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STAFF REPORT
UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

2000 AUG 30 P 12:24

Application For a Certificate of Convenience and Necessity and For
Determination That Services of The Company are Competitive
DOCKETED
AUG 30 2000
AZ CORP COMMISSION
DOCUMENT CONTROL

Company: Business Discount Plan, Inc.

Docket No.: T-03142A-96-0201

DOCKETED BY
[Signature]

On April 1, 1996, the Applicant filed an application for a Certificate of Convenience and Necessity (CC&N) to resell telecommunications services within the State of Arizona.

Staff's review of this application addresses the overall fitness of the Applicant to receive a CC&N to provide competitive resold intrastate toll telecommunications services. Staff's review considers the Applicant's integrity, technical and financial capabilities, and whether the Applicant's proposed rates will be competitive, just and reasonable.

REVIEW OF COMPANY AND TELECOMMUNICATION SERVICE INFORMATION

Staff makes the following finding, indicated by an "X," regarding information filed by the Applicant:

X The necessary information has been filed to process this application. In addition, the Applicant has published legal notice of the Application in all counties where services will be provided if the Application is approved, and has received authority to transact business in the State of Arizona.

— The information listed below was omitted and must be filed with the Commission. Staff will not recommend that this application be granted until the information is filed. Failure to file the omitted information within 30 days from the date of this Staff Report will result in Staff recommending dismissal of this application without prejudice to filing a new application. If the application is dismissed, the Applicant may not provide service until such time as a new application is filed and approved by the Commission.

REVIEW OF TECHNICAL INFORMATION

The Applicant has demonstrated sufficient technical capability to provide the proposed services for the following reasons, which are marked:

X The Applicant is currently providing service in Arizona.

X The Applicant is currently providing service in other states.

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X The Applicant is a switchless reseller.

— The Applicant has provided a system diagram that depicts its network that is used for completing calls within Arizona. Local exchange carrier facilities are used to originate and terminate calls carried on the Applicant's long distance network. The Applicant does not currently own any long distance facilities; the facilities that are used to complete calls are obtained from a facilities-based carrier operating in the state.

X In the event the Applicant's network fails, end users can access other long distance service providers.

REVIEW OF FINANCIAL INFORMATION

The Applicant has provided its financial statements for the year ended December 31, 1999. These financial statements list assets of \$25.04 million, shareholders' equity of \$5.97 million, and retained earnings of \$5.97 million. In addition, the Company reported \$77.42 million in Gross Sales, and \$0.95 million Net Income. Based upon this information, Staff believes the Applicant has sufficient financial resources.

If this Applicant experiences financial difficulty, there should be minimal impact to the customers of this Applicant because there are many other companies that provide resold telecommunications service or the customers may choose a facilities-based provider. If the customer wants service from a different provider immediately, that customer is able to dial a 101XXXX access code. In the longer term, the customer may permanently switch to another company.

COMPETITIVE SERVICES RATES AND CHARGES

Competitive Services

The Applicant is a reseller that sells services that it purchases from other telecommunications companies. It is not a monopoly provider of service nor does it control a significant portion of the telecommunications market. The Applicant cannot adversely affect the intrastate toll market by restricting output or raising market prices. In addition, those companies from whom the Applicant buys bulk services are technically and financially capable of providing alternative services at comparable rates, terms and conditions. Staff has concluded that the Applicant has no market power and that the reasonableness of its rates will be evaluated in a market with numerous competitors. In light of the competitive market in which the Applicant will be providing its services, Staff believes that the Applicant's proposed tariffs for its competitive services will be just and reasonable.

Effective Rates

The Commission provides pricing flexibility by allowing competitive telecommunication service companies to price their services at or below the maximum rates contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109. The Applicant's tariff for each competitive service must state the maximum rate as well as the effective (actual) price that will be charged for the service. Because Staff believes that the market in which these services will be offered is competitive, Staff recommends that the Applicant's competitive services be priced at the rates proposed by the Applicant in its most recently filed tariffs. In the event that the Applicant states only one rate in its tariff for a competitive service, Staff recommends that the rate stated be the effective (actual) price to be charged for the service as well as the service's maximum rate. Any changes to the Applicant's effective price for a service must comply with A.A.C. R14-2-1109.

Minimum and Maximum Rates

A.A.C. R14-2-1109(A) provides that minimum rates for the Applicant's competitive services must not be below the Company's total service long run incremental costs of providing the services. The Company's maximum rates should be the maximum rates proposed by the Company in its most recent tariffs on file with the Commission. Any future changes to the maximum rates in the Company's tariffs must comply with A.A.C. R14-2-1110.

STAFF RECOMMENDATIONS

Staff has reviewed the Applicant's application for a Certificate of Convenience and Necessity to offer intrastate toll services as a reseller and its Petition to classify its intrastate toll services as competitive. Based on its evaluation of the Applicant's technical and financial capabilities to resell intrastate toll services, Staff makes the following recommendations:

The Applicant's application for a CC&N should be approved subject to the following conditions:

1. Applicant shall comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service.
2. Applicant shall maintain its accounts and records as required by the Commission.
3. Applicant shall 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.
4. Applicant shall maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require.
5. Applicant shall cooperate with Commission investigations of customer complaints.

6. Applicant shall participate in and contribute to a universal service fund, as required by the Commission.
7. Failure by Applicant to comply with any of the above conditions may result in rescission of its Certificate of Convenience and Necessity.

The Applicant should be required to file its tariffs within 30 days of an Order in this matter, and in accordance with the Decision.

The Applicant should be required to notify the Commission immediately upon changes to the Applicant's address or telephone number.

The Applicant's intrastate toll service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108.

The Applicant's competitive services should be priced at the rates proposed by the Applicant in its most recently filed tariffs. The maximum rates for these services should be the maximum rates proposed by the Applicant in its tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109. In the event that the Applicant states only one rate in its 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.

The Applicant should be required to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Company's tariffs and the Commission's rules.

NOTE:

The Federal Communications Commission (FCC), in its Report No. CC 98-46 dated December 17, 1998; has proposed a \$2.4 million forfeiture against Business Discount Plan, Inc. (BDP) for apparently engaging in unfair and unreasonable telemarketing practices and slamming, the practice of changing a consumer's telephone company without that consumer's express approval.

Staff contacted Lori Hays (fax: 602-542-4579) at the Office of the Arizona Attorney General and requested any information on complaints filed by residents of Arizona against BDP relevant to this slamming issue. However, no response was received.

Staff contacted Colleen Heitkamp (ph: 202-418-0974) of the FCC Common Carrier Bureau, who initiated the action by the FCC on December 16, 1998, with a Notice of Apparent Liability for Forfeiture against BDP. Ms. Heitkamp indicated the evidence collected was overwhelming and that the FCC rejected all arguments BDP presented for dismissal of allegations. However, FCC records indicate BDP has apparently not slammed any consumers since the December 16, 1998 action.

Staff contacted Greg Eriksen (ph: 714-974-9100) the Lawyer for BDP, who indicated BDP vigorously disputes all allegation, denies any wrongdoing, and is appealing the forfeiture. Nevertheless,

BDP has not solicited any new customers since 1998. BDP is content to service only existing customers and does not have any plans to reopen its marketing department.

BDP's application was filed with the Arizona Corporation Commission on April 1, 1996 indicating there has been no formal complaints, civil or criminal convictions against it, related to delivery of telecommunications services within the last five years by any state or federal regulatory commission. Therefore, since this FCC action is still under appeal and BDP has ceased all marketing practices, Staff recommends this application be approved.

This application may be approved without a hearing pursuant to A.R.S. § 40-282.



Deborah R. Scott
Director
Utilities Division

Date: 8/24/00

Originator: Rodney Moore

Date: August 24, 2000