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November 18, 2005

Re: Accipiter Complaint, Docket No. T-03471A-05-0064

Dear Parties to the Docket:

As you know, on November 8, 2005, Accipiter filed a notice of withdrawal with prejudice in its complaint against Cox and Vistancia Communications over their preferred provider agreement. At yesterday's procedural conference, Cox and Vistancia Communications made it clear that they do not want the details of this settlement agreement revealed publicly. Staff disagreed and asked Judge Nodes to require disclosure of the settlement.

Aside from the obvious irony of not requiring the disclosure of a Settlement Agreement in a case involving secret preferred provider agreements, I do not believe it is good public policy for this Settlement Agreement to remain closed off from public view.

First, Staff has stated that it has uncovered additional evidence regarding this case. That evidence should be made public.

Second, there appears to be no compelling reason for not holding a hearing on the Settlement Agreement. Normally, when a utility insists on confidentiality it is because it believes the information is proprietary and disclosure would harm its competitive posture. I do not see how that applies in this case.

Finally, as you know, we have opened a concurrent generic docket on preferred provider agreements statewide. It would seem to me that the new evidence uncovered by Staff, as well as the details of the Settlement Agreement, should be included as a part of that docket, and therefore would need to be disclosed publicly. Additionally, this is a remarkable case that earned the attention of the Justice Department. More, not less, scrutiny is warranted in such a situation.

I believe that the Commission should hold a hearing to air the details of this settlement before it is approved.

Sincerely,

Kris Mayes
Commissioner

Cc: ACC Commissioners
Ernest Johnson
Brian McNeil
Heather Murphy