



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: August 20, 2002
TO: Blanca Bayo, Director, Division of the Commission Clerk and Administrative Services
FROM: Nancy Pruitt, Division of Competitive Markets and Enforcement *z*
RE: Docket No. 020900-TP

Attached is additional information for the above referenced docket.

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**Before the
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Petition of ITC^DeltaCom Communications, Inc.)
And ITC^DeltaCom, Inc. (Debtor In Possession))
For approval of the transfer of indirect control of)
ITC^DeltaCom Communications Inc.)

To: the Commission

EXPEDITED ACTION REQUESTED

**Joint Petition of ITC^DeltaCom Communications, Inc.,
And ITC^DeltaCom, Inc.
for Approval of Transfer of Indirect Control**

By this petition, ITC^DeltaCom Communications, Inc., d/b/a ITC^DeltaCom (“ITC^DeltaCom”) and its parent corporation, ITC^DeltaCom, Inc., (“ITCD”) seek authority to the extent necessary pursuant to Section 100 of the Public Service Law for ITC^DeltaCom, Inc. as Debtor-in-Possession (“ITC/DIP” or “Old ITC”) and ITC^DeltaCom, Inc. (“New ITC”) to transfer control of ITC^DeltaCom Communications, Inc. (“DeltaCom”) from ITC/DIP to New ITC. This Application does not seek to transfer any operating authority. New York customers will not be directly affected by the change in control, as it will be transparent to them.

On June 25, 2002, ITC/DIP filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware. Grant of the requested transfer of control will permit consummation of a plan of reorganization (“POR”) that is currently being considered by the United States Bankruptcy Court for the District of Delaware (Case No. 02-11848 (MLW)). We anticipate that ITC/DIP’s POR

will be approved on or about **September 30, 2002**. Therefore, we request expedited treatment of this Petition.

I. The Parties

A. ITC^DeltaCom, Inc. (New ITC)

Pursuant to the POR, ITC/DIP will emerge from bankruptcy with a revised ownership structure as New ITC. It will remain the same corporate entity, but it will no longer be a debtor-in-possession, and it will have a new corporate charter. The POR provides for cancellation of the existing common stock and preferred stock of Old ITC. The POR also provides that New ITC will issue new common stock. More than 85% of the new common stock will be distributed to the holders of senior and subordinated convertible notes of Old ITC (the “Noteholders”). Campbell B. Lanier, III (“Mr. Lanier”), a director and current stockholder of Old ITC, and SCANA Corporation (“SCANA”), a current stockholder of Old ITC, each have agreed to purchase up to \$15 million of a new issue of Series A convertible preferred stock of New ITC. Mr. Lanier and SCANA will also receive common stock of New ITC and warrants to purchase additional common stock of New ITC. Other existing preferred and common stockholders will also be entitled to purchase on a pro rata basis, up to a specified amount, the convertible preferred stock and warrants that Mr. Lanier and SCANA have agreed to purchase. No single shareholder will own a controlling interest in New ITC.

The initial board of directors of New ITC will consist of seven members. Larry F. Williams will continue to serve on the Board. The Noteholders will be entitled to designate a total of four board members, two of whom will be independent directors. Holders of the new Series A convertible preferred stock will be entitled to designate the remaining two board members. The existing senior management team of ITC/DIP will remain in place, led by Chief Executive Officer Larry F. Williams.

- **ITC^DeltaCom Communications, Inc. (DeltaCom)**

Interstate FiberNet, Inc. is a wholly-owned direct subsidiary of Old ITC, and DeltaCom is a wholly-owned direct subsidiary of Interstate FiberNet. Neither Interstate FiberNet nor DeltaCom is itself undergoing reorganization. Instead, each company will continue to operate subsequent to implementation of the POR as a subsidiary of New ITC. The ultimate ownership of FiberNet and DeltaCom will change due to the ownership changes occurring as part of the reorganization of Old ITC. DeltaCom is an Alabama corporation and is certified to operate as a reseller of long distance services within New York State. The principal office and place of business of DeltaCom is at 4092 S. Memorial Parkway, Huntsville, Alabama 35802. Organizational charts of the current and post-transaction ownership structure are attached hereto as Exhibit A.

II. Designated Contacts

The designated contact for questions concerning this Application is:

Nanette S. Edwards
Director -Regulatory
ITC^DeltaCom Communications, Inc.
4092 S. Memorial Pkwy
Huntsville, Alabama 35802
(800) 239-3000, ext. 3856
(256) 382-3936 facsimile

III. Description of the Transaction

The POR contemplates a restructuring of Old ITC's ownership and the elimination of a significant portion of the company's debt. The POR is the result of a

Order Issuing Certificate of Public Convenience and Necessity,
Case 94-C-0473 (August 19, 1994).

pre-negotiated agreement between Old ITC and members of the Noteholders. The agreement will permit the company to continue to operate pursuant to a business plan approved by the noteholders.

The POR provides for New ITC to emerge from bankruptcy with the following ownership:

- Old ITC's senior note debt will be eliminated, and holders of these notes will receive 81.5% of New ITC's common stock.
- Old ITC's subordinated convertible note debt will be eliminated, and holders of these notes will receive 5% of New ITC's common stock.
- Old ITC's common stock, Series A preferred stock and Series B preferred stock will be cancelled, and holders of these shares will collectively receive a total of 1% of New ITC's common stock.
- As noted above, Mr. Lanier and SCANA have committed to purchase new Series A convertible preferred stock to be issued by New ITC, and other shareholders will be entitled to purchase these shares on a pro rata basis up to certain limits. In exchange for their commitment, Mr. Lanier and SCANA will receive 2% of New ITC's common stock. The Series A preferred stock, if converted, will represent 10.5% of the common stock of New ITC. All of the ownership percentages described above assume conversion of the Series A preferred stock into common stock.

If the Series A stock is not converted, the New ITC common stock distributed to the various interest holders would represent the following percentages of the total: senior note holders 91.1%; subordinated convertible note holders 5.6%; Old ITC common stock, Series A preferred stock and Series B preferred stock holders 1.1%; and stock distributed to Mr. Lanier and SCANA in exchange for their commitment to purchase the convertible preferred stock 2.2%.

ITC/DIP currently holds 100 percent of the equity of Interstate FiberNet, and subsequent to the proposed reorganization, New ITC will hold 100 percent of the equity of Interstate FiberNet. DeltaCom is and will remain a direct wholly-owned subsidiary of Interstate FiberNet.

The Parties have reviewed the most reasonably current information available to them regarding the holdings of the debt and equity of Old ITC. Based on that information, the Parties have determined that upon consummation of the POR, two affiliated funds will beneficially own a total of approximately 21.4% of the common stock of New ITC and that no other person or entity will hold a greater than 10% equity interest in New ITC. Specifically, Appaloosa Investment Limited Partnership I (“AILP”), a Delaware limited partnership, will hold 11.4% of New ITC’s common stock, and Palomino Fund Ltd. (“Palomino”), a British Virgin Islands company, will hold 10% of New ITC’s common stock.

Assuming repayment of certain capital lease obligations, ITC/DIP’s total indebtedness will be reduced from approximately \$724 million at March 31, 2002 to approximately \$194 million of indebtedness under its senior credit facility and capital leases. As a result, ITC/DIP also estimates that 2002 annual interest expense on a pro forma basis will decrease from approximately \$55 million to between approximately \$11 million and \$13 million.

The proposed transfer will be seamless to DeltaCom’s customers. DeltaCom has less than 135 long distance customers in New York as of June 2002. DeltaCom’s name, rates and service offerings, as reflected in its tariff, will not change as a result of the proposed transaction. There will be no interruption of service.

Grant of the Requested Authority is in the Public Interest

Grant of the instant application will serve the public interest, convenience, and necessity. It will allow Old ITC to emerge from bankruptcy with a revised ownership structure and improved capitalization. Its operating subsidiary, DeltaCom, will be able to provide uninterrupted telecommunications services to existing customers. Furthermore, the proposed reorganization is pro-competitive. It does not involve the merger or consolidation of competing carriers. Instead, it will permit DeltaCom to continue to offer services in competition with other providers. Thus, implementation of the POR will allow continuity of service to customers and promote competition, and is therefore in the public interest. The transaction outlined herein will be made in a seamless fashion that will not adversely affect the provisioning of telecommunications services in New York, but will in fact increase the financial strength of the entity providing telecommunications service in New York. The Commission's ability and authority to regulate DeltaCom and to ensure that it satisfies all obligations, commitments and regulatory requirements established by the laws of the Commonwealth and by the Commission will remain unchanged. Thus, there are no potential public-interest harms raised by the proposed transaction and there will be clear benefits to the public upon approval and closing of this transaction.

WHEREFORE, ITC^DeltaCom, Inc., and ITC^DeltaCom Communications, Inc., respectfully request that the Commission grant any necessary authority for an indirect transfer of control of ITC^DeltaCom Communications, Inc.

Respectfully submitted,

ITC^DeltaCom, Inc. and

ITC^DeltaCom Communications, Inc.

By: _____

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Its Attorney

Dated: August 8, 2002