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December 17, 2007

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

By Electronic Filing

Re: Joint Petition of Accipiter Communications, Inc. and Qwest Corporation for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules, Petition for Waiver of Sec. 69.3(e)(11) of the Commission's Rules. CC Doc. No. 96-45

Ex Parte Notice

Dear Ms. Dortch:

The Accipiter/Qwest Petition for a study area boundary waiver filed June 20, 2006 estimated that, upon construction of facilities and offering of service in the four sections proposed to be added to its study area, Accipiter would be eligible for approximately \$177,172 in additional high cost loop support, while ICLS and LSS would decline by \$7,014 and \$42, respectively.<sup>1</sup> At the request of the Commission's staff, Accipiter filed additional information in January 2007 from its original projections of USF impact for the second and third years (2009 and 2010) following a grant of the Petition.<sup>2</sup>

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<sup>1</sup> Although the originally filed petition stated the projected USF revenues would commence in 2006, in fact, Accipiter projected these amounts in 2006 and assumed the normal regulatory lag associated with HCL revenues would first be realized in 2008. ICLS and LSS estimates are assumed for each year as associated with each year's costs. Thus, the estimates

The USF impact test for a study area waiver petition is whether the additional USF eligibility following grant would exceed 1% of the total USF for the year. The 2006 and 2007 filings were made from a study which computed USF recovery dollars based on two Scenarios: (1) Accipiter would build out 100% of the Vistancia development and serve 100% of the homes and business, or (2) Accipiter would build out 100% of the Vistancia development and serve less than 30% of the homes and businesses. In each case, the Vistancia development is defined to include South Vistancia which encompasses the four sections subject to the waiver, and North Vistancia which is within Accipiter's existing study area. (A map of the area is provided as Attachment 1). In each Scenario healthy growth in home builds was assumed to reflect the upper-range of possible USF recovery. The data previously filed reflected only Scenario #1. With this filing, Accipiter is providing the Commission with the detailed analysis supporting both assumed Scenarios. While Scenario #2 reflects a higher USF recovery than Scenario #1, both Scenarios predict immaterial USF growth as compared to the 1% threshold.

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contained in all filings (original 2006 filing, January 2007 and in this correspondence) are projected for the years 2008, 2009 and 2010 based on cost estimates for the years 2006, 2007 and 2008 for HCL and 2008, 2009 and 2010 for ICLS and LSS.

<sup>2</sup> Letter from David Cosson, Counsel to Accipiter, to Marlene Dortch, FCC, Jan. 29, 2007. Accipiter voluntarily provided the extended forecast, but notes that Commission precedent looks only at the impact on the USF in the year of filing of the waiver. *U S West Communications, Inc. and Eagle Telecommunications, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, AAD 94-27, Memorandum Opinion and Order, 10 FCC Rcd 1771 (1995); *Sandwich Isles Communications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary and Section 36.611 and 69.2(hh) of the Commission's Rules*, Order, 20 FCC Rcd 8999 (2005), para. 17: "In applying the one-percent guideline, the Commission looks at the estimated support on an annualized basis at the time the waiver request is submitted, and does not attempt to estimate future support amounts." (footnote omitted).

**Additional USF revenue attributable to addition to existing study area:**

Scenario #1 100% build / 100% penetration:	Scenario #2 100% build / 30% penetration in open lots, 20% closed <sup>3</sup>
2008: \$170,201	\$176,480
2009 \$263,930	\$480,885
2010 \$385,938	\$664,314

The primary addition to the data previously provided is the Scenario #2 impact analysis described above which is based upon a much lower service penetration rate throughout both North and South Vistancia.<sup>4</sup> The resultant lower number of homes served is coincidentally not inconsistent with but also not attributable to the substantial slow down in the housing market in this area and nationwide. The effect upon USF recovery of a lower service penetration rate despite assuming maintaining a 100% build-rate is still immaterial against the 1% test.

Attachment 2 contains tables which show three year projections of each USF program for the different penetration assumptions resulting in estimates of the USF eligibility for Accipiter's study area post waiver grant, the USF eligibility without grant of the waiver, and the difference between them, which is the impact.

Accipiter respectfully requests that the Commission expedite action on its Petition in order that it can continue rational business planning to fulfill the obligations of its state Certificate of Convenience and Necessity and its Eligible Telecommunications Carrier designation and further grant the requested relief retroactive to 2006.

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<sup>3</sup> "Open" lots refers to lots where no communications facilities have been previously buried. "Closed" lots refers to lots where there are existing facilities and no open trenches or conduits are available.

The impact analysis assumes no change in the level of investment or number of lines in Accipiter's original study area excluding North Vistancia.

Please direct any questions in this matter to me.

Sincerely yours

David Cosson  
Counsel to Accipiter Communications, Inc.

Attachments

Cc: Jeremy Marcus  
Jennifer McKee  
Gary Seigel  
Melissa Newman  
Joe D. Edge

ATTACHMENT 1



ATTACHMENT 2

Scenario 1: Accipiter builds 100% of Vistancia (North and South) and obtains 100% of subscribers for voice services:

**Projected Subscribers and USF Eligibility: Post Waiver Grant**

	2008	2009	2010
<b>End of Year Subscribers</b>	3,990	5,390	5,908
HCF	1,266,656	1,416,601	1,431,299
ICLS	394,237	607,188	697,169
LSS	161,038	115,268	94,261
<b>Total USF</b>	<b>1,821,931</b>	<b>2,139,056</b>	<b>2,222,730</b>

**Less: USF Eligibility: Original Study Area**

	2008	2009	2010
<b>End of Year Subscribers</b>	1,330	2,152	2,670
HCF	1,089,484	1,255,362	1,238,653
ICLS	401,251	483,354	481,107
LSS	160,995	136,410	117,032
<b>Total USF</b>	<b>1,651,730</b>	<b>1,875,126</b>	<b>1,836,792</b>

**Equals: Additional USF Eligibility Resulting From Grant of Waiver**

	2008	2009	2010
<b>End of Year Subscribers</b>	2,660	3,238	3,238
HCF	177,172	161,238	192,646
ICLS	(7,014)	123,834	216,062
LSS	43	(21,142)	(22,770)
<b>Total USF</b>	<b>170,201</b>	<b>263,930</b>	<b>385,938</b>

Note: All estimates assume grant of waiver in January 2008.

Scenario 2: Accipiter builds 100% of Vistancia (North and South) but only obtains 30% of homes as subscribers for voice services in "open" lots and 20% of homes as subscribers for voice services in "closed" lots :

**Projected Subscribers and USF Eligibility: Post Waiver Grant**

	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>End of Year Subscribers</b>	1,176	1,518	1,673
HCF	1,272,293	1,682,630	1,876,075
ICLS	396,040	582,742	633,850
LSS	161,055	120,279	102,670
<b>Total USF</b>	<b>1,829,388</b>	<b>2,385,651</b>	<b>2,612,595</b>

**Less: USF Eligibility: Original Study Area**

	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>End of Year Subscribers</b>	500	726	881
HCF	1,089,172	1,285,854	1,358,091
ICLS	402,728	481,142	467,928
LSS	161,008	137,770	122,262
<b>Total USF</b>	<b>1,652,908</b>	<b>1,904,766</b>	<b>1,948,281</b>

**Equals: Additional USF Eligibility Resulting From Grant of Waiver**

	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>End of Year Subscribers</b>	676	792	792
HCF	183,121	396,776	517,984
ICLS	(6,688)	101,600	165,922
LSS	46	(17,491)	(19,592)
<b>Total USF</b>	<b>176,480</b>	<b>480,885</b>	<b>664,314</b>

