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December 22, 2005

Re: 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 L.L.C.; Docket No. T-04371-A-05-0064.

To the Docket:

I have read Staff's brief filed on December 19 in this matter and write to agree with their conclusion that an evidentiary hearing is necessary on the Settlement Agreement reached between Cox and Accipiter and Complainant's Notice of Withdrawal.

As Staff noted, a number of questions remain regarding the preferred provider arrangement at Vistancia and whether the Settlement reached in the matter is in the public interest. For instance, the Settlement Agreement, at the direction of the signatories, was filed at the ACC without disclosing the amount paid to Accipiter to settle the case. I would like the opportunity to examine the parties about this non-disclosure and why it should be kept confidential. And, as Staff noted in its brief, a number of questions posed by the Commissioners during the last hearing in this matter remain unanswered, including what has happened to the money that changed hands when the preferred provider agreement was originally struck, and whether consumers have been adequately apprised of all of the terms of this Settlement Agreement.

Additionally, Staff has indicated that it may seek a fine in this case against Cox for its actions, based on evidence that 15 Cox employees were closely involved in the implementation of the preferred provider agreement that is at issue in this case. I believe the Commission must be given an opportunity to hear the evidence gathered by Staff on the issue of whether Cox willfully attempted to thwart the 1996 Telecommunications Act and our own rules, and if so, whether a penalty is in the public interest.

Furthermore, addressing the Settlement Agreement and Staff's additional evidence in the generic preferred provider docket does not seem the best course, since that docket is intended to take a broader look at this phenomenon, rather than the conduct of one company. Finally, I agree with Staff that sans Commission oversight of the Settlement Agreement, the Parties could unilaterally chose at some point to halt efforts to enforce it, leaving consumers right back where they started.

I believe a hearing is in order to allow the Commission the opportunity to fully resolve our questions on this matter, Staff the opportunity to present its evidence, and the Company an opportunity to respond to Staff's allegations and potentially to a proposed fine.

Sincerely,

Kris Mayes
Commissioner