

# OPEN MEETING ITEM



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Executive Director

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AZ CORP COMMISSION  
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COMMISSIONERS  
KRISTIN K. MAYES – Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP



## ARIZONA CORPORATION COMMISSION

ORIGINAL

DATE: DECEMBER 14, 2009

DOCKET NO: T-20618A-08-0469

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

IBASIS RETAIL, INC. dba IBASIS  
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

DECEMBER 23, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JANUARY 12, 2010 and JANUARY 13, 2010

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission  
**DOCKETED**

DEC 14 2009

DOCKETED BY *mm*

*E. G. Johnson*  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SBernal@azcc.gov](mailto:SBernal@azcc.gov)

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman  
4 GARY PIERCE  
5 PAUL NEWMAN  
6 SANDRA D. KENNEDY  
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF  
9 IBASIS RETAIL, INC. D/B/A IBASIS, FOR A  
10 CERTIFICATE OF CONVENIENCE AND  
11 NECESSITY TO PROVIDE COMPETITIVE  
12 RESOLD LONG DISTANCE  
13 TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-20618A-08-0469

DECISION NO. \_\_\_\_\_

ORDER

14 Open Meeting  
15 January 12 and 13, 2010  
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 \* \* \* \* \*

19 Having considered the entire record herein and being fully advised in the premises, the  
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 FINDINGS OF FACT

22 1. On September 8, 2008, iBasis Retail, Inc., d/b/a iBasis ("iBasis" or "Company"), filed  
23 with the Commission an application for a Certificate of Convenience and Necessity ("CC&N") to  
24 provide competitive resold long distance telecommunications services within a service area  
25 encompassing the entire State of Arizona ("Application").

26 2. On October 27, 2008, iBasis filed an Affidavit of Publication indicating that notice of  
27 the Application had been published on October 10, 2008, in *The Arizona Business Gazette*.

28 3. On October 31, 2008, the Commission's Utilities Division Staff ("Staff") issued its  
Letter of Insufficiency and First Set of Data Requests, and on December 5, 2008, iBasis filed its  
responses to those data requests.

4. On April 10, 2009, the Staff issued its Second Set of Data Requests, and on May 11,  
2009, iBasis filed its responses to those data requests.

1           5.       On June 23, 2009, Staff issued its Third Set of Data Requests, and on July 17, 2009,  
2 iBasis filed its responses to those data requests.

3           6.       On October 23, 2009, Staff filed its Staff Report recommending approval of iBasis'  
4 Application subject to certain conditions.

5 **Fitness and Properness to Obtain a CC&N**

6           7.       iBasis is a Delaware "C" corporation, granted authority on June 25, 2008, to do  
7 business in Arizona as a foreign corporation.

8           8.       iBasis is in good standing with the Commission's Corporations Division.

9           9.       iBasis currently does not hold a CC&N to provide telecommunications services in  
10 Arizona.

11          10.       iBasis has indicated that neither iBasis nor any of its officers, directors, partners, or  
12 managers have been or are currently involved in any civil or criminal investigations, have had  
13 judgments entered in any civil or criminal matter or levied by any administrative or regulatory  
14 agency, or have been convicted of any criminal acts within the past 10 years.

15          11.       Staff noted in the Staff report that the Company's 10-Q provided in the financial  
16 statements submitted with the Application, listed a number of investigations or proceedings involving  
17 iBasis' parent company, iBasis, Inc. ("Parent Company").

18          12.       One matter involves a class action complaint filed in 2001 in the United States District  
19 Court for the Southern District of New York against the Parent Company and its investment banking  
20 firms, regarding the Parent Company's 1999 initial public common stock offering and its 2000  
21 secondary common stock offering. As a result of settlement negotiations, the District Court issued a  
22 preliminary order regarding the specifics of a settlement. The matter is still ongoing and the Parent  
23 Company expects that additional settlement negotiations will occur.

24          13.       Staff states that the Parent Company also has a claim against it relating to the 2001  
25 bankruptcy proceedings involving World Access, Inc., WorldxChange Communications, Inc., and  
26 Facilicom International, LLC, together with other related debtors (collectively, the "Debtors"), who  
27 filed for Chapter 11 relief in the Bankruptcy Court for the Northern District of Illinois. In 2003, the  
28 Debtors asserted claims against the Parent Company because of alleged preferential transfers and

1 nonpayment of overdue amounts owed by the Parent Company to the Debtors for approximately \$2.1  
2 million. According to Staff, the Parent Company asserted certain defenses to the claims and filed  
3 proofs of claim for approximately \$500,000, to which the trustee for the Debtors has objected. The  
4 Parent Company is engaging in mediation in an attempt to resolve the dispute. Staff notes that  
5 neither iBasis nor its officers were named in the petitions.

6 14. Staff states that in 2006, two derivative actions relating to the Parent Company's stock  
7 options were filed in the United States District Court of Massachusetts. Staff notes that on December  
8 5, 2007, the District Court issued a formal order dismissing the entire action for lack of jurisdiction.  
9 The plaintiffs in the matter appealed the dismissal to the First Circuit Court of Appeals and the appeal  
10 is currently pending.

11 15. Staff also notes that, in 2006, the Securities and Exchange Commission ("SEC")  
12 contacted the Parent Company in an informal inquiry, and later a formal inquiry, into the Parent  
13 Company's grant of its stock options from 1999 through 2007. On November 24, 2008, the SEC  
14 notified the Parent Company that it is considering recommending that the SEC bring a civil  
15 injunction against the Parent Company and certain of its officers. iBasis states that the Parent  
16 Company is cooperating fully with the SEC inquiry.

17 16. Finally, Staff notes that J & J Communications, Inc. ("J & J"), filed a suit against  
18 Abdul Communications, Inc. ("Abdul"), and later joined the Parent Company and another defendant  
19 to the complaint. The case involves a contract dispute between J & J and Abdul, and the calling cards  
20 that Abdul purchased from the Parent Company. On June 2, 2008, the Court granted the Parent  
21 Company's motion to dismiss three counts in J & J's complaint. None of the Parent Company's  
22 officers are named in the suit and iBasis is not a party. The Company states that no civil judgments  
23 have been rendered and that the Parent Company anticipates filing for summary judgment of all  
24 claims against it.

25 17. According to iBasis, it currently has authority to provide resold interexchange service  
26 in thirteen states. Staff contacted the state public utility commissions ("PUCs") in these thirteen  
27 states to confirm iBasis' operating authority and to inquire as to consumer complaints. Staff found  
28 that there have been no consumer complaints filed against iBasis.

1           18.     Staff notes that a search of the Federal Communications Commission's website found  
2 that there have been no complaints filed against iBasis.

3           19.     Finally, Staff states that the Consumer Services Section of the Utilities Division  
4 reported no complaints, inquiries, or opinions filed within Arizona against iBasis between January 1,  
5 2005 and August 26, 2009.

6     **Technical Capabilities**

7           20.     iBasis intends to offer resold long distance telecommunications services from Verizon,  
8 Sprint, and Global Crossing to subscribers in Arizona.

9           21.     iBasis is a wholly-owned subsidiary of the Parent Company.

10          22.     iBasis' management team is comprised of four employees who have over 32 years  
11 experience in the telecommunications industry.

12          23.     iBasis has authority to provide, and/or is providing, resold long distance  
13 telecommunications services similar to those it intends to offer in Arizona in thirteen states.

14          24.     Based on the foregoing, Staff determined that iBasis has sufficient technical  
15 capabilities to provide resold long distance telecommunications services in Arizona.

16     **Financial Resources**

17          25.     iBasis provided the audited financial statements for its Parent Company for the  
18 twelve-month periods ending December 31, 2006, and December 31, 2007. According to the Staff  
19 Report, the Parent Company's 2007 financial statement lists assets of \$659,873,000, total equity of  
20 \$334,490,000, and a net income of \$16,123,000. The 2006 financial statement lists assets of  
21 \$233,269,000, total equity of \$23,978,000, and net income of \$42,490,000.

22          26.     iBasis' Application indicated that it intends to rely on the financial resources of its  
23 Parent Company.

24          27.     iBasis projects total revenues generated by the provision of telecommunications  
25 services to Arizona customers for the first 12 months of operations to be \$20,000, with no operating  
26 expenses in Arizona during that period.

27          28.     iBasis projects the net book value of all Arizona jurisdictional assets and the projected  
28 value of all Arizona assets after the first 12 months of operations to be zero.

1           29. Staff stated that if iBasis experienced financial difficulty, it would have only a  
2 minimal impact on its customers because many companies provide resold long distance  
3 telecommunications services, and facilities-based providers are also available.

4 **Proposed Rates**

5           30. Staff indicates that the rates proposed by iBasis are for competitive services and that  
6 rates for competitive telecommunications services are generally not established according to rate-of-  
7 return regulation.

8           31. Staff has determined that iBasis' fair value rate base is zero. While Staff considered  
9 the fair value rate base information submitted by the Company, Staff determined that the fair value  
10 rate base information should not be given substantial weight in its analysis.

11           32. As a reseller of services purchased from other telecommunications companies, iBasis  
12 will have no market power and will have to compete with other providers to obtain subscribers to its  
13 services. In light of this competitive market, Staff believes that the Company's proposed tariffs will  
14 be just and reasonable.

15           33. Staff reviewed iBasis' proposed rates and determined that they are just and reasonable.

16           34. iBasis' tariff indicates that it will not collect advance payments or deposits from its  
17 resold long distance customers, however the Company will be offering prepaid calling cards. As  
18 such, Staff recommends that iBasis be required to file a \$10,000 performance bond or irrevocable  
19 sight draft letter of credit in order to protect Arizona customers.

20 **Regulatory Requirements**

21           35. Commission rules require iBasis to file a tariff for each competitive service that states  
22 the maximum rate as well as the effective (actual) price that will be charged for the service. Under  
23 Arizona Administrative Code ("A.A.C.") R14-2-1109(A), the minimum rate for a service must not be  
24 below the total service long-run incremental cost of providing the service. Any change to iBasis'  
25 effective price for a service must comply with A.A.C. R14-2-1109, and any change to the maximum  
26 rate for a service in the Company's tariff must comply with A.A.C. R14-2-1110.

27           36. A.A.C. R14-2-1204(A) requires all telecommunications service providers that  
28 interconnect to the public switched network to provide funding for the Arizona Universal Service

1 Fund ("AUSF"). A.A.C. R14-2-1204(B)(3)(a) requires new telecommunications service providers  
2 that begin providing toll service after April 26, 1996, to pay AUSF charges as provided under A.A.C.  
3 R14-2-1204(B)(2).

4 37. A.A.C. R14-2-1901 et seq. establish requirements to protect Arizona consumers from  
5 unauthorized carrier changes ("slamming") and apply to each public service corporation providing  
6 telecommunications services within the State of Arizona and over which the Commission has  
7 jurisdiction.

8 38. A.A.C. R14-2-2001 et seq. establish requirements to protect Arizona consumers from  
9 unauthorized carrier charges ("cramming") and apply to each public service corporation providing  
10 telecommunications services within the State of Arizona and over which the Commission has  
11 jurisdiction.

12 39. A.A.C. R14-2-1107 requires a competitive telecommunications service provider to file  
13 an application for authorization with the Commission before it discontinues service; the rule also  
14 establishes customer notice requirements and other requirements related to discontinuance of service.

15 **Staff's Recommendations**

16 40. Staff recommends approval of iBasis' Application and further recommends:

- 17 a. That iBasis be ordered to comply with all Commission rules, orders, and other  
18 requirements relevant to the provision of intrastate telecommunications  
19 service;
- 20 b. That iBasis be ordered to maintain its accounts and records as required by the  
21 Commission;
- 22 c. That iBasis be ordered to file with the Commission all financial and other  
23 reports that the Commission may require, in a form and at such times as the  
24 Commission may designate;
- 25 d. That iBasis be ordered to maintain on file with the Commission all current  
26 tariffs and rates and any service standards that the Commission may require;
- 27 e. That iBasis be ordered to comply with the Commission's rules and to modify  
28 its tariffs to conform to those rules if it is determined that there is a conflict  
between iBasis' tariffs and Commission rules;
- f. That iBasis be ordered to cooperate with Commission investigations, including  
but not limited to customer complaints;
- g. That iBasis be ordered to participate in and contribute to the AUSF as required  
by the Commission;

- 1 h. That iBasis be ordered to notify the Commission immediately upon changes to  
its name, address, or telephone number;
- 2 i. That iBasis' intrastate interexchange service offerings be classified as  
3 competitive pursuant to A.A.C. R14-2-1108;
- 4 j. That the maximum rates for iBasis' services be the maximum rates proposed  
by iBasis in its proposed tariffs;
- 5 k. That the minimum rates for iBasis' services be the total service long-run  
6 incremental costs of providing those services, as set forth in A.A.C. R14-2-  
1109;
- 7 l. If iBasis states only one rate for a service in its proposed tariff, that the rate  
8 stated be the effective (actual) price to be charged for the service as well as the  
service's maximum rate;
- 9 m. That iBasis' fair value base rate is zero;
- 10 n. That should iBasis request to discontinue and/or abandon its service area,  
11 iBasis must provide notice to both the Commission and its customers, in  
accordance with A.A.C. R-14-2-1107; and
- 12 o. That iBasis be ordered to do the following and that its CC&N be rendered null  
13 and void, after due process, if it fails to do the following:
- 14 i. iBasis shall docket conforming tariffs within 365 days from the date of  
an Order in this matter or 30 days before providing service, whichever  
15 comes first, and in accordance with this Decision.
- 16 ii. iBasis shall procure either a performance bond or an irrevocable sight  
draft letter of credit equal to \$10,000.
- 17 iii. iBasis shall docket proof of the original performance bond or  
18 irrevocable sight draft letter of credit with the Commission's Business  
Office and copies of the performance bond or irrevocable sight draft  
19 letter of credit with Docket Control, as a compliance item in this  
docket, within 90 days of the effective date of a Decision in this matter  
20 or 10 days before the first customer is served, whichever comes earlier.  
iBasis shall notify the Commission when its first customer is served.  
21 The performance bond or irrevocable sight draft letter of credit must  
22 remain in effect until further order of the Commission. The  
Commission may draw on the performance bond or irrevocable sight  
23 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  
24 the Company is in default of its obligations arising from its Certificate.  
The Commission may use the performance bond or irrevocable sight  
25 draft letter of credit funds, as appropriate, to protect the Company's  
customers and public interest and take any and all actions the  
26 Commission deems necessary, in its discretion, including, but not  
27 limited to, returning prepayments or deposits collected from the  
28 Company's customers.



**ORDER**

IT IS THEREFORE ORDERED that the Application of iBasis Retail, Inc., d/b/a iBasis, for a Certificate of Convenience and Necessity to provide competitive resold long distance telecommunications services in Arizona is hereby granted conditioned upon compliance with the conditions and recommendations set forth in Findings of Fact No. 40

IT IS FURTHER ORDERED that if iBasis Retail, Inc., d/b/a iBasis, fails to meet the conditions outlined in Findings of Fact No. 40(o) within the stated timeframes, the Certificate of Convenience and Necessity conditionally granted herein shall become null and void after due process.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: IBASIS RETAIL, INC., D/B/A IBASIS

2 DOCKET NO.: T-20618A-08-0469

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