# Attachment A

# Email from J.G. Harrington, Counsel to Cox, to Heather Zachary and Elvis Stumbergs, Counsel to Qwest (Sept. 3, 2010)

## Stumbergs, Elvis

**From:** Harrington, J.G. [JHarrington@dowlohnes.com]
**Sent:** Friday, September 03, 2010 5:35 PM
**To:** Zachary, Heather
**Cc:** Stumbergs, Elvis
**Subject:** Re: Cox Communications - Consent Requested
**Attachments:** Dow Lohnes PLLC; ATT1271227.htm

I have discussed this with my client and Cox is willing to consent to modification of the Omaha protective order, but not the 4-MSA or 6-MSA order, given that both petitions were withdrawn.

J.G.

Sent from my iPhone

On Aug 30, 2010, at 11:01 AM, "Zachary, Heather" <Heather.Zachary@wilmerhale.com> wrote:

> Good morning, J.G. --
>
> I hope that you had a nice weekend. The 4-MSA order is relevant to Qwest's current appeal of the *Phoenix Forbearance Order* in a number of ways.
>
> First, the Phoenix order contains numerous references to the 4-MSA order, and the only way for the court to understand the relationship between the two orders is to see them both in their entirety. Similarly, the only way for the court to understand why the D.C. Circuit remanded the 4-MSA order is to see exactly what that order said. The subsequent history of the 4-MSA order is irrelevant for these purposes. In any event, the D.C. Circuit did not vacate the 4-MSA order, but instead merely remanded it. Qwest's subsequent withdrawal of its petition on remand does not somehow deprive the order of all precedential value, any more than a non-vacated district court order early in a proceeding would be deprived of all precedential value merely because the case was appealed and then subsequently settled.
>
> I hope this helps you understand our reasoning for seeking modification of the 4-MSA protective orders. If you have any additional questions, please feel free to contact me at this email address or the phone number below.
>
> Best,
>
> Heather

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**From:** Harrington, J.G. [mailto:JHarrington@dowlohnes.com]
**Sent:** Friday, August 27, 2010 2:55 PM
**To:** Stumbergs, Elvis
**Cc:** Zachary, Heather
**Subject:** RE: Cox Communications - Consent Requested

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I will discuss this with my client.

However, I note that the original order in the Qwest 4-MSA proceeding was remanded by the U.S. Court of Appeals and that the proceeding now has been terminated at Qwest's request. Can you explain the rationale for using information from that order, which would appear to have no precedential value in light of those later events, in the current appeal? That would be helpful to us in determining whether we will consent to use of the confidential information.

Thanks.

***J.G. Harrington***