

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE JOINT APPLICATION)
OF BUSINESS DISCOUNT PLAN, INC. AND)
CONSUMER TELCOM, INC. FOR APPROVAL TO) PSC DOCKET NO. 14-114
ACQUIRE DELAWARE CUSTOMERS AND)
CONTRACTS (FILED MARCH 19, 2014))

ORDER NO. 8554

AND NOW, this 15th day of April, 2014, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on January 3, 1995, Trans National Telephone, Inc. filed an application with the Commission which requested a Certificate of Public Convenience and Necessity ("CPCN") to provide intrastate telecommunications resale service to the public within and throughout the State of Delaware; and

WHEREAS, on January 3, 1995, Trans National Telephone, Inc. notified the Commission that it had changed its corporate name to Business Discount Plan, Inc.; and

WHEREAS, on February 14, 1995, via Order No. 3946, the Commission granted a CPCN to Trans National Telephone, Inc. to provide intrastate telecommunications resale service to the public within and throughout the State of Delaware; and

WHEREAS, on March 3, 1995, via Order No. 3953, the Commission granted to Business Discount Plan, Inc. f/k/a Trans National Telephone, Inc. a CPCN for intrastate telecommunications services to the public within the State of Delaware; and

WHEREAS, on January 8, 2008, via Order No. 7337, the Commission granted a CPCN to Consumer Telcom, Inc. ("Consumer Telcom") to provide intrastate telecommunications services in the State of Delaware;

WHEREAS, on January 30, 2014, Business Discount Plan, Inc. ("BDP") and Consumer Telcom entered into an agreement in which Consumer Telcom will transfer its long-distance customer accounts to BDP; and

WHEREAS, on March 10, 2014, BDP and Consumer Telcom jointly notified the Federal Communications Commission that pursuant to 47 C.F.R. §64.1120(e),¹ BDP was acquiring Consumer Telcom's interexchange service customer base. This written notice stated that the transaction pertains exclusively to the customer base acquisition and

¹ 47 C.F.R. §§64.1120(e)(1) and (3) provide, in pertinent part, the following: "A telecommunications carrier may acquire, through a sale or transfer, either part or all of another telecommunications carrier's subscriber base without obtaining each subscriber's authorization and verification in accordance with §64.1120(c), provided that the acquiring carrier complies with the following streamlined procedures. A telecommunications carrier may not use these streamlined procedures for any fraudulent purpose, including any attempt to avoid liability for violations under part 64, subpart K of the Commission rules. No later than 30 days before the planned transfer of the affected subscribers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall file with the Commission's Office of the Secretary a letter notification in CC Docket No. 00-257 providing the names of the parties to the transaction, the types of telecommunications services to be provided to the affected subscribers, and the date of the transfer of the subscriber base to the acquiring carrier. In the letter notification, the acquiring carrier also shall certify compliance with the requirement to provide advance subscriber notice in accordance with §64.1120(e)(3), with the obligations specified in that notice, and with other statutory and Commission requirements that apply to this streamlined process. In addition, the acquiring carrier shall attach a copy of the notice sent to the affected subscribers. Not later than 30 days before the transfer of the affected subscribers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall provide written notice to each affected subscriber of the information specified. The acquiring carrier is required to fulfill the obligations set forth in the advance subscriber notice. The advance subscriber notice shall be provided in a manner consistent with 47 U.S.C. §255 and the Commission's rules regarding accessibility to blind and visually-impaired consumers, 47 CFR 6.3, 6.5 of this chapter."

PSC Docket No. 14-114, Order No. 8554 Con't

does not otherwise involve the transfer of operating authority or a discontinuation or termination of service by Consumer Telcom; and

WHEREAS, on March 19, 2014, BDP and Consumer Telcom jointly filed an application (the "Application") requesting approval, to the extent required, for BDP to acquire the Delaware customers of Consumer Telcom, including customer contracts, through a mutually negotiated customer base acquisition (the "Transaction"). The Application also included a request to waive any applicable account transfer or "anti-slamming" regulations that might be violated without specific authorization and verification of each customer affected to the extent necessary. Both companies alleged that each of Consumer Telcom's customers has received the required advance notice; however, the companies have not provided any documentation to show that the companies have obtained the required customer verifications; and

WHEREAS, 26 *Del. C.* §924(b)(1) and (2) provide, in pertinent part, that no submitting carrier shall submit a change in the customer's selection of a carrier prior to obtaining authorization from the customer and verification of that authorization in accordance with the procedures prescribed in 26 *Del. C. ch. 9*, subchapter III and implementing regulations of the Commission; and

WHEREAS, the Applicants have not yet obtained specific authorization and verification of each customer that will be affected by the Transaction, and no Delaware Code provision or regulation allows a waiver of the specific authorization and verification requirements regarding anti-slamming under both Delaware laws and regulations and federal laws and regulations; and

WHEREAS, 26 *Del. C.* §215(a)(1) requires, in pertinent part, that no public utility, without having first obtained the approval of the Commission, may directly or indirectly sell, assign, or otherwise dispose of any essential part of its franchises, plant, equipment or other property, necessary or useful in the performance of its duty to the public; and

WHEREAS, 26 *Del. C.* §215(d) provides, in pertinent part, that the Commission shall approve any such proposed transfer or acquisition when it finds that the same is to be made "in accordance with law, for a proper purpose and is consistent with the public interest;" and

WHEREAS, BDP and Consumer Telcom have asserted in the Application that the Transaction (i) is in accordance with 26 *Del. C.* §215, (ii) is for the purpose of transferring Consumer Telcom's customer base to BDP; (iii) will not cause any changes in the service rates, terms or conditions of service for the customers of Consumer Telcom and these customers will continue to receive telecommunications services without interruption, and (iv) is consistent with the public interest; and

WHEREAS, no Delaware law or regulation allows the Commission to grant a waiver of the anti-slamming provisions;²

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE OF
NOT FEWER THAN THREE COMMISSIONERS:**

1. The Application requesting Commission approval, under 26 *Del. C.* §215(a)(1), for Consumer Telcom to sell and assign its customer accounts and customer base, including customers contracts, to

² Under 26 *Del. Admin. C.* §4001-17.0, Part B, the submission and execution of changes in customer carrier selection must comply with 47 C.F.R. § 64.1120; however, the provisions of 26 *Del. C. ch.* 9 do not seem to allow a waiver of the requirements of verifications and authorizations from customers prior to changing a customer's carrier.

PSC Docket No. 14-114, Order No. 8554 Con't

BDP is granted subject to the conditions set forth below and subject to the condition that the Federal Communications Commission has not disapproved the Transaction.

2. The Commission requires BDP and Consumer Telcom to comply with the anti-slamming provisions of 26 *Del. C.* §§924(b)(1) and (2) and 26 *Del. Admin. C.* §§4001-13.0 to 19.0 and all applicable federal laws and regulations.

3. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary