

Kimberley Pena

From: Marsha Rule [marsha@reuphlaw.com]
Sent: Monday, August 25, 2008 10:50 AM
To: Filings@psc.state.fl.us
Cc: Adam Teitzman; Kimberley Pena; Ruth Nettles; David.adelman@sablaw.com; greg.follensbee@att.com; Roxanne Levingston
Subject: RE: Docket No. 030137-TP - Deltacom's Conditional Notice to Withdraw Petition for Arbitration
Attachments: Deltacom Notice of WDrawal 08 22 2008.pdf

Attached.

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From: Filings@psc.state.fl.us [mailto:Filings@PSC.STATE.FL.US]
Sent: Monday, August 25, 2008 10:30 AM
To: Marsha Rule
Cc: Adam Teitzman; Kimberley Pena; Ruth Nettles
Subject: FW: Docket No. 030137-TP - Deltacom's Conditional Notice to Withdraw Petition for Arbitration

Ms. Rule,

We received the e-filing cover page below, however there was no attachment included. Please resubmit information, with attachment(s), to be considered an official filing. Thank you for assistance.

Dorothy Menasco
 FPSC
 Office of Commission Clerk
 850-413-6770

From: Marsha Rule [mailto:marsha@reuphlaw.com]
Sent: Friday, August 22, 2008 2:36 PM
To: Filings@psc.state.fl.us
Cc: tony.mastando@deltacom.com; Roxanne Levingston; greg.follensbee@att.com; Adam Teitzman; David.adelman@sablaw.com
Subject: Docket No. 030137-TP - Deltacom's Conditional Notice to Withdraw Petition for Arbitration

The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing:

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8/26/2008

DOCUMENT NUMBER-DATE

07717 AUG 25 08

FPSC-COMMISSION CLERK

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The docket number and title of docket:

Docket No. 030137-TP

Petition for arbitration of unresolved issues in negotiation of interconnection agreement with BellSouth Telecommunications, Inc. by ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom

The name of the parties on whose behalf the document is filed:

ITC^DeltaCom Communications, Inc., now known as DeltaCom, Inc.

The total number of pages in the attached document: 4

A brief but complete description of each attached document.

Deltacom's Conditional Notice to Withdraw Petition for Arbitration

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of unresolved issues in negotiation of interconnection agreement with BellSouth Telecommunications, Inc. by ITC^Deltacom Communications, Inc. d/b/a ITC^DeltaCom

Docket No. 030137-TP
Filed: August 22, 2008

**DELTACOM'S CONDITIONAL NOTICE TO WITHDRAW
PETITION FOR ARBITRATION**

ITC^Deltacom Communications, Inc., now known as DeltaCom, Inc. ("Deltacom"), pursuant to Rule 28-106.204, Florida Administrative Code, files this Conditional Notice To Withdraw Petition For Arbitration ("Notice") in the above-captioned proceeding. This Notice is conditioned on the effectiveness of the amendment to extend the interconnection agreement between itself and BellSouth Telecommunications, Inc. (d/b/a AT&T Florida) ("AT&T") that was filed for approval on August 19, 2008 in Docket No. 080563-TP. In support thereof, Deltacom states as follows:

1. Deltacom filed its Petition for Arbitration in this docket in February 2003. A hearing was held in September 2003, after which the parties filed post-hearing briefs and continued to negotiate in good faith to resolve outstanding issues.

2. During the pendency of the proceeding, the Federal Communications Commission issued a series of orders impacting the parties' interconnection rights and obligations. *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338); Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC No. 03-36, (rel. Aug. 21, 2003) ("Triennial Review Order" or "TRO"), *vacated and remanded in part sub nom., United States Telecom Ass'n v. FCC*, 359 F.3d

554 (DC. Cir 2004); and *In the Matter of Review of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (WC Docket No. 04-313, CC Docket No. 01-338); Order on Remand, FCC No. 04-290, (rel. Feb. 4, 2005) ("Triennial Review Remand Order" or "TRRO"). In addition, this Commission opened Docket No. 041269-TP to consider the effect of these changes in law on BellSouth's then-existing interconnection dockets.

3. Such pending proceedings made it difficult, if not impossible, to resolve the parties' remaining arbitration issues. Accordingly, the parties ultimately agreed to await the resolution of the FCC, court, and Commission proceedings before attempting to bring closure to this docket.

4. Thereafter, in March 2006, BellSouth Corporation, the ultimate parent of BellSouth Telecommunications, Inc., proposed to merge with AT&T, Inc., resulting in a corporate structure in which BellSouth Corporation (and its subsidiaries, including BellSouth Telecommunications, Inc.) would be a wholly-owned subsidiary of AT&T, Inc. In order to facilitate the FCC's approval of the merger, AT&T, Inc. later made a number of commitments (the "Merger Commitments"), including, without limitation, a number of commitments to reduce transaction costs associated with interconnection agreements.

5. The FCC approved the merger in December 2006, and issued its formal Order authorizing the merger on March 26, 2007. *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74 ("FCC Merger Order"). In its Merger Order, the FCC ordered AT&T and BellSouth to comply with the Merger Commitments, as set forth in Appendix F therein. *FCC Merger Order*, ¶ 227 at page 112.

6. On April 24, 2007, Deltacom requested that the instant proceeding be held in abeyance to invoke the merger conditions related to reducing the transaction costs associated with interconnection agreements. The parties initially worked to “port” their North Carolina interconnection agreement into Florida by conforming it to applicable Florida law, rules and orders. While that effort was underway, AT&T released an Accessible Letter November 16, 2007, announcing a shift in its policy whereby CLECs could now extend older interconnection agreements by three years. Since the effort to conform the North Carolina agreement was proving rather cumbersome, Deltacom requested and AT&T agreed simply to extend the parties’ existing Florida interconnection agreement for three additional years, pursuant to Merger Commitment, Reducing Transaction Costs Associated with Interconnection Agreements, No. 4; to wit:

The AT&T/BellSouth ILECs shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years, subject to amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's "default" provisions.

7. The parties have negotiated and executed an amendment to extend their current interconnection agreement.

8. On August 19, 2008, AT&T filed such amendment for Commission approval in Docket No. 080563-TP.

9. Deltacom would withdraw its petition for arbitration, however, only upon the effectiveness of the amendment extending the parties’ existing interconnection agreement.

WHEREFORE, Deltacom provides this Notice conditioned upon the approval and effectiveness of the amendment extending the parties’ current interconnection agreement in Docket No. 080563-TP.

Respectfully submitted this 22nd day of August, 2008.

/s/ Marsha E. Rule

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ATTORNEYS FOR DELTACOM, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by email and U.S. Mail as shown below on this 22nd day of August, 2008 to the following:

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/s/ Marsha E. Rule

MARSHA E. RULE