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BEFORE THE ARIZONA CORPORATION COMMISSION

2004 FEB 19 P 4: 15

COMMISSIONERS

- MARC SPITZER, CHAIRMAN
- WILLIAM A. MUNDELL
- JEFF HATCH-MILLER
- MIKE GLEASON
- KRISTIN K. MAYES

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE JOINT )  
 APPLICATION OF TOUCH AMERICA, )  
 INC. TO SELL AND TRANSFER TO )  
 360NETWORKS (USA) INC. CERTAIN )  
 LIT FIBER ASSETS IN ARIZONA AND )  
 RELATED CUSTOMER CONTRACTS )  
 DEPENDENT ON THOSE FACILITIES )

DOCKET NOS. T-04011A-03-0749  
T-03777A-03-0749

Arizona Corporation Commission

**DOCKETED**

FEB 19 2004

DOCKETED BY	<i>sl</i>
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**MOTION FOR: 1. EXTENSION OF ~~TIME TO FILE~~ PERFORMANCE BOND  
 AND  
 2. PERMISSION TO SUBMIT ALTERNATIVE MEANS OF COMPLIANCE**

360networks (USA) inc. ("360networks"), by its undersigned counsel, hereby moves the Arizona Corporation Commission ("Commission") for an extension of time to comply with the Commission's Order in the above-captioned proceeding requiring 360networks to filing proof that it has procured a performance bond as described in the Order. 360networks further moves the Commission to amend the Order, in the event that 360networks does not succeed in procuring the required bond, to allow 360networks to submit within the extension of time requested herein, a letter of credit or such other financial tool as the Commission deems will satisfy the objectives of the requirement that 360networks procure and maintain a performance bond. In support of this Motion, 360networks states as follows:

1. On January 20, 2004, in Docket Nos. T-04011A-03-0749 and T-03777A-03-0749, the Commission issued Decision No. 66737 ("Decision"), conditionally granting the application of Touch America, Inc. to sell and transfer to 360networks certain of its lit fiber assets in Arizona and related customer contracts dependent upon those facilities. The grant of approval is

1 conditioned upon 360networks filing within thirty (30) days of the date of the Decision, proof of a  
2 performance bond as described in the Decision. The filing of proof of the performance bond is due  
3 to this Commission on February 19, 2004.

4           2.       Following issuance of the Decision, 360networks immediately contacted  
5 several bond and insurance brokers, requesting assistance in procuring a performance bond equal to  
6 \$100,000, as required by the Order. As of this date, however, none of the eleven (11) surety  
7 companies that 360networks contacted has yet agreed to post the bond, even though 360networks  
8 has agreed to fully collateralize the bond (i.e. post \$100,000 as security for the bond). Thus,  
9 despite its best efforts over the past several weeks to procure the required bond, 360networks at  
10 this time cannot comply with the Order by filing proof of the performance bond by the due date.

11           3.       Accordingly, 360networks respectfully requests a 60-day extension of time  
12 from February 19, 2004 until April 19, 2004, to file with the Commission proof of a performance  
13 bond. This revised compliance date would then match the compliance date for the other  
14 compliance filings in this docket.

15           4.       360networks further respectfully requests that, in the event that further  
16 efforts to procure the required bond continue to be met with rejection, the Commission amend the  
17 Order to allow 360networks to submit within the 60-day extension of time period requested herein,  
18 a letter of credit or such other financial tool as the Commission deems will satisfy the objectives of  
19 requiring 360networks to procure and maintain a performance bond.

20           WHEREFORE, 360networks respectfully requests the Commission grant this Motion and  
21 accord all such other relief as it deems may be appropriate or necessary to effectuate the relief  
22 requested herein.

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RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of February, 2004

**360NETWORKS (USA) INC.**

By: 

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filed February 19, 2004, with:

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**COPIES** of the foregoing hand delivered  
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