

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 3, 2010

IN RE:

**JOINT APPLICATION FOR APPROVAL TO
TRANSFER INDIRECT CONTROL OF DELTACOM,
INC. AND BUSINESS TELECOM, INC.**

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**DOCKET NO.
10-00193**

ORDER APPROVING *JOINT APPLICATION*

This matter came before Director Eddie Roberson, Director Kenneth C. Hill and Director Sara Kyle of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on November 22, 2010 for consideration of the *Joint Application* filed on October 5, 2010 by ITC^DeltaCom, Inc. (“ITCD”) and EarthLink, Inc. (“EarthLink” and, together with ITCD, “Applicants”). The *Joint Application* seeks approval to transfer control of DeltaCom, Inc. (“DeltaCom”) and Business Telecom, Inc. (“BTI”) (collectively, the “DeltaCom Subsidiaries”) from ITCD to EarthLink.

ITCD is the ultimate parent of the Applicants. Through its certificated subsidiaries, DeltaCom and BTI, 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 a wholly-owned subsidiary of Interstate FiberNet, Inc. which, in turn, is wholly-owned by ITCD. In Tennessee, DeltaCom is authorized to provide local exchange telecommunications services pursuant to Authority Order in Docket No. 96-01431 issued on January 2, 1997 and resold telecommunications services pursuant to Authority Order in Docket

No. 95-02826 issued on September 8, 1995. DeltaCom is also authorized to provide facilities-based and/or resold interexchange telecommunications services in forty-nine other states and the District of Columbia.

BTI is a wholly-owned subsidiary of BTI Telecom Corp., which is a wholly-owned subsidiary of ITCD. BTI provides integrated telecommunications services primarily in the southeastern United States. In Tennessee, it is authorized to provide resold and facilities-based local exchange telecommunications services pursuant to Authority Orders in Docket No. 98-00126 issued on March 12, 1998 and Docket No. 98-00334 issued on October 7, 1998. In addition, BTI is authorized to provide resold operator service and facilities-based interexchange telecommunications services pursuant to Authority Orders in Docket No. 95-02947 issued on September 12, 1995 and Docket No. 98-00334 issued on October 7, 1998. In addition, BTI is authorized to provide facilities-based and/or resold interexchange telecommunications services in forty-nine other states and the District of Columbia.

EarthLink is primarily an Internet Service Provider that provides nationwide Internet access and related services to individual and small business customers. Services include narrowband and broadband Internet access, web hosting, advertising and related services, and Voice Over Internet Protocol services. Through its wholly-owned subsidiary, New Edge Network, Inc. ("New Edge"), EarthLink provides competitive local exchange and interexchange services in forty-six states. In Tennessee, New Edge is authorized to provide resold and facilities-based local exchange telecommunications services, as well as resold and facilities-based interexchange telecommunications services pursuant to Authority Order in Docket No. 99-00714 issued on May 22, 2000.

THE JOINT APPLICATION

EarthLink and ITCD entered into an Agreement and Plan of Merger pursuant to which ITCD will become a direct, wholly-owned subsidiary of EarthLink. As a result of the merger, the DeltaCom subsidiaries will become indirect, wholly-owned subsidiaries of EarthLink. The proposed transfer of control will result from the merger of a newly formed subsidiary of Earthlink with and into ITCD, with ITCD surviving as a wholly-owned subsidiary of EarthLink. Although EarthLink's acquisition of ITCD will result in a change in the ultimate ownership and control of the DeltaCom Subsidiaries, no transfer of certificate, assets or customers will occur as a result of the transfer. Immediately following the consummation of the merger, the DeltaCom subsidiaries will continue to offer the same services, rates, terms and conditions pursuant to their existing authorization. The proposed transfer will be transparent to Tennessee consumers.

FINDINGS AND CONCLUSIONS

Tenn. Code Ann. § 65-4-113(a) (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services and provides:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.


Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, which in pertinent part, states as follows:

Upon application for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.


Based on the entire record, the panel found the transaction would be transparent to Tennessee customers. Thereafter, the panel voted unanimously to approve the transaction described in the *Joint Application* pursuant to Tenn. Code Ann. § 65-4-113.¹

IT IS THEREFORE ORDERED THAT:

The *Joint Application* is approved.


Eddie Roberson, Director


Kenneth C. Hill, Director


Sara Kyle, Director

¹ The Federal Communications Commission approved the transaction effective November 18, 2010. WC Docket No. 10-209, DA 10-2199 (November 18, 2010).