

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: JANUARY 25, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYD)

FROM: DIVISION OF COMPETITIVE SERVICES (HINTON, AUDU, BARRETT, FULWOOD)
DIVISION OF POLICY ANALYSIS AND INTERGOVERNMENTAL LIAISON (OLLILA)
DIVISION OF LEGAL SERVICES (CALDWELL)

RE: DOCKET NO. 990750-TP - PETITION BY ITC^DELTACOM COMMUNICATIONS, INC. D/B/A ITC^DELTACOM FOR ARBITRATION OF CERTAIN UNRESOLVED ISSUES IN INTERCONNECTION NEGOTIATIONS BETWEEN ITC^DELTACOM AND BELL SOUTH TELECOMMUNICATIONS, INC.

AGENDA: 02/06/01 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO CHAIRMAN JACOBS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\990750G.RCM

CASE BACKGROUND

On June 11, 1999, ITC^DeltaCom Communications, Inc., d/b/a ITC^DeltaCom (DeltaCom) filed a Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 (Act)¹ seeking arbitration of certain unresolved issues in the interconnection negotiations between DeltaCom and BellSouth Telecommunications, Inc. (BellSouth). On July 6, 1999, BellSouth filed its response.

An administrative hearing on the issues was held October 27-29, 1999. Subsequent to the hearing, the parties filed a Joint

¹ 47 U.S.C. 252(b)

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Motion of the Parties Notifying the Commission of Recently Resolved Issues, by which additional issues were removed from this arbitration proceeding. On March 15, 2000, the final order on arbitration, Order No. PSC-00-0537-FOF-TP, (Final Order) was issued.

On March 30, 2000, BellSouth filed a Motion for Reconsideration of the Final Order. On April 11, 2000, DeltaCom filed its Response to BellSouth's Motion for Reconsideration. On April 24, 2000, BellSouth filed a Motion for Leave to File a Reply Memorandum. DeltaCom filed a Motion to Strike BellSouth's Motion for Leave to File Reply Memorandum and its Response to BellSouth's Reply Memorandum on May 8, 2000. Finally, on May 16, 2000, BellSouth filed a Response to DeltaCom's Motion to Strike Motion for Leave to File Reply Memorandum. Staff's recommendation addressing the issues raised in the motions was deferred to allow the parties time to negotiate a settlement. On October 24, 2000, BellSouth filed a Notice of Partial Withdrawal of Motion for Reconsideration.

On November 22, 2000, the final order on arbitration, Order No. PSC-00-2233-FOF-TP, was issued which among other things, required the agreement to be filed within 20 days of the date the order was issued. On December 12, 2000, the parties filed an Agreed Motion for Extension of Time. This Motion was granted by Order No. PSC-01-0129-PCO-TP issued January 17, 2001. On January 11, 2001, DeltaCom and BellSouth filed a Second agreed Motion for extension of time. This recommendation addresses that Motion.

This docket was originally assigned to a two member panel. In light of the resignation of one of the panel members, the remaining panel member rendered the decision on reconsideration consistent with Section 350.01(5), Florida Statutes. The parties were contacted and raised no objections.

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived through compulsory arbitration. Specifically, Section 252(b)(1) states:

- (1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date

on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than nine months after the date on which the local exchange carrier received the request under this section.

In addition, Section (e)(5) states:

Commission to act if state will not act.--If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant ITC^DeltaCom Communications, Inc d/b/a ITC^DeltaCom (DeltaCom) and BellSouth Telecommunications, Inc.'s (BellSouth) Second Agreed Motion for Extension of Time?

RECOMMENDATION: Yes. Staff recommends that the Commission grant the Second Agreed Motion for extension of Time. (Caldwell)

STAFF ANALYSIS: In support of their Motion, DeltaCom and BellSouth state that they are still in the process of finalizing the interconnection agreement and therefore request that the Commission

grant and extension of time to February 12, 2001, for filing the interconnection agreement.

Staff believes that because the parties have agreed to this extension and it appears no interests will be harmed by the granting of the extension, it would be reasonable for the Commission to grant the extension. Pursuant to the request, the agreement would be due February 12, 2001. Therefore, staff recommends that the Commission grant the parties' Agreed Motion for extension of time. Staff suggests that the Commission urge the parties to complete their negotiations and timely file their agreement.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. Staff recommends the docket remain open pending the filing of the Agreement. (Caldwell)

STAFF ANALYSIS: Staff recommends the docket remain open until the agreement has been filed and the Commission takes final action.