

ORIGINAL

OPEN MEETING



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MEMORANDUM

TO: THE COMMISSION

Arizona Corporation Commission

DOCKETED

RECEIVED

FROM: Utilities Division

APR 29 2014

2014 APR 29 P 3:23

DATE: April 29, 2014

DOCKETED BY

AZ CORP COMMISSION
DOCKET CONTROL

RE: IN THE MATTER OF THE JOINT APPLICATION OF BUSINESS DISCOUNT PLAN, INC. AND CENTRAL TELECOM LONG DISTANCE, INC. FOR APPROVAL OF THE TRANSFER OF CUSTOMER BASE. (DOCKET NOS. T-03142A-14-0060 AND T-20740A-14-0060)

Business Discount Plan, Inc. ("BDP") and Central Telecom Long Distance, Inc. ("Central Telecom") (together, "Applicants"), pursuant to Arizona Revised Statute ("A.R.S.") Section 40-285(A) and R14-2-1107 of the Arizona Administrative Code ("A.A.C."), request approval from the Arizona Corporation Commission ("Commission"), to the extent required, for BDP to acquire the Arizona customers, including the customer contracts, of Central Telecom, through a mutually negotiated customer base acquisition.

In support of this filing, Applicants provide the following information.

Introduction and Request for Expedited Treatment

On January 30, 2014, BDP and Central Telecom entered into a customer base acquisition agreement (the "Agreement") whereby Central Telecom agreed to sell, and BDP agreed to acquire, Central Telecom's commercial and residential long distance customers located in Arizona and other jurisdictions served by Applicants. Under the terms of the Agreement, BDP will begin providing current Central Telecom customers the same services at the same rates, terms and conditions provided by Central Telecom, effective on or about March 5, 2014, following regulatory approvals, where required.

Following approval of the Transaction, Central Telecom intends to concentrate its efforts on a different segment of the telecommunications market in Arizona and continue to meet its current regulatory obligations. Therefore, Central Telecom does not propose to cancel its Certificate of Convenience and Necessity at this time.

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

Description of the Applicants

A. Business Discount Plan, Inc.

BDP is a privately-held corporation organized under the laws of the State of California on August 18, 1992, with principal offices located at One World Trade Center, Suite 800, Long Beach, California 90831. BDP is a provider of resold long distance telecommunications services to commercial and residential customers in Arizona and throughout the U.S. BDP was granted authority to provide resold long distance telecommunications services in Arizona on May 1, 2001 in Decision No. 63625. BDP states that it is authorized by the Federal Communications Commission ("FCC") to provide interstate and international telecommunications services. BDP states it is in current compliance with its applicable regulatory obligations in Arizona and in the other jurisdictions in which it operates.

B. Central Telecom Long Distance, Inc.

Central Telecom is a privately-held corporation organized under the laws of the State of Colorado on December 21, 2007, with principal offices located at 102 South Tejon Street, 11th Floor, Colorado Springs, Colorado 80903. Central Telecom is also a provider of resold long distance telecommunications services to commercial and residential customers in Arizona and throughout the U.S. Central Telecom was granted authority to provide such services by the Commission on August 24, 2011 in Decision No. 72559. Central Telecom states that it is authorized by the FCC to provide interstate and international telecommunications services. Central Telecom states that it is in current compliance with its applicable regulatory obligations in Arizona and in the other jurisdictions in which it operates.

Description of the Transaction

Pursuant to the terms of the Agreement, BDP will acquire only Central Telecom's customer accounts and contracts, to the extent permitted under applicable law and regulations and will continue to provide intrastate, interstate, and international telecommunications services to former Central Telecom customers as BDP customers. The Agreement and transfer were to become effective on or about March 5, 2014, or upon approval by regulatory agencies in those jurisdictions where the Applicants operate. Central Telecom 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 Central Telecom. BDP proposes to initially concur with Central Telecom's existing tariff, and subsequently submit a replacement tariff with identical and new service rates, terms and conditions. Future changes in the rates, terms, and conditions of service to the affected customers will be undertaken pursuant to customer contracts and the applicable federal and state notice and tariff requirements.

Public Interest Considerations

The Applicants submit that the proposed Transaction serves the public interest. The Transaction will result in the assignment of Central Telecom customers to an existing longstanding company with established operating history in the State that will continue to provide telecommunications services to transferred customers without interruption. Further, the proposed Transaction is structured to assure an orderly transition of customers from Central Telecom to BDP.

Request For Waiver of Slamming and Cramming Rules

In accordance with the terms of their service contracts and the rules and procedures of the FCC and applicable state(s), including this Commission, customers have been notified of the proposed transaction and the change in their telecommunications provider from Central Telecom to BDP. BDP and Central Telecom have provided customers with more than 30 days advanced notice of the transfer pursuant to Section 64.1120(e) of the FCC's rules, 47 C.F.R. §64.1120(e), a copy of which is attached to the Application as Exhibit A. Applicants request, to the extent necessary, that the Commission grant a waiver of A.A.C. R14-2-1904 *et seq.* (the "Slamming Rules") and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases.

Applicants also request that the Commission, to the extent applicable, grant a waiver of A.A.C. R14-2-2001 *et seq.* (the "Cramming Rules"), which, among other things, require a telecommunications company to obtain authorization from a customer when ordering telecommunications products and services in order to prevent unauthorized carrier charges on their bill. BDP is purchasing the Central Telecom customer base, and the affected customers will receive the same services as they currently receive under the same rates, terms and conditions. Applicants believe that the Commission's Cramming Rules do not apply in this instance, as Central Telecom's customers are simply being transferred to BDP. No new products and services are being ordered from BDP and no new charges will be assessed as a result of the Transaction.

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

Request for Waiver of Discontinuance Rules

Applicants request that the Commission grant a waiver of A.A.C. R14-2-1107 (the "Discontinuance Rule"), which governs a telecommunications company's discontinuance of competitive local exchange or interexchange services in the State. Applicants do not believe that the

Discontinuance Rule applies in this matter as the Transaction involves the transfer of Central Telecom's customers to BDP, neither of which are local exchange carriers. Moreover, service to the acquired customers is not being discontinued.¹

In the event that the Commission determines that the Discontinuance Rule does apply, Applicants request that the Commission grant a waiver and state that customers have received at least 30 days' notice of the Transaction as required by the FCC's account transfer regulations. It would be confusing for customers to also receive a notice regarding a Central Telecom discontinuance of service or for the planned customer transfer notice to include a discussion regarding a discontinuance of service since no affected customer's service will be discontinued as a result of the Transaction and Central Telecom will in any event continue to offer services.² Applicants believe that the Commission's waiver of the Discontinuance Rule will serve the public interest.

Complaints and Compliance

The Consumer Services Section of the Utilities Division reports that there have been zero (0) complaints, inquiries, or opinions about BDP and Central Telecom. According to the Corporations Division, both BDP and Central Telecom are in good standing. Both BDP and Central Telecom have filed their respective 2012 Utilities Annual Reports. The Compliance Section of the Utilities Division reports that both BDP and Central Telecom are in compliance.

Staff Recommendations

Staff recommends approval of the Application of BDP and Central Telecom for BDP to acquire the Arizona customers, including the customer contracts, of Central Telecom.

Staff believes the Commission's Slamming, Cramming and Discontinuance Rules all apply to this transaction. However, based on the above, Staff recommends the following:

- A waiver of A.A.C. R14-2-1904 et seq. and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases because the notice informs customers that the rates, terms and conditions of service will not change as a result of this proposed transfer and informs customers that they may subscribe to the telecommunications service provider of their choice;

¹ Commission Staff has previously come to this same conclusion. See Docket No. T-0376LA-04-0710, Addendum to Staff Report (Dec. 27, 2004) (stating "Staff does not believe that the transfer of certain customers qualifies as a discontinuance of service or an abandonment of any portion of its service area. Therefore, Staff does not believe that A.A.C. R14-2-1107 applies").

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

THE COMMISSION

April 29, 2014

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- A waiver not be granted of A.A.C. R14-2-2001 et seq. cramming rules because the rates, terms and conditions of service will not change as a result of this proposed transfer; and
- A waiver of A.A.C. R14-2-1107, which governs a telecommunications company's discontinuance of competitive local exchange or interexchange services in the state.



Steven M. Olea
Director
Utilities Division

SMO:LLM:sms\MAS

ORIGINATOR: Lori Morrison

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BEFORE THE ARIZONA CORPORATION COMMISSION

- BOB STUMP
Chairman
- GARY PIERCE
Commissioner
- BRENDA BURNS
Commissioner
- BOB BURNS
Commissioner
- SUSAN BITTER SMITH
Commissioner

IN THE MATTER OF THE JOINT
APPLICATION OF BUSINESS DISCOUNT
PLAN, INC. AND CENTRAL TELECOM
LONG DISTANCE, INC. FOR APPROVAL
OF THE TRANSFER OF CUSTOMER BASE

DOCKET NOS. T-03142A-14-0060
T-20740A-14-0060

DECISION NO. _____

ORDER

Open Meeting
May 13 and 14, 2014
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. Business Discount Plan, Inc. ("BDP") and Central Telecom Long Distance, Inc. ("Central Telecom") (together, "Applicants"), pursuant to Arizona Revised Statute ("A.R.S.") Section 40-285(A) and R14-2-1107 of the Arizona Administrative Code ("A.A.C."), request approval from the Arizona Corporation Commission ("Commission"), to the extent required, for BDP to acquire the Arizona customers, including the customer contracts, of Central Telecom, through a mutually negotiated customer base acquisition.

2. In support of this filing, Applicants provide the following information.

Introduction and Request for Expedited Treatment

3. On January 30, 2014, BDP and Central Telecom entered into a customer base acquisition agreement (the "Agreement" or "Transaction") whereby Central Telecom agreed to sell, and BDP

1 agreed to acquire, Central Telecom's commercial and residential long distance customers located in
2 Arizona and other jurisdictions served by Applicants. Under the terms of the Agreement, BDP will
3 begin providing current Central Telecom customers the same services at the same rates, terms and
4 conditions provided by Central Telecom, effective on or about March 5, 2014, following regulatory
5 approvals, where required.

6 4. Central Telecom has made a business decision to redirect its market focus and to sell its
7 existing customer base in order to concentrate its efforts on a different segment of the
8 telecommunications market in Arizona and throughout the U.S. To that end, Central Telecom does
9 not wish to cancel its current operating authority and will continue to comply with its regulatory
10 obligations following the transfer of its customers to BDP.

11 5. Central Telecom will assign to BDP those customers for which applicable state
12 governmental approvals are required and have been obtained under the terms of the Agreement in
13 order to complete the Transaction. Applicants submit that the public interest would be served by the
14 prompt transition of the business to BDP as quickly as possible, and therefore urge that the
15 Commission promptly approve the Application to permit the transfer of the Arizona customers.

16 **Description of the Applicants**

17 A. Business Discount Plan, Inc.

18 6. BDP is a privately-held corporation organized under the laws of the State of California on
19 August 18, 1992, with principal offices located at One World Trade Center, Suite 800, Long Beach,
20 California 90831. BDP is a provider of resold long distance telecommunications services to
21 commercial and residential customers in Arizona and throughout the U.S. BDP was granted authority
22 to provide resold long distance telecommunications services in Arizona on May 1, 2001 in Decision
23 No. 63625. BDP states that it is authorized by the Federal Communications Commission ("FCC") to
24 provide interstate and international telecommunications services. BDP states that it is in current
25 compliance with its applicable regulatory obligations in Arizona and in the other jurisdictions in which
26 it operates.

27 ...

28 ...

1 B. Central Telecom Long Distance, Inc.

2 7. Central Telecom is a privately-held corporation organized under the laws of the State of
3 Colorado on December 21, 2007, with principal offices located at 102 South Tejon Street, 11th Floor,
4 Colorado Springs, Colorado 80903. Central Telecom is also a provider of resold long distance
5 telecommunications services to commercial and residential customers in Arizona and throughout the
6 U.S. Central Telecom was granted authority to provide such services by the Commission on August
7 24, 2011 in Decision No. 72559. Central Telecom states that it is authorized by the FCC to provide
8 interstate and international telecommunications services. Central Telecom states that it is in current
9 compliance with its applicable regulatory obligations in Arizona and in the other jurisdictions in which
10 it operates.

11 **Description of the Transaction**

12 8. Pursuant to the terms of the Agreement, BDP will acquire only Central Telecom's
13 customer accounts and contracts, to the extent permitted under applicable law and regulations and will
14 continue to provide intrastate, interstate, and international telecommunications services to former
15 Central Telecom customers as BDP customers. The Agreement and transfer were to become
16 effective on or about March 5, 2014, or upon approval by regulatory agencies in those jurisdictions
17 where the Applicants operate. Central Telecom will assign to BDP those customers and assets for
18 which applicable governmental approvals have been obtained.

19 9. In the interest of assuring seamless and uninterrupted service, all of the assigned
20 customers will continue to receive service from BDP under the same rates, terms, and conditions of
21 services as were previously provided by Central Telecom. BDP proposes to initially concur with
22 Central Telecom's existing tariff, and subsequently submit a replacement tariff with identical and new
23 service rates, terms and conditions. Future changes in the rates, terms, and conditions of service to
24 the affected customers will be undertaken pursuant to customer contracts and the applicable federal
25 and state notice and tariff requirements.

26 **Public Interest Considerations**

27 10. The Applicants submit that the proposed Transaction serves the public interest. The
28 Transaction will result in the assignment of Central Telecom customers to an existing longstanding

1 company with established operating history in the State that will continue to provide
2 telecommunications services to transferred customers without interruption. Further, the proposed
3 Transaction is structured to assure an orderly transition of customers from Central Telecom to BDP.

4 **Request For Waiver of Slamming and Cramming Rules**

5 11. In accordance with the terms of their service contracts and the rules and procedures of
6 the FCC and applicable state(s), including this Commission, customers have been notified of the
7 proposed transaction and the change in their telecommunications provider from Central Telecom to
8 BDP. On January 30, 2014, BDP and Central Telecom attested they have provided customers notice
9 of the transfer pursuant to Section 64.1120(e) of the FCC's rules, 47 C.F.R. §64.1120(e), a copy of
10 which is attached to the Application as Exhibit A. Applicants request, to the extent necessary, that the
11 Commission grant a waiver of A.A.C. R14-2-1904 *et seq.* (the "Slamming Rules") and any other
12 applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the
13 transfer of customer bases.

14 12. Applicants also request that the Commission, to the extent applicable, grant a waiver of
15 A.A.C. R14-2-2001 *et seq.* (the "Cramming Rules"), which, among other things, require a
16 telecommunications company to obtain authorization from a customer when ordering
17 telecommunications products and services in order to prevent unauthorized carrier charges on their
18 bill. BDP is purchasing the Central Telecom customer base, and the affected customers will receive
19 the same services as they currently receive under the same rates, terms and conditions. Applicants
20 believe that the Commission's Cramming Rules do not apply in this instance, as Central Telecom's
21 customers are simply being transferred to BDP. No new products and services are being ordered
22 from BDP and no new charges will be assessed as a result of the Transaction.

23 13. To the extent that the Cramming Rules apply to the Transaction, Applicants submit that
24 it is in the public interest to grant a waiver of the rules in this case because current Central Telecom
25 customers will receive at least 30 days' notice of the Transaction as required by the FCC's account
26 transfer rules; customers have been given full notice that their current services will be provided by
27 BDP after the Transaction is completed, and that there will be no change in the quality or cost of their
28 services as a result of the Transaction.

Request for Waiver of Discontinuance Rules

14. Applicants request that the Commission grant a waiver of A.A.C. R14-2-1107 (the “Discontinuance Rule”), which governs a telecommunications company’s discontinuance of competitive local exchange or interexchange services in the State. Applicants do not believe that the Discontinuance Rule applies in this matter as the Transaction involves the transfer of Central Telecom’s customers to BDP, neither of which are local exchange carriers. Moreover, service to the acquired customers is not being discontinued.¹

15. In the event that the Commission determines that the Discontinuance Rule does apply, Applicants request that the Commission grant a waiver and state that customers have received at least 30 days’ notice of the Transaction as required by the FCC’s account transfer regulations. It would be confusing for customers to also receive a notice regarding a Central Telecom discontinuance of service or for the planned customer transfer notice to include a discussion regarding a discontinuance of service since no affected customer’s service will be discontinued as a result of the Transaction and Central Telecom will in any event continue to offer services.² Applicants believe that the Commission’s waiver of the Discontinuance Rule will serve the public interest.

Complaints and Compliance

16. The Consumer Services Section of the Utilities Division reports that there have been no complaints, inquiries, or opinions about BDP and Central Telecom. According to the Corporation Division, both BDP and Central Telecom are in good standing. Both BDP and Central Telecom have filed their respective 2012 Utilities Annual Reports. The Compliance Section of the Utilities Division reports that both BDP and Central Telecom are in compliance.

Staff Recommendations

17. Staff recommends approval of the Application of BDP and Central Telecom for BDP to acquire the Arizona customers, including the customer contracts, of Central Telecom.

¹ Commission Staff has previously come to this same conclusion. See Docket No. T-0376IA-04-0710, Addendum to Staff Report (Dec. 27, 2004) (stating “Staff does not believe that the transfer of certain customers qualifies as a discontinuance of service or an abandonment of any portion of its service area. Therefore, Staff does not believe that A.A.C. R14-2-1107 applies”).

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

1 IT IS FURTHER ORDERED that Business Discount Plan, Inc.'s and Central Telecom Long
2 Distance, Inc.'s request that the Commission grant a waiver of A.A.C. R14-2-1107 be and hereby is
3 approved.

4 IT IS FURTHER ORDERED that within thirty (30) days following the closing of the
5 proposed transaction, Business Discount Plan, Inc. and Central Telecom Long Distance, Inc. inform
6 the Commission by filing an affidavit with Docket Control that transaction-related activities are
7 completed.

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

9
10 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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12 _____
13 CHAIRMAN

COMMISSIONER

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16 COMMISSIONER

COMMISSIONER

COMMISSIONER

17 IN WITNESS WHEREOF, I, JODI JERICH, Executive
18 Director of the Arizona Corporation Commission, have
19 hereunto, set my hand and caused the official seal of this
20 Commission to be affixed at the Capitol, in the City of
21 Phoenix, this _____ day of _____, 2014.

22 _____
23 JODI JERICH
EXECUTIVE DIRECTOR

24 DISSENT: _____

25
26 DISSENT: _____

27 SMO:LLM:sms\MAS

1 SERVICE LIST FOR: BUSINESS DISCOUNT PLAN, INC. AND CENTRAL TELECOM
LONG DISTANCE, INC.

2 DOCKET NOS. T-03142A-14-0060 and T-20740A-14-0060

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