

DT 00-135

**ACCESS POINT, INC. AND EFFICY GROUP, INC.**

**Transfer of Efficy Group, Inc. Assets to Access Point, Inc.**

**Order Approving Transfer of Assets**

**O R D E R    N O.    23,624**

**January 22, 2001**

On June 8, 2000, Access Point, Inc. (Access Point) filed a letter of notification (LON) with the New Hampshire Public Utilities Commission (Commission) of a proposed transfer of customers of Efficy Group, Inc. (Efficy) to Access Point's customer base.

Access Point averred that it had successfully petitioned the Federal Communications Commission for a limited waiver of its subscriber carrier selection rules (47 CFR §§64.1100 -64.1190) to enable Access Point to transfer certain subscribers of Efficy to Access Point's customer base without first obtaining subscribers' authorization and verification. The FCC, by issuance of its order, granted Access Point's request. Efficy and Access Point entered into an agreement that provided for Efficy to transfer substantially all of its assets, including its customer base to Access Point. Access Point intends to migrate approximately 250 New Hampshire customers from Efficy to Access Point.

Efficy is a registered Competitive IntraLATA Toll Provider in New Hampshire pursuant to Authorization No. IX23697 dated September 26, 1997. Access Point is an authorized Competitive IntraLATA Toll Provider in New Hampshire pursuant to Authorization Number IX0400600 dated July 24, 2000.

Access Point avows the proposed acquisition will be transparent to the customers of Efficy as the company will adopt Efficy's tariff rates, terms and conditions, and the company will continue to operate in all material respects as Efficy operates.

Access Point maintains that unless Efficy customers are transferred to Access Point, those customers are at risk for potential service disruption, since Efficy has decided to discontinue providing interexchange services to these customers.

Access Point will provide the former Efficy customers a letter that states "the quality of service . . . will remain the same and Access Point will continue to provide service . . . with the same or better services and rates current provided by Efficy." In addition, the letter will provide notice that the customers have the right to switch to another carrier of their choice and Access Point will

reimburse customers for any primary interexchange carrier (PIC) change charges if imposed by local exchange carriers. Access Point will also provide a toll-free number for customers of Efficacy to contact the company for any question regarding the switch over.

Efficacy's system to be transferred consists of tangible and intangible assets encompassing, *inter alia*, customer base, computerized billing systems, and collection rights. The Commission cannot approve a transfer of a customer base unless the provisions of RSA 378:28-a are met. See RSL COM U.S.A., Inc., Order No. 23,234 (June 1999). RSA 374:28-a prohibits changes of a customer's service provider without the customer's knowledge or consent, a practice known as slamming. Access Point has satisfied the requirements of RSA 374:28-a in that it will not change carriers without the customer's knowledge or implicit consent by virtue of notice to all of Efficacy's customers of his/her opportunity to choose another long distance carrier. We also note that customers will not have to take any affirmative steps to receive Access Point service. Accordingly, we will approve the asset transfer as proposed.

**Based upon the foregoing, it is hereby**

**ORDERED,** that the transfer of Efficacy Group, Inc. assets to Access Point, Inc. as proposed in the letter is hereby APPROVED; and it is

**FURTHER ORDERED,** Access Point shall file tariff pages encompassing the services provided by Efficacy, pursuant to which it will provide service to those former customers of Efficacy who choose the default carrier Access Point as their IntraLATA interexchange service provider; and it is

**FURTHER ORDERED,** Efficacy Group, Inc.'s New Hampshire Competitive IntraLATA Telecommunication certificate of authority is RESCINDED.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of January, 2001.

---

Douglas L. Patch  
Chairman

---

Susan S. Geiger  
Commissioner

---

Nancy Brockway  
Commissioner

Attested by:

---

Thomas B. Getz  
Executive Director and Secretary