

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

RCN TELECOM SERVICES OF PHILADELPHIA, INC.,
Complainant,
v.
PECO ENERGY COMPANY, and
INFRASTRUCTURE INCORPORATED,
f/k/a EXELON INFRASTRUCTURE
SERVICES, INC.,
Respondents.

File No. PA 01-003

ORDER

Adopted: October 20, 2003

Released: October 22, 2003

By the Chief, Market Disputes Resolution Division, Enforcement Bureau:

1. On March 16, 2001, RCN Telecom Services of Philadelphia, Inc. ("RCN") filed a complaint in the captioned matter against PECO Energy Company ("PECO") alleging that PECO's pole attachment rate was unjust and unreasonable ("Complaint"). On May 4, 2001, RCN amended the Complaint to add InfraSource Incorporated as a defendant and to include allegations that the defendants' make-ready charges were unjust and unreasonable ("Amended Complaint"). On December 18, 2002, the Enforcement Bureau bifurcated the rate issues from the make ready issues and resolved the rate issues.1 The make-ready issues RCN raised in its Amended Complaint remained pending.

2. On October 16, 2003, RCN filed a motion seeking leave to withdraw its Amended Complaint ("Motion"). RCN's Motion states that the parties "have entered into and mutually executed a Settlement Agreement which has fully resolved such pending claims effective October 8, 2003. This Motion is not intended to affect those matters addressed in the Phase I

1 RCN Telecom Services of Philadelphia, Inc. v. PECO Energy Company and Exelon Infrastructure Services, Inc, Phase I Order, 17 FCC Rcd 25238 (Enf. Bur. 2002), petitions for reconsideration pending.

Order herein, which is the subject of pending Petitions for Reconsideration.”<sup>2</sup> PECO and InfraSource do not oppose the Motion.<sup>3</sup>

3. We are satisfied that allowing withdrawal of the Amended Complaint will serve the public interest by promoting the private resolution of disputes and by eliminating the need for further litigation and the expenditure of further time and resources of the parties and this Commission.

4. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 224, and the authority delegated in sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111 and 0.311, that the Motion to Withdraw Amended Complaint IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Alexander P. Starr  
Chief, Market Disputes Resolution Division  
Enforcement Bureau

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<sup>2</sup> Motion of RCN Telecom Services of Philadelphia, Inc. to Withdraw Complaint, File No. PA-01-003 (filed Oct. 16, 2003) at 1-2.

<sup>3</sup> See Letter from Christine M. Gill, Attorney for PECO and InfraSource, to Lisa B. Griffin, Deputy Chief, and Jonathan Reel, Staff Attorney, Market Disputes Resolution Division, Enforcement Bureau, FCC, File No. PA-01-003 (October 17, 2003).