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BEFORE THE ARIZONA CORPORATION COMMISSION

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TOM FORESE  
Chairman  
BOB BURNS  
Commissioner  
DOUG LITTLE  
Commissioner  
ANDY TOBIN  
Commissioner  
BOYD DUNN  
Commissioner

Arizona Corporation Commission

DOCKETED

MAR 22 2017

DOCKETED BY  
*AB*

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

DECISION NO. 76032

ORDER

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

BY THE COMMISSION:

FINDINGS OF FACT

1. On December 28, 2016, Accipiter Communications Incorporated dba Zona Communications ("Accipiter" or "Applicant") 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 to 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.

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  
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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.

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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  
from any encumbrance of Accipiter's assets under the proposed transaction.

#### 10 CONCLUSIONS OF LAW

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

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

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

#### 17 ORDER

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

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

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

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

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

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

*[Signature]*  
CHAIRMAN FORESE

*[Signature]*  
COMMISSIONER DUNN

*[Signature]*  
COMMISSIONER TOBIN

*[Signature]*  
COMMISSIONER LITTLE

*[Signature]*  
COMMISSIONER BURNS



IN WITNESS WHEREOF, I, TED VOGT, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 22nd day of March, 2017.

*[Signature]*

TED VOGT  
EXECUTIVE DIRECTOR

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

EOA:LLM:nr/MAS

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22 **Consented to Service by Email**

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