



# PUBLIC NOTICE

Federal Communications Commission  
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**DA 04-3665**

**Released: November 19, 2004**

## **DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF GE BUSINESS PRODUCTIVITY SOLUTIONS, INC. BY BUSINESS PRODUCTIVITY SOLUTIONS, INC.**

### **STREAMLINED PLEADING CYCLE ESTABLISHED**

**WC Docket No. 04-413**

**Comments Due: December 3, 2004**

**Reply Comments Due: December 10, 2004**

On November 5, 2004, GE Business Productivity Solutions, Inc. (GEBPS) and Business Productivity Solutions, Inc. (BPS) (together, “Applicants”) filed an application, pursuant to sections 63.03 and 63.04 of the Commission’s rules,<sup>1</sup> requesting consent to transfer substantially all of the assets of GEBPS, including the GEBPS customer base, to BPS, a newly formed subsidiary of Eschelon Telecom, Inc. (ETI).<sup>2</sup>

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission’s rules because the proposed transaction would result in the transferee having a market share in the interstate, interexchange market of less than 10 percent; the transferee would provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and neither of the applicants is dominant with respect to any service.<sup>3</sup>

GEBPS, a Georgia corporation, is a direct, wholly owned subsidiary of General Electric Capital Corporation (GECC). GECC is a direct, wholly owned subsidiary of General Electric Capital Services, Inc. (GECS). GECS is a direct, wholly owned subsidiary of the ultimate parent corporation, General Electric Company. GEBPS provides long distance services on a resale basis to both residential and

<sup>1</sup> 47 C.F.R §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

<sup>2</sup> Applicants have also filed an application for consent to transfer authorization for international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related pending applications.

<sup>3</sup> 47 C.F.R. § 63.03(b)(2)(i); *see* 47 C.F.R. § 63.03(b)(3) (“For purposes of (b)(1) and (2) of this paragraph, the terms ‘applicant,’ ‘carrier,’ ‘party,’ and ‘transferee’ (and their plural forms) include any affiliates of such entities within the meaning of section 3(1) of the Communications Act of 1934, as amended.”).

business customers in 49 states. In addition, GEBPS provides local service, also on a resale basis, to customers in Massachusetts and Connecticut. Specifically, GEBPS provides voice and data services, including audio conferencing, voice mail, dedicated Internet access, frame relay services, private line services, and ISDN services.

BPS, a newly formed Minnesota corporation, is a direct, wholly owned subsidiary of Eschelon Operating Company (OPCO). OPCO, a Minnesota corporation, functions as a holding company. OPCO is a direct, wholly owned subsidiary of ETI, a Delaware corporation, the ultimate parent corporation.<sup>4</sup> ETI is authorized to provide telecommunications services in California, Idaho, New Mexico, and New York. OPCO has several direct, wholly owned subsidiaries that offer telecommunications services in various states.<sup>5</sup> In these states, the subsidiaries provide resold and facilities-based local, resold long distance, Internet and data services to small and medium-sized businesses. There are no other affiliates of BPS that offer domestic telecommunications services.

Pursuant to the terms of an Asset Purchase Agreement dated October 13, 2004, BPS's ultimate parent company, ETI, will acquire substantially all of the assets of GEBPS, including the GEBPS customer base and, where necessary, state telecommunications authorizations, and immediately transfer these assets to BPS. Following completion of the proposed transaction, BPS will provide telecommunications services to the former customers of GEBPS. According to the Applicants, the GEBPS customers will continue to receive their existing services at the same rates, terms and conditions that they have prior to the transfer and any future changes in the rates, terms and conditions of service will be made consistent with the Commission requirements. Applicants state that, to ensure a seamless transition and avoid customer confusion or inconvenience, they have provided advance written thirty day notice to the affected customers, explaining the change in service provider in accordance with applicable Commission and state requirements for changing a customer's presubscribed carrier.

Applicants assert that the proposed transaction will serve the public interest. Applicants expect that the transaction will increase competition in the telecommunications market by strengthening ETI's position as an effective and multifaceted telecommunications carrier. The Applicants argue that the enhanced ETI will achieve economies of scale and scope that will enhance the company's ability to roll out new products and services and expand into new markets. The Applicants contend that ETI's acquisition, through BPS, of the assets of GEBPS, including its customer base, will allow ETI to combine its financial, technical and market resources and expertise with that of GEBPS, thereby enhancing its ability to provide reliable, competitively priced services to customers. The companies anticipate that customers will experience a seamless transition to their new service provider. Further, the Applicants state that these customers have been notified of the proposed transaction and their rights. Although GEBPS and ETI both provide service in certain markets (Arizona, Colorado, Minnesota, Nevada, Oregon, Utah and Washington), Applicants state that the transfer of GEBP's customers to ETI will increase, not degrade, the competitiveness of these markets.

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<sup>4</sup> The following entities own 10% or more of the equity of ETI: (1) Bain Capital Fund VI, L.P.; (2) Wind Point Partners; and (3) Stolberg Equity Partners.

<sup>5</sup> OPCO's direct, wholly owned subsidiaries are Eschelon Telecom of Minnesota, Inc.; Eschelon Telecom of Washington, Inc.; Eschelon Telecom of Colorado, Inc.; Eschelon Telecom of Nevada, Inc.; Eschelon Telecom of Arizona, Inc.; Eschelon Telecom of Utah, Inc.; and Eschelon Telecom of Oregon, Inc.

## **GENERAL INFORMATION**

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before December 3, 2004** and **reply comments on or before December 10, 2004**.<sup>6</sup> Unless otherwise notified by the Commission, Applicants are permitted to transfer assets on the 31<sup>st</sup> day after the date of this notice.<sup>7</sup> Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the subject line “get form <your e-mail address>.” A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

### **In addition, one copy of each pleading must be sent to each of the following:**

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, [www.bcpweb.com](http://www.bcpweb.com); phone: (202) 488-5300; fax: (202) 488-5563;
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, SW, Room 5-C212, Washington, D.C. 20554; e-mail: [tracey.wilson-parker@fcc.gov](mailto:tracey.wilson-parker@fcc.gov);

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<sup>6</sup> See 47 C.F.R. § 63.03(a).

<sup>7</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

- (3) Christi Shewman, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, SW, Room 5-C163, Washington, D.C. 20554; e-mail: [christi.shewman@fcc.gov](mailto:christi.shewman@fcc.gov);
- (4) Terri Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, SW, Room 5-C234, Washington, D.C. 20554; e-mail: [terri.natoli@fcc.gov](mailto:terri.natoli@fcc.gov);
- (5) Susan O'Connell, Policy Division, International Bureau, 445 12<sup>th</sup> Street, SW, Room 7-B544, Washington, D.C. 20554; email: [susan.o'connell@fcc.gov](mailto:susan.o'connell@fcc.gov); and
- (6) James Bird, Office of General Counsel, 445 12<sup>th</sup> Street, SW, Room 8-C824, Washington, D.C. 20554; e-mail: [james.bird@fcc.gov](mailto:james.bird@fcc.gov).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail at [www.bcpipweb.com](http://www.bcpipweb.com).

For further information, please contact Tracey Wilson-Parker at (202) 418-1394 or Christi Shewman at (202) 418-1686.

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