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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

MAR 29 2005

DOCKETED BY  
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IN THE MATTER OF THE JOINT APPLICATION  
OF GE BUSINESS PRODUCTIVITY SOLUTIONS,  
INC. AND BUSINESS PRODUCTIVITY  
SOLUTIONS, INC. FOR EXPEDITED APPROVAL  
OF CERTAIN TRANSACTIONS.

DOCKET NO. T-02719A-04-0760  
DOCKET NO. T-04280A-04-0760

DECISION NO. 67727

ORDER

Open Meeting  
March 24, 2005  
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On October 21, 2004, GE Business Productivity Solutions, Inc. ("GEBPS") and Business Productivity Solutions, Inc. ("BPS") (collectively "Applicants") jointly filed with the Commission an application seeking authority to consummate a transaction involving the transfer of the assets of GEBPS, including the GEBPS customer base and Certificate of Convenience and Necessity ("CC&N"), to BPS. GEBPS is a switchless reseller<sup>1</sup> that purchases telecommunications services from a variety of carriers for resale to its customers.

2. On November 22, 2004, the Applicants filed a Supplement to Application providing additional information in support of the application.

3. On December 15, 2004, the Commission's Utilities Division Staff ("Staff") filed a Letter of Insufficiency and attached its First Set of Data Requests directed to the Applicants.

<sup>1</sup> In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") are public service corporations subject to the jurisdiction of the Commission.

1           4.    On December 28, 2004, the Applicants filed Responses to Staff's First Set of Data  
2 Requests.

3           5.    On January 12, 2005, Staff filed a second Letter of Insufficiency. Attached to the letter  
4 was Staff's Second Set of Data Requests.

5           6.    On January 20, 2005, the Applicants filed Responses to Staff's Second Set of Data  
6 Requests.

7           7.    On March 9, 2005, Staff filed a Staff Report recommending approval of the application  
8 subject to certain conditions.

9           8.    Also on March 9, 2005, GEBPS' general counsel filed a letter requesting that a  
10 Recommended Order be issued as soon as possible for consideration at the Commission's Securities  
11 Open Meeting scheduled for March 24, 2005.

12           9.    Pursuant to the terms of an Asset Purchase Agreement ("Agreement") between GEBPS  
13 and BPS' ultimate parent company, Eschelon Telecom, Inc. ("Eschelon"), Eschelon will acquire  
14 substantially all of the assets of GEBPS, including the GEBPS customer base and GEBPS' CC&N in  
15 Arizona<sup>2</sup>. Under the terms of the Agreement, the assets would immediately be transferred from  
16 Eschelon to BPS, a Minnesota corporation that is a wholly owned subsidiary of Eschelon. Eschelon  
17 provides local and long distance facilities-based service in 12 markets in 7 states including Arizona  
18 and, according to the application, has the financial, managerial and technical qualifications necessary  
19 to provide quality telecommunications services to customers in Arizona.

20           10.   Because GEBPS conducts business in Arizona only as a long-distance reseller, there  
21 are no physical assets to be transferred. In effect, the Applicants are seeking authority only for  
22 GEBPS to transfer its customer base and CC&N to BPS through the Agreement with Eschelon.  
23 According to the Applicants' Responses to Staff Data Requests, GEBPS currently serves 559  
24 residential customers and 73 business customers in Arizona. After the transaction is completed,  
25 GEBPS would no longer provide telecommunications services.

26           11.   According to the Applicants, current customers of GEBPS were notified of the

27 <sup>2</sup> GEBPS is a Georgia corporation licensed to do business in Arizona, and authorized to provide resold long distance  
28 telecommunications services throughout the United States. GEBPS' CC&N to provide resold telecommunications  
services in Arizona was granted in Decision No. 62410 (April 3, 2000).

1 proposed transfer to BPS by letter sent in November/December 2004. In the notice, customers were  
 2 informed that they were free to select a new service provider at any time (Exhibit B to Application).  
 3 The Applicants also published notice of the proposed transfer in the *Arizona Republic* on November  
 4 5, 2004 (Attachment C to Application Supplement)<sup>3</sup>.

5 12. In the Staff Report, Staff indicated that unaudited financial statements were provided  
 6 for BPS' parent company, Eschelon Telecom, Inc. The financial statements show that for the six  
 7 months ending June 30, 2004, Eschelon listed assets of \$168.6 million, equity of \$4.1 million, and net  
 8 income of \$10.9 million.

9 13. Staff stated that based on information obtained from BPS, it has determined that BPS'  
 10 fair value rate base ("FVRB") is zero and is not useful in either a fair value analysis or in setting  
 11 rates. Staff further stated that, in general, rates for competitive services are not set according to rate  
 12 of return regulation. Staff has reviewed the rates to be charged by BPS and believes they are just and  
 13 reasonable as they are comparable to several long distance carriers operating in Arizona. Therefore,  
 14 while Staff considered the FVRB information submitted by BPS, Staff does not believe that  
 15 information should be given substantial weight in this analysis.

16 14. Staff states that BPS has no market power and that the reasonableness of its rates will  
 17 be evaluated in a market with numerous competitors. Staff believes that the rates in BPS' proposed  
 18 tariffs for its competitive services will be just and reasonable and recommends that the Commission  
 19 approve them.

20 15. Based on its evaluation of BPS' technical, managerial, and financial capabilities to  
 21 provide resold interexchange services, Staff recommended approval of the application subject to the  
 22 following recommendations:

- 23 (a) Transfer of GEBPS' current customers to BPS should be granted  
 24 and waivers of the Commission's rules governing Unauthorized  
 25 Carrier Changes, as set forth in A.A.C. R14-2-1904 and R14-2-

26 <sup>3</sup>The Applicants contend that a separate notice informing customers of their right to switch providers within 90 days  
 27 without regard to contractual obligations is unnecessary in this case due to the prior notifications to customers by mail  
 28 and publication. We disagree. Despite the prior notifications, we believe that it is reasonable to require BPS to notify the  
 transferred customers of the transaction within 30 days of the effective date of this Order and within 90 days thereafter to  
 allow such customers to discontinue service in their discretion without prejudice or regard to contractual obligation. *See*,  
*e.g., Winstar Wireless, Inc.*, Decision No. 64740 (April 17, 2002), at 8.

1905, should be granted with respect to that transaction;

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- (b) Cancellation of GEBPS' CC&N to provide resold long distance service should be granted once the transfer of assets to BPS is complete;
  - (c) BPS should be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
  - (d) BPS should be ordered to maintain its accounts and records as required by the Commission;
  - (e) BPS should be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
  - (f) BPS should be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
  - (g) BPS should be ordered to comply with the Commission's rules and modify its tariffs to conform to those rules if it is determined that there is a conflict between BPS' tariffs and the Commission's rules;
  - (h) BPS should be ordered to cooperate with Commission investigations including, but not limited to customer complaints;
  - (i) BPS should be ordered to participate in and contribute to the Arizona Universal Service Fund, as required by the Commission;
  - (j) BPS should be ordered to notify the Commission immediately upon changes to BPS' name, address or telephone number;
  - (k) BPS' intrastate interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;
  - (l) BPS' maximum rates should be the maximum rates proposed in its proposed tariffs. The minimum rates for BPS' competitive services should be its total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109; and
  - (m) In the event that BPS states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate.

1           16. Staff further recommended that BPS' CC&N should be conditioned upon the filing of  
2 conforming tariffs in accordance with this Decision within 365 days from the date of an Order in this  
3 matter, or 30 days prior to providing service, whichever comes first.

4           17. Based upon the proposed tariff, BPS may collect advances, deposits and/or  
5 prepayments from its customers. Consequently, Staff recommended that BPS' CC&N should be  
6 conditioned upon procurement of a performance bond as described below, and filing proof of that  
7 performance bond within 365 days from the date of an Order in this matter, or 30 days prior to  
8 providing service, whichever comes first.

9           18. Staff recommended that BPS be required to procure a performance bond in the initial  
10 amount of \$10,000, with the minimum bond amount of \$10,000 to be increased if at any time it  
11 would be insufficient to cover all advances, deposits, or prepayments collected from its customers, in  
12 the following manner: The bond amount should be increased in increments of \$5,000, with such  
13 increases to occur whenever the total amount of the advances, deposits, and prepayments reaches a  
14 level within \$1,000 under the actual bond amount.

15           19. Staff further recommended that BPS be required to file a request for cancellation of its  
16 established performance bond relating to the provision of resold interexchange service if, at some  
17 time in the future, it does not collect from its customers an advance, deposit, and/or prepayment.  
18 Such request shall be filed with the Commission for Staff review. Upon receipt of such filing and  
19 after Staff review, Staff will forward its recommendation to the Commission.

20           20. Staff recommended that if BPS fails to meet the timeframes outlined in Staff's  
21 recommendations, BPS' CC&N should become null and void without further Order of the  
22 Commission, and that no time extensions for compliance should be granted.

23           21. Staff also recommended that BPS be required to provide notice to the Commission and  
24 its customers in the event it requests to discontinue service and/or abandon its service area, and Staff  
25 indicates that such notice(s) shall be in accordance with A.A.C. R14-2-1107. Pursuant to A.A.C.  
26 R14-2-1107, BPS is required to obtain Commission authorization of compliance with all of the  
27 requirements, including but not limited to the notice requirements, prior to the discontinuance of  
28 service and/or abandonment of its service area.



**ORDER**

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2 IT IS THEREFORE ORDERED that the joint application of GE Business Productivity  
3 Solutions, Inc. and Business Productivity Solutions, Inc. to transfer the Arizona assets of GE  
4 Business Productivity Solutions, Inc., including its customer base and Certificate of Convenience and  
5 Necessity, to Business Productivity Solutions, Inc., is reasonable and in the public interest and shall  
6 be granted, provided that within 30 days of the effective date of this Order all customers currently  
7 receiving service from GE Business Productivity Solutions, Inc. shall receive notification of the  
8 transaction and such customers shall be permitted within 90 days thereafter to discontinue service in  
9 their discretion without prejudice or regard to contractual obligation.

10 IT IS FURTHER ORDERED that upon consummation of the transaction transferring the  
11 assets of GE Business Productivity Solutions, Inc. to Business Productivity Solutions, Inc., the  
12 Certificate of Convenience and Necessity for authority to provide competitive resold intrastate  
13 interexchange telecommunications services, except local exchange services, shall be held by Business  
14 Productivity Solutions, Inc., conditioned upon its compliance with the conditions discussed  
15 hereinabove.

16 IT IS FURTHER ORDERED that Business Productivity Solutions, Inc. shall docket proof of  
17 procurement of a \$10,000 performance bond within 30 days of the effective date of this Order, and  
18 that such performance bond shall remain in effect until further order of the Commission.

19 IT IS FURTHER ORDERED that Business Productivity Solutions, Inc. shall file conforming  
20 tariffs within 30 days of the effective date of this Order.

21 IT IS FURTHER ORDERED that Staff's recommendations set forth hereinabove are adopted,  
22 except that the time for performance regarding the filing of conforming tariffs and procurement of the  
23 performance bond shall be 30 days after the effective date of this Order.

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1 IT IS FURTHER ORDERED that if Business Productivity Solutions, Inc. fails to meet the  
2 timeframes outlined above, the Certificate of Convenience and Necessity for authority to provide  
3 competitive resold intrastate interexchange telecommunications services shall become null and void  
4 without further Order of the Commission.

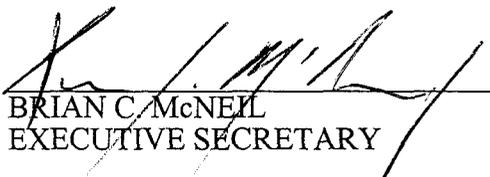
5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9 CHAIRMAN COMMISSIONER COMMISSIONER

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12 COMMISSIONER COMMISSIONER

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14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
15 Secretary of the Arizona Corporation Commission, have  
16 hereunto set my hand and caused the official seal of the  
17 Commission to be affixed at the Capitol, in the City of Phoenix,  
18 this 29<sup>th</sup> day of March, 2005.

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20 BRIAN C. McNEIL  
21 EXECUTIVE SECRETARY

22 DISSENT \_\_\_\_\_

23 DISSENT \_\_\_\_\_

24 DDN:mj

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1 SERVICE LIST FOR:

GE BUSINESS PRODUCTIVITY SOLUTIONS, INC.  
and BUSINESS PRODUCTIVITY SOLUTIONS, INC.

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3 DOCKET NOS.:

T-02719A-04-0760 and T-04280A-04-0760

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