

State of Florida



Public Service Commission

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REPORTING AND  
COMMUNICATIONS

DATE: MARCH 16, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF TELECOMMUNICATIONS (PRUITT)  
DIVISION OF LEGAL SERVICES (FORDHAM) *PL*  
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (LESTER) *PL*

*ALM*  
*PL*  
*PL*

RE: DOCKET NO. 000080-TI - REQUEST FOR WAIVER OF RULES AND  
REQUIREMENTS TO ALLOW DEPOSIT REQUIREMENT IN LONG DISTANCE  
TARIFF BY ITC^DELTACOM COMMUNICATIONS, INC. D/B/A  
ITC^DELTACOM.

AGENDA: 03/28/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: APRIL 24, 2000 - STATUTORY DEADLINE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\000080.RCM

CASE BACKGROUND

On January 24, 2000, this Commission received a petition seeking a waiver of Rule 25-24.490(2), Florida Administrative Code, from ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom (ITC). The rule requires that a company maintain on file with the Commission a bond covering its current balance of deposits and advanced payments from its customers.

The notice of Petition of Waiver of Bond Requirement was submitted to the Secretary of State for publication in the Florida Administrative Weekly on February 9, 2000. The comment period ended on March 3, 2000, and no comments were submitted. The statutory deadline for the Commission's decision regarding this petition is April 24, 2000.

DOCUMENT NUMBER-DATE

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REPORTING AND COMMUNICATIONS

The Commission has addressed several bond waiver petitions in the past, and has approved or denied them based on the financial data provided by the petitioning interexchange telecommunications carrier. Staff recommends that ITC be granted the waiver from Rule 25-24.490(2), Florida Administrative Code.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom (ITC) be granted a waiver of Rule 25-24.490(2), Florida Administrative Code?

**RECOMMENDATION:** Yes. (Pruitt)

**STAFF ANALYSIS:** Rule 25-24.490(2), F.A.C., states as follows:

An interexchange company may require a deposit as a condition of service and may collect advanced payments for more than one month of service if it maintains on file with the Commission a bond covering its current balance of deposits and advanced payments (for more than one month's service). A company may apply to the Commission for a waiver of the bond requirement by demonstrating that it possesses the financial resources and income to provide assurance of continued operation under its certificate over the long term.

Staff believes ITC's liquidity and ability to raise funds in the public capital markets are adequate to demonstrate that it has the financial means to continue operations over the long term.

In addition to meeting the requirements of Rule 25-24.490(2), Florida Administrative Code, for waiver of the bond requirement, ITC's petition for waiver must also meet the requirements of Section 120.542, Florida Statutes. Under this statutory requirement, a petitioner requesting a waiver of a Commission rule must first demonstrate that the purpose of the underlying statute will otherwise be served if waiver of the rule is granted. Secondly, the petitioner must demonstrate that continued enforcement of the rule would result in substantial hardship for the petitioner or violate principles of fairness.

On February 9, 2000, ITC filed supplemental information to comply with the requirements of Chapter 120, Florida Statutes. Staff believes that ITC's petition meets the requirements of Section 120.542, Florida Statutes. First, the petitioner has demonstrated that the pro-consumer, public interest purposes of Sections 364.03 and 364.337, Florida Statutes, underlying Rule 25-24.490(2), Florida Administrative Code, will be served if the Commission grants the waiver request. ITC has demonstrated that a bond is not necessary to protect consumers' interests in this situation because of its substantial financial resources and overall stability.

Secondly, the company has demonstrated that the Commission's enforcement of the bond requirement would result in substantial hardship for the company. Enforcement of the bond requirement would force ITC to tie up monies that could be used to continue building its infrastructure in Florida. The public is better served if ITC could utilize those dollars for continued deployment of its Florida network. Accordingly, staff recommends that ITC's bond waiver petition be granted.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, this docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action order. (Fordham)

**STAFF ANALYSIS:** Whether staff's recommendation on Issue 1 is approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.