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OPEN MEETING



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MEMORANDUM

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Arizona Corporation Commission

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TO: THE COMMISSION

2014 APR 29 P 3:23

APR 29 2014

FROM: Utilities Division

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY

DATE: April 29, 2014

RE: IN THE MATTER OF THE JOINT APPLICATION OF BUSINESS DISCOUNT PLAN, INC. AND U.S. TELECOM LONG DISTANCE, INC. FOR APPROVAL OF THE TRANSFER OF CUSTOMER BASE. (DOCKET NOS. T-03142A-14-0086 AND T-03486A-14-0086)

Business Discount Plan, Inc. ("BDP") and U.S. Telecom Long Distance, Inc. ("USTLD") (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 USTLD, through a mutually negotiated customer base acquisition.

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

**Introduction and Request for Expedited Treatment**

On February 25, 2014, BDP and USTLD entered into a customer base acquisition agreement (the "Agreement" or "Transaction") whereby USTLD agreed to sell, and BDP agreed to acquire, USTLD'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 USTLD customers the same services at the same rates, terms and conditions provided by USTLD, effective on or about March 27, 2014, following regulatory approvals, where required.

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

USTLD 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 that it is in current compliance with its applicable regulatory obligations in Arizona and in the other jurisdictions in which it operates.

B. U.S. Telecom Long Distance, Inc.

USTLD is a privately-held corporation organized under the laws of the State of Nevada on August 13, 1997, with principal offices located at 3960 Howard Hughes Parkway, 5th Floor, #5001F, Las Vegas, Nevada 89109. USTLD is also a provider of resold long distance telecommunications services to commercial and residential customers in Arizona and throughout the U.S. USTLD was granted authority to provide such services by the Commission on April 18, 2000, in Decision No. 62456. USTLD states that it is authorized by the FCC to provide interstate and international telecommunications services. USTLD 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 USTLD'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 USTLD customers as BDP customers. The Agreement and transfer were to become effective on or about March 27, 2014, or upon approval by regulatory agencies in those jurisdictions where the Applicants operate. USTLD 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 USTLD. BDP proposes to initially concur with USTLD'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 USTLD 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 USTLD 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 USTLD to BDP. On February 25, 2014, BDP and USTLD attest that they have provided customers 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 USTLD 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 USTLD'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 USTLD 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 USTLD's

customers to BDP, neither of which are local exchange carriers. Moreover, service to the acquired customers is not being discontinued.<sup>1</sup>

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 USTLD 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 USTLD will in any event continue to offer services.<sup>2</sup> 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 no complaints, inquiries, or opinions about BDP and USTLD. According to the Corporations Division, both BDP and USTLD are in good standing. Both BDP and USTLD have filed their respective 2012 Utilities Annual Reports. The Compliance Section of the Utilities Division reports that both BDP and USTLD are in compliance.

### **Staff Recommendations**

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

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

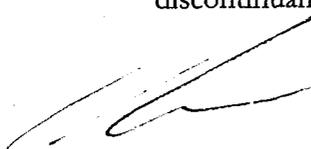
- A waiver of A.A.C. R14-2-1904 et seq. and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases because the notice informs customers that the rates, terms and conditions of service will not change as a result of this proposed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

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<sup>1</sup> 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").

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

- 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\BH

ORIGINATOR: Lori Morrison



1 jurisdictions served by Applicants. Under the terms of the Agreement, BDP will begin providing  
2 current USTLD customers the same services at the same rates, terms and conditions provided by  
3 USTLD, effective on or about March 27, 2014, following regulatory approvals, where required.

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

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

14 Description of the Applicants

15 A. Business Discount Plan, Inc.

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22 10. The Applicants submit that the proposed Transaction serves the public interest. The  
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25 services to transferred customers without interruption. Further, the proposed Transaction is  
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**Request For Waiver of Slamming and Cramming Rules**

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12. 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 USTLD 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 USTLD'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.

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**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

1 competitive local exchange or interexchange services in the State. Applicants do not believe that the  
2 Discontinuance Rule applies in this matter as the Transaction involves the transfer of USTLD's  
3 customers to BDP, neither of which are local exchange carriers. Moreover, service to the acquired  
4 customers is not being discontinued.<sup>1</sup>

5 15. In the event that the Commission determines that the Discontinuance Rule does apply,  
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7 30 days' notice of the Transaction as required by the FCC's account transfer regulations. It would be  
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9 the planned customer transfer notice to include a discussion regarding a discontinuance of service  
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12 Discontinuance Rule will serve the public interest.

### 13 Complaints and Compliance

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18 USTLD are in compliance.

### 19 Staff Recommendations

20 17. Staff recommends approval of the Application of BDP and USTLD for BDP to acquire  
21 the Arizona customers, including the customer contracts, of USTLD.

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

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27 Staff Report (Dec. 27, 2004) (stating "Staff does not believe that the transfer of certain customers qualifies as a  
28 discontinuance of service or an abandonment of any portion of its service area. Therefore, Staff does not believe that  
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<sup>2</sup> See Commission Decision No. 70706 (October 2, 2008) (waiving discontinuance rules in transfer of control case).

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- 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;
- 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.

CONCLUSIONS OF LAW

1. Business Discount Plan, Inc. and U.S. Telecom Long Distance, Inc. are public service corporations within the meaning of Article XV of the Arizona Constitution.
2. The Commission has jurisdiction over Business Discount Plan, Inc. and U.S. Telecom Long Distance, Inc. and the subject matter in this filing.
3. The Commission, having reviewed the filing and Staff’s Memorandum dated April 29, 2014, concludes that it is in the public interest to grant approval as proposed and discussed herein.

ORDER

IT IS THEREFORE ORDERED that the Application of Business Discount Plan, Inc. to acquire the customers (including the customers’ contracts) of U.S. Telecom Long Distance, Inc. be and hereby is approved as discussed herein.

IT IS FURTHER ORDERED that the request for 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 be and hereby is approved.

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1 IT IS FURTHER ORDERED that Business Discount Plan, Inc.'s and U.S. 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 U.S. Telecom Long Distance, Inc. inform the  
6 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.

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10 BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN

COMMISSIONER

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COMMISSIONER

COMMISSIONER

COMMISSIONER

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

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\_\_\_\_\_  
JODI JERICH  
EXECUTIVE DIRECTOR

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DISSENT: \_\_\_\_\_

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DISSENT: \_\_\_\_\_

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SMO:LLM:sms\BH

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

2 DOCKET NOS. T-03142A-14-0086 and T-03486A-14-0086

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8 Long Beach, California 90831

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Las Vegas, Nevada 89109

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13 Mr. Andrew Isar  
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19 Ms. Janice M. Alward  
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22 Ms. Lyn Farmer  
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Arizona Corporation Commission  
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