



0000024863

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



ARIZONA CORPORATION COMMISSION

RECEIVED

2001 APR 18 P 2:56

AZ CORP Arizona Corporation Commission
DOCUMENT DOCKETED

DATE: APRIL 18, 2001

DOCKET NOS: T-03142A-96-0201

APR 18 2001

TO ALL PARTIES:

DOCKETED BY	SD
-------------	----

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Order on:

BUSINESS DISCOUNT PLAN, INC
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **12:00 noon** on or before:

APRIL 27, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MAY 1, 2001 AND MAY 2, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 MARC SPITZER
COMMISSIONER

5
6 IN THE MATTER OF THE APPLICATION OF
BUSINESS DISCOUNT PLAN, INC. FOR A
7 CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
8 RESOLD INTEREXCHANGE
TELECOMMUNICATIONS SERVICES, EXCEPT
9 LOCAL EXCHANGE SERVICES

DOCKET NO. T-03142A-96-0201

DECISION NO. _____

ORDER

10 Open Meeting
May 1 and 2, 2001
11 Phoenix, Arizona

12 **BY THE COMMISSION:**

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

15 **FINDINGS OF FACT**

16 1. On April 1, 1996, Business Discount Plan, Inc. ("Applicant" or "BDP") filed with
17 Docket Control of the Arizona Corporation Commission ("Commission") an application for a
18 Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange
19 telecommunications services, except local exchange services, within the State of Arizona.

20 2. Applicant is a California corporation, authorized to do business in Arizona since 1995.

21 3. Applicant is a switchless reseller, which purchases telecommunications services from
22 AT&T.

23 4. In Decision No. 58926 (December 22, 1994), the Commission found that resold
24 telecommunications providers ("resellers") were public service corporations subject to the
25 jurisdiction of the Commission.

26 5. On May 17, 1996, BDP filed an Affidavit of Publication indicating compliance with
27 the Commission's notice requirements.

28 6. On August 30, 2000, the Commission's Utilities Division Staff ("Staff") filed its Staff

1 Report in this matter. In its Report, Staff stated that BDP has provided financial statements for the
2 year ended December 31, 1999. These financial statements list assets of \$25.04 million, total equity
3 of \$5.97 million, and retained earnings of \$5.97 million. In addition, the Applicant reported gross
4 sales of \$77.42 million and net income of \$.95 million for the year. Based on the foregoing, Staff
5 believes that Applicant has adequate financial resources to provide services as a reseller of toll
6 services in Arizona. Staff believed that if Applicant experiences financial difficulty, there should be
7 minimal impact to its customers. Customers are able to dial another reseller or facilities-based
8 provider to switch to another company.

9 7. Staff recommended approval of the application subject to the following:

10 (a) The Applicant should be ordered to comply with all Commission rules, orders,
11 and other requirements relevant to the provision of intrastate telecommunications
12 service;

13 (b) The Applicant should be ordered to maintain its accounts and records as
14 required by the Commission;

15 (c) The Applicant should be ordered to file with the Commission all financial and
16 other reports that the Commission may require, and in a form and at such times as the
17 Commission may designate;

18 (d) The Applicant should be ordered to maintain on file with the Commission all
19 current tariffs and rates, and any service standards that the Commission may require;

20 (e) The Applicant should be ordered to comply with the Commission's rules and
21 modify its tariffs to conform to these rules if it is determined that there is a conflict
22 between the Applicant's tariffs and the Commission's rules;

23 (f) The Applicant should be ordered to cooperate with Commission investigations
24 of customers complaints;

25 (g) The Applicant should be ordered to participate in and contribute to a universal
26 service fund, as required by the Commission;

27 (h) The Applicant should be ordered to notify the Commission immediately upon
28 changes to the Applicant's address or telephone number;

(i) The Applicant's intrastate toll service offerings should be classified as
competitive pursuant to Commission rules;

(j) The rates proposed by the Applicant in its most recently filed tariffs should be
approved on an interim basis. The maximum rates for these services should be the

1 maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates
2 for the Applicant's competitive services should be the Applicant's total service long
run incremental costs of providing those services;

3 (k) In the event that the Applicant states only one rate in its proposed tariff for a
4 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; and,

5 (l) The Applicant should be ordered to file conforming tariffs within 30 days of an
6 Order in this matter, and in accordance with the Decision.

7 8. In comments filed November 21, 2000, Staff further recommended that BDP should
8 have the option of following two procedural options:

9 (a). If Applicant wishes to have permanent rates set in this proceeding, it must file
10 Fair Value Rate Base ("FVRB") information within 30 days of the
11 Commission granting its request for a Certificate, or at least 90 days prior to
12 providing service. Applicant should notify Staff within 10 calendar days of
13 providing service. If there are any disagreements with any FVRB information
the Applicant files, the Order granting Applicant's Certificate should be stayed
pending resolution of those disagreements; or

14 (b) If Applicant desires to proceed with its Certificate without providing FVRB
15 information at this time, all tariffs filed in this matter should be reviewed and
16 approved on an interim basis. If a Certificate is conditionally granted and
17 tariffs are authorized on an interim basis, the Applicant should be required to
18 file FVRB information within 30 days of any final court mandate on the Fair
Value requirement, and failure to file the information would result in the
expiration of the conditional Certificate as well as expiration of any approval
to charge its tariffs on an interim basis.

19 9. Subsequent to Staff filing its recommendations concerning the filing of FVRB
20 information in this case, the Commission has adopted the following Staff recommendations that were
21 made under similar circumstances:

22 (a) That Applicant should be required to file in this Docket, within 18 months of
23 the date it first provides service following certification, sufficient information
24 for Staff analysis and recommendation for a fair value finding, as well as for an
25 analysis and recommendation for permanent tariff approval. This information
must include, at a minimum, the following:

26 1. A dollar amount representing the total revenue for the first twelve months
27 of telecommunications service provided to Arizona customers by Applicant
28 following certification, adjusted to reflect the maximum rates that
Applicant has requested in its tariff. This adjusted total revenue figure

1 could be calculated as the number of units sold for all services offered
2 times the maximum charge per unit.

3 2. The total actual operating expenses for the first twelve months of
4 telecommunications service provided to Arizona customers by Applicant
5 following certification.

6 3. The value of all assets, listed by major category, used for the first twelve
7 months of telecommunications services provided to Arizona customers by
8 Applicant following certification. Assets are not limited to plant and
9 equipment. Items such as office equipment and office supplies should be
10 included in this list.

11 (b) Applicant's failure to meet the condition to timely file sufficient information
12 for a fair value finding and analysis and recommendation of permanent tariffs
13 shall result in the expiration of the Certificate of Convenience and Necessity
14 and of the tariffs.

15 10. The Staff Report stated that Applicant has no market power and the reasonableness of
16 its rates would be evaluated in a market with numerous competitors.

17 11. In its Report No. CC 98-46 dated December 17, 1998, the Federal Communications
18 Commission ("FCC") proposed a \$2.4 million forfeiture against BDP for allegedly engaging in unfair
19 and unreasonable telemarketing practices and slamming. FCC records indicate there is no evidence
20 that BDP has slammed any consumers since the December 16, 1998 action. BDP refutes all
21 allegations and is appealing the forfeiture, but nevertheless BDP has not solicited any new customers
22 since 1998. Because the FCC action is still under appeal and BDP has ceased all marketing practices,
23 Staff recommends the application be approved.

24 12. On August 29, 2000, the Arizona Court of Appeals, Division One ("Court") issued its
25 Opinion in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV,
26 Section 14 of the Arizona Constitution requires the Commission to "determine fair value rate base for
27 all public service corporations in Arizona prior to setting their rates and charges."

28 13. On October 26, 2000, the Commission filed a Petition for Review to the Arizona
Supreme Court.

14. On February 13, 2001, the Commission's Petition was granted.

CONCLUSIONS OF LAW

1
2 1. Applicant is a public service corporation within the meaning of Article XV of the
3 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

4 2. The Commission has jurisdiction over Applicant and the subject matter of the
5 application.

6 3. Notice of the application was given in accordance with the law.

7 4. Applicant's provision of resold interexchange telecommunications services is in the
8 public interest, as conditioned herein.

9 5. As conditioned herein, Applicant is a fit and proper entity to receive a Certificate for
10 providing competitive interexchange telecommunications services as a reseller in Arizona.

11 6. Staff's recommendations in Findings of Fact Nos. 7 and 9 are reasonable and should
12 be adopted.

ORDER

13
14 IT IS THEREFORE ORDERED that the application of Business Discount Plan, Inc. for a
15 Certificate of Convenience and Necessity for authority to provide competitive resold interexchange
16 telecommunications services, except local exchange services, shall be and the same is hereby granted,
17 except that Business Discount Plan, Inc. shall not solicit new customers in Arizona without further
18 Order of the Commission pending the final outcome of its dispute with the Federal Communications
19 Commission.

20 IT IS FURTHER ORDERED that Business Discount Plan, Inc. shall file notice with the
21 Commission of the final outcome of its dispute with the Federal Communications Commission within
22 30 days of the conclusion of the matter.

23 IT IS FURTHER ORDERED that Business Discount Plan, Inc. shall comply with the Staff
24 recommendations set forth in Findings of Fact Nos. 7 and 9.

25 ...

26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision,
2 Business Discount Plan, Inc. shall notify the Compliance Section of the Arizona Corporation
3 Commission of the date that it will begin or has begun providing service to Arizona customers.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN

COMMISSIONER

COMMISSIONER

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2001.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____
JR:mlj

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST FOR: BUSINESS DISCOUNT PLAN, INC.

DOCKET NO.: T-03142A-96-0201

T. David Jenkins
Business Discount Plan, Inc.
3780 Kilroy Airport Way
Suite 200
Long Beach, California 90806

K. Harsha Krishnan
Halignman and Lottner, PC
First Interstate Tower North
633 Seventeenth Street, Suite 2700
Denver, Colorado 80202-3635

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Deborah Scott, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007