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MEMORANDUM

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TO: Docket Control
Arizona Corporation Commission

THRU: Matt Rowell *MR*
Chief
Economics and Research

FROM: Ernest G. Johnson *EJ*
Director
Utilities Division

DATE: October 21, 2003

RE: **APPLICATION CANCELLATION - IN THE MATTER OF THE APPLICATION OF NET 2000 COMMUNICATIONS SERVICES, INC. FOR CANCELLATION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY. (DOCKET NO. T-03523A-02-0037)**

Attached is the Staff Report for the above referenced application. Staff is recommending cancellation of the CC&N without a hearing.

Originator: Anthony Gatto

Attachment: Original and Ten Copies

Arizona Corporation Commission

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Service List for: Net 2000 Communications Services Inc.
Docket No. (T-03523A-02-0037)

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STAFF REPORT

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

Net2000 COMMUNICATION SERVICES INC.

DOCKET NO. T-03523A-02-0037

STAFF ACKNOWLEDGEMENT

The Staff member designated below contributed elements of this Staff Report.

A handwritten signature in black ink, appearing to read 'A. Gatto', is written over a horizontal line.

Anthony Gatto
Public Utility Analyst IV

Introduction:

On January 15, 2002, Net2000 Communication Services Inc. ("Net" or "Applicant") filed with the Commission a letter requesting cancellation of its Certificate of Convenience and Necessity ("Certificate").

Background and Staff Analysis:

Net was approved to offer competitive telecommunications services in Arizona as a reseller of interexchange service in Decision No. 61170. Net filed for bankruptcy protection under Chapter 11 on November 16, 2001. Pursuant to the orders of the Bankruptcy Court Net transferred all of its assets and customers to Cavalier Telephone Corporation. Net stated that it has given all customers 30 days advanced written notice of the transfer to Cavalier. Net is no longer doing business; does not service any intrastate customers; and no prepayments, deposits, or advances would be at risk by cancellation of Net's Certificate.

Since Net does not serve any Arizona customers, and there are numerous other carriers offering similar services, Staff believes that granting this application for cancellation is in the public interest.

Recommendations:

Staff recommends cancellation of Net's Certificate of Convenience and Necessity.

Staff further recommends that the application be approved without a hearing.

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January 14, 2002

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Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Re: Request to Cancel Authorization of Net2000 Communications Services, Inc. to Provide Telecommunications Services

To Whom It May Concern:

Per the instructions of Net2000 Communications Services, Inc. ("Net2000"), we hereby respectfully request, on its behalf, that the Arizona Corporation Commission ("Commission") cancel Net2000's Certificate of Convenience and Necessity to provide interexchange telecommunications services within Arizona and any associated tariffs. This request for cancellation of Net2000's authority is being made consistent with the directions of the U.S. Bankruptcy Court for Delaware.¹ In Arizona, Net2000 received authorization to provide interexchange telecommunications services on October 8, 1998, in Docket No. T-3523A-98-0108. As discussed hereafter, pursuant to the orders of the Bankruptcy Court, Net2000 is in the process of transferring all of its network assets and customers to Cavalier Telephone Corporation ("Cavalier") and expect to discontinue providing services on or around *January 21, 2002*.

Net2000, located at 2180 Fox Mill Road, Herndon, Virginia 20171, provides broadband voice and data telecommunications services. The company provides business customers with long distance, data, interactive video and Internet services. Net2000 operates network facilities in nine markets. It provides service on a purely resale basis elsewhere.

¹ Net2000 Communications, Inc. and its subsidiaries, including Net2000 Communications Services, Inc., filed for bankruptcy law protection on November 16, 2001 in the U.S. Bankruptcy Court for Delaware, and currently operate as debtors-in-possession pursuant to Chapter 11 of the U.S. Bankruptcy Code. See Case No. 01-11324.

Founded in 1993, Net2000 grew quickly and enjoyed early success. The sudden collapse in the capital markets for technology companies, as exacerbated by the tragic events of September 11, 2001, however, unexpectedly denied Net2000 the access to capital required for the continued operation and expansion of its business. As a result, on November 16, 2001, Net2000 filed a petition pursuant to Chapter 11 of the U.S. Bankruptcy Code seeking the protection of the U.S. Bankruptcy Court for Delaware while Net2000 disposes of its assets and reassigns its customer base in an orderly fashion. As a prelude to its bankruptcy court filing, Net2000 negotiated to sell substantially all of its assets to Cavalier.

Cavalier is a telecommunications carrier that already provides high quality local and long distance telecommunications services to thousands of consumers. The company utilizes state-of-the-art telecommunications facilities and is led by an able and experienced team of management and technical personnel. Cavalier has determined that the acquisition of Net2000's assets will enable it to significantly expand its operations in a cost-effective manner, thereby enhancing its competitive position and ability to provide an array of high quality telecommunications services to the public. Net2000, in turn, has decided to undertake the transaction with Cavalier to preserve the maximum possible value for Net2000's creditors and ensure that its customers continue to receive the same reliable, high quality telecommunications services to which they are accustomed. Accordingly, Cavalier and Net2000 have entered into an Asset Purchase Agreement whereby Cavalier will purchase substantially all of Net2000's telecommunications assets, including the operations and existing customer base associated therewith ("Agreement"). Cavalier has stated that it has no immediate plans to alter rates or other terms of service for former Net2000 customers materially. The proposed transaction was approved by the Bankruptcy Court on December 27, 2001.

Importantly, to ensure a seamless transition and avoid customer confusion or inconvenience, Net2000 and Cavalier gave written notice to Net2000's customers of the proposed transfer date, explaining the change in service provider. Some notification letters were sent on November 29, 2001, and others on December 17, 2001. All customers received one version or the other. The customer notices comply with the Federal Communications Commission's ("FCC's") requirements for changing a customer's presubscribed carrier pursuant to Section 64.1120(e) of the FCC's Rules and for discontinuing service pursuant to Section 63.71 of the FCC's Rules.

As the Commission is acutely aware, Net2000 is not alone in suffering recent financial hardship, which has plagued virtually the entire competitive telecommunications carrier community. Many other competitive carriers preceded Net2000 to the bankruptcy courts; examples include Teligent, Picus, Winstar, e.spire, ICG, NorthPoint, Telergy and Covad. Other new entrants have reported that they are substantially scaling back their respective operations or expansion plans. This sudden reversal in the fortunes of so many new entrants has been caused by the recent general collapse in the capital markets for technology companies, a reduction in demand for telecommunications services attributable to the recession as exacerbated by the September 11 tragedy, and a generally hostile change in the federal regulatory and legislative climate.

Net2000's intention to discontinue service is not discretionary on its part. Due to its financial condition, the company simply lacks sufficient cash to continue providing service for more than a few weeks, even operating with the benefit of bankruptcy court protection. *In addition, with the entry of the Bankruptcy Court's order on January 10, 2002, Net2000 is obligated under federal law to close the Transaction and transfer its assets according to the schedule prescribed therein in order to provide the maximum possible protection to creditors.*

The company has worked in good faith to ensure that its customers will not be adversely affected. All customers have been given a minimum of 30 days advance written notice of the imminent discontinuance of service by Net2000, and the company's plans to sell its accounts to Cavalier. Each such customer was informed that, thereafter, its service would be provided by Cavalier or a designee or assignee of Cavalier to be named. Obviously, affected customers have the option of arranging substitute service or accepting the service offered by Cavalier or its designee. Customers who elect to remain will initially receive service at the same rates, terms and conditions offered by Net2000.

Obviously, Net2000 would have preferred to remain in business itself, or at least have had an opportunity for a more prolonged transition plan. Unfortunately, business conditions simply do not permit either. Thus, the company has attempted in good faith to craft and implement a plan that protects the legitimate interests and expectations of its customers and creditors to the maximum extent reasonably feasible within the confines of its pending bankruptcy proceeding.

Significantly, under the terms of the Bankruptcy Court order, Net2000 is *compelled* to close its transaction with Cavalier and transfer its assets to Cavalier no later than the effective date of the FCC's approval of Net2000's discontinuance of service (projected to be *January 21, 2002*). *Specifically, Paragraph 22 of the Bankruptcy Court's order issued on January 10, 2002 states: "The Debtors [Net2000] are hereby ordered to immediately transfer the customers and other assets subject to the [Asset Purchase] Agreement to the Purchaser [Cavalier] as of (i) the Closing Date or (ii) to the extent applicable, the receipt of all requisite approvals of the Federal Communications Commission for the discontinuance of service by the Debtors and transfer of affected customers to the Purchaser".* With the entry of the Bankruptcy Court's order, Net2000 is obligated under federal law to close the transaction with Cavalier, including the transfer of its customers and other assets.

Accordingly, Net2000 respectfully requests that the Commission cancel its authorization to provide telecommunications services in Arizona no later than January 22, 2002.

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Arizona Corporation Commission
January 14, 2002
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Enclosed please find ten (10) copies of this letter for your records. Enclosed please also find a duplicate copy of this letter and self-addressed, stamped envelope. Please date-stamp the duplicate upon receipt and return it in the self envelope provided. Please feel free to contact Brett Heather Freedson at (202) 887-1211 if you have any questions regarding this matter.

Respectfully submitted,



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Enclosures