

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF DELTACOM, INC. AND)
ITC HOLDING COMPANY, INC. FOR AN ORDER) CASE NO. 95-534
APPROVING A TRANSFER AND ACQUISITION OF)
OWNERSHIP AND CONTROL)

O R D E R

On November 30, 1995, DeltaCom, Inc. ("DeltaCom") and ITC Holding Company, Inc. ("ITC") (hereinafter collectively referred to as "Joint Applicants") filed an application ("Joint Application") for Commission approval of the transfer of ownership and control of Deltacom, which, doing business as "DeltaCom Long Distance Services," was authorized to provide long-distance services in Kentucky in Case No. 94-201.¹

Pursuant to KRS 278.020(4), no person shall acquire or transfer ownership or control, or the right to control, any utility under the jurisdiction of the Commission without prior approval of the Commission. KRS 278.020(5) prohibits any person or entity from acquiring control of any utility under the jurisdiction of the Commission without prior approval.

ITC, a Delaware corporation, holds interests in a number of telecommunications service providers doing business in several states. Eastern Telecom, Inc., a wholly-owned subsidiary of ITC that does business as "InterQuest," is authorized by the Commission

¹ Case No. 94-201, Application of DeltaCom, Inc. for Authority to Operate as a Reseller of Telecommunications Services within the Commonwealth of Kentucky, Order dated October 4, 1994.

to provide long-distance telecommunications services within Kentucky in Case No. 94-231.²

The proposed transaction consists of a transfer of all issued and outstanding common stock of DeltaCom to ITC. In return, DeltaCom's shareholders will receive shares or cash. After the transaction is complete, DeltaCom will continue its separate corporate existence and will continue to provide telecommunications services under the terms, rates, and conditions of its tariff currently on file with the Commission. DeltaCom and Eastern Telecom will continue to be operated separately from each other.

Joint Applicants assert that ITC possesses the financial, technical, and managerial abilities to enable DeltaCom to continue to provide reasonable service following the proposed transaction. In support of these assertions, Joint Applicants refer to information and financial statements concerning ITC filed in Case No. 94-231. In addition, Joint Applicants filed on December 19, 1995, as an addendum to their Joint Application, their Stock Purchase Agreement, financial statements of ITC current as of September 30, 1995, and additional statements regarding operating and management personnel. They state that the operating personnel of DeltaCom will not change as a result of the proposed transaction.

² See Case No. 94-231, Application of Eastern Telecom, Inc. d/b/a Interquest for a Certificate of Public Convenience and Necessity to Resell Intrastate Long Distance Telecommunications Services Within the Commonwealth of Kentucky, Order dated August 31, 1994.

As Joint Applicants correctly point out, Commission approval pursuant to KRS 278.020(5) need not be obtained when the utility to be transferred derives a greater percentage of its gross revenue from business in another state than from its business in Kentucky, if the Commission determines the other jurisdiction has statutes or rules that are being applied and that afford Kentucky ratepayers protection substantially equal to that provided by subsection (5). KRS 278.020(6). Joint Applicants submit that DeltaCom does much more business in Mississippi than in Kentucky, that Mississippi's laws regarding transfers provide substantially the same protection to ratepayers as that provided by Kentucky, and that a petition for approval of this proposed transaction is currently being considered by the Mississippi Public Service Commission. A copy of the application before the Mississippi Commission in Docket No. 95UAO481 is attached as Exhibit B to the Joint Application.

KRS 278.020(4), however, makes no exception for situations wherein a sister state is overseeing a petition which is substantially the same as that submitted in Kentucky. Accordingly, KRS 278.020(4) applies to the proposed transaction, and Commission approval is necessary. Pursuant to that section, and based on the information filed in this case and in previous cases cited herein, the Commission finds that ITC has the financial, technical, and managerial abilities to enable DeltaCom to continue to provide reasonable service in Kentucky after the proposed transfer takes place. In addition, the Commission finds that Joint Applicants have established that approval of the proposed transaction is

appropriate pursuant to KRS 278.020(5) as well, since it appears the proposed transaction is consistent with the public interest and is to be made in accordance with law and for a proper purpose. Consequently, the transfer should be approved, and it is unnecessary for the Commission to reach the question of whether the cited exemption to KRS 278.020(5) applies.

IT IS THEREFORE ORDERED that:

1. The proposed transaction as described by the Joint Applicants is hereby approved.

2. Joint Applicants shall notify the Commission within 10 days of the date of consummation of the proposed transaction or, in the alternative, shall notify the Commission if the proposed transaction does not take place.

3. Within 10 days of the date of the consummation of the proposed transaction, Joint Applicants shall file with the Commission a chart displaying the corporate structure of the ITC companies as it will exist subsequent to the proposed transaction.

Done at Frankfort, Kentucky, this 2nd day of January, 1996.

PUBLIC SERVICE COMMISSION

Linda K Breathitt
Chairman

ATTEST:

Don Mills
Executive Director

Vice Chairman

Robert M. Davis
Commissioner