



State of Utah
Department of Commerce
Division of Public Utilities

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MEMORANDUM

To: Public Service Commission

From: Division of Public Utilities
Philip Powlick, Director
Bill Duncan, Telecommunications / Water Manager
Ron Slusher, Utility Technical Consultant

Date: October 11, 2010

Re: In the Matter of the Notification of the Indirect Transfer of Control of DeltaCom, Inc to EarthLink, Inc. per Docket No.10-2287-01.

RECOMMENDATION (Approve):

The Division has reviewed the joint application between ITC[^]DeltaCom, Inc. and EarthLink, Inc. and believes that the indirect transfer of control of DeltaCom, Inc to EarthLink, Inc is in the public interest. As a result of the acquisition, the merged company will be able to bring new services and products to the marketplace more quickly than either could do separately.

EXPLANATION:

On October 04, 2010 ITC[^]DeltaCom, Inc. ("ITCD"), and EarthLink, Inc. ("EarthLink") filed a joint application with the Commission regarding Indirect Transfer of Control of DeltaCom, Inc ("DeltaCom") to EarthLink.

ITCD is a publicly traded Delaware holding company with its principle office located at 7037 Old Madison Pike, Huntsville, Alabama 35806 and is the parent of the subsidiary DeltaCom. Through its subsidiary, ITCD provides voice and data telecommunications services on a retail basis to primarily business customers in the southern United States and regional communications transmission services over its network on a wholesale basis to other communications companies.

DeltaCom is incorporated under the laws of the state of Alabama and is qualified to transact business in Utah as a foreign corporation. DeltaCom provides interexchange telecommunications services in Utah on a deregulated basis pursuant to letter registration filed with the Commission on February 14, 1994. DeltaCom is authorized by the various state public service commissions to provide facilities based and/or resold interexchange telecommunications

services in the other 49 states and the District of Columbia, pursuant to certification, registration or tariff requirements, or on a deregulated basis and is authorized to provide competitive local exchange services in more than 10 states.

EarthLink is a publicly traded Delaware corporation. It is an Internet service provider, providing nationwide Internet access and related services to individual and small business customers. EarthLink also provides, through its wholly owned subsidiary New Edge Network, Inc. ("New Edge"), competitive local exchange and interexchange services in 46 states. In Utah, New Edge is authorized to provide local exchange telecommunications services pursuant to certification issued in Docket No. 99-2287-01 on December 22, 1999, and interexchange telecommunications services on a deregulated basis.

EarthLink and ITCD recently entered into an Agreement and Plan of Merger, pursuant to which ITCD will become an indirect, wholly owned subsidiary of EarthLink. As a result of the merger, DeltaCom will become an indirect, wholly owned subsidiary of EarthLink. The proposed Transfer of Control will result from the merger of a newly formed subsidiary with and into ITCD, with ITCD surviving as a wholly owned subsidiary of EarthLink.

The applicants state that the proposed acquisition of DeltaCom by EarthLink will serve the public interest by creating one of the largest nationwide competitive communications service providers serving Internet/business customers. The combined company will offer customers an alternative to legacy carriers through the combined footprint of the two companies, a comprehensive suite of Internet/business services, and an extensive switching and fiber network. The applicants further state that although EarthLink's acquisition of ITCD will result in a change in the ultimate ownership and control of DeltaCom, no transfer of authorization, assets or customers will occur as a result of the Transfer of Control. Immediately following consummation of the merger, DeltaCom will continue to provide service to Utah customers pursuant to its existing authorization with no change in the rates or terms and conditions of service as currently provided. The Transfer of Control will be transparent to DeltaCom's Utah customer's terms of the services they currently receive.

The Division has reviewed the joint application between ITCD and EarthLink and believes that the transfer of control is in the public interest. As a result of the acquisition, DeltaCom should be in a better position to provide expanded and advanced telecommunications services.

cc: Tony S. Lee, Counsel, ITC^DeltaCom, Inc.
Mark J. O'Conner, Counsel, EarthLink, Inc.
Patricia Schmid, Attorney, State of Utah