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MEMORANDUM

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2002 AUG -5 A 9:57

TO: Docket Control
FROM: Ernest G. Johnson
Director
Utilities Division

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: August 2, 2002

RE: AMENDMENT TO STAFF REPORT FOR THE JOINT APPLICATION OF TOUCH AMERICA SERVICES, INC. AND 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 NOS. T-04011A-01-0303 and T-03911A-01-0303)

Attached is an amendment to the Staff Report for the joint application of Touch America Services, Inc. and 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. The amendment includes a discussion of the fair value of the property of Touch America, Inc. required by the June 18, 2002 Procedural Order filed this docket.

EGJ:LAJ:nms

Originator: Linda A. Jaress

Attachment: Original and Ten Copies

Arizona Corporation Commission

DOCKETED

AUG 05 2002

DOCKETED BY	
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Service List for Touch America Services, Inc. and Touch America, Inc.
Docket Nos. T-04011A-01-0303 and T-039911A-01-0303

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STAFF ACKNOWLEDGMENT

The amendment to the Staff Report for Touch America Services, Inc. and Touch America, Inc., Docket Nos. T-04011A-01-0303 and T-039911A-01-0303 was the responsibility of Linda A. Jaress.

A handwritten signature in cursive script that reads "Linda A. Jaress". The signature is written in dark ink and is centered on the page.

Linda A. Jaress
Executive Consultant III

EXECUTIVE SUMMARY
TOUCH AMERICA SERVICES, INC. AND TOUCH AMERICA, INC.
DOCKET NOS. T-04011A-01-0303 AND T-039911A-01-0303

A Staff Report dated April 15, 2002 recommended approval of Touch America Services, Inc. ("TASI") application for the transfer of its Certificate of Convenience and Necessity ("CC&N") to provide facilities based, interexchange service to Touch America, Inc., ("the Company") an affiliate. On June 18, 2002, the Administrative Law Judge issued a Procedural Order requiring the Applicants to publish notice and file an Affidavit of Publication in this Docket no later than August 12, 2002.

The Procedural Order also ordered Staff to "file an amendment to its Staff Report in this matter that includes a recommendation reflecting the current Staff and Commission performance bond requirements and a recommended fair value finding. The amendment to the Staff Report shall also include a recommendation to the Commission on how the fair value determination should be used in consideration of this application."

Staff obtained the information required by the Procedural Order from the Company and has determined that its fair value rate base is \$8,008,206. The rates charged by the Company are heavily influenced by the market for its services. Also, the fair value of the Company's rate base has no discernable impact on the transaction at issue. Therefore, while Staff considered the fair value rate base information submitted by the company, it did not accord that information substantial weight in its analysis of the application to transfer the CC&N.

Staff has altered some of its previous recommendations. Based on the current policy of Staff and the Commission, Staff now recommends that a bond of \$235,000 be established by Touch America, Inc. Also, Touch America, Inc. has provided Staff with information indicating that it does not have or need an interconnection agreement with Qwest so Staff is omitting its previous recommendation that Touch America, Inc. file an interconnection agreement. Finally, Staff is recommending that after the notice ordered by the Administrative Law Judge have been made, that the Administrative Law Judge decide if a hearing is required.

STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

TOUCH AMERICA SERVICES, INC. AND
TOUCH AMERICA, INC.
DOCKET NOS. T-04011A-01-0303 AND T-039911A-01-0303

JOINT APPLICATION OF
TOUCH AMERICA SERVICES, INC.
AND 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

AUGUST 2002

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Background

On April 11, 2001 Touch America Services, Inc. ("TASI") filed an application for approval of the assignment of assets and transfer of its Certificate of Convenience and Necessity ("CC&N") to provide resold facilities-based interexchange telecommunications services and alternative operator services to Touch America, Inc. ("the Company") and for approval of a waiver of the customer notification required by A.R.S. Section 44-1572.

On June 30, 2001 the transfer transaction closed and the Company began serving Arizona customers.

TASI received a Certificate of Convenience and Necessity ("CC&N") to provide resold, facilities based, long distance telecommunications services and alternative operator services in Arizona in Decision No. 62672 dated June 30, 2000. TASI originated as TeleDistance, Inc. TeleDistance, Inc. was formed by Qwest, Inc. to facilitate the federally mandated divestiture of Qwest Communications, Inc.'s ("Qwest") interLATA business prior to the merger of Qwest, Inc. and U S West, Inc. Qwest transferred its interLATA customers and assets and those of Qwest affiliates LCI International Telecom, Inc., Phoenix Network, Inc. and USLD Communications, Inc. to TeleDistance. Qwest then changed the name of TeleDistance to TASI and sold TASI to Touch America, Inc.

Touch America, Inc., TASI's former parent, is a Montana corporation that, until recently, was wholly owned by Entech, Inc. a wholly owned subsidiary of Montana Power. In February 2002, Montana Power divested all of its energy business, including its electric and gas utility and invested the proceeds in Touch America, Inc.

Touch America, Inc. now owns an 18,000-mile fiber-optic network and provides long distance service, Internet access, and frame relay/ATM services and provides other services such as the design, installation and maintenance of PBX and key systems, and construction management oversight. Touch America, Inc. has operated the TASI network since its divestiture from Qwest. TASI currently serves approximately 28,000 customers in Arizona.

Staff filed its Staff Report on the matter on April 15, 2002, recommending approval. On June 18, 2002, an Administrative Law Judge issued a Procedural Order requiring the Applicants to publish notice and file an Affidavit of Publication in this Docket no later than August 12, 2002.

The Procedural Order also ordered Staff to "file an amendment to its Staff Report in this matter that includes a recommendation reflecting the current Staff and Commission performance bond requirements and a recommended fair value finding. The amendment to the Staff Report shall also include a recommendation to the Commission on how the fair value determination should be used in consideration of this application".

Staff obtained the information required by the Procedural Order from Touch America, Inc. and has determined that its fair value rate base is \$8,008,206. This amount is equal to the net book value of the assets devoted to the Arizona jurisdiction.

The rates charged by the Company will be heavily influenced by the market for its services. If the rates charged by Touch America, Inc. are not just and reasonable, customers will defect to a provider whose rates are just and reasonable. Also, the fair value of the Company's rate base has no discernable impact on the transaction at issue. Therefore, while Staff considered the fair value rate base information submitted by Touch America, Inc., it did not accord that information substantial weight in its analysis of the application to transfer the CC&N.

Regarding the bonding requirement, the new Staff and Commission policy dictates that Touch America, Inc. must obtain a bond for each general service category. This amounts to \$235,000 (\$100,000 for facilities-based long distance service, \$100,000 for facilities based local exchange service, \$25,000 for resold local exchange service and \$10,000 for resold interexchange service).

Touch America, Inc. Response to the Staff Report

In response to the Staff Report issued on April 15, 2002, Touch America, Inc. sent a letter to Staff regarding two of Staff's recommendations. The Company requested that it not be required to procure and file an interconnection agreement as recommended by Staff. The Company's letter clarified how it provides service. The Company does not purchase local loops as unbundled network elements but purchases the local loops in Arizona pursuant to Qwest's special access tariff. Furthermore, the Company's co-location with Qwest in Arizona is only for the provision of long distance services. Because the purpose of the filing of interconnection agreements is to verify that the terms and conditions under which a CLEC would interconnect its network with that of Qwest, and Touch America, Inc. will not be interconnected with Qwest, Staff agrees that the recommendation regarding an interconnection agreement should be omitted.

The letter from Touch America, Inc. also indicated that it did not believe a hearing was necessary because it had not observed any interest on the part of the public in the docket. However, as of this writing, the Company has not provided notice of this docket. Staff recommends that after the notice is provided, the Administrative Law Judge determine if a hearing is necessary to provide a record upon which to base a Commission decision.

Revised Recommendations

Staff recommends that the application to transfer the assets and CC&N of TASI to Touch America, Inc. be approved subject to the following recommendations:

Touch America, Inc. should be required to notify the Commission immediately upon changes to its address or telephone number.

Touch America, Inc. should comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service.

Touch America, Inc. should maintain its accounts and records as required by the Commission.

Touch America, Inc. should file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate.

Touch America, Inc. should maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require.

Touch America, Inc. should cooperate with Commission investigations of customer complaints.

Touch America, Inc. should procure a performance bond equal to \$235,000 and file proof of the procurement of the performance bond with Docket Control within 60 days of the effective date of the Decision on this matter.

Staff further recommends that Touch America, Inc. should be subject to the Commission's rules governing interconnection and unbundling along with the 1996 Telecommunications Act and the rules promulgated thereunder. In the event that Touch America, Inc. provides essential services or facilities that potential competitors need in order to provide their services, Touch America, Inc. should be required to offer those facilities or services to those providers on non-discriminatory terms and conditions pursuant to federal laws, federal rules, and state rules.