qwest would be able to have its single Study Area and have it accurately reflect the
8 boundaries of the territory it services. (Tr. at 36-37.) Qwest does not receive USF funds in Arizona.

9 **Request to Retain 623 Area Code**

10 52. The Accipiter extension area is currently in Qwest’s Circle City Exchange, which has
11 a 623 area code. Accipiter has requested that the Accipiter extension area be permitted to remain in
12 the 623 area code rather than being switched to a 928 area code for the following reasons:

- 13 a. The developer of the Lake Pleasant 5000 property has requested that the
14 Accipiter extension area retain the 623 area code;
- 15 b. Accipiter already has the South Lake Pleasant Exchange, which has a 623 area
16 code, so Accipiter will not have any technical or operational difficulties with
17 provisioning the 623 area code;
- 18 c. The residents in the planned Lake Pleasant 5000 development will probably do
19 business primarily along the U.S. Highway 60 corridor, which has a 623 area
20 code;
- 21 d. Accipiter has experienced the following difficulties with its 928 area code
22 telephone numbers:
- 23 i. Businesses in the Phoenix metropolitan area that do not keep their
24 private branch exchange (“PBX”) updated are unable to complete calls
25 to Accipiter’s 928 customers because the equipment does not recognize
26 the numbers as local;
- 27 ii. Accipiter’s 928 customers are often initially confused about their
28 ability to make local calls to Phoenix numbers (623, 602, and 480) and

- 1 are unable to complete such calls if they erroneously use 1+ dialing;
- 2 iii. Phoenix metro residents likewise experience confusion about their
- 3 ability to make local calls to Accipiter's 928 customers, with the same
- 4 result; and
- 5 iv. Accipiter's 928 customers sometimes believe that they can call any 928
- 6 number as a local call, which they cannot; and
- 7 e. Qwest does not object.

8 53. Accipiter testified that the Accipiter extension area would be included in Accipiter's

9 existing 623 exchange, (Tr. At 20), the South Lake Pleasant Exchange, and that Accipiter's Extended

10 Area Service ("EAS") agreement with Qwest would not need to be modified, (Tr. At 30).

11 54. Staff does not oppose Accipiter's request to have the Accipiter extension area remain

12 in the 623 area code. (Tr. at 43.) Staff does not believe that there is any harm in allowing the

13 Accipiter extension area to remain in the 623 area code and generally agrees with the reasons that

14 Accipiter raised for requesting this. (Tr. at 49.)

15 **Staff's Recommendations**

16 55. Staff believes that the Joint Application should be approved, as it is in the public

17 interest, and recommends the following:

- 18 a. That the Commission approve the transfer of the Accipiter extension area from
- 19 Qwest to Accipiter;
- 20 b. That the Commission approve the transfer of the Qwest extension area from
- 21 Accipiter to Qwest;
- 22 c. That Accipiter and Qwest be required to update their respective service area
- 23 maps on file with the Commission within 60 days after a Decision granting the
- 24 Joint Application;
- 25 d. That the Commission approve the requests of Accipiter and Qwest to charge in
- 26 the Accipiter extension area and the Qwest extension area those rates and
- 27 charges set forth in their existing tariffs on file with the Commission;
- 28 e. That any Decision approving the transfer of the extension areas include an

1 ordering clause stating that the Commission does not object to the FCC's
2 granting a waiver of the Study Area boundary freeze to allow Accipiter and
3 Qwest to modify their respective Study Areas consistent with the transfer of
4 the extension areas; and

5 f. That if the Accipiter extension area remains in the 623 area code, it be made a
6 noncontiguous part of Accipiter's existing South Lake Pleasant Exchange.

7 56. Staff's recommendations in Findings of Fact No. 55 are reasonable and should be
8 adopted.

9 **CONCLUSIONS OF LAW**

10 1. Accipiter is a public service corporation within the meaning of Article XV of the
11 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

12 2. Qwest is a public service corporation within the meaning of Article XV of the Arizona
13 Constitution and A.R.S. §§ 40-281 and 40-282.

14 3. The Commission has jurisdiction over Accipiter and Qwest and the subject matter of
15 the Joint Application.

16 4. Notice of the Joint Application was given in accordance with the law.

17 5. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes,
18 it is in the public interest to eliminate the Accipiter extension area from Qwest's service area and to
19 allow Accipiter to extend its CC&N service area to include the Accipiter extension area.

20 6. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes,
21 it is in the public interest to eliminate the Qwest extension area from Accipiter's CC&N service area
22 and to allow Qwest to extend its service area to include the Qwest extension area.

23 7. Accipiter is a fit and proper entity to receive an extension of its CC&N service area to
24 include the Accipiter extension area.

25 8. Qwest is a fit and proper entity to receive an extension of its service area to include the
26 Qwest extension area.

27 9. It is just and reasonable and in the public interest to allow Accipiter to charge in the
28 Accipiter extension area the rates and charges in Accipiter's existing tariffs on file with the

1 Commission.

2 10. It is just and reasonable and in the public interest to allow Qwest to charge in the
3 Qwest extension area the rates and charges in Qwest's existing tariffs on file with the Commission.

4 11. It is in the public interest to include an ordering paragraph in this Decision stating that
5 the Commission does not object to the FCC's granting a waiver of the Study Area boundary freeze to
6 allow Accipiter and Qwest to modify their respective Study Areas to reflect the transfer of the
7 extension areas granted herein.

8 12. It is in the public interest to allow the Accipiter extension area to be included in
9 Accipiter's South Lake Pleasant Exchange, which is assigned a 623 area code, rather than requiring it
10 to be included in an exchange with a 928 area code.

11 13. Staff's recommendations, as set forth in Findings of Fact No. 55, are reasonable and
12 should be adopted.

13 **ORDER**

14 IT IS THEREFORE ORDERED that Accipiter Communications, Inc.'s Certificate of
15 Convenience and Necessity is hereby modified by eliminating from its service area the Qwest
16 extension area, which is legally described in Findings of Fact No. 30.

17 IT IS FURTHER ORDERED that Qwest Corporation's service area is hereby modified by
18 eliminating from it the Accipiter extension area, which is legally described in Findings of Fact No.
19 19.

20 IT IS FURTHER ORDERED that Accipiter Communications, Inc.'s Certificate of
21 Convenience and Necessity is hereby extended to include within its service area the Accipiter
22 extension area, as described in Findings of Fact No. 19.

23 IT IS FURTHER ORDERED that Qwest Corporation's service area is hereby extended to
24 include the Qwest extension area, as described in Findings of Fact No. 30.

25 IT IS FURTHER ORDERED that Accipiter Communications, Inc. shall, within 60 days after
26 the effective date of this Decision, file with the Commission's Docket Control, as a compliance item
27 in this docket, an updated service area map showing the modifications approved herein.

28 IT IS FURTHER ORDERED that Qwest Corporation shall, within 60 days after the effective

1 date of this Decision, file with the Commission's Docket Control, as a compliance item in this
2 docket, an updated service area map showing the modifications approved herein.

3 IT IS FURTHER ORDERED that Accipiter Communications, Inc. shall charge in the
4 Accipiter extension area those rates and charges set forth in Accipiter Communications, Inc.'s
5 existing tariffs on file with the Commission.

6 IT IS FURTHER ORDERED that Qwest Corporation shall charge in the Qwest extension
7 area those rates and charges set forth in Qwest Corporation's existing tariffs on file with the
8 Commission.

9 IT IS FURTHER ORDERED that the Accipiter extension area shall be included in Accipiter
10 Communications, Inc.'s South Lake Pleasant Exchange, which is assigned a 623 area code, rather
11 than in an exchange with a 928 area code.

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IT IS FURTHER ORDERED that the Commission does not object to the Federal Communications Commission's granting a waiver of the Study Area boundary freeze to allow Accipiter Communications, Inc. and Qwest Corporation to modify their respective Study Areas to reflect the transfer of the extension areas granted herein.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN _____ COMMISSIONER

COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2008.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SNH:db

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SERVICE LIST FOR: ACCIPITER COMMUNICATIONS, INC. AND
QWEST CORPORATION

DOCKET NOS.: T-02847A-08-0164 AND T-01051B-08-0164

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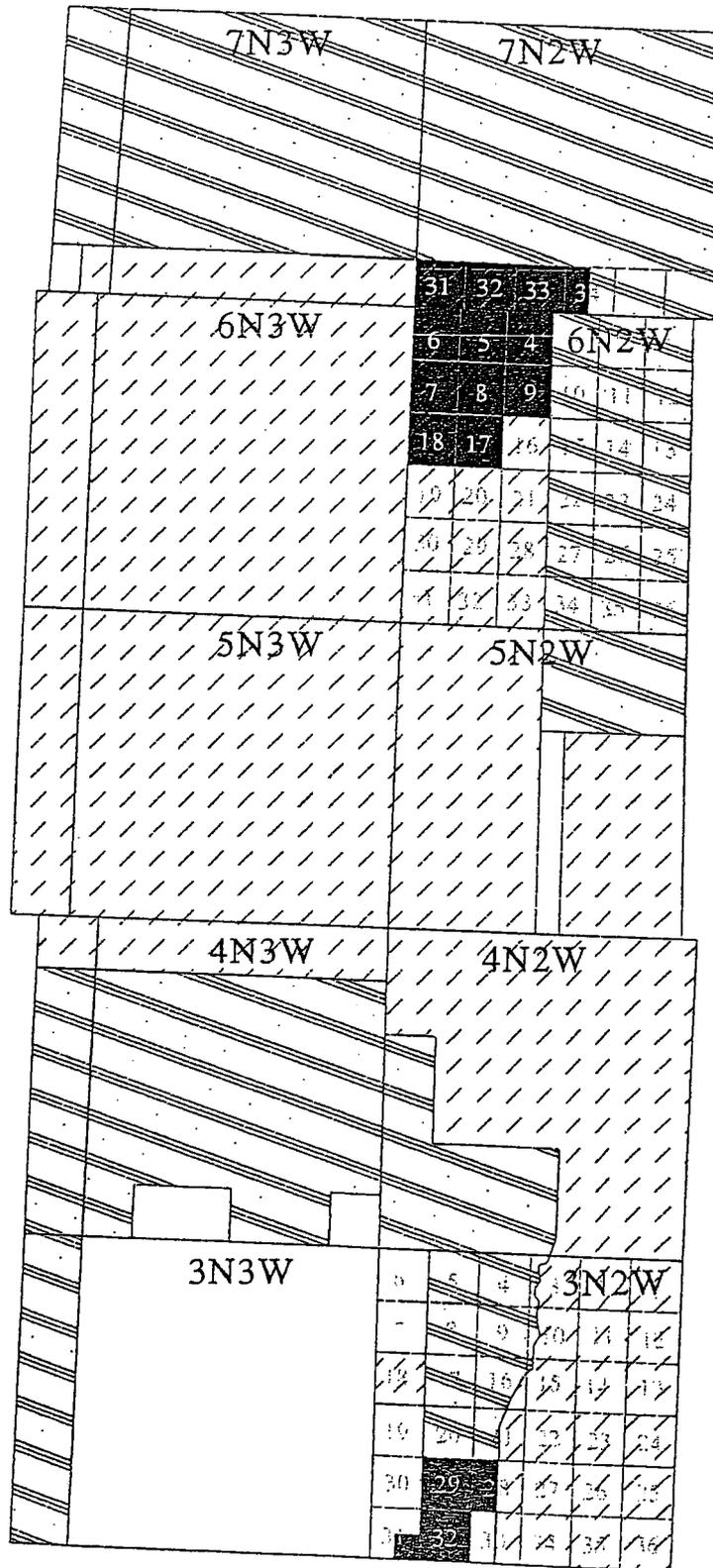
ACCIPITER COMMUNICATIONS, INC.

DOCKET NO. T-02847A-08-0164

QWEST CORPORATON

DOCKET NO. T-01051B-08-0164

EXHIBIT "A"



 ACCIPITER (ZONA) COMMUNICATIONS, INC.

 QWEST COMMUNICATIONS, I

 ZONA EXTENSION DELETED FROM QWEST

 QWEST EXTENSION DELETED FROM ZON