

ORIGINAL

OPEN MEETING



0000144208

MEMORANDUM

TO: THE COMMISSION

FROM: Utilities Division

DATE: April 8, 2013

RE: IN THE MATTER OF THE APPLICATION OF PNG TELECOMMUNICATIONS, INC. DBA POWERNET GLOBAL COMMUNICATIONS DBA CROSSCONNECT ("PNG") FOR APPROVAL OF A WAIVER OF A.A.C. R14-2-1904 AND 1905 IN ASSOCIATION WITH THE PURCHASE OF CERTAIN CUSTOMERS OF GLOBAL TOUCH TELECOM, INC BY PNG AND MIGRATION OF THOSE CUSTOMERS TO PNG (DOCKET NOS. T-03121A-08-0122 AND T-20428A-08-0122)

Arizona Corporation Commission

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ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

Introduction

On February 27, 2008, PNG Telecommunications, Inc. d/b/a PowerNet Global Communications d/b/a CrossConnect ("PNG") filed an Application seeking approval of a waiver of the Commission's Slamming Rules, Arizona Administrative Code ("A.A.C.") R14-2-1904 and R14-2-1905. PNG seeks the waiver, which requires a carrier to have authorization from each subscriber prior to making a change to the subscriber's carrier, in order to execute an Asset Purchase Agreement whereby PNG will purchase certain customers from Global Touch Telecom, Inc. ("Global Touch").

On May 19, 2008, Staff issued its First Set of Data Requests to PNG. On August 19, 2011, PNG provided Responses to Staff's First Set of Data Requests. On August 26, 2011 and September 12, 2011, Staff left voice messages for Mr. Stephen Nelson, the management contact for Global Touch. No responses were received from Mr. Nelson. On September 13, 2011, Staff issued its First Set of Data Requests via certified mail to Mr. Nelson at Global Touch.

On October 6, 2011, Staff issued its Second Set of Data Requests via certified mail to Mr. Cliff Rees, President/CEO of Global Touch. On October 13, 2011, Staff's Second Set of Data Requests was returned to sender as not deliverable as addressed and unable to forward. On October 31, 2011, Staff left a voice message for Mr. Rees. No response was received from Mr. Rees.

On November 29, 2011, Responses to Staff's First Set of Data Requests was received from Ms. Eryn Sears, on behalf of Global Touch. Included in the November 29, 2011 Response is a request by Global Touch to cancel its Certificate of Convenience and Necessity ("CC&N") and tariff that is currently on file. On November 11, 2012, Ms. Sears provided additional clarification regarding Global Touch's 2007 Annual Report.

The Parties

PNG Telecommunications, Inc. is an Ohio corporation. PNG is a reseller of long distance telecommunications services in Arizona. The Commission granted PNG a CC&N in Decision No. 60313, dated July 30, 1997.

Global Touch Telecom, Inc. is a corporation authorized to provide resold long distance telecommunications services in Arizona. On September 21, 2006, in Decision No. 68968, the Commission granted Global Touch a CC&N.

Staff's Analysis

Pursuant to the Parties' January 14, 2008 Asset Purchase Agreement, PNG was to purchase approximately 160 customers from Global Touch in Arizona. In response to Staff Data Request PJG 1-1, PNG confirmed that the total number of customers was 161, consisting of 155 residential and 6 business customers. PNG also confirmed in response to Staff Data Request PJG 1-6 that no deposits, advances, or prepayments were associated with the transfer of these customers. Global Touch indicated, in response to Staff Data Request STF 1.7, that it was not holding any customer deposits, advances, or prepayments.

PNG indicated in its Application, that the transfer of customers to PNG will have no adverse impact on the customers. PNG also stated that the affected customers will continue to receive their existing services at the same rates, terms, and conditions as they have prior to the transfer.

In compliance with 47 C.F.R. §64.1120, PNG and Global Touch provided advance written notice to the affected customers at least thirty (30) days prior to the transfer explaining the change in service provider. A copy of the proposed customer notice was provided with the Application and was sent to the affected customers on February 11, 2008.

The 2010 Annual Report for PNG indicates that PNG is a Class A utility in Arizona. Global Touch's 2007 Annual Report, the latest available for the company, indicates that Global Touch was not a Class A Utility pursuant to A.A.C. R14-2-103.

The Consumer Services Section of the Utilities Division reports that there have been no complaints or opinions filed against PNG or Global Touch through August 29, 2011. Consumer Services reports that PNG is in Good Standing with the Corporations Division of the Commission. Consumer Services also reports that Global Touch is not in Good Standing as its Arizona business authority was revoked on March 3, 2009, for failure to file its 2008 – 2010 Annual Reports. According to the Compliance Section, a check of the Compliance Database indicates that there are currently no delinquencies for both PNG and Global Touch.

In response to Staff Data Requests STF 1.1 and STF 1.2, Global Touch stated that it is no longer providing telecommunications services in Arizona and that it ceased operations in April 2008. Global Touch also stated that it does not have any employees¹ or facilities² in Arizona. Global Touch indicated, in response to Staff Data Request STF 1.9, that it has no affiliates offering telecommunications services in Arizona. Additionally, Global Touch stated that it no longer operates in any states³.

Based on information provided in its 2007 Annual Report on file with the Commission, Global Touch had no long distance customers. However, the same Report contains information related to residential local exchange customers. The Report also lists an amount for deposits, prepayments, and advances from its customers. Global Touch's 2006 Annual Report indicates that no deposits, prepayments, or advances were collected from its customers. Decision No. 68968, dated September 21, 2006, which granted Global Touch the authority to provide resold long distance services, did not authorize Global Touch to collect advances, prepayments, or deposits from its Arizona customers. In addition, the Decision granted authority to provide competitive resold interexchange services, not resold local exchange services. On November 11, 2012, Ms. Sears clarified via email that Global Touch was not serving local exchange customers or holding advances, prepayments, or deposits for any customers.

Pursuant to A.A.C. R14-2-1107(B), Global Touch is required to publish legal notice of an Application to discontinue or abandon local exchange or interexchange services in all counties affected by the Application. As stated previously, Global Touch indicated in response to Staff Data Request STF 1.1 and STF 1.2, that it is no longer providing telecommunications services in Arizona and that it ceased operations in April 2008. Global Touch also indicated that it did not have service contracts with its customers. In response to Staff Data Request STF 3.1, Global Touch respectfully requests a waiver of the legal notice requirement. Based on all of the above information, Staff recommends that the legal notice requirement be waived.

Staff's Recommendations

Staff recommends approval of the proposed transaction. Staff also recommends approval of PNG's request for a waiver of the Commission's rules pertaining to Consumer Protections for Unauthorized Carrier Changes rules, A.A.C. R14-2-1901, et seq., for the transaction discussed herein.

In addition, Staff recommends cancellation of Global Touch's CC&N to provide resold long distance telecommunications services in Arizona and cancellation of Global Touch's tariff that is on file with the Commission. Staff also recommends that the legal notice requirement contained in A.A.C. R14-2-1107 be waived. Upon cancellation of its CC&N, Global Touch will no longer be authorized to provide resold long distance telecommunications services in Arizona and therefore, will no longer be subject to the requirements of Decision No. 68968.

¹ Response to Staff Data Request STF 1.5.

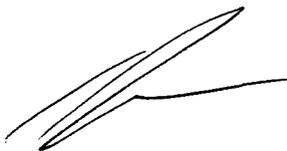
² Response to Staff Data Request STF 1.6.

³ Response to Staff Data Request STF 1.4.

THE COMMISSION

April 8, 2013

Page 4

A handwritten signature in black ink, consisting of several overlapping, sweeping lines that form a stylized, elongated shape.

Steven M. Olea
Director
Utilities Division

SMO:PJG:

ORIGINATOR: Pamela J. Genung

SERVICE LIST FOR: PNG TELECOMMUNICATIONS, INC. D/B/A POWERNET GLOBAL
COMMUNICATIONS D/B/A CROSSCONNECT AND GLOBAL TOUCH TELECOM, INC.

THE COMMISSION

April 8, 2013

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DOCKET NOS. T-03121A-08-0122 AND T-20428A-08-0122

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Corporate & Regulatory Specialist
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Ms. Lyn Farmer
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BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP
Chairman
GARY PIERCE
Commissioner
BRENDA BURNS
Commissioner
BOB BURNS
Commissioner
SUSAN BITTER SMITH
Commissioner

IN THE MATTER OF THE APPLICATION)
OF PNG TELECOMMUNICATIONS, INC.)
DBA POWERNET GLOBAL)
COMMUNICATIONS DBA)
CROSSCONNECT ("PNG") FOR)
APPROVAL OF A WAIVER OF A.A.C. R14-)
2-1904 AND 1905 IN ASSOCIATION WITH)
THE PURCHASE OF CERTAIN)
CUSTOMERS OF GLOBAL TOUCH)
TELECOM, INC BY PNG AND)
MIGRATION OF THOSE CUSTOMERS TO)
PNG.)

DOCKET NOS. T-03121A-08-0122
T-20428A-08-0122

DECISION NO. _____

ORDER

Open Meeting
May 1 and 2, 2013
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

Introduction

On February 27, 2008, PNG Telecommunications, Inc. d/b/a PowerNet Global Communications d/b/a CrossConnect ("PNG") filed an Application seeking approval of a waiver of the Commission's Slamming Rules, Arizona Administrative Code ("A.A.C.") R14-2-1904 and R14-2-1905. PNG seeks the waiver, which requires a carrier to have authorization from each subscriber prior to making a change to the subscriber's carrier, in order to execute an Asset Purchase Agreement whereby PNG will purchase certain customers from Global Touch Telecom, Inc. ("Global Touch").

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13 request by Global Touch to cancel its Certificate of Convenience and Necessity ("CC&N") and
14 tariff that is currently on file. On November 11, 2012, Ms. Sears provided additional clarification
15 regarding Global Touch's 2007 Annual Report.

16 The Parties

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18 distance telecommunications services in Arizona. The Commission granted PNG a CC&N in
19 Decision No. 60313, dated July 30, 1997.

20 2. Global Touch Telecom, Inc. is a corporation authorized to provide resold long
21 distance telecommunications services in Arizona. On September 21, 2006, in Decision No. 68968,
22 the Commission granted Global Touch a CC&N.

23 Staff's Analysis

24 3. Pursuant to the Parties' January 14, 2008 Asset Purchase Agreement, PNG was to
25 purchase approximately 160 customers from Global Touch in Arizona. In response to Staff Data
26 Request PJG 1-1, PNG confirmed that the total number of customers was 161, consisting of 155
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2 holding any customer deposits, advances, or prepayments.

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5 receive their existing services at the same rates, terms, and conditions as they have prior to the
6 transfer.

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8 written notice to the affected customers at least thirty (30) days prior to the transfer explaining the
9 change in service provider. A copy of the proposed customer notice was provided with the
10 Application and was sent to the affected customers on February 11, 2008.

11 6. The 2010 Annual Report for PNG indicates that PNG is a Class A utility in
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13 Global Touch was not a Class A Utility pursuant to A.A.C. R14-2-103.

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15 been no complaints or opinions filed against PNG or Global Touch through August 29, 2011.
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20 indicates that there are currently no delinquencies for both PNG and Global Touch.

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2 it no longer operates in any states³.

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4 Commission, Global Touch had no long distance customers. However, the same Report contains
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25 Protections for Unauthorized Carrier Changes rules, A.A.C. R14-2-1901, et seq., for the
26 transaction discussed herein.

27 _____
28 ³ Response to Staff Data Request STF 1.4.

1 IT IS FURTHER ORDERED that the request by Global Touch Telecom, Inc. to cancel its
 2 Certificate of Convenience and Necessity to provide resold long distance telecommunications
 3 services and cancellation of the Global Touch Telecom, Inc. tariff that is on file with the
 4 Commission, be and hereby is cancelled.

5 IT IS FURTHER ORDERED that upon cancellation of Global Touch Telecom, Inc.
 6 Certificate of Convenience and Necessity, Global Touch Telecom, Inc. shall no longer be
 7 authorized to provide resold long distance telecommunications services in Arizona and therefore,
 8 shall no longer be subject to the requirements of Decision No. 68968.

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

10 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

11
 12 _____
 CHAIRMAN

COMMISSIONER

13
 14
 15 _____
 COMMISSIONER

COMMISSIONER

COMMISSIONER

16
 17 IN WITNESS WHEREOF, I JODI JERICH, Executive
 18 Director of the Arizona Corporation Commission, have
 19 hereunto, set my hand and caused the official seal of this
 Commission to be affixed at the Capitol, in the City of
 20 Phoenix, this _____ day of _____, 2013.

21
 22 _____
 23 JODI JERICH
 EXECUTIVE DIRECTOR

24
 25 DISSENT: _____

26
 27 DISSENT: _____

28 SMO:PJG:sms/MAS

1 SERVICE LIST FOR: PNG TELECOMMUNICATIONS, INC. D/B/A POWERNET GLOBAL
2 COMMUNICATIONS D/B/A CROSSCONNECT AND GLOBAL TOUCH TELECOM, INC.
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