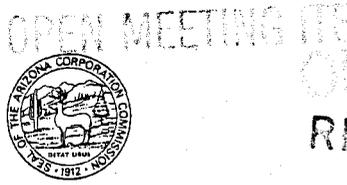


COMMISSIONERS
MARC SPITZER - Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON



RECEIVED Executive Secretary 3/11

ARIZONA CORPORATION COMMISSION FEB 25 P 2:27

AZ CORP COMMISSION
Arizona Corporation Commission
DOCKETED

DATE: FEBRUARY 25, 2003
DOCKET NOS: T-04011A-01-0303 and T-03911A-01-0303
TO ALL PARTIES:

FEB 25 2003
DOCKETED BY CAR

Enclosed please find the recommendation of Administrative Law Judge Dwight Nodes. The recommendation has been filed in the form of an Opinion and Order on:

TOUCH AMERICA SERVICES, INC. and
TOUCH AMERICA, INC.
(SALE OF ASSETS/TRANSFER CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MARCH 6, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MARCH 11, 2003 and MARCH 12, 2003

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 JIM IRVIN
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 MIKE GLEASON

8 IN THE MATTER OF THE JOINT APPLICATION
9 OF TOUCH AMERICA SERVICES, INC. AND
10 TOUCH AMERICA, INC. FOR APPROVAL OF
ASSIGNMENT OF ASSETS AND TRANSFER OF
A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE INTRASTATE
TELECOMMUNICATIONS SERVICES TO
TOUCH AMERICA, INC. AND WAIVER OF
CUSTOMER NOTIFICATION.

DOCKET NO. T-04011A-01-0303
DOCKET NO. T-03911A-01-0303

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: September 30, 2002
12 PLACE OF HEARING Phoenix, Arizona
13 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes
14 APPEARANCES: Ms. Mary Gayle Sullivan, on behalf of Touch America,
15 Inc.; and
16 Ms. Maureen Scott, Staff Attorney, Legal Division, on
17 behalf of the Utilities Division of the Arizona
Corporation Commission.

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 FINDINGS OF FACT

22 1. On April 11, 2001, Touch America Services, Inc. ("TASI") and Touch America, Inc.
23 ("Touch America" or "Company") (jointly "Applicants") filed an Application for approval of the
24 assignment of assets and transfer of TASI's Certificate of Convenience and Necessity ("CC&N") to
25 Touch America. TASI received a CC&N to provide facilities-based and resold interexchange
26 telecommunications services, except local exchange services, in Arizona pursuant to Decision No.
27 62672 (June 30, 2000). On June 30, 2001, the transfer transaction closed and Touch America began
28

1 serving Arizona customers. The Company currently serves approximately 28,000 customers in
2 Arizona and represents that the transfer has resulted in a seamless transaction for its customers,
3 except for the name change.

4 2. On April 15, 2002, Staff filed its Staff Report in this matter recommending approval
5 of the Application after a hearing, contingent on certain conditions. One of the conditions
6 recommended by Staff was that Touch America should be required to procure a performance bond of
7 \$100,000.

8 3. On June 18, 2002, a Procedural Order was issued directing Staff to file an amended
9 Staff Report with the current Staff and Commission performance bond requirements, as well as an
10 evaluation of the fair value of the property that the Company currently uses, and that it proposes to
11 use, to provide telecommunications services to Arizona customers. The Procedural Order scheduled
12 a hearing for September 16, 2002 and ordered the Applicants to publish notice of the hearing.

13 4. On August 5, 2002, Staff filed its amended Staff Report. The amended Staff Report
14 determined Touch America's fair value rate base to be \$8,008,206. Staff also recommended that the
15 Company be required to post a performance bond of \$235,000.

16 5. By Procedural Order issued August 7, 2002, the hearing date was continued until
17 September 30, 2002, at the Company's request.

18 6. On August 20, 2002, Touch America filed Affidavits of Publication indicating
19 compliance with the Commission's notice requirements.

20 7. In order to protect the published hearing date, the hearing was called on September 16,
21 2002 to take public comment. No members of the public appeared to give comments regarding this
22 matter.

23 8. At the September 30, 2002 hearing, testimony was presented by witnesses for Touch
24 America and Staff.

25 9. TASI originated as Teledistance, Inc. ("Teledistance"), which was formed by Qwest,
26 Inc. ("Qwest") to facilitate the federally mandated divestiture of Qwest Communications, Inc.'s
27 interLATA business prior to the merger of Qwest and US West, Inc. Qwest transferred its
28 interLATA customers and assets, and the customers and assets of Qwest affiliates LCI International

1 Telecom, Inc., Phoenix Network, Inc., and USLD Communications, Inc., to Teledistance. Qwest
2 then changed the name of Teledistance to TASI, and sold TASI to Touch America.

3 10. Touch America is a Montana corporation that was previously owned by Entech, Inc., a
4 wholly owned subsidiary of Montana Power. In February 2002, Montana Power divested all of its
5 energy business, including its electric and gas utility business, and invested the proceeds in Touch
6 America.

7 11. Touch America owns an 18,000 mile fiber optic network and provides long distance
8 service, internet access, and frame relay/ATM services. Touch America also provides other services
9 such as design, installation, and maintenance of PBX and key systems, and construction and
10 management oversight.

11 12. The Applicants request approval to transfer TASI's assets and CC&N to Touch
12 America in order that Touch America will have authority in Arizona to provide facilities-based and
13 resold interexchange service.

14 13. In its amended Staff Report, Staff determined a fair value rate base for Touch America
15 in Arizona of \$8,008,206. Staff indicated that, because the rates charged by the Company are heavily
16 influenced by the competitive market, Touch America's fair value rate base information has no
17 discernable impact on the transaction at issue. Therefore, Staff did not accord the fair value
18 information substantial weight in its analysis of the application.

19 14. Staff also recommended that a performance bond of \$235,000 be established by Touch
20 America based on the following specific amounts for each service category: \$100,000 for facilities-
21 based long distance service; \$100,000 for facilities-based local exchange service, \$25,000 for resold
22 local exchange service, and \$10,000 for resold interexchange service. At the hearing, Staff revised its
23 bond requirement recommendation to a total of \$110,000, based on Touch America's testimony that
24 it provides only facilities-based and resold interexchange service, but does not offer local exchange
25 service (Tr. 18).

26 15. Based on its review, Staff recommended that the application for transfer of assets and
27 CC&N of TASI to Touch America be approved, subject to the following conditions:

28 a) Touch America shall be required to notify the Commission immediately upon

- 1 changes to its address or telephone number;
2 b) Touch America shall comply with all Commission rules, orders, and other
3 requirements relevant to the provision of intrastate telecommunications
4 service;
5 c) Touch America shall maintain its accounts and records as required by the
6 Commission;
7 d) Touch America shall file with the Commission all financial and other reports
8 that the Commission may require, in a form and at such times as the
9 Commission may designate;
10 e) Touch America shall maintain on file with the Commission all current tariffs
11 and rates, and any service standards that the Commission may require; and
12 f) Touch America shall procure a performance bond equal to \$110,000 and file
13 proof of procurement of the performance bond with Docket Control within 60
14 days of the effective date of this Decision.

15 16. At the hearing, Touch America agreed to fully comply with each of Staff's
16 recommendations, including the bond requirement.

17 17. Staff's recommendations in Findings of Fact Nos. 13, 14 and 15 are reasonable.

18 18. Touch America's fair value rate base is determined to be \$8,008,026. In general, rates
19 for competitive services are not set according to rate of return regulation, but are heavily influenced
20 by the market. The rate ultimately charged by Touch America will be heavily influenced by the
21 market. Because of the nature of the competitive market and other factors, a fair value analysis is not
22 necessarily representative of the Company's operations.

23 19. The record reflects that Touch America lacks the market power to adversely affect the
24 telecommunications market by either restricting output or raising prices. Touch America's services
25 will be classified as competitive, and thus subject to the flexible pricing authority permitted by the
26 Commission's Competitive Telecommunications Services rules. Touch America's lack of market
27 power and the competitive marketplace for the services offered by Touch America support the
28 conclusion that a fair value analysis is not necessarily representative of the Company's operations,
and thus the rates charged by Touch America will be reasonable.

20. Staff's recommendations, as set forth herein, are reasonable.

CONCLUSIONS OF LAW

1
2 1. TASI and Touch America are public service corporations within the meaning of
3 Article 15 of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

4 2. The Commission has jurisdiction over the Applicants and the subject matter of the
5 Application.

6 3. Notice of the Application was given in accordance with the law.

7 4. A.R.S. §40-282 allows a telecommunications company to file an application for a
8 Certificate to provide telecommunications services.

9 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
10 Statutes, it is in the public interest for Touch America to provide the telecommunications services set
11 forth in its application.

12 6. Touch America is a fit and proper entity to receive a CC&N authorizing it to provide
13 competitive facilities-based and resold local exchange and exchange access telecommunications
14 services in Arizona, as conditioned by Staff's recommendations.

15 7. The telecommunications services that Touch America provides are competitive within
16 Arizona.

17 8. Pursuant to Article XV of the Arizona Constitution, as well as the Commission's
18 Competitive Rules, it is just and reasonable and in the public interest for Touch America to establish
19 rates and charges that are not less than the Company's total service long-run incremental costs of
20 providing the competitive services approved herein.

21 9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

22 10. Touch America's competitive rates, as set forth in its proposed tariffs, are just and
23 reasonable and should be approved.

24 **ORDER**

25 IT IS THEREFORE ORDERED that the Application for authority to transfer the assets and
26 the Certificate of Convenience and Necessity for authority to provide facilities-based and resold
27 interexchange telecommunications services, except local exchange services, from Touch America
28 Services, Inc. to Touch America, Inc., is hereby granted.

1 IT IS FURTHER ORDERED that Touch America, Inc. shall continue to charge the existing
2 tariff rates of Touch America Services, Inc., and Touch America, Inc. shall file in this docket, within
3 30 days of this Decision, tariffs that are identical to the current tariffs of Touch America Services,
4 Inc.

5 IT IS FURTHER ORDERED that Touch America, Inc. shall procure a performance bond
6 equal to \$110,000, and shall file proof of the performance bond with Docket Control within 60 days
7 of the date of this Decision.

8 IT IS FURTHER ORDERED that Touch America, Inc. shall comply with all of the Staff
9 recommendations, as set forth in the above-stated Findings of Fact and Conclusions of Law.

10 IT IS FURTHER ORDERED that if any of the above conditions and timeframes are not met,
11 Touch America, Inc.'s CC&N shall be null and void without further Order of the Commission.

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

13 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

14			
15	CHAIRMAN	COMMISSIONER	COMMISSIONER
16			
17	COMMISSIONER	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 ____ day of _____, 2003.

23 BRIAN C. McNEIL
EXECUTIVE SECRETARY

24 DISSENT _____

25 DISSENT _____

26 DDN:dap

1 SERVICE LIST FOR:

TOUCH AMERICA SERVICES, INC. and TOUCH AMERICA, INC.

2 DOCKET NOS.:

T-04011A-01-0303 and T-03911A-01-0303

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