

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
July 18, 2000**

CASE NO: TM-2000-615

Office of the Public Counsel
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Jefferson City, MO 65102

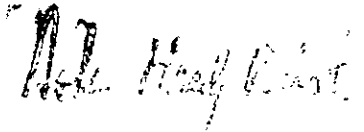
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Enclosed find a certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 18th
day of July, 2000.

In the Matter of the Application of Access)
Point, Inc., for Approval of a Transaction) Case No. TM-2000-615
Whereby Access Point, Inc., Will Acquire)
Selected Customers of Efficacy Group, Inc.)

ORDER APPROVING ACQUISITION,
WAIVING RULE, REQUIRING FILING OF TARIFF,
AND CLOSING CASE

On March 31, 2000, Access Point, Inc. (Access), and Efficacy Group, Inc. (Efficacy; jointly, the Applicants), filed a joint application for approval of Access' acquisition of all of Efficacy's Missouri interexchange telecommunications service customer accounts in exchange for Access stock.¹ On June 15, 2000, no further activity having occurred in the case, the Commission issued its Order Directing Filing, requiring the Staff of the Missouri Public Service Commission (Staff) to file a status report no later than June 22, 2000. Staff filed its status report on June 21, 2000, and its Memorandum and Recommendation on June 26, 2000. In the meantime, the Applicants filed their Motion to Correct and Supplement Application on June 20, 2000.

The joint application, as corrected and supplemented on June 20, 2000, states that Access and Efficacy are both foreign corporations duly

¹The application was not captioned as a joint application; however, its actual nature was clarified by the Motion to Correct and Supplement filed on June 20, 2000.

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authorized to conduct business in the state of Missouri. Access is certificated to provide intraLATA and interLATA, facilities-based and resold interexchange telecommunications services in the state of Missouri. Access is also authorized to provide resold interexchange services in 44 states and is authorized by the Federal Communications Commission to provide international switched and private line telecommunications services. Efficacy is certificated to provide interexchange telecommunications service in the state of Missouri. Both companies have been classified as competitive companies in Missouri.

Access proposes to acquire all of Efficacy's Missouri interexchange telecommunications customer accounts in exchange for Access stock. Efficacy will then quit business in Missouri and, upon approval of the transaction that is the subject of this proceeding, Efficacy will then file an application to cancel its certificate and tariff. Access will provide services to the customers acquired from Efficacy under the same rates, terms and conditions as Efficacy provided service, with no interruption of service. The transaction is intended to be transparent from the vantage point of Efficacy's approximately 45 Missouri customers.

Access proposes to provide notice of the transaction to Efficacy's customers by letter, both before the transfer is initiated and again after it is completed. The notice will advise Efficacy's customers that service will continue at the same, or better, rates, terms and conditions; that the customers may elect to switch to a different interexchange carrier; that Access will reimburse customers for any primary interexchange carrier (PIC) change charges imposed by local exchange carriers; and that customers may

contact Access via a toll-free number with any questions. Access states that it will amend its tariff to add Efficy's services, rates, terms and conditions for the transferred customers. Finally, to facilitate the transfer, the Applicants seek waiver of Commission Rule 4 CSR 240-33.150, the "anti-slamming" rule.

Staff's Memorandum and Recommendation, filed on June 26, 2000, advises that the Commission should grant the joint application. Staff states that the Commission may approve a transfer of assets, pursuant to Section 392.300, RSMo 1994, and Commission Rule 4 CSR 240-2.060, (3) and (7), so long as it is "not detrimental to the public interest." State ex. rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980). Staff states that it has reviewed the proposed transaction and has found no public detriment therein.

In considering such cases, the Commission is mindful that the right to sell property is an important incident of the ownership thereof and that "[a] property owner should be allowed to sell his property unless it would be detrimental to the public." State ex rel. City of St. Louis v. Public Service Commission, 335 Mo. 448, 459, 73 S.W.2d 393, 400 (Mo. banc 1934). "The obvious purpose of [Section 392.200] is to ensure the continuation of adequate service to the public served by the utility." Fee Fee Trunk Sewer, *supra*. "[T]he Commission is unwilling to deny private, investor-owned companies an important incident of the ownership of property unless there is compelling evidence on the record tending to show that a public detriment will occur." In the Matter of the Joint Application of Missouri Gas Energy et al., Case No. GM-94-252, *supra*,

3 Mo.P.S.C.3d 216, 221.

The Commission reads City of St. Louis, supra, 335 Mo. at 459, 73 S.W.2d at 400, to require a direct and present public detriment. To that end, the Commission has previously considered such factors as the applicant's experience in the utility industry; the applicant's history of service difficulties; the applicant's general financial health and ability to absorb the proposed transaction; and the applicant's ability to operate the asset or assets safely and efficiently. See Missouri Gas Energy, supra, 3 Mo.P.S.C.3d at 220. The present record reveals no such direct and present public detriment; therefore, the Commission will approve the transaction. No party has requested a hearing; therefore, the Commission may resolve the case on the pleadings. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

IT IS THEREFORE ORDERED:

1. That the Applicants' Motion to Correct and Supplement Application is granted.

2. That the transaction described in the Joint Application filed on March 31, 2000, as corrected and supplemented on June 20, 2000, is approved. The parties may take all otherwise lawful actions necessary to consummate the transaction herein approved.

3. That Commission Rule 4 CSR 240-33.150, the "anti-slamming" rule, is waived with respect to the transaction approved by this Order.

4. That the parties shall give notice to all affected Missouri subscribers as described in the Joint Application.

5. That Access Point, Inc., shall file proposed tariff sheets with a 30-day effective date in order to make all necessary and appropriate changes to its tariffs to add the services, rates, terms, and conditions of Efficacy Group, Inc., as described in the Joint Application. The parties shall not transfer any customers prior to the effective date of Access Point, Inc.'s proposed tariff sheets referred to in this paragraph.

6. That Efficacy Group, Inc., shall file an application seeking cancellation of its certificate and tariff within 15 days of the consummation of the transaction approved in this Order.

7. That this order shall become effective on July 28, 2000.

8. That this case may be closed on July 29, 2000.

BY THE COMMISSION

(S E A L)



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Drainer, Murray, Schemenauer,
and Simmons, CC., concur.
Lumpe, Ch., absent.

Thompson, Deputy Chief Regulatory Law Judge

ALJ/Sec'y: Thompson/Poye
7-11 74-2000-615
 Date Circulated CASE NO.

Alison T.
 Lumpe, Chair

and
 Drainer, Vice Chair

CM
 Murray, Commissioner

BL
 Schemenauer, Commissioner

KS
 Simmons, Commissioner

OK

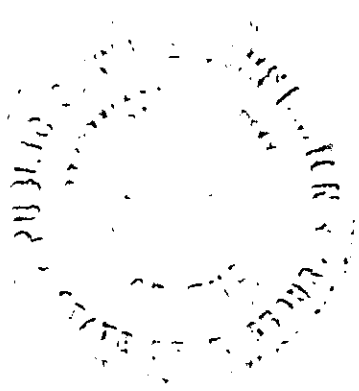
7-18
 Agenda Date

Action taken: 4-0 AS
 Must Vote Not Later Than _____

**STATE OF MISSOURI
 OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and
 I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
 Missouri, this 18th day of July 2000.



Dale Hardy Roberts

Dale Hardy Roberts
 Secretary/Chief Regulatory Law Judge