

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

MAR 14 2014

DOCKETED BY ne

Bob Stump, Chairman
Gary Pierce, Commissioner
Brenda Burns, Commissioner
Susan Bitter Smith, Commissioner
Bob Burns, Commissioner

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AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE JOINT)
APPLICATION OF BUSINESS DISCOUNT)
PLAN, INC. AND CONSUMER TELCOM,)
INC. FOR APPROVAL OF THE TRANSFER)
OF CUSTOMER BASE)

DOCKET NOS. T-03142A-14-0088
T-20559A-14-0088

JOINT APPLICATION FOR APPROVAL OF THE
TRANSFER OF CUSTOMER BASE

Business Discount Plan, Inc. ("BDP") and Consumer Telcom, Inc. ("Consumer Telcom") (jointly, the "Applicants"), by their undersigned representatives and pursuant to A.R.S. § 40-285(A) and R14-2-1107 of the Arizona Administrative Code, respectfully request Arizona Corporation Commission ("Commission") approval, to the extent required, for BDP to acquire the Arizona customers, including the customer contracts of Consumer Telcom, through a mutually negotiated customer base acquisition (the "Transaction"). As a result of the Transaction, Consumer Telcom's customers will be transferred to BDP, which will become the interexchange service provider for those customers. As described below, the Transaction will be virtually transparent to customers of Consumer Telcom in terms of the services that those customers receive and the rates and terms of those services currently provided by Consumer Telcom. As BDP customers, former Consumer Telcom customers will maintain the same service rates and terms, and will have access to the same general customer service, technical, and operational support they have had as Consumer Telcom customers. Following approval of the Transaction, Consumer

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1 Telecom will maintain its current operating authority and continue to assume attendant regulatory
2 obligations in order to redirect its telecommunications market focus in the State.

3 In support of this filing, Applicants provide the following information:

4 **I. INTRODUCTION AND REQUEST FOR EXPEDITED TREATMENT**

5 On February 25, 2014, BDP and Consumer Telecom entered into a customer base
6 acquisition agreement whereby Consumer Telecom agreed to sell, and BDP agreed to acquire,
7 Consumer Telecom's commercial and residential intraLATA and interLATA interexchange
8 customers located in Arizona and other jurisdictions served by Applicants (the "Agreement").
9 Under the terms of the Agreement, BDP will begin providing current Consumer Telecom
10 customers the same services at the same rates, terms and conditions provided by Consumer
11 Telecom, effective on or about March 27, 2014, following regulatory approvals, where required.

12 Consumer Telecom has made an affirmative business decision to redirect its market focus
13 and to sell its existing customer base in order to concentrate its efforts on a different segment of
14 the telecommunications market in Arizona and throughout the U.S. To that end, Consumer
15 Telecom will maintain its current operating authority and continue to comply with attendant
16 regulatory obligations following the transfer of its customers to BDP.

17 Consumer Telecom will assign to BDP those customers for which applicable state
18 governmental approvals are required and have been obtained under the terms of the Agreement in
19 order to complete the Transaction. Applicants submit that the public interest would be served by
20 the prompt transition of the business to BDP as quickly as possible, and therefore urge that the
21 Commission promptly approve the Application to permit the transfer of the Arizona customers at
22 the earliest possible time.

23 **II. DESCRIPTION OF THE APPLICANTS**

24 **A. Business Discount Plan, Inc.**

25 BDP is a privately-held corporation organized under the laws of the State of California on
26 August 18, 1992, with principal offices located at One World Trade Center, Suite 800, Long

1 Beach, CA 90831. BDP is a long-standing provider of non-facilities-based resold interLATA and
2 intraLATA interexchange telecommunications services to commercial and residential customers in
3 Arizona and throughout the U.S. BDP was granted authority to provide interexchange
4 telecommunications services in Arizona on May 1, 2001 in Docket No. T-03142A-96-0201. The
5 Company is authorized by the Federal Communications Commission ("FCC") to provide interstate
6 and international telecommunications services. BDP is in current compliance with its applicable
7 regulatory obligations in Arizona and in the other jurisdictions in which it operates.

8 **B. Consumer Telcom, Inc.**

9 Applicant is a privately held corporation organized under the laws of the State of
10 California on September 23, 1998, with principal offices located at 701 N. Green Valley Parkway,
11 Suite 200, Henderson, Nevada, 89014. Consumer Telcom is also a provider of non-facilities-
12 based resold interLATA and intraLATA interexchange telecommunications services to
13 commercial and residential customers in Arizona and throughout the U.S. Consumer Telcom was
14 granted authority to provide such services by the Commission on March 17, 2009 in Docket No.
15 T-20559A-07-0613. The Company is authorized by the FCC to provide interstate and international
16 telecommunications services. Consumer Telcom is in current compliance with its applicable
17 regulatory obligations in Arizona and in the other jurisdictions in which it operates.

18 **III. CONTACTS**

19 Questions or any correspondence, orders, or other materials pertaining to this filing should
20 be directed to the following:

21 Matt Bingham
22 Lewis Roca Rothgerber LLP
23 201 E. Washington Street, Suite 1200
24 Phoenix, AZ 85004-4429
25 Telephone: 602.262.5320
26 Email: mbingham@lrrlaw.com

1 **For Business Discount Plan, Inc.:**

2 Craig Konrad, President
3 Business Discount Plan, Inc.
4 One World Trade Center
5 Suite 800
6 Long Beach, CA 90831
7 Telephone: 949.798.7040

8 **For Consumer Telcom, Inc.:**

9 Joseph Nicotra
10 President
11 Consumer Telcom, Inc.
12 701 N. Green Valley Parkway, Suite 200
13 Henderson, Nevada, 89014
14 Telephone: 800.872.3811

15 With a copy to:

16 Andrew Isar
17 Miller Isar Inc.
18 4423 Point Fosdick Drive, N.W.
19 Suite 306
20 Gig Harbor, WA 98335
21 Telephone: 253.851.6700
22 Email: aisar@millarisar.com

23 **IV. DESCRIPTION OF THE TRANSACTION**

24 Pursuant to the terms of the Agreement, BDP will acquire only Consumer Telcom's
25 customer accounts and contracts, to the extent permitted under applicable law and regulations and
26 will continue to provide intrastate, interstate, and international telecommunications services to
former Consumer Telcom customers as BDP customers. The Agreement and transfer will become
effective on or about March 27, 2014, or upon approval by regulatory agencies in those
jurisdictions where the Applicants operate. Consumer Telcom will assign to BDP those customers
and assets for which applicable governmental approvals have been obtained.

In the interest of assuring seamless and uninterrupted service, all of the assigned customers
will continue to receive service from BDP under the same rates, terms and conditions of services
as were previously provided by Consumer Telcom. BDP proposes to initially concur Consumer
Telcom's existing tariff, and subsequently submit a replacement tariff with identical and new

1 service rates, terms, and conditions. Future changes in the rates, terms and conditions of service to
2 the affected customers will be undertaken pursuant to customer contracts and the applicable
3 federal and state notice and tariff requirements.

4 **V. PUBLIC INTEREST CONSIDERATIONS**

5 Applicants respectfully submit that the proposed Transaction serves the public interest.
6 The Transaction will result in the assignment of Consumer Telcom customers to an existing long-
7 standing company with established operating history in the State that will continue to provide
8 telecommunications services to transferred customers without interruption. Further, the proposed
9 Transaction is structured to assure an orderly transition of customers from Consumer Telcom to
10 BDP.

11 **VI. REQUEST FOR WAIVER OF SLAMMING AND CRAMMING RULES**

12 In accordance with the terms of their service contracts and the rules and procedures of the
13 FCC and applicable state(s), including this Commission, customers have been properly notified of
14 the proposed transaction and the change in their telecommunications provider from Consumer
15 Telcom to BDP. BDP and Consumer Telcom have provided customers with more than 30 days
16 advanced notice of the transfer pursuant to Section 64.1120(e) of the FCC's rules, 47 C.F.R.
17 §64.1120(e), a copy of which is attached hereto at **Exhibit A**. Applicants respectfully request, to
18 the extent necessary, that the Commission grant a waiver of AAC R14-2-1904 et seq. and any
19 other applicable anti-slamming regulations that may be inconsistent with the FCC's rules
20 regarding the transfer of customer bases.

21 Applicants respectfully request that the Commission, to the extent applicable, grant a
22 waiver of AAC R14-2-2001 *et seq.* (the "Cramming Rules"), which, among other things, require a
23 telecommunications company to obtain authorization from a customer when ordering
24 telecommunications products and services in order to prevent unauthorized carrier charges on their
25 bill. As described herein, BDP is purchasing the Consumer Telcom customer base, and the
26 affected customers will receive the same services as they currently receive under the same rates,

1 terms and conditions. Applicants believe that the Commission's Cramming Rules do not apply in
2 this instance, as Consumer Telcom's customers are simply being transferred to BDP. No new
3 products and services are being ordered from BDP and no new charges will be assessed as a result
4 of the Transaction.

5 To the extent that the Cramming Rules apply to the Transaction, Applicants respectfully
6 submit that it is in the public interest to grant a waiver of the rules in this case because current
7 Consumer Telcom customers will receive at least 30 days' notice of the Transaction as required by
8 the FCC's account transfer rules; customers have been given full notice that their current services
9 will be provided by BDP after the Transaction is completed, and that there will be no change in
10 the quality or cost of their services as a result of the Transaction.

11 **VII. REQUEST FOR WAIVER OF DISCONTINUANCE RULES**

12 AAC R14-2-1107 (the "Discontinuance Rule") governs a telecommunications company's
13 discontinuance of competitive local exchange or interexchange services in the State. Applicants
14 do not believe that the Discontinuance Rule applies in this matter as the Transaction involves the
15 transfer of Consumer Telcom's customers to BDP, neither of which are local exchange carriers.
16 Moreover, service to the acquired customers is not being discontinued.

17 In the event that the Commission determines that the Discontinuance Rule does apply,
18 Applicants respectfully request that the Commission grant a waiver. Consumer Telcom's
19 customers have received at least 30 days' notice of the Transaction as required by the FCC's
20 account transfer regulations. It would be confusing for customers to also receive a notice regarding
21 a Consumer Telcom discontinuance of service or for the planned customer transfer notice to
22 include a discussion regarding discontinuance since no affected customer will be discontinued as a
23 result of the Transaction and Consumer Telcom will in in any event continue to offer services.¹
24 The Commission's waiver of the Discontinuance Rule will serve the public interest.

25
26 ¹ See Commission Decision No. 70706 (October 2, 2008)(waiving discontinuance rules in transfer of control case).

1 **VIII. CONCLUSION**

2 WHEREFORE, for the reasons set forth above, Applicants respectfully request that the
3 Commission grant all authority necessary for Business Discount Plan, Inc. to acquire the
4 customers of Consumer Telcom, Inc. Further, Applicants request that the Commission
5 expeditiously act on the Application so that Consumer Telcom, Inc.'s Arizona customers may be
6 assigned to Business Discount Plan, Inc. at the earliest possible closing.

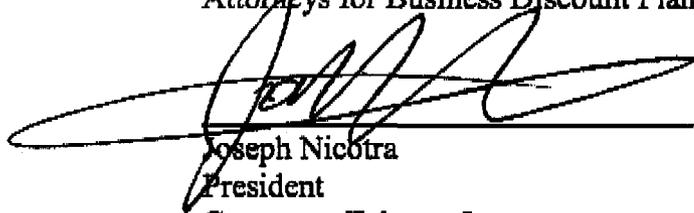
7 RESPECTFULLY SUBMITTED this 14th day of March, 2014.

8
9 Lewis Roca Rothgerber LLP

10
11 

12 Michael Hallam
13 Matthew Bingham
14 201 E. Washington Street, Suite 1200
15 Phoenix, AZ 85004
16 Phone: (602) 262-5340
17 MHallam@LRRLaw.com
18 MBingham@LRRLaw.com

19 **Attorneys for Business Discount Plan, Inc.**

20 

21 Joseph Nicotra
22 President
23 Consumer Telcom, Inc.
24 701 N. Green Valley Parkway, Suite 200
25 Henderson, Nevada, 89014
26 Telephone: 800.872.3811

Original and thirteen (13) copies
of the foregoing filed this 14th day
of March, 2014, with:

The Arizona Corporation Commission
Docket Control

1 1200 W. Washington Street
2 Phoenix, Arizona 85007

3 Copy of the foregoing hand-delivered
4 this this ~~1st~~ day
5 of March, 2014, to:

6 Lyn Farmer, Esq.
7 Chief Administrative Law Judge
8 Hearing Division
9 Arizona Corporation Commission
10 1200 W. Washington Street
11 Phoenix, Arizona 85007

12 Janice Alward, Esq.
13 Chief Counsel, Legal Division
14 Arizona Corporation Commission
15 1200 W. Washington Street
16 Phoenix, Arizona 85007

17 Mr. Steven M. Olea, Director
18 Utilities Division
19 Arizona Corporation Commission
20 1200 W. Washington Street
21 Phoenix, Arizona 85007

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EXHIBIT A
Customer Notification

BUSINESS DISCOUNT PLAN, INC.

One World Trade Center Suite 800 Long Beach CA
90831 <http://www.interstatebdprate.net/>

Notice of Carrier Change

February 25, 2014

Dear Valued Consumer Telcom, Inc. Customer:

Great news for your long distance service! Following a reevaluation of its business focus, your current long distance company, Consumer Telcom, Inc. ("CTI") has entered into an agreement with Business Discount Plan, Inc. ("BDP") to acquire certain business holdings. **As a result, Business Discount Plan, Inc., will automatically become your new long distance telecommunication services provider after March 27, 2014.** (The specific date(s) of the transfer of your interstate and intrastate telephone services may differ depending upon when we receive the applicable federal and state regulatory approvals.)

Please rest assured that the transaction will not affect the services you currently receive. You will continue to receive services with the same rates, features, terms, and conditions as you currently enjoy, with the added convenience of receiving one bill through your local telephone company, where available. In the event that changes are made to your service you will be notified by separate mailing thirty (30) days prior to the changes becoming effective.

You will not be responsible for any charges associated with the transfer of your account. All charges associated with the transfer to BDP will be borne by BDP. Although you have the right to select the carrier of your choice, we value your business and hope that BDP may continue to serve you. If you should choose another telephone provider you will need to contact that carrier directly to arrange for the change prior to the transfer of your services to BDP and also provide BDP with notice per existing service terms. It can take several weeks for a new carrier to make the switch and you may also incur service initiation fees from that provider such as service order, installation and other similar charges associated with establishing a new service account.

If you currently have a preferred carrier freeze on your account you will still be automatically transferred to BDP on the effective date unless you have selected another carrier before the effective date. To arrange a new freeze or confirm an existing freeze, you must contact your local service provider.

BDP will be responsible for responding any customer inquiries prior to and during the transfer of service from CTI to BDP. **BDP's toll free customer service number for BDP is 800-680-1120, which will remain the same after your services are transferred.**

You can trust that you will be provided with the same quality service to which you have grown accustomed with CTI. We welcome you to BDP and look forward to meeting all your long distance communication needs. Please visit the web site <http://www.interstatebdprate.net/> for more information.

Sincerely,

The Product Management Team
Business Discount Plan, Inc.

STATE OF CALIFORNIA

)

COUNTY OF ORANGE

)

)

VERIFICATION

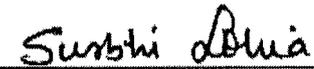
I, Craig Konrad, state that I am President of Business Discount Plan, Inc. ("BDP"); that I am authorized to make this verification on behalf of BDP; that the foregoing filing was prepared under my direction and supervision; and that, with respect to BDP, the same are true and correct to the best of my knowledge, information, and belief.

By: 

Craig Konrad
President
Business Discount Plan, Inc.
One World Trade Center
Suite 800
Long Beach, CA 90831
Telephone: 949.798.7040



Subscribed and Sworn to me this 12th day of March, 2014


Notary Public

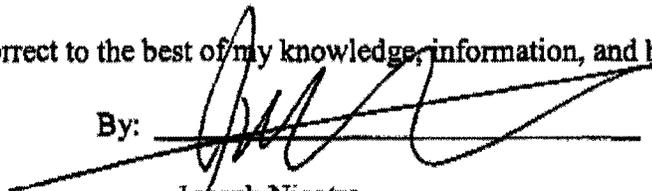
My commission expires: June 14, 2017

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STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

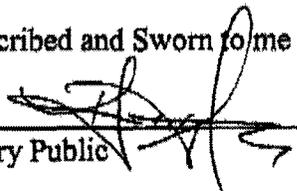
VERIFICATION

I, Joseph A. Nicotra, state that I am President of Consumer Telcom, Inc.; that I am authorized to make this verification on behalf of Consumer Telcom, Inc.; that the foregoing filing was prepared under my direction and supervision; and that, with respect to Consumer Telcom, Inc., the same are true and correct to the best of my knowledge, information, and belief.

By: 

Joseph Nicotra
President
Consumer Telcom, Inc.
701 N. Green Valley Parkway, Suite 200
Henderson, Nevada, 89014
Telephone: 800.872.3811

Subscribed and Sworn to me this 12th day of March, 2014

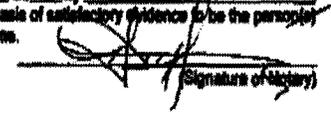


Notary Public

My commission expires: 11/24/15

SEAL



STATE OF CALIFORNIA COUNTY OF ORANGE
Subscribed and sworn to (or affirmed) before me on this
12th day of MARCH, 2014 by JOSEPH NICOTRA
proved to me on the basis of satisfactory evidence to be the person(s)
who appeared before me.

(Signature of Notary)