

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Access)
Point, Inc., for a Certificate of Public) DOCKET NO. 08-2488-01
Convenience and Necessity to Provide)
Resold and Facilities-Based Local Exchange) REPORT AND ORDER
Services within the State of Utah)
)

ISSUED: October 7, 2008

SYNOPSIS

By this Report and Order, the Public Service Commission of Utah (Commission) grants the request of Access Point, Inc. (Applicant) for a Certificate of Public Convenience and Necessity (Certificate) authorizing Applicant to provide public telecommunications services within the State of Utah, excluding those local exchanges having fewer than 5,000 access lines of an incumbent telephone corporation with fewer than 30,000 access lines in the state.

By The Commission:

PROCEDURAL HISTORY

Applicant filed its Application on January 30, 2008, pursuant to Utah Code Ann. §§ 54-8b-1.1 *et seq* and Title 63, Chapter 46b of the Utah Administrative Procedures Act, seeking a Certificate of Public Convenience and Necessity to operate as a provider of resold and facilities-based local exchange telecommunications services in Utah. On September 22, 2008, the Division filed a memorandum recommending approval of the Application, and in part, specifically recommend the Commission waive the \$100,000 bond requirement and the positive net worth requirement, and also that it limit the certificate to local exchanges with more than 5,000 access lines that are owned or controlled by incumbent local exchange carriers (ILECs) with more than 30,000 access lines.

ILECs have been notified of the Application and have not requested intervention. There is no opposition to the issuance of the Certificate and the Applicant has established a *prima facie* case in support of the Application. The Commission held a hearing in the matter on September 25, 2008. Thomas Forte appeared for the Applicant telephonically. Michael Ginsberg appeared for the Division of Public Utilities (Division). The Commission, being fully appraised in the matter, enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Applicant is qualified to do business in Utah.
2. Applicant requests the Commission grant a Certificate authorizing it to provide public telecommunications services within Utah.
3. Applicant proposes it provide public telecommunication services in Utah, excluding those exchanges with less than 5,000 access lines that are served by incumbent telephone corporations with fewer than 30,000 access lines in the state.
4. Applicant will utilize its managerial expertise to support its Utah operations.
5. Applicant has sufficient technical resources and abilities to provide the public telecommunication services for which it has applied.
6. Applicant has sufficient managerial resources and abilities to provide the public telecommunications services for which it has applied.
7. Applicant has a secure and sufficient source of funding for its Utah operations that will enable it to meet projected capital and operating expenses and to implement its business plans.

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8. Applicant has sufficient financial resources and abilities to provide the public telecommunications services for which it has applied.
9. In its provision of intrastate services, Applicant will be subject to competition from other certified telecommunications services providers.
10. Applicant's services offerings will provide customers with a wider range of choices in meeting their telecommunications needs and will support the development of competition.
11. The issuance of a Certificate to Applicant to provide telecommunications services is in the public interest.
12. The reporting requirements in Exhibit B attached hereto are in the public interest.
13. Applicant has applied for exemptions from the requirements of various procedures of the Utah Code and the Commission's Rules and Regulations.
14. Applicant has also applied for waivers from the \$100,000 bond requirement and the positive net worth requirement.
 - a. The Commission finds that the Applicant will not require customer deposits or offer any prepaid services in Utah;
 - b. The Commission further finds that the Applicant has signed or will be signing national contracts with revenue growth to mitigate the negative net worth within an 18-month period.

CONCLUSIONS OF LAW

1. Applicant meets each of the statutory requirements of U.C.A. §§ 54-8b-1.1 *et seq* for issuance of a Certificate as a telecommunications corporation.
2. Applicant meets each of the statutory requirements of U.C.A. §§ 54-8b-1.1 *et seq* for authorization to provide the public telecommunications services for which it has applied.
3. The grant of exemptions from the provisions of the Utah Code and the Commission's Rules and regulations, as set forth in Exhibit B, is in accord with Commission practice and is in the public interest. The grant of waivers, as set forth above, from the provisions of the Utah Code and the Commission's Rules and regulations, is in accord with Commission practice and is in the public interest.
4. The issuance of a Certificate to the Applicant to provide the telecommunications services for which it has applied is in accord with the legislative policy declarations set forth in Utah Code § 54-8b-1.1 *et seq*.

ORDER

The Commission, having entered its Findings and Conclusions above, hereby ORDERS

- a. The Applicant is hereby granted the Certificate attached hereto as Exhibit A, which Exhibit is incorporated by reference into this Order;
- b. Applicant shall provide reports to the Commission and to the Division as set forth in Exhibit B, which Exhibit is incorporated by reference into this Order;
- c. The reporting requirements in Exhibit B shall be binding upon Applicant until modified by the Commission;

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- d. Applicant shall be exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B;
- e. The bond requirement and positive net worth requirement are waived.

DATED at Salt Lake City, Utah this 7th day of October, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#59255

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EXHIBIT A

In the Matter of the Application of Access Point, Inc., for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-based Local Exchange Services within the State of Utah)))))	<u>DOCKET NO. 08-2488-01</u> <u>CERTIFICATE</u>
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ISSUED: October 7, 2008

By the Commission:

The Public Service Commission of Utah, pursuant to Utah Code Ann. § 54-8b-2.1, hereby issues a Certificate of Public Convenience and Necessity authorizing Access Point, Inc. to provide public telecommunication services within the State of Utah, excluding those local exchanges of less than 5,000 access lines if incumbent telephone corporations with fewer than 30,000 access lines in the state.

DATED at Salt Lake City, Utah, this 7th day of October, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

EXHIBIT B

I. Annual Report: Grantee shall file an Annual Report, on or before March 31 of each year, unless said Grantee requests and obtains an extension. The Annual Report shall contain the following:

A. Annual Revenues from operations attributable to the State of Utah by major service categories. Such information would be provided on a “Total Utah” and “Utah Intrastate” basis. “Total Utah” will consist of the total of interstate and intrastate revenues. “Utah Intrastate” will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Intrastate Utah revenues shall be reported according to at least the following classes of service:

1. private line and special access,
2. business local exchange,
3. residential local exchange,
4. measured interexchange, and
5. vertical services.

Business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible.

B. Annual Expenses and Estimated Taxes attributed to operations in the State of Utah.

C. Year End Balances by Account for Property, Plant, Equipment, Annual Depreciation, and Accumulated Depreciation for telecommunications

investment in Utah. The Actual Depreciation Rates which were applied in developing annual and accumulated depreciation figures shall also be shown.

- D. **Financial Statements** maintained in accordance with generally accepted accounting principles in the ordinary course of business. These financial statements shall at a minimum include an income statement, balance sheet and statement of cash flows.
 - E. **List of Services** offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served.
 - F. **Number of Access Lines in Service** by geographic area, segregated between business and residential customers.
 - G. **Number of Messages and Minutes of Services** for measured services billed to end users.
 - H. **List of Officers and Responsible Contact Personnel** updated annually.
 - I. **Chart of Accounts.** In addition to the foregoing, said grantee will provide its chart of accounts as existing and updated (no less than annually). Said Grantee will also work with the Division in good faith to develop a method of estimating intrastate expenses and investments.
- II. **Applicable Statutory Provisions and Exemptions from Statutes and Waiver of Regulations.** Grantee shall be exempted from the following statutory provisions and regulations:

A. Exemptions from Title 54

54-3-8, 54-3-19	Prohibitions of discrimination
54-7-12	Rate increases or decreases
54-4-21	Establishment of property values
54-4-24	Depreciation rates
54-4-26	Approval of expenditures

B. Waivers of Regulations

R746-340-2(D)	Uniform System of Accounts (47 C.F.R. 32)
R746-340-2(E)(1)	Tariff filings required
R746-340-2(E)(2)	Exchange Maps
R746-341	Lifeline ¹
R746-344	Rate case filing requirements
R746-401	Reporting of construction, acquisition and disposition of assets
R746-405	Tariff formats
R746-600	Accounting for post-retirement benefits

III. **Obligations with Respect to Provision of Services.** Grantee agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

¹This regulation would be waived only until the Commission establishes Lifeline rules that may include Grantee or until it begins to provide residential local exchange service.

- A. Grantee's obligation to furnish service to customers is dependent upon the availability of suitable facilities on its own network and the networks of underlying carriers. Grantee will provide a map identifying the areas within the state of Utah where it is offering any services. The map will be updated as Grantee serves new areas and no less frequently than annually.
 - B. Grantee will only be responsible for the operation and maintenance of services that it provides.
- IV. **Modification:** It is anticipated that to the extent such requirements impact competitive entry or impact effective competition that they will be subject to the rule making requirements of the Utah Code Ann. § 54-8b-2.2 and that the provisions set forth herein shall be superseded by any such rule adopted by the Commission.