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Department of Commerce
Division of Public Utilities

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--==-- MEMORANDUM ==--

TO: PUBLIC SERVICE COMMISSION

FROM: DIVISION OF PUBLIC UTILITIES
Philip J Powlick, Division Director
William Duncan, Manager, Telecommunications
Shauna Benvegna-Springer, Utility Analyst

SUBJECT: 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

RE: Docket No. 08-2488-01

DATE: September 22, 2008

RECOMMENDATION: APPROVE

The Division has reviewed the technical, managerial, and financial abilities of Access Point, Inc., (“Applicant” or “API”) and has found that the Applicant has provided the necessary information to fulfill the requirements as stated in the existing Commission rule R746-349-3. The Division believes that the public interest will be promoted by recommending approval of the Applicant’s request for a Certificate of Public Convenience and Necessity (CPCN) to provide resold and facilities-based local exchange telecommunications service in the State of Utah, as requested, under the same terms and conditions as allowed in other CPCN applications.

The Division also recommends that the Commission waive the \$100,000 bond requirement on the basis that the Applicant will not require customer deposits or offer any prepaid services in Utah.

The Division also recommends that the Commission waive the positive net worth requirement on the basis that the Applicant has or will be signing national contracts with revenue growth to mitigate the negative net worth within an 18-month period.

The Division further recommends that the certificate be limited 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. Rural ILECs have not objected to this application because they would not be affected unless the Applicant intended to serve in their territories. If the Applicant decides to serve in the rural ILECs’ territory, a hearing may be necessary before the Commission, pursuant to Section 251(f)(1) of the Telecommunications Act of 1996.

SUMMARY:

On January 30, 2008, the Applicant filed an application for a CPCN to operate as a provider of resold and facilities-based local exchange telecommunications service in the State of Utah. The Applicant is not requesting authorization at this time to provide services within any local exchange with fewer than 5,000 access lines owned or controlled by an incumbent telephone corporation (ILEC) with fewer than 30,000 access lines within the state. The Applicant is registered as a foreign profit corporation in the State of Utah, in good standing, as of January 8, 2008 and currently provides interexchange services throughout Utah.

Proposed Service Area:

The Applicant’s initial focus will be to offer basic local exchange services to business customers who have associations with other customers in other certificated states, within the Qwest service areas in Utah. The Applicant has no timetable established for commencement of local services, since the company has a very limited market segment. Eventually, the Applicant plans on

offering residential services and xDSL related services as well. The company does not have physical facilities nor does it plan to construct such facilities in Utah.

Proposed Service Offerings:

The Applicant's service offerings will include all forms of local exchange and switched access telecommunications services on a resold and facilities-based basis. They will include but are not limited to:

- 1) private line and basic local exchange business services;
- 2) access to ordinary intraLATA and interLATA message toll calling;
- 3) operator services;
- 4) customer calling features;
- 5) directory assistance;
- 6) directory listings; and
- 7) emergency services such as 911 and E911 through facilities-based interconnection or resale services purchased directly from the ILEC.

The Applicant plans to offer residential services and xDSL related services as well. The Applicant will initiate interconnection negotiations with Qwest as soon as the filing is approved.

Current Areas of Telecommunications Operations:

The Applicant is certificated in twenty-six (26) other state jurisdictions, mainly the east coast states, mid-eastern states, California and Texas. The Applicant also operates interexchange services in forty-eight (48) of the United States. The Applicant has had their certificates revoked in Nebraska and Illinois due to not filing their annual financial statements, but have reconciled this problem, both internally and externally, and these certificates have been reinstated.

Managerial & Technical Expertise:

The Applicant was formed in 1996 by a team with over 50 years of combined experience. Summaries of the professional experience and the formal education of its managerial and

technical personnel demonstrate that the Applicant has considerable business, managerial and technology expertise in the telecommunications industry.

Financial Analysis:

The Applicant filed for bankruptcy in 2000, but emerged from that proceeding in October 2001. The Applicant is currently not under the protection of the federal bankruptcy system. The Applicant is a subsidiary of Access Point Communications, Inc. (Parent). The subsidiary has had a negative net worth during the past several years, and the current year of application. The Applicant has changed its business plan and as a result, its focus on the market has changed. Forecasted years starting in 2009 are anticipated to increase to a position of positive net worth. A national contract, which was signed by the Applicant in May 2008, and two additional national clients, which are anticipated to be under contract by the end of December 2008, document and facilitate this upward change, with projected revenues to continue to grow. Attached are three (3) confidential documents.

Complaint Analysis:

The Applicant has no pending complaints or investigations.

Waivers:

The Applicant requests that the \$100,000 bond requirement be waived because it will not require customer deposits or prepayments of any kind.

The Applicant requests that the negative net worth rule also be waived due to the business plan change, national business contracts and revenue growth.

cc: Tom Forte, Technologies Management Today
Beckie Gillette, Access Point, Inc.,

Attachments (3) Confidential Documents