

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of the Application of)
)
)
ITC^DeltaCom, Inc.,)
 Transferor,)
and) File No. ITC-T/C-2010-_____
)
EarthLink, Inc.,) WC Docket No. 10-_____
 Transferee,)
)
)
Joint Application for Approval to)
Transfer Control of Domestic and)
International Section 214 Authorizations.)
)

JOINT APPLICATION FOR TRANSFER OF CONTROL

I. INTRODUCTION

A. Summary of Transaction

ITC^DeltaCom, Inc. (“ITCD”) and EarthLink, Inc. (“EarthLink”) (together, the “Applicants”), through the undersigned counsel and pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (the “Act”), and Sections 63.04 and 63.24 of the Commission’s Rules, 47 C.F.R. §§ 63.04, 63.24, respectfully request approval to transfer control of domestic and international Section 214 authorizations held by ITCD’s operating subsidiaries, DeltaCom, Inc. (“Deltacom”), Interstate FiberNet, Inc. (“IFN”), and Business Telecom, Inc. (“BTI”).

The transfer of control will result from the merger of EarthLink’s subsidiary Egypt Merger Corp. (“MergerCo”) with ITCD, with ITCD continuing as the surviving corporation. Corporate organization charts depicting the respective corporate structure of ITCD and EarthLink prior to and following the acquisition are attached hereto as Exhibit A.

B. Application Eligible for Streamlined Processing

This Application is eligible for streamlined processing pursuant to Section 63.03 and 63.12 of the Commission’s Rules, 47 C.F.R. §§ 63.03, 63.12. With respect to domestic authority, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following the consummation of the transaction: (1) Applicants and their affiliates (as defined in Section 3(1) of the Act, hereafter “Affiliates”), will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) Applicants and their Affiliates will provide competitive telephone exchange services or exchange access services only in geographic areas served by a dominant local exchange carrier (none of which is a party to the transaction); and (3) neither of the Applicants nor any of their respective Affiliates is dominant with respect to any service.

(Response to Question 20) With respect to international authority, this application is eligible for streamlined processing pursuant to Section 63.12(a) and (b) because: (1) neither of the Applicants nor any of their respective Affiliates is affiliated with a foreign carrier in any destination market; and (2) neither of the Applicants nor any of their respective Affiliates is affiliated with any dominant U.S. carrier whose services Applicants seek authority to resell.

II. DESCRIPTION OF THE APPLICANTS

A. ITC^DeltaCom, Inc. (Transferor)

ITCD is a publicly-traded Delaware holding company headquartered at 7037 Old Madison Pike, Huntsville, Alabama 35806 and is the ultimate parent of DeltaCom, BTI, and IFN. Through its certificated subsidiaries – DeltaCom, BTI, and IFN – 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.

B. EarthLink, Inc. (Transferee)

EarthLink is a publicly traded Delaware corporation. It is primarily an Internet service provider, providing nationwide Internet access and related value-added services to individual and small business customers. Its service offerings are narrowband and broadband (high speed) Internet access; web hosting; advertising and related services; and VoIP services. EarthLink provides its portfolio of services to approximately 1.9 million customers through a nationwide network of dial-up points of presence and a nationwide broadband footprint. EarthLink also provides, through its wholly-owned subsidiary New Edge Network, Inc. (“New Edge”), competitive local exchange and interexchange services in 46 states. Additional information regarding EarthLink is available at www.earthlink.net.

III. DESCRIPTION OF THE TRANSACTION (Response to Question 13)

EarthLink and ITCD have recently entered into an Agreement and Plan of Merger (“Agreement”), pursuant to which ITCD will become a direct, wholly-owned subsidiary of EarthLink. Under the terms of the Agreement, which was unanimously approved by the boards of directors of both companies, EarthLink will acquire the stock of ITCD in an all cash transaction. As a result of the merger, DeltaCom, BTI, and IFN will become indirect, wholly owned subsidiaries of EarthLink. Corporate organization charts depicting the respective corporate structures of the parties prior to and immediately following the merger, as well as a diagram illustrating the merger, are attached hereto as Exhibit A.

The proposed merger does not involve the assignment of any Section 214 authorizations, nor does it involve the transfer of any customers between the operating subsidiaries of ITDC and

EarthLink. Immediately following consummation of the merger, the Section 214 authorizations (which are identified in Applicants' response to Section 63.18(d) of the Commission's Rules (see Section V, below)) will remain held by the same entities that held those authorizations prior to consummation of the transaction. The operating subsidiaries of ITCD will continue to provide service to their existing customers under the ITCD name, with no change in the rates or terms and conditions of service as a result of the merger. Accordingly, the proposed transfer of control will be transparent to ITCD customers in terms of the services they receive. Consummation of the transaction is contingent upon receipt of certain regulatory approvals,, and satisfaction of customary closing conditions.

IV. PUBLIC INTEREST CONSIDERATIONS

The proposed transaction 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 a compelling 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 complementary strengths, product sets, and geographic footprints of the two companies should position EarthLink to realize cost savings and achieve synergies that are expected to strengthen its ability to enhance service offerings and provide more advanced communications services to a broader customer base. Among the additional synergies and benefits that are expected include the following: the transaction will provide both companies with significant new customer relationships and create opportunities for both companies to offer additional products and services to each other's customers; both companies will be afforded greater capabilities to market and offer solutions to businesses and to differentiate themselves

significantly in the marketplace; and the merged company will be able to bring new services and products to the marketplace more quickly than either could do separately. Moreover, the strategic combination will bring together two companies that share a commitment to building and maintaining solid relationships with their customers. Both EarthLink and ITCD believe that success is built by providing excellent service to every customer.

Although EarthLink's acquisition of ITCD will result in a change in the ultimate ownership and control of DeltaCom, BTI, and IFN, no transfer of Section 214 authorization, assets, or customers will occur as a result of the transfer of control. Immediately following consummation of the merger, DeltaCom, BTI, and IFN will continue to provide service to their customers pursuant to their existing authorizations, with no change in the rates or terms and conditions of service as currently provided. The transfer of control will be transparent to DeltaCom, BTI, and IFN's customers in terms of the services they currently receive.

In sum, the combination of EarthLink and ITCD is expected to create substantial opportunities for customers of both companies and provide shareholders with significant value, which will ultimately enhance the quality and variety of telecommunications products and services offered. Grant of this Application will therefore serve the public interest.

V. INFORMATION REQUIRED BY SECTION 63.24(e)

Pursuant to Section 63.24(e)(2) of the Commission's Rules, 47 C.F.R. § 63.24(e)(2), Applicants submit the following information required under paragraphs(a) through(d) and (h) through (p) of Section 63.18 in support of this Application:

63.18(a) Name, address and telephone number of each Applicant

Transferor:

ITC^DeltaCom, Inc.
7037 Old Madison Pike
Huntsville, Alabama 35806

(256) 382-5900

Transferee:

EarthLink, Inc.
1375 Peachtree Street
Atlanta, Georgia 30309
(404) 815-0770

63.18(b) Jurisdiction of Organization

Transferor: ITCD is a corporation organized under the laws of the State of Delaware.

Transferee: EarthLink is a corporation organized under the laws of the State of Delaware.

**63.18(c) *(Response to Question 10)*
Correspondence concerning this Application should be sent to:**

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63.18(d) *(Response to Question 10)*

Transferor: ITC D does not hold any domestic or international Section 214 authority. Certain of its wholly owned operating subsidiaries identified below hold the following international Section 214 authorizations:

	Section 214 Authorization File No. /Authorized Entity	Entity FRN
1.	ITC-214-19930727-00132; (Old File No: ITC-93-27)	
	Interstate FiberNet, Inc.	0004329363
2.	ITC-214-19940705-00204 (Original File No. ITC-94-385)	
	DeltaCom, Inc.	0005183025
3.	ITC-214-19950630-00042 (Original File No. ITC-95-404) ITC-214-19950515-00043 (Original File No. ITC-95-402) ITC-214-19980422-00005 (Original File No. ITC-88-120)	
	Business Telecom, Inc.	0003744935

The ITC D subsidiaries identified above also hold blanket domestic Section 214 authority.

Transferee: EarthLink does not hold any domestic or international Section 214 authority. New Edge Network, Inc., an indirect wholly owned subsidiary of EarthLink, holds an international Section 214 authorization (File No. ITC-214-200020514-00229), in addition to blanket domestic Section 214 authority.

63.18(h) **Current Ownership of EarthLink:**

(Response to Questions 11 and 12)

No person or entity, directly or indirectly, holds a ten percent (10%) or greater equity interest in EarthLink. EarthLink has no interlocking directorates with a foreign carrier.

Post-Merger Ownership of EarthLink:

(Response to Questions 11 and 12)

As a publicly traded company, the percentage of EarthLink's shares held by an entity at any given time may fluctuate. To the best of EarthLink's knowledge and based upon information available at this time, upon consummation of the merger no person or entity will directly or indirectly hold a ten percent (10%) or greater equity interest in EarthLink. Upon consummation of the merger, EarthLink will have no interlocking directorates with a foreign carrier.

- 63.18(i)** As evidenced by EarthLink's certification provided in Attachment A, hereto, EarthLink is not, and is not affiliated with, a foreign carrier.
- 63.18(j)** EarthLink certifies that it does not seek to provide international services to any destination country for which any of the statements set forth in Section 63.18(j)(1) through (4) is true.
- 63.18(k)** Not applicable.
- 63.18(l)** Not applicable.
- 63.18(m)** Not applicable.
- 63.18(n)** EarthLink certifies that it has not agreed to accept special concessions, as defined in Section 63.14(b) of the Commission's Rules, directly or indirectly, from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.
- 63.18(o)** ITCD certifies that neither ITCD nor any of its operating subsidiaries is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. *See* 21 U.S.C. § 853a.

EarthLink certifies that neither EarthLink nor any of its operating subsidiaries is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. *See* 21 U.S.C. § 853a.

- 63.18(p)** ***(Response to Question 20)***
With respect to international authority, this Application is eligible for streamlined processing pursuant to Section 63.12 of the Commission's Rules, 47, C.F.R. § 63.12, because (1) EarthLink is not affiliated with a foreign carrier on any route for which authority is sought; (2) EarthLink is not affiliated with any dominant U.S. carrier whose international switched or private line services it seeks to resell; and (3) EarthLink is not

requesting authority to provide switched service over private lines to countries not previously authorized for service by the Commission.

VI. INFORMATION REQUIRED BY SECTION 63.04

In lieu of an attachment to this Application, Applicants respectfully submit the following information in support of their request for domestic Section 214 authority in order to address the requirements set forth in Commission Rule 63.04(a)(6)-(12), 47 C.F.R. § 63.04(a)(6)-(12):

(a)(6) A description of the transaction.

A description of the transaction is set forth in Section III, above.

(a)(7) A description of the geographic areas and domestic services provided in each area.

ITCD (including its Affiliates) provides resold and/or facilities-based telecommunications services in all 50 states and the District of Columbia pursuant to certification, registration or tariff requirements, or on a deregulated basis. Interstate FiberNet, Inc. (“IFN”) is a provider of wholesale fiber optic transmission or commonly known as a carrier’s carrier. DeltaCom, Inc. (“DeltaCom”) provides both competitive local exchange and interexchange services primarily to business customers. DeltaCom provides competitive local exchange or exchange access service in: Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Business Telecom, Inc. (“BTI”) is a provider of integrated telecommunications services primarily in the southeastern United States; it provides competitive local exchange or exchange access service in: Alabama, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, New Jersey, New York, Pennsylvania, South Carolina, Tennessee, Texas, Virginia and West Virginia.

(a)(8) Eligibility for Streamlined Processing

Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Section 63.03 of the Commission’s Rules, 47 C.F.R. § 63.03. In particular, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following consummation of the transaction: (1) Applicants and their affiliates (as defined in Section 3(1) of the Act, hereafter “Affiliates”)) combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) Applicants and their respective Affiliates will provide competitive telephone exchange services or

exchange access services only in geographic areas served by dominant local exchange carriers (none of which is a party to the transaction); and (3) neither of the Applicants nor any of their respective Affiliates is dominant with respect to any service.

(a)(9) Other FCC Applications Related to the Same Transaction

Through this Application, Applicants seek authority with respect to IFN, DeltaCom, and BTI's international and domestic Section 214 authorizations (this Application is being separately and concurrently filed with respect to both types of authorities in compliance with Commission Rule 63.04(b), 47 C.F.R. § 63.04(b)). No other applications are being filed with the Commission with respect to the proposed transaction at this time.

(a)(10) Request for Special Consideration

Prompt completion of the proposed transactions is critical to ensuring that Applicants may obtain the benefits described in the foregoing Application. Accordingly, Applicants respectfully request that the Commission approve this Application expeditiously in order to allow Applicants to consummate the proposed transaction as soon as possible.

(a)(11) Waiver Requests

Not applicable.

(a)(12) Statement of Public Interest

A statement showing how grant of the Application will serve the public interest, convenience, and necessity is provided in Section IV of this Application.

VII. CONCLUSION

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application for approval to transfer control of the domestic and international Section 214 authorizations held by ITCD and its operating subsidiaries, as identified herein. Applicants respectfully request that the Commission consider and approve this Application expeditiously to permit Applicants to consummate the proposed transaction as soon as possible.

Respectfully submitted,

/s/ Mark J. O'Connor

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