

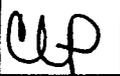


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BEFORE THE ARIZONA CORPORATION COMMISSION  
DOCKETED

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

MAR 25 2002

DOCKETED BY 

IN THE MATTER OF THE APPLICATION OF TOUCHAMERICA SERVICES, INC. FOR A WAIVER OF PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTERESTS RULES (A.A.C. R14-2-801 ET SEQ.)

DOCKET NO. T-03911A-01-0448

IN THE MATTER OF THE JOINT APPLICATION OF THE MONTANA POWER COMPANY AND ITS WHOLLY OWNED SUBSIDIARY, TOUCHAMERICA, INC., FOR A WAIVER OF PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTERESTS RULES (A.A.C. R14-2-801 ET SEQ.)

DOCKET NO. T-04011A-01-0645

DECISION NO. 64655

**ORDER**

Open Meeting  
February 26 and 27, 2002  
Phoenix, Arizona

**BY THE COMMISSION:**

On May 31, 2001, Touch America Services, Inc. filed with the Arizona Corporation Commission ("Commission") the above-captioned application for a permanent general waiver of the Commission's Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R14-2-801 et seq. ("Rules"), or in the alternative, for a partial waiver of the Rules that is consistent with its operation as a competitive telecommunications services provider in Arizona.

On August 9, 2001, the Montana Power Company and Touch America, Inc. filed the above-captioned joint application for a permanent general waiver of the Rules.

On November 30, 2001, the Commission's Utilities Division Staff ("Staff") filed a Staff Report in the above-captioned dockets recommending that the two matters be consolidated and that the Commission approve a limited waiver of the Rules without a hearing.

Because the above-captioned matters are substantially related and the rights of the parties will not be prejudiced by the their consolidation, they will be consolidated.

\* \* \* \* \*

1 Having considered the entire record herein and being fully advised in the premises, the  
2 Commission finds, concludes, and orders that:

3 **FINDINGS OF FACT**

4 1. Touch America Services, Inc. ("TASP") is an Arizona public service corporation  
5 authorized to provide facilities-based interexchange telecommunications services and alternative  
6 operator services in Arizona. The Commission granted Touch America Services, Inc. a Certificate of  
7 Convenience and Necessity ("CC&N") to provide those services in Decision No. 62672 (June 30,  
8 2000).

9 2. Touch America, Inc. ("TAI") is TASI's parent company. TAI is a wholly-owned  
10 subsidiary of Entech, Inc., which is a wholly-owned subsidiary of Montana Power Company.

11 3. Montana Power Company is a Montana corporation whose stock is publicly traded on  
12 the New York Stock Exchange. Montana Power Company is currently divesting all of its energy  
13 business, including its electric and gas utility, and will invest the proceeds in TAI.

14 4. On May 31, 2001, TASI filed an application for a permanent general waiver of the  
15 Rules.

16 5. In the alternative, TASI's application requests a partial waiver of the Rules as follows:

17 a. TASI and its parent and affiliates be required to file a notice of intent to  
18 organize or reorganize a public utility holding company under A.A.C. R14-2-803 only  
19 for those organizations or reorganizations that are likely to have a material adverse  
20 impact on TASI;

21 b. No cumulative threshold or "exempt" amount, such as those adopted by  
22 Decision No. 58063, apply to any organization or reorganization planned by TASI, its  
23 parent and affiliates that would have a material adverse impact on the Arizona  
24 jurisdiction;

25 c. With respect to A.A.C. R14-2-804(B)(1), which requires a utility to obtain  
26 Commission approval before obtaining a financial interest, or guaranteeing, or  
27 assuming the liabilities of an unregulated affiliate, TASI and its parent and affiliates  
28 be required to seek prior approval under A.A.C. R14-2-804(B)(1) only for transactions

1 which are likely to have a material adverse effect on Arizona operations;

2 d. Likewise, with respect to A.A.C. R14-2-804(B)(3), which requires a utility to  
3 obtain Commission approval before using utility funds to form a subsidiary or divest  
4 itself of an established subsidiary, TASI and its parent and affiliates be required to  
5 seek prior approval under A.A.C. R14-2-804(B)(3) only for transactions which are  
6 likely to have a material adverse effect on Arizona operations;

7 e. Waiver of all other requirements of A.A.C. R14-2-804, including that TASI  
8 need not report on loans, evidences of indebtedness, and all other transactions that  
9 occur between and among TASI and its parents and affiliates in the ordinary course of  
10 business, and which would likely fall under A.A.C. R14-2-804; and

11 f. Waiver of the annual reporting requirements in A.A.C. R14-2-805, because the  
12 above modifications to A.A.C. R14-2-803 and A.A.C. R14-2-804 should be sufficient  
13 to capture and expose affiliated transactions which are likely to have a material  
14 adverse effect on the Arizona jurisdictional operations.

15 6. In support of its application, TASI asserts that it operates in a highly competitive  
16 environment that, in conjunction with the Commission's existing regulatory measures, effectively  
17 protects customers from cross-subsidization or other activities that could detrimentally affect service  
18 to its customers. TASI claims that it has no incentive or ability to charge unduly high or above-  
19 market prices that could be used to fund or subsidize unregulated affiliates or to commingle utility  
20 and non-utility funds in a manner that is harmful to Arizona consumers.

21 7. TASI further asserts in support of its application that because TASI's Arizona  
22 operations represent such a small percentage of the total revenue and investment of the company and  
23 its subsidiaries, application of the Rules to TASI would be unreasonably costly and burdensome.

24 8. On August 9, 2001, Montana Power Company and TAI filed a joint application for a  
25 permanent general waiver of the Rules. The August 9, 2001 application also generally describes the  
26 restructuring of Montana Power Company from an energy and telecommunications utility into a  
27 telecommunications company.

28 9. In their applications, TASI, TAI and Montana Power Company all request that the

1 Commission's order be issued *nunc pro tunc* if necessary, retroactive to the date on which the Rules  
2 became applicable to TASI.

3 10. On November 16, 2001, TASI and TAI agreed to waive the thirty day timeline set  
4 forth in A.A.C. R14-2-806 as it pertains to these applications.

5 11. On November 30, 2001, Staff filed a Staff Report on the application of TASI and on  
6 the joint application of TAI and Montana Power.

7 12. In the Staff Report, Staff states that in the current competitive environment, the Rules  
8 may be unnecessarily restrictive and expensive to comply with, and that the telecommunications  
9 services market may replace the historical need for the Rules for some companies.

10 13. Staff believes that the competitive nature of the services the Applicants provide, and  
11 the lack of incentives for them to engage in the activities that the Rules are designed to prevent,  
12 reduce the need for Commission oversight over their relationships with affiliates. Staff stated,  
13 however, that the Commission may desire to continue its current policy of granting limited waivers to  
14 telecommunications companies to prevent harm in the event the telecommunications market  
15 contracts.

16 14. In the Staff Report, Staff recommended that the applications be consolidated, and that  
17 the Commission grant the Applicants a partial waiver of the Rules retroactive to the time when TASI  
18 became a Class A public utility in Arizona. Staff recommended that the partial waiver be granted  
19 without a hearing.

20 15. In the Staff Report, Staff recommended that the partial waiver be granted as follows:

21 a. TAI and its affiliates should be required to file a notice of intent to enter into  
22 the transactions listed in A.A.C. R14-2-803 when a transaction is likely to result in  
23 significant increased capital costs of the Arizona operations; significant additional  
24 costs allocated or charged directly to the Arizona jurisdiction; or significant reduction  
25 of net income to the Arizona operations;

26 b. that for A.A.C. R14-2-804, that the Commission should require TAI and its  
27 affiliates to seek approval only for transactions that are likely to have a material  
28 adverse effect on Arizona operations; and

1 c. that the Commission grant to TAI and its affiliates a complete waiver of  
2 A.A.C. R14-2-805 for 30 months.

3 16. The May 31, 2001 and August 9, 2001 applications are substantially related and the  
4 rights of the parties will not be prejudiced by their consolidation.

5 17. As a competitive telecommunications carrier in Arizona, TASI competes directly with  
6 numerous other competitive interexchange carriers.

7 18. Although the competitive nature of the telecommunications market may reduce the  
8 need for Commission oversight over Applicants' affiliate relationships to the extent contemplated by  
9 the Rules, it is not reasonable for the Commission to grant the Applicants a complete waiver of the  
10 Rules at this time.

11 19. In Decision No. 64628, dated March 14, 2002, the Commission adopted new language  
12 proposed by Staff and amended by the Commission, relative to applications for waivers of the Rules  
13 for competitive telecommunications carriers in Arizona.

14 20. The following partial waiver is consistent with that granted by Decision No. 64628.

15 21. Touch America, Inc., Touch America Services, Inc., and Montana Power should  
16 receive a waiver from A.A.C. R14-2-803 for organizations or reorganizations that would not directly  
17 or indirectly result in or cause an increase in their maximum rates on file with the Commission for  
18 any competitive service.

19 22. Touch America, Inc., Touch America Services, Inc., and Montana Power should  
20 receive a waiver from A.A.C. R14-2-804(B), (C), and (D) except for transactions that could directly  
21 or indirectly result in or cause an increase in their maximum rates on file with the Commission for  
22 any competitive service.

23 23. Touch America, Inc., Touch America Services, Inc., and Montana Power should  
24 receive a waiver from A.A.C. R14-2-805 unless diversification plans could directly or indirectly  
25 result in or cause an increase in their maximum rates on file with the Commission for any competitive  
26 service.

27 24. The recommended partial waiver of the Rules should be granted subject to the  
28 condition that Applicants notify the Commission, and file in advance for approval of any proposed

1 organization or reorganization, transaction, or diversification plan that could directly or indirectly  
2 result in or cause an increase in their maximum rates on file with the Commission for any competitive  
3 service.

4 25. The language adopted by Decision No. 64628 is reasonable and should be adopted in  
5 this Decision.

6 **CONCLUSIONS OF LAW**

7 1. Touch America Services, Inc. is a public service corporation within the meaning of  
8 Article 15 of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

9 2. Absent a waiver of A.A.C. R14-2-803, TASI, TAI and Montana Power would be  
10 required to provide notice to the Commission for every internal reorganization they undertake.

11 3. The Commission has jurisdiction over this matter and has authority to issue this Order  
12 and pursuant to A.A.C. R14-2-801 *et seq.*

13 4. The applications should be consolidated.

14 5. Touch America Services, Inc. should be granted a limited waiver of the Rules in  
15 accordance with Staff's recommendations as set forth in Findings of Fact Nos. 14 and 15 above.

16 **ORDER**

17 IT IS THEREFORE ORDERED that the applications of Touch America Services, Inc.,  
18 Montana Power Company, and Touch America, Inc. for waivers of the Commission's Affiliated  
19 Interests Rules are hereby consolidated.

20 IT IS FURTHER ORDERED that the applications of Touch America Services, Inc., Montana  
21 Power Company, and Touch America, Inc. for complete waivers of the Commission's Affiliated  
22 Interests Rules are hereby denied.

23 IT IS FURTHER ORDERED that Touch America, Inc., Touch America Services, Inc. and  
24 Montana Power shall be required to file a notice of intent to enter into the transactions listed in  
25 A.A.C. R14-2-803 only when an organization or reorganization could directly or indirectly result in  
26 or cause an increase in their maximum rates on file with the Commission for any competitive service.

27 IT IS FURTHER ORDERED that Touch America, Inc., Touch America Services, Inc., and  
28 Montana Power shall receive a waiver from A.A.C. R14-2-804(B), (C), and (D) except for

1 transactions that could directly or indirectly result in or cause an increase in their maximum rates on  
2 file with the Commission for any competitive service.

3 IT IS FURTHER ORDERED that Touch America, Inc., Touch America Services, Inc., and  
4 Montana Power should receive a waiver from A.A.C. R14-2-805 unless diversification plans could  
5 directly or indirectly result in or cause an increase in their maximum rates on file with the  
6 Commission for any competitive service.

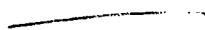
7 IT IS FURTHER ORDERED that Touch America, Touch America Services, Inc., and  
8 Montana Power are granted these waivers subject to the condition that Applicants notify the  
9 Commission and file in advance for approval of any proposed organization or reorganization,  
10 transaction, or diversification plan that could directly or indirectly result in or cause an increase in  
11 their maximum rates on file with the Commission for any competitive service.

12 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

13 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

14 

15 CHAIRMAN

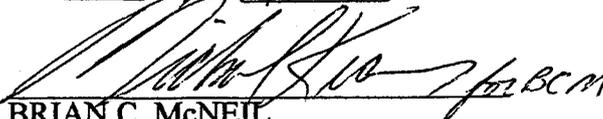
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COMMISSIONER

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COMMISSIONER

18 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
19 Secretary of the Arizona Corporation Commission, have  
20 hereunto set my hand and caused the official seal of the  
21 Commission to be affixed at the Capitol, in the City of Phoenix,  
22 this 25<sup>TH</sup> day of MARCH, 2002.

23 

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

24 DISSENT \_\_\_\_\_  
25 TW:dap

1 SERVICE LIST FOR:

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POWER COMPANY, AND TOUCHAMERICA, INC.

2 DOCKET NO.:

T-03911A-01-0448 ET AL.

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