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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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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

NOTICE OF FILING

Pursuant to the February 13, 2006 Procedural Order, Cox Arizona Telcom, LLC ("Cox") hereby files its responses to Staff's 27<sup>th</sup> set of data requests in this docket, excluding voluminous attachments.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of December, 2008.

COX ARIZONA TELCOM, LLC.

By 

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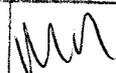
Original and 13 copies of the foregoing filed this 12<sup>th</sup> day of December 2008 with:

Arizona Corporation Commission

DOCKETED

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

DEC 12 2008

DOCKETED BY 

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1 Copy of the foregoing hand-delivered/mailed  
2 this 12<sup>th</sup> day of December 2008 to:

3 Dwight Nodes, Esq.  
4 Administrative Law Judge  
5 Hearing Division  
6 Arizona Corporation Commission  
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By Mary Ippolito

**COX ARIZONA TELCOM, LLC's  
RESPONSES TO  
STAFF'S TWENTY-SEVENTH SET  
OF DATA REQUESTS  
Docket No.: T-03471A-05-0064  
December 12, 2008**

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**Subject: All information responses should ONLY be provided in searchable PDF, DOC or EXCEL files via email or electronic media.**

STF 27.1

The following Recital E language was inserted into the Co-Marketing Agreement ("CMA") by Lesa Storey on April 4, 2003. The language appears to be the same language in Recital E of the CMA signed by Cox on April 8, 2003.

"The form of the CSER and the Non-Exclusive License shall be subject to review and approval by Cox prior to recordation thereof, which approval shall not be unreasonably withheld by Cox and shall be deemed given unless Cox delivers to Master Developer its specific written objections to the proposed form of CSER (or Non-Exclusive License, as applicable) within ten days after Master Developer's delivery thereof to Cox. Even though this CMA is being executed by the parties prior to recordation of the CSER, this CMA shall in all events be subject and subordinate to the CSER and the Access Entity's rights thereunder."

Please explain:

1. Did Cox ask for insertion of the above language in Recital E? If yes, please provide:
  - a. Any documentation that references or communicates Cox's request to insert the above language in Recital E;
    - i. The date when such a request was made by Cox; and
    - ii. The name of the Cox representative who made the request.
2. If Cox did not ask for insertion of the above language in Recital E, please provide:
  - a. The name of the individual who asked for insertion of the language;
  - b. The company represented by the individual who asked for insertion of the language;
  - c. The date when the use of the above language in Recital E was first proposed to Cox;
  - d. The names of the Cox representatives who reviewed the above language in Recital E;
  - e. The name of the Cox representative who approved the insertion of the language in Recital E before the CMA was signed on April 8, 2003;
  - f. The date when Cox approved the insertion of the above language in Recital E before the CMA was signed on April 8, 2003;

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- g. Any documentation that communicates Cox's objection to the above language in Recital E; and
- h. Any documentation that explains the above language in Recital E should be interpreted as a courtesy on behalf of Shea and/or Vistancia.

**RESPONSE:**

1. Current Cox personnel does not recall ever requesting the insertion of the quoted language into Recital E.
  - a. Not applicable
2.
  - a. Current Cox personnel either does not recall, or never knew, who, if anyone, asked Lesa Storey for the insertion of the quoted language into Recital E.
  - b. See answer to 2(a).
  - c. Current Cox personnel does not recall the date that the quoted language was first proposed to Cox.
  - d. Linda Trickey received the April 4, 2003, email from Lesa Storey and most likely reviewed the quoted language, but Ms. Trickey does not recall reviewing the quoted language. Additionally, former Cox personnel Tisha Christle and Mary Kelley received the April 4, 2003, email from Lesa Storey and may have reviewed the quoted language.
  - e. Linda Trickey gave final legal approval to the Co-Marketing Agreement that was executed by the parties.
  - f. Ms. Trickey does not recall specifically giving final legal approval to the quoted language. Ms. Trickey generally recalls giving final legal approval to the Co-Marketing Agreement that was executed by the parties.
  - g. Cox is aware of no such documentation. Cox had no reason to object to language inserted by Ms. Storey as a courtesy that would allow Cox to review for approval any post-execution documentation that might be interpreted to impose additional obligations on Cox.

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- h. Cox objects to the extent that this sub-paragraph is argumentative. The original language proposed by Shea/Sunbelt, which was apparently derived from Mr. Montel's standard language, contemplated that the CSER would have been approved by the City *before* the Co-Marketing Agreement was executed. However, the City had not approved the CSER before the parties sought to finalize the Co-Marketing Agreement. Thus, it is not surprising that the language would be revised to permit Cox to review any post-execution documents that would potentially impact the parties' obligations under the Co-Marketing Agreement. As Ms. Trickey testified, although the CSER was not Cox's concern, Cox would have concerns that no additional obligations be imposed on Cox.

Additional comment: In reviewing files to respond to this request, Ms. Trickey located an additional electronic file folder containing documents relating to her review of the Vistancia contracts. Although most of the additional documents located in the electronic file folder are duplicative of documents previously produced by Cox, or submitted by Cox for *in camera* review, Cox hereby produces the non-privileged documents bearing document production numbers CO4732-4761, CO4770-4863, CO4870-5383, CO5385-5406. Cox also hereby produces a supplemental privilege log for documents bearing production numbers CO4762-4769, CO4864-4869, CO5384, CO5164-65 (privileged in part), CO5171-72 (privileged in part), and CO5247-48 (privileged in part). The privileged documents, identified on the supplemental privilege log, will be provided to the Hearing Division for *in camera* review.

Respondent: Linda Trickey, Cox counsel.