

OPEN MEETING



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ORIGINAL

MEMORANDUM

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AZ CORPORATION COMMISSION
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Arizona Corporation Commission

DOCKETED

TO: THE COMMISSION

FROM: Utilities Division

2017 MAR 1 PM 4:08

MAR 1 2017

DATE: March 1, 2017

DOCKETED BY
GB

RE: IN THE MATTER OF THE APPLICATION OF ACCIPITER COMMUNICATIONS INCORPORATED, DOING BUSINESS AS ZONA COMMUNICATIONS, TO PLEDGE, MORTGAGE, LIEN AND/OR ENCUMBER THE COMPANY'S ASSETS AND, IF WITHIN THE COMMISSION'S JURISDICTION, TO APPROVE THE ISSUE OF NEW COMMON STOCK. (DOCKET NO. T-02847A-16-0482)

INTRODUCTION

Enclosed are the Commission Staff's Memorandum and Proposed Order for the application of Accipiter Communications Incorporated dba Zona Communications, ("Accipiter" or "Applicant") for approval to pledge, mortgage, lien and/or encumber the Company's Assets (Docket No. T-02847A-16-0482). This is only a Staff recommendation to the Commission; it has not yet become an order of the Commission. The Commission can decide to accept, amend or reject Staff's proposed order.

You may file comments to the recommendation(s) of the proposed order by filing an original and thirteen (13) copies of the comments with the Commission's Docket Control Center at 1200 W. Washington St., Phoenix, AZ 85007 by 4:00 p.m. on or before March 10, 2017.

This matter may be scheduled for Commission deliberation at its Open Meetings scheduled **March 14, 2017, at 10:00 a.m.** and **March 15, 2017, at 10:00 a.m.**

If you have any questions about this matter, please contact Lori Morrison of our Staff at (602) 542-2179, or Elijah Abinah, Acting Director, at (602) 542-7270.

APPLICATION

On December 28, 2016, Accipiter filed an Application seeking approval by the Arizona Corporation Commission ("Commission"), pursuant to, Arizona Revised Statute ("A.R.S.") § 40-285 and any other applicable statutes or rules, to pledge, mortgage, lien and/or encumber Accipiter's assets to be used by its new corporate parent, Pinpoint Holdings, Inc. ("Pinpoint") to secure a loan of \$4,000,000 from McCook National Bank as part of a bankruptcy agreement to help Pinpoint fund the purchase price of \$5,250,000 for Accipiter's new common stock. Thereafter, Pinpoint will own 100 percent of Accipiter's common stock.

Further, Accipiter requests that the Commission issue its order confirming that the issuance of new common stock by Accipiter, a foreign public service corporation, is not subject to the requirements of A.R.S. §§ 40-301 et seq.

The following background and transaction information was provided by the Applicant.

BACKGROUND OF APPLICANT

Accipiter is a Nevada corporation authorized to do business in Arizona as a foreign corporation. In Decision 59346, dated October 11, 1995, the Commission granted Accipiter a Certificate of Convenience and Necessity ("CC&N") to provide facilities-based local exchange carrier and other telecommunication services in portions of the municipalities of Peoria, Surprise and Buckeye, as well as additional portions of Maricopa and Yavapai Counties, including Lake Pleasant Regional Park and the Castle Hot Springs area. Additional expansions and/or modifications of Accipiter's CC&N were approved in Decision 67574, dated February 15, 2005, Decision 67675, dated March 9, 2005, and Decision 70641, dated December 17, 2008. Accipiter currently provides service to approximately 2,200 customer accounts in a CC&N area covering approximately 1,000 square miles.

BACKGROUND ON ACCIPITER'S BANKRUPTCY

On March 28, 2014, Accipiter filed a voluntary petition in the Bankruptcy Court for the District of Arizona (Case No. 2:14-bk-04372-GBN) wherein Accipiter sought to restructure its debt under Chapter 11 of the Federal Bankruptcy Code. On or about October 25, 2016, Pinpoint and the unsecured creditors jointly proposed and filed the First Amended Chapter 11 Plan of Reorganization, which was subsequently amended by the Second Amended Chapter 11 Plan of Reorganization (collectively, the "Plan"). On December 15, 2016, the Bankruptcy Court issued the Bankruptcy Order approving the Plan and approving the cancellation of all existing notes, instruments and outstanding equity interests (stock) and vesting the property of Accipiter free and clear of all liens and claims. The Plan calls for the payment of a purchase price by Pinpoint in exchange of which Accipiter will issue new common stock to Pinpoint, which will become Accipiter's sole shareholder. Pinpoint will fund \$4,000,000 of the Purchase Price of \$5,250,000 with a loan from McCook National Bank. The loan from McCook National Bank will be secured by a pledge, mortgage, lien and/or encumbrance on the assets of Accipiter. The loan will close upon approval of this Application by the Commission. The remaining portion of the Purchase Price will be funded by Pinpoint with its own funds.

DESCRIPTION OF THE STOCK ACQUISITION LOAN AND COLLATERAL

The loan to fund Pinpoint's purchase of the new common stock of Accipiter will be provided by McCook National Bank of McCook, Nebraska. The borrowers are Pinpoint Holdings, Inc., a Nebraska corporation, and Accipiter. The loan amount is \$4,000,000 which will be made in a single advance at an interest rate in the range of 7 percent to 9 percent. The maturity date for the loan is December 31, 2017. During the term, the loan balance will be reduced with proceeds that Pinpoint expects to receive in 2017, as follows:

- (i) \$1,000,000 expected in the first quarter of 2017 from a transaction between Pinpoint and Switch Business Solutions LLC;
- (ii) \$1,000,000 expected in April 2017 from a transaction between Pinpoint and Great Plains Communications; and
- (iii) \$2,000,000 expected in August 2017 from a transaction between Pinpoint and Switch Business Solutions LLC.

After applying the proceeds above, the remaining balance of the loan on the maturity date will be paid by Pinpoint and Accipiter. In addition to the transaction proceeds listed above, Pinpoint expects to receive an additional \$2,000,000 from Switch Business Solutions LLC in 2017 which will be available as a backup repayment source for the Stock Acquisition Loan. A term sheet for the Stock Acquisition Loan is identified as Attachment 3 of the Application.

The loan from McCook National Bank will be secured by the utility assets of Accipiter. Currently, the assets are already subject to liens by the U.S. Department of Agriculture and Rural Utility Services ("RUS"). However, all existing liens on the assets of Accipiter held by RUS will be eliminated once Pinpoint completes closing of the transaction. Thereafter, the only lien on the assets of Accipiter will be that held by McCook National Bank.

STAFF'S ANALYSIS

A.R.S. §§ 40-301 et seq. requires public service corporations which issue stocks and stock certificates, bonds, notes and other evidences of indebtedness, and creates liens on their property located within this state, etc., to be approved by the Commission. However, A.R.S. § 40-301.D states that the provisions of this article shall not apply to foreign public service corporations providing communications service within this state whose physical facilities are also used in providing communications service in interstate commerce. Given that Accipiter is a foreign public service corporation providing communications service in interstate commerce, Staff concludes Accipiter is not subject to the requirements of A.R.S. §§ 40-301 et seq.

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to encumber certain utility assets. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service. Staff concludes that a pledge of the Applicant's assets would not impair the availability of service to customers since the Applicant provides competitive services that are available from alternative service providers.

Staff does not believe the proposed transactions will negatively impact the operations of Accipiter. The Applicant indicated to Staff that the transactions proposed in this Application should be seamless and transparent to customers. The proposed transactions will not result in a change to Accipiter's tariffed rates or terms and conditions. Following these transactions, many of the same personnel who manage Accipiter's services will continue their roles and there will be no change in the network assets used to provide Accipiter's services. Additionally, it is important that customer

deposits not be encumbered as part of the proposed transactions. In its February 6, 2017 response to Staff Data Request STF 1.8, Accipiter states that customer deposits, prepayments and advances will not be encumbered as part of the proposed transactions.

Accipiter filed proof of published and direct customer notice on February 21, 2017. Legal Notice was published in the Peoria Times, a newspaper of general circulation in Accipiter's service territory, on February 10, 2017. In addition, Accipiter mailed direct customer notice on or about February 8, 2017. No Party has filed comments or sought intervention in this matter.

The Corporations Division has indicated that Accipiter is in good standing. The Consumer Services Section reports no complaints or opinions have been received for Accipiter from January 1, 2014 to January 13, 2017. The Compliance section indicates Accipiter is in compliance.

STAFF'S RECOMMENDATIONS

Staff recommends approval of the application with the following conditions:

- a. That one copy of the executed loan documents be filed with Docket Control, as a compliance item in this Docket, within ninety (90) days following the proposed transaction's consummation.
- b. That all Accipiter customer deposits, prepayments and advances be excluded from any encumbrance of Accipiter's assets under the proposed transaction.



Elijah Abinah
Acting Director
Utilities Division

EOA:LLM:nr\MAS

ORIGINATOR: Lori Morrison

THE COMMISSION

March 1, 2017

Page 5

On this 1st day of March, 2017, the foregoing document was filed with Docket Control as a Utilities Division Memorandum & Proposed Order, and copies of the foregoing were mailed on behalf of the Utilities Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

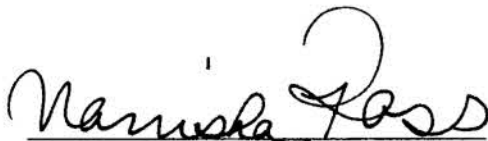
Mr. Jeffrey Crockett
Crockett Law Group, PLLC
2198 East Camelback Road, Suite 305
Phoenix, Arizona 85016

Mr. Patrick Sherrill
Accipiter Communications, Inc.
2238 West Lone Cactus Drive, Suite 100
Phoenix, Arizona 85027

Mr. Dwight "Doc" Winger
Pinpoint Holdings, Inc.
100 12th Street, Suite 500
Lincoln, Nebraska 68508

Mr. Timothy La Sota
Acting General Counsel/Acting Director, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
Legaldiv@azcc.gov
Eabinah@azcc.gov
Consented to Service by Email

By:



Nanisha Ross
Administrative Support Specialist

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 TOM FORESE
Chairman

3 BOB BURNS
Commissioner

4 DOUG LITTLE
Commissioner

5 ANDY TOBIN
Commissioner

6 BOYD DUNN
Commissioner

7
8 IN THE MATTER OF THE APPLICATION)
OF ACCIPITER COMMUNICATIONS)
9 INCORPORATED, DOING BUSINESS AS)
ZONA COMMUNICATIONS, TO PLEDGE,)
10 MORTGAGE, LIEN AND/OR ENCUMBER)
THE COMPANY'S ASSETS AND, IF)
11 WITHIN THE COMMISSION'S)
12 JURISDICTION, TO APPROVE THE ISSUE)
OF NEW COMMON STOCK.)

DOCKET NO. T-02847A-16-0482

DECISION NO. _____

ORDER

13
14 Open Meeting
March 14 and March 15, 2017
15 Phoenix, Arizona

16 BY THE COMMISSION:

17
18 FINDINGS OF FACT

19 1. On December 28, 2016, Accipiter Communications Incorporated dba Zona
20 Communications ("Accipiter" or "Applicant") filed an Application seeking approval by the Arizona
21 Corporation Commission ("Commission"), pursuant to, Arizona Revised Statute ("A.R.S") § 40-285
22 and any other applicable statutes or rules, to pledge, mortgage, lien and/or encumber Accipiter's assets
23 to be used by its new corporate parent, Pinpoint Holdings, Inc. ("Pinpoint") to secure a loan of
24 \$4,000,000 from McCook National Bank to as part of a bankruptcy agreement to help Pinpoint fund
25 the purchase price of \$5,250,000 for Accipiter's new common stock. Thereafter, Pinpoint will own
26 100 percent of Accipiter's common stock.

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28

1 2. Further, Accipiter requests that the Commission issue its order confirming that the
2 issuance of new common stock by Accipiter, a foreign public service corporation, is not subject to the
3 requirements of A.R.S. §§ 40-301 et seq.

4 3. The following background and transaction information was provided by the Applicant.

5 **BACKGROUND OF APPLICANT**

6 4. Accipiter is a Nevada corporation authorized to do business in Arizona as a foreign
7 corporation. In Decision 59346, dated October 11, 1995, the Commission granted Accipiter a
8 Certificate of Convenience and Necessity ("CC&N") to provide facilities-based local exchange carrier
9 and other telecommunication services in portions of the municipalities of Peoria, Surprise and
10 Buckeye, as well as additional portions of Maricopa and Yavapai Counties, including Lake Pleasant
11 Regional Park and the Castle Hot Springs area. Additional expansions and/or modifications of
12 Accipiter's CC&N were approved in Decision 67574, dated February 15, 2005, Decision 67675, dated
13 March 9, 2005, and Decision 70641, dated December 17, 2008. Accipiter currently provides service to
14 approximately 2,200 customer accounts in a CC&N area covering approximately 1,000 square miles.

15 **BACKGROUND ON ACCIPITER'S BANKRUPTCY**

16 5. On March 28, 2014, Accipiter filed a voluntary petition in the Bankruptcy Court for the
17 District of Arizona (Case No. 2:14-bk-04372-GBN) wherein Accipiter sought to restructure its debt
18 under Chapter 11 of the Federal Bankruptcy Code. On or about October 25, 2016, Pinpoint and the
19 unsecured creditors jointly proposed and filed the First Amended Chapter 11 Plan of Reorganization,
20 which was subsequently amended by the Second Amended Chapter 11 Plan of Reorganization
21 (collectively, the "Plan"). On December 15, 2016, the Bankruptcy Court issued the Bankruptcy Order
22 approving the Plan and approving the cancellation of all existing notes, instruments and outstanding
23 equity interests (stock) and vesting the property of Accipiter free and clear of all liens and claims. The
24 Plan calls for the payment of a purchase price by Pinpoint in exchange of which Accipiter will issue
25 new common stock to Pinpoint, which will become Accipiter's sole shareholder. Pinpoint will fund
26 \$4,000,000 of the Purchase Price of \$5,250,000 with a loan from McCook National Bank. The loan
27 from McCook National Bank will be secured by a pledge, mortgage, lien and/or encumbrance on the
28

1 assets of Accipiter. The loan will close upon approval of this Application by the Commission. The
2 remaining portion of the Purchase Price will be funded by Pinpoint with its own funds.

3 **DESCRIPTION OF THE STOCK ACQUISITION LOAN AND COLLATERAL**

4 6. The loan to fund Pinpoint's purchase of the new common stock of Accipiter will be
5 provided by McCook National Bank of McCook, Nebraska. The borrowers are Pinpoint Holdings,
6 Inc., a Nebraska corporation, and Accipiter. The loan amount is \$4,000,000 which will be made in a
7 single advance at an interest rate in the range of 7 percent to 9 percent. The maturity date for the loan
8 is December 31, 2017. During the term, the loan balance will be reduced with proceeds that Pinpoint
9 expects to receive in 2017, as follows:

- 10 (i) \$1,000,000 expected in the first quarter of 2017 from a transaction between Pinpoint
11 and Switch Business Solutions LLC;
- 12 (ii) \$1,000,000 expected in April 2017 from a transaction between Pinpoint and Great
13 Plains Communications; and
- 14 (iii) \$2,000,000 expected in August 2017 from a transaction between Pinpoint and Switch
15 Business Solutions LLC.

16 7. After applying the proceeds above, the remaining balance of the loan on the maturity
17 date will be paid by Pinpoint and Accipiter. In addition to the transaction proceeds listed above,
18 Pinpoint expects to receive an additional \$2,000,000 from Switch Business Solutions LLC in 2017
19 which will be available as a backup repayment source for the Stock Acquisition Loan. A term sheet
20 for the Stock Acquisition Loan is identified as Attachment 3 of the Application.

21 8. The loan from McCook National Bank will be secured by the utility assets of Accipiter.
22 Currently, the assets are already subject to liens by the U.S. Department of Agriculture and Rural
23 Utility Services ("RUS"). However, all existing liens on the assets of Accipiter held by RUS will be
24 eliminated once Pinpoint completes closing of the transaction. Thereafter, the only lien on the assets
25 of Accipiter will be that held by McCook National Bank.

26 **STAFF'S ANALYSIS**

27 9. A.R.S. §§ 40-301 et seq. requires public service corporations which issue stocks and
28 stock certificates, bonds, notes and other evidences of indebtedness, and creates liens on their

1 property located within this state, etc., to be approved by the Commission. However, A.R.S. §§ 40-
2 301.D states that the provisions of this article shall not apply to foreign public service corporations
3 providing communications service within this state whose physical facilities are also used in providing
4 communications service in interstate commerce. Given that Accipiter is a foreign public service
5 corporation providing communications service in interstate commerce, Staff concludes Accipiter is
6 not subject to the requirements of A.R.S. §§ 40-301 et seq.

7 10. A.R.S. § 40-285 requires public service corporations to obtain Commission
8 authorization to encumber certain utility assets. The statute serves to protect captive customers from
9 a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it
10 serves to preempt any service impairment due to disposal of assets essential for providing service.
11 Staff concludes that a pledge of the Applicant's assets would not impair the availability of service to
12 customers since the Applicant provides competitive services that are available from alternative service
13 providers.

14 11. Staff does not believe the proposed transactions will negatively impact the operations
15 of Accipiter. The Applicant indicated to Staff that the transactions proposed in this Application
16 should be seamless and transparent to customers. The proposed transactions will not result in a
17 change to Accipiter's tariffed rates or terms and conditions. Following these transactions, many of the
18 same personnel who manage Accipiter's services will continue their roles and there will be no change
19 in the network assets used to provide Accipiter's services. Additionally, it is important that customer
20 deposits not be encumbered as part of the proposed transactions. In its February 6, 2017 response to
21 Staff Data Request STF 1.8, Accipiter states that customer deposits, prepayments and advances will
22 not be encumbered as part of the proposed transactions.

23 12. Accipiter filed proof of published and direct customer notice on February 21, 2017.
24 Legal Notice was published in the Peoria Times, a newspaper of general circulation in Accipiter's
25 service territory, on February 10, 2017. In addition, Accipiter mailed direct customer notice on or
26 about February 8, 2017. No Party has filed comments or sought intervention in this matter.

27

28

1 13. The Corporations Division has indicated that Accipiter is in good standing. The
2 Consumer Services Section reports no complaints or opinions have been received for Accipiter from
3 January 1, 2014 to January 13, 2017. The Compliance section indicates Accipiter is in compliance.

4 **STAFF'S RECOMMENDATIONS**

5 14. Staff recommends approval of the application with the following conditions:

- 6 a. That one copy of the executed loan documents be filed with Docket Control,
7 as a compliance item in this Docket, within ninety (90) days following the
8 proposed transaction's consummation.
9 b. That all Accipiter customer deposits, prepayments and advances be excluded
10 from any encumbrance of Accipiter's assets under the proposed transaction.

11 CONCLUSIONS OF LAW

12 1. Accipiter Communications Incorporated dba Zona Communications is a public service
13 corporation as within the meaning of Article XV of the Arizona Constitution and A.R.S. § 40-285.

14 2. The Commission has jurisdiction over the subject matter of the Application.

15 3. The Commission, having reviewed the filing and Staff's Memorandum dated March 1,
16 2017, concludes that it is in the public interest to grant approval for Accipiter to encumber assets as
17 proposed in the financing arrangement discussed herein.

18 ORDER

19 IT IS THEREFORE ORDERED that the Application of Accipiter Communications
20 Incorporated dba Zona Communications requesting approval to encumber assets as described and
21 discussed herein, be and hereby is approved.

22 IT IS FURTHER ORDERED that Accipiter Communications Incorporated dba Zona
23 Communications be authorized to engage in any transactions and to execute any documents necessary
24 to effectuate the authorizations granted.

25 IT IS FURTHER ORDERED that the Application of Accipiter Communications
26 Incorporated dba Zona Communications is subject to the condition that all customer deposits,
27 prepayments and advances be excluded from encumbrance and equivalent amount be retained by
28 Accipiter.

1 IT IS FURTHER ORDERED that copies of the executed loan documents be filed with the
2 Compliance Section within ninety (90) days following the proposed transaction's consummation.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.
4

5
6 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**
7

8 _____
CHAIRMAN FORESE

COMMISSIONER DUNN

9
10
11 _____
COMMISSIONER TOBIN

COMMISSIONER LITTLE

COMMISSIONER BURNS

12
13 IN WITNESS WHEREOF, I, TED VOGT, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto, set my hand and caused the official seal of this
16 Commission to be affixed at the Capitol, in the City of
17 Phoenix, this _____ day of _____, 2017.

18 _____
TED VOGT
EXECUTIVE DIRECTOR

19
20 DISSENT: _____

21
22 DISSENT: _____

23 EOA:LLM:nr/MAS
24
25
26
27
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1 SERVICE LIST FOR: Accipiter Communications Incorporated dba Zona Communications
2 DOCKET NO. T-02847A-16-0482

3 Mr. Jeffrey Crockett
4 Crockett Law Group, PLLC
5 2198 East Camelback Road, Suite 305
6 Phoenix, Arizona 85016

7 Mr. Patrick Sherrill
8 Accipiter Communications, Inc.
9 2238 West Lone Cactus Drive, Suite 100
10 Phoenix, Arizona 85027

11 Mr. Dwight "Doc" Wininger
12 Pinpoint Holdings, Inc.
13 100 12th Street, Suite 500
14 Lincoln, Nebraska 68508

15 Mr. Timothy La Sota
16 Acting General Counsel/Acting Director, Legal Division
17 Arizona Corporation Commission
18 1200 West Washington Street
19 Phoenix, Arizona 85007
20 Legaldiv@azcc.gov
21 Eabinah@azcc.gov
22 **Consented to Service by Email**

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