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MEMORANDUM

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TO: Docket Control  
FROM: Ernest G. Johnson  
Director  
Utilities Division  
DATE: January 16, 2009

*EA for EGJ*

2009 JAN 16 P 4: 22  
AZ CORP COMMISSION  
DOCKET CONTROL

RE: IN THE MATTER OF THE APPLICATION OF ACCESS POINT, INC. APPROVAL FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE TELECOMMUNICATIONS SERVICES, RESOLD LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES AND FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-03446A-08-0055)

Attached is the Staff Report for the above Application requesting approval for a Certificate of Convenience and Necessity ("CC&N") to provide the following services:

- Resold Local Exchange Telecommunications Services
- Facilities-Based Local Exchange Telecommunications Services

Staff is recommending approval of the Application.

EGJ:PJG:red

Originator: Pamela J. Genung

Attachment: Original and Thirteen copies

Arizona Corporation Commission  
DOCKETED  
JAN 16 2009

DOCKETED BY *MM*

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DOCKET NO. T-03446A-08-0055

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STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

ACCESS POINT, INC.

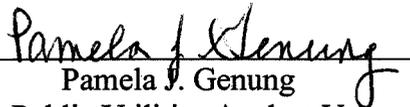
DOCKET NO. T-03446A-08-0055

IN THE MATTER OF THE APPLICATION OF ACCESS POINT, INC. APPROVAL FOR A  
CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG  
DISTANCE TELECOMMUNICATIONS SERVICES, RESOLD LOCAL EXCHANGE  
TELECOMMUNICATIONS SERVICES AND FACILITIES-BASED LOCAL EXCHANGE  
TELECOMMUNICATIONS SERVICES

JANUARY 16, 2009

## STAFF ACKNOWLEDGMENT

The Staff Report for Access Point, Inc., Docket No. T-03446A-08-0055, was the responsibility of the Staff member listed below. Pamela J. Genung was responsible for the review and analysis of Access Point, Inc. Application for a Certificate of Convenience and Necessity to provide Resold Local Exchange and Facilities-Based Local Exchange Telecommunications Services within the State of Arizona, in addition to the petition for a determination that its proposed services should be classified as competitive.

  
Pamela J. Genung  
Public Utilities Analyst V

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**ATTACHMENT**

States in Which Access Point Is Currently Certificated.....	Attachment A
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## **1. INTRODUCTION**

On January 28, 2008, Access Point, Inc. ("Access Point" or "Applicant" or "Company") filed an Application for a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance, resold local exchange and facilities-based local exchange telecommunications services within the State of Arizona. The Applicant also petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive. On January 28, 2008, Access Point submitted a proposed tariff for the services it is requesting the authority to provide.

Commission records indicate that on June 9, 2000, in Decision No. 62624, Access Point was granted authority to provide competitive resold long distance telecommunications services in Arizona. Therefore, this Application pertains to Access Point's request for authority to provide resold local exchange and facilities-based local exchange telecommunications services within the State of Arizona.

On February 14, 2008, Staff issued its First Set of Data Requests to Access Point. Responses to Staff's First Set of Data Requests were received from Access Point on March 27, 2008. Included within Access Point's Responses to Staff's First Set of Data Requests, in Attachment II pertaining to question 1.8, were replacement and supplemental tariff pages to add to its proposed tariff. On June 5, 2008, Staff issued its Second Set of Data Requests to Access Point. Responses to Staff's Second Set of Data Requests were received from Access Point on September 9, 2008. Included within Access Point's Responses to Staff's Second Set of Data Requests, in Attachment I pertaining to STF 2.3, were four replacement pages to its proposed tariff. On September 29, 2008, at the recommendation of Staff, Access Point filed an additional replacement page, Original Page 2 of Section 4, to its proposed Arizona Tariff No. 3.

Staff's review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

## **2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

Access Point indicated in its Application that it is currently offering competitive telecommunications services similar to those that it intends to offer in Arizona in 49 additional states/jurisdictions. Staff has contacted approximately half of the Public Utility Commissions in those 49 states/jurisdictions to determine if Access Point is certificated or registered to provide telecommunications services in the states listed by the Applicant. Staff also inquired whether there were any consumer complaints filed against the Applicant. The information that Staff has obtained indicates that there have been no consumer complaints filed against Access Point in any of the states/jurisdictions researched by Staff. To date, Staff has been able to verify that Access Point is authorized to provide service in the states of Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Louisiana, Maine, Mississippi, Nebraska, Nevada, Oregon,

Pennsylvania, Texas, Virginia, and Washington. In Virginia, the Applicant is certificated as Access Point of Virginia, Inc.

Access Point is currently certificated to provide competitive resold long distance telecommunications services in Arizona. At present Access Point is providing resold long distance services to eighteen customers in Arizona. The nine members of the senior management team average over thirteen years experience each in the telecommunications industry.

Based on the above information, Staff believes Access Point possesses the technical capabilities to provide the services it is requesting the authority to provide in Arizona.

### **3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

In the Applicant's response to Staff's First Set of Data Requests, Access Point provided unaudited 2007 financial statements. As of December 31, 2007, these financial statements list assets of \$4,295,852; negative equity of \$1,262,777; and a net loss of \$373,687. In its initial Application, Access Point provided audited 2005 and 2006 financial statements. As of December 31, 2006, the financial statements list assets of \$4,183,899; negative equity of \$889,091; and a net loss of \$640,887. As of December 31, 2005, the financial statements indicate assets of \$4,554,505; negative equity of \$248,204; and a net loss of \$1,230,631. The Applicant also provided notes related to the financial statements indicating that Access Point filed for bankruptcy in 2000 but emerged from bankruptcy in 2001 and is currently not under the protection of the federal bankruptcy system.

The Applicant stated in its proposed tariff (reference Sections 2.5.4 and 2.5.5 of Access Point's proposed Arizona Tariff No. 3) that it may collect advances, deposits and prepayments from any applicant or customer whose financial responsibility is not established to the satisfaction of the Company. Staff believes that advances, deposits, and/or prepayments received from the Applicant's customers should be protected by the procurement of either a performance bond or an irrevocable sight draft Letter of Credit.

The Commission's current bond or irrevocable sight draft Letter of Credit requirements are \$10,000 for resold long distance, \$25,000 for resold local exchange, \$100,000 for facilities-based long distance, and \$100,000 for facilities-based local exchange services. Since the Applicant is requesting a CC&N for more than one kind of service, the amount of a performance bond or an irrevocable sight draft Letter of Credit for multiple services is an aggregate of the minimum bond or draft amount for each type of telecommunications service requested by the Applicant. The amount of bond or draft coverage needed for each service is as follows: resold local exchange \$25,000; and facilities-based local exchange line \$100,000. The bond or draft coverage needs to increase in increments equal to 50 percent of the total minimum bond or draft amount when the total amount of the advances, deposits, and prepayments is within 10 percent of the total minimum bond or draft amount. Further, measures should be taken to ensure that the

Applicant will not discontinue service to its customers without first complying with Arizona Administrative Code ("A.A.C.") R14-2-1107.

To that end, Staff recommends that the Applicant procure either a performance bond or an irrevocable sight draft Letter of Credit equal to \$125,000. The minimum bond or draft amount of \$125,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond or draft amount should be increased in increments of \$62,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$12,500 of the bond or draft amount. If the Applicant desires to discontinue service, it must file an Application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an Application to discontinue service. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or irrevocable sight draft Letter of Credit.

Staff further recommends that proof of the above mentioned performance bond or irrevocable sight draft Letter of Credit be docketed within 30 days of the effective date of a Decision in this matter. The original bond or Letter of Credit should be filed with the Commission's Business Office and copies of the bond or Letter of Credit with Docket Control, as a compliance item in this docket. The Commission may draw on the bond or Letter of Credit, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the bond or Letter of Credit funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to, returning prepayments or deposits collected from the Company's customers.

#### **4. ESTABLISHING RATES AND CHARGES**

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an initial rate (the actual rate to be charged) and a maximum rate must be listed for each competitive service offered, provided that the rate for the service is not less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Company indicating that its fair value rate base is zero. Accordingly, the Company's fair value rate base is too small to be useful in a fair value analysis. Access Point has submitted proposed tariff pages reflecting the actual rates that Access Point will be charging for its local exchange services. Access Point has also provided additional rate comparison information of other competitive local exchange carriers in the State of Arizona. Staff has reviewed the proposed rates and believes they are comparable to the rates charged by competitive local carriers and local incumbent carriers operating in the State of Arizona. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value rate base information provided should not be given substantial weight in this analysis.

## **5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES**

Issues related to the provision of Local Exchange service are discussed below.

### *5.1 Number Portability*

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

### *5.2 Provision of Basic Telephone Service and Universal Service*

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

### *5.3 Quality of Service*

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest (f/k/a USWC) in Docket No. T-01051B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service

or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

#### *5.4 Access to Alternative Local Exchange Service Providers*

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

#### *5.5 911 Service*

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

#### *5.6 Custom Local Area Signaling Services*

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

### **6. REVIEW OF COMPLAINT INFORMATION**

The Applicant has not had an Application for service denied in any state. The Applicant indicated in its Application that it had its certificate revoked in Nebraska and Illinois due to not filing its annual financial statements, but have since reconciled the problem and the certificates have been reinstated. Staff has verified the accuracy of the above information with the Commissions in both states. Consumer Services reports no complaint history within Arizona.

The Applicant indicated that none of its officers, directors or partners have been involved in any civil or criminal investigations, or any formal or informal complaints. The Applicant also

indicated that none of its officers, directors or partners have been convicted of any criminal acts in the past ten (10) years.

## **7. COMPETITIVE SERVICES ANALYSIS**

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

### *7.1 Competitive Services Analysis for Local Exchange Services*

#### **7.1.1 A description of the general economic conditions that exist which make the relevant market for the service one that is competitive.**

The local exchange market that the Applicant seeks to enter is one in which a number of new CLECs have been authorized to provide local exchange service. Nevertheless, ILECs hold a virtual monopoly in the local exchange service market. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, the Applicant will have to compete with those companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments.

#### **7.1.2 The number of alternative providers of the service.**

Qwest and various independent LECs are the primary providers of local exchange service in the State. Several CLECs and local exchange resellers are also providing local exchange service.

#### **7.1.3 The estimated market share held by each alternative provider of the service.**

Since Qwest and the independent LECs are the primary providers of local exchange service in the State, they have a large share of the market. Since the CLECs and local exchange resellers have only recently been authorized to offer service, they have limited market share.

#### **7.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.**

None.

**7.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.**

ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the CLECs and local exchange resellers also offer substantially similar services.

**7.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).**

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories and which provide them with a virtual monopoly over local exchange service. New entrants are also beginning to enter this market.
- b. One in which new entrants will be dependent upon ILECs:
  1. To terminate traffic to customers.
  2. To provide essential local exchange service elements until the entrant's own network has been built.
  3. For interconnection.
- c. One in which ILECs have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market and one in which new entrants do not have a long history with any customers.
- d. One in which most customers have few, if any choices since there is generally only one provider of local exchange service in each service territory.
- e. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

## **8. RECOMMENDATIONS**

The following sections contain Staff recommendations on the Application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

*8.1 Recommendations on the Application for a CC&N*

Staff recommends that Applicant's Application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Company and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers and local incumbent carriers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
8. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
9. Staff further recommends that the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services;

10. That the Applicant submit local exchange tariffs indicating that it may collect advances, deposits and or prepayments;

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariffs pages for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application.
2. The Applicant shall:
  - a. Procure either a performance bond or an irrevocable sight draft Letter of Credit equal to \$125,000. The minimum bond or draft amount of \$125,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond or draft amount should be increased in increments of \$62,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$12,500 of the bond or draft amount.
  - b. Docket proof of the original performance bond or irrevocable sight draft Letter of Credit with the Commission's Business Office and copies of the performance bond or irrevocable sight draft Letter of Credit with Docket Control, as a compliance item in this docket, within 30 days of the effective date of a Decision in this matter. The performance bond or irrevocable sight draft Letter of Credit must remain in effect until further order of the Commission. The Commission may draw on the performance bond or irrevocable sight draft Letter of Credit, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond or irrevocable sight draft Letter of Credit funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers.
3. Abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

8.2 *Recommendation on the Applicant's Petition to Have Its Proposed Services Classified As Competitive*

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.

## Attachment A

The following are the states/jurisdictions in which Access Point is currently certificated to provide telecommunications services:

1. Alabama
2. Arizona
3. Arkansas
4. California
5. Colorado
6. Connecticut
7. Delaware
8. District of Columbia
9. Florida
10. Georgia
11. Idaho
12. Illinois
13. Indiana
14. Iowa
15. Kansas
16. Kentucky
17. Louisiana
18. Maine
19. Maryland
20. Massachusetts
21. Michigan
22. Minnesota
23. Mississippi
24. Missouri
25. Montana
26. Nebraska
27. Nevada
28. New Hampshire
29. New Jersey
30. New Mexico
31. New York
32. North Carolina
33. North Dakota
34. Ohio
35. Oklahoma
36. Oregon
37. Pennsylvania
38. Rhode Island
39. South Carolina
40. South Dakota
41. Tennessee
42. Texas
43. Utah
44. Vermont
45. Virginia
46. Washington
47. West Virginia
48. Wisconsin
49. Wyoming