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VIA ECFS

February 28, 2011

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington, DC 20554

RE: *In the Matter of Accipiter Communications, Inc. and Qwest Corporation
Joint Petition for Waiver of the Definition of "Study Area" of the
Appendix-Glossary of Part 36 of the Commission's Rules, CC Docket
No. 96-45*

Dear Ms. Dortch:

Qwest Corporation (Qwest) files these brief comments pursuant to the Wireline Competition Bureau's Public Notice seeking comments on the Application for Review filed by Accipiter Communications, Inc. (Accipiter).¹ Qwest, a co-Petitioner on the Petition for Waiver that is the subject of Accipiter's Application for Review,² supports said Application to the extent that Qwest feels that the Petition provides sufficient basis for the requested waiver of the Commission's study area boundary freeze rules. The Bureau denied the Petition on the grounds that it was not in the public interest.³ Qwest requests that the Commission review this determination and find that the waiver requested was, and continues, to be in the public interest.

¹ *Wireline Competition Bureau Seeks Comments on the Accipiter Communications, Inc. Application for Review of a Decision to Deny a Waiver of the Commission's Study Area Boundary Freeze*, Public Notice, DA 11-176 (Jan. 28, 2011). Accipiter Application for Review, CC Docket No. 96-45 (filed Oct. 1, 2010) (Accipiter Application).

² *Accipiter Communications, Inc., and Qwest Corporation, Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules*, CC Docket No. 96-45 (filed June 20, 2006) (Petition).

³ See *In the Matter of Accipiter Communications, Inc. and Qwest Corporation, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36 of the Commission's Rules, Petition for Waiver of Section 69.3(e)(11) of the Commission's Rules*, Order, 25 FCC Rcd 12663 (Wireline Comp. Bur. 2010).

In fact, Qwest is concerned that denial of the Petition, if upheld by the Commission, will be detrimental to the public interest.

The portion of the Qwest study area in question is in a master-planned development in Maricopa County, Arizona now known as Vistancia. The area in question is only four square miles and the area in which Accipiter will be providing service is approximately one half of the area.⁴ Qwest did not provide any service in this area nor did it have any facilities in the section of Qwest's study area which is the subject of the Petition. The section is adjacent to Accipiter's service area. Given Qwest's lack of services, facilities and customers in the area and Accipiter's desire to provide service to the planned development Qwest transferred the section to Accipiter. The transfer was approved by the Arizona Corporation Commission.⁵ Further, the Petitioners provided a letter from the Arizona Corporation Commission indicating its support for the requested study area waiver.⁶

The Petition was in the public interest, and continues to be in the public interest. Since Accipiter's service area is adjacent to the section of the development in question, and given the lack of Qwest facilities in the area, Accipiter would be the more logical choice to provide service in the area. Accipiter represents that its customers, subscribers, and IXCs will benefit from lower rates and cost savings.⁷ Accipiter also states that it will further the goals of the National Broadband Plan by providing broadband services in the area.⁸ Given the presence of Cox Communications in the development as the only provider of voice and broadband services, the entrance of another competitor in the market will likely fuel competition which should lead to more services at lower costs.

If the denial of the Petition is allowed to stand, Qwest is concerned about the uncertainty that will be created. Accipiter stated in its Application for Review that it may have to consider withdrawing from the area. And regardless of what action it takes, there will be a cloud of uncertainty in regard to, among other things, Carrier of Last Resort obligations, eligible telecommunications carrier status, and competitive access to Section 251(c) facilities to provide services to the sections in the development.⁹

⁴ Accipiter Application at 4, n. 7. The remainder of the area is largely uninhabited.

⁵ *Application of Accipiter Communications, Inc. to Extend Its Certificate of Convenience and Necessity in Maricopa County*, Docket No. T-02847A-02-0641, Opinion and Order, Arizona Corporation Commission (Feb. 15, 2005) (Arizona Order).

⁶ See Letter from Ernest G. Johnson, Arizona Corporation Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Mar. 5, 2007).

⁷ Accipiter Application at 3.

⁸ *Id.* at 2.

⁹ See, e.g., *id.* at 17-18.

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While Qwest is not in a position to opine on the nature of the commitments Accipiter has made in regard to not seeking Universal Service Fund (USF) support in the area, if the Commission, upon review of the Application is satisfied that the waiver will have no impact on the USF, then the sole question will be whether the waiver is in the public interest. And on this question Qwest concurs with Accipiter and the Arizona Corporation Commission that grant of the waiver will be in the public interest. For these reasons, Qwest respectfully requests that the Commission grant Accipiter's Application.

Respectfully,

/s/ Harisha J. Bastiampillai

cc: Attached Certificate of Service

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST CORPORATION** to be: 1) filed via ECFS with the Office of the Secretary of the FCC in CC Docket No. 96-45; 2) served via email on Mr. Gary Seigel (gary.seigel@fcc.gov) and Mr. Charles Tyler (charles.tyler@fcc.gov) with the Telecommunications Access Policy Division, Wireline Competition Bureau; and 3) served via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com.

/s/Richard Grozier

February 28, 2011