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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 12, 2000

HAND DELIVERED VIA COURIER

Magalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary
445-12th Street, S.W.
Room tw-204B
Washington, D.C. 20554

**Re: Implementation of the Subscriber Changes Provisions of the
Telecommunications Act of 1996, CC Docket No. 94-129,
Touch America, Inc. – Supplement to Petition for Waiver**

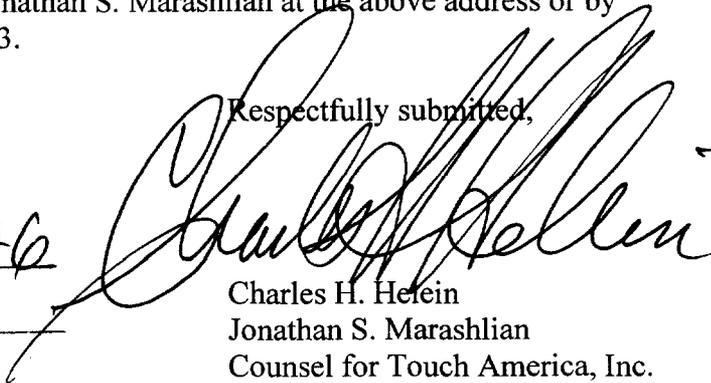
Dear Ms. Salas:

Enclosed are an original and four copies plus two additional public copies of Touch America, Inc.'s ("Touch America") Supplement to its Petition for Waiver of the Commission's authorization and verification rules, 47 C.F.R. §§64.1100-64.1190, as adopted in the above referenced proceeding. Please substitute the Supplement to Petition for Waiver filed today for the Petition for Waiver filed by Touch America on March 17, 2000. The Supplement will replace the original filing in its entirety.

A duplicate original copy of this letter is enclosed, please date stamp this copy as acknowledgement of its receipt and return it. Questions regarding this filing may be directed to Jonathan S. Marshlian at the above address or by telephone at (703) 714-1313.

Respectfully submitted,

No. of Copies rec'd 0+6
List ABCDE


Charles H. Helein
Jonathan S. Marshlian
Counsel for Touch America, Inc.

Enclosures

cc: Katherine Schroder, Accounting Policy Division
Michele Walters, Accounting Policy Division
Will Cox, Accounting Policy Division

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Touch America, Inc.)	
Acquisition of Subscriber Bases of)	
Qwest Communications)	
International, Inc., and Subsidiaries)	
)	
Implementation of the Subscriber)	
Carrier Selection Changes)	CC Docket No. 94-129
Provisions of the)	
Telecommunications Act of 1996)	

**PETITION FOR WAIVER
OF THE SUBSCRIBER CHANGE PROVISIONS OF THE
TELECOMMUNICATIONS ACT OF 1996 AND THE FCC'S RULES**

Touch America, Inc. ("Touch America") and Qwest Communications International Inc. ("Qwest"), by their attorneys and pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, hereby respectfully request a limited waiver of the FCC authorization and verification rules, 47 C.F.R. §§ 64.1100-64.1190, to the extent necessary to enable the transfer of the interLATA subscriber base of certain of Qwest's subsidiaries to Touch America, without first obtaining such subscribers' authorization and verification. As demonstrated below, Touch America and Qwest fully satisfy the Commission's good cause standard for securing a waiver. 1/

BACKGROUND

This Waiver Request is necessary to facilitate Qwest's divestiture of certain long distance assets to enable Qwest to complete its pending merger with U S WEST, Inc.

1/ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

("U S WEST"). ^{2/} Grant of the instant Request will allow Qwest to divest its long distance assets in the 14 in-state U S WEST region, and Touch America to acquire those assets, in a manner that minimizes the impact on consumers while ensuring full compliance with Section 271 of the Communications Act of 1934, as amended, as of the closing of the Merger. Section 271 requires that Qwest cease providing the interLATA services it currently offers in the 14 states of U S WEST's region.

To effectuate this divestiture, and for tax and business reasons, Qwest has formed a new wholly-owned subsidiary, TeleDistance Holdings, Inc. ("TD Holdings"), which in turn is the sole stockholder of TeleDistance, Inc. ("TeleDistance"). Qwest intends to transfer the U S WEST-region subscriber bases of Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc., and Phoenix Network, Inc. (collectively, the "Qwest Subs") to TeleDistance. Qwest then will sell the stock of TD Holdings to Touch America, thereby transferring control of TeleDistance and its subscriber base to Touch America. ^{3/} Thereafter, Touch America will continue to provide services to the TeleDistance subscriber base under the Touch America name. ^{4/}

Prior to this subscriber base transfer, Touch America will send letters to the subscribers being acquired by Touch America via transfer to TeleDistance, notifying them of the

^{2/} *Qwest Communications International Inc. and U S WEST, Inc.*, CC Docket No. 99-272, Memorandum Opinion and Order, FCC 00-91 (rel. March 10, 1999) (the "Merger").

^{3/} See Applications of Qwest and Touch America, *In the Matter of TeleDistance, Inc., Application Pursuant to Section 214 of the Communications Act of 1934 for Consent to the Transfer of Control*, and *In the Matter of TeleDistance, Inc., Application Pursuant to Section 214 of the Communications Act of 1934 and Section 63.18 of the Commission's Rules for Consent to the Transfer of Control* (filed concurrently herewith on March 17, 2000).

^{4/} As of the consummation of the transaction, Qwest will cause the name of TeleDistance to be changed to "Touch America Services, Inc."

change. Presubscribed customers that have not already given their consent to a carrier change will be informed that (1) their long distance terms, conditions and rates will not change as a result of the transfer; (2) if they wish, they may change their service to a carrier other than Touch America; (3) Touch America has established a toll-free 800 number that subscribers can call with any questions; and (4) no charges, such as LEC-assessed PIC change charges, will appear on the customers bill as a result of the migration. A sample copy of the initial customer notification letter is attached hereto as Exhibit 1.

Once Touch America has received the necessary regulatory approval for the migration and the transfer has been completed, Touch America intends to send a second letter to affected Qwest customers welcoming them to Touch America service. A sample copy of the post-migration letter is attached hereto as Exhibit 2.

Touch America, a Montana corporation founded in 1983, is the telecommunications subsidiary of The Montana Power Company and the focus of its growth strategy in broadband fiber-optic and wireless spectrum applications.^{5/} Touch America is the owner, operator and developer of a 12,000-mile, state-of-the-art, high-speed, fiber-optic network that is scheduled to have more than 26,000 miles of fiber by year end 2001.

Touch America, through its fiber-optic network and its expanding alliances, offers high-speed access to the Internet, a full-line of long distance services, as well as dedicated voice, data, video, ATM and frame relay solutions. The company also offers "last mile" telecommunications solutions through its FCC spectrum licenses with LMDS (local multipoint distribution service) and PCS (personal communication service) applications.

^{5/} As recently announced, Montana Power is planning to divest its energy business, thereby becoming Touch America. See March 28, 2000 Press Release at http://www.mtpower.com/news/2000_pr/03-28-2000.htm.

Touch America also provides business telephone equipment and related services, using the most advanced telecommunications technology available today. Touch America's equipment services include design, installation and maintenance of PBX and key systems. Touch America also offers construction management oversight of the installation of fiber-optic systems.

DISCUSSION

Under Sections 64.1000-64.1190 of the Commission's rules, carriers are required to verify all preferred carrier change orders before executing such changes. The Commission can grant a waiver, however, if special circumstances exist and approval will serve the public interest. 6/ The parties request a waiver because requiring that Touch America obtain verification from each of the thousands of subscribers being assigned to TeleDistance and then transferred to Touch America, before Touch America can begin to provide service to those subscribers, would impede the seamless transfer of those customers and disrupt their ability to place long distance and other calls. Considering the size of the Qwest Subs' subscriber bases, Touch America is unlikely to be able to affirmatively contact, solicit and obtain appropriate verification from each subscriber on an expeditious basis. Absent a waiver, any subscriber that Touch America is unable to contact before acquiring the stock of TeleDistance, which is necessary to allow the Qwest-U S WEST merger to close, risks temporarily losing service or being charged substantially higher rates than those that Touch America will apply.

As mentioned above, the Qwest Sub/TeleDistance subscribers from whom verification would otherwise be required will receive notification of the change in service providers, both before and after their service is switched, and they will also be informed that they

6/ *WAIT Radio*, 418 F.2d at 1159.

are free to change their carrier. Touch America will also address and attempt to resolve all customer inquiries regarding the impact of the migration of their service and the change in providers through a toll-free 800 number, established to handle such inquiries, which will also appear in the customer notifications. Qwest will retain responsibility for addressing and resolving any customer complaints or other customer issues arising from the service provided prior to the transfer date. These steps will ensure that the rights of these subscribers are adequately protected.

Finally, the circumstances justifying this waiver request are similar to those the Commission found sufficient as to many other similar petitions for waiver of the authorization and verification rules. ^{7/}

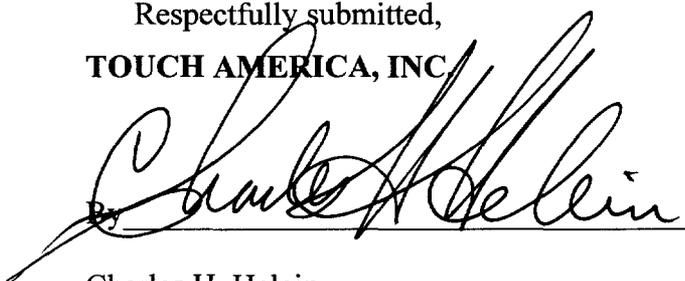
^{7/} See, e.g., *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 – Sprint Comms. Co., Petition for Waiver*, CC Docket No. 94-129, Order, DA 99-2178 (rel. Oct. 20, 1999); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 – AT&T Corp. Petition for Waiver*, CC Docket No. 94-129, Order, 14 FCC Rcd 13925 (1999); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 – MCI WorldCom, Inc., Petition for Waiver*, CC Docket No. 94-129, Order, 14 FCC Rcd 12264 (1999).

CONCLUSION

For the foregoing reasons, Touch America and Qwest hereby respectfully request that the Commission waive Sections 64.1100-64.1190 of its rules to the extent necessary to enable a transfer of the interLATA subscriber base from the Qwest subsidiaries identified in footnote 1, above, to Touch America without first obtaining such subscribers' authorization and verification.

Respectfully submitted,

TOUCH AMERICA, INC.



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Counsel for Touch America, Inc.

**QWEST COMMUNICATIONS
INTERNATIONAL INC.**

By 

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Counsel for Qwest Communications
International Inc.

Dated: April 12, 2000

Sample Customer Notification – Pre-Migration

WELCOME

Welcome to the modern world of telecommunications provided to you by Touch America. Touch America is purchasing your long distance account from Qwest Communications. Qwest is merging its business with U S WEST and, as a result, cannot continue to offer long distance services in the 14 states served by U S WEST.

Touch America is delighted to be able to serve your communications needs. Organized in 1983 and headquartered in Montana, we've been providing high quality, technologically advanced, affordable telecommunications services with a personal touch to business and residential customers in the Northwest, Rocky Mountain and Great Plains States.

As President of Touch America I want to personally take this opportunity to assure you that, although your long distance service will be provided by Touch America once Qwest's merger with U S WEST is completed around _____, 2000, your existing long distance service and its price will not change. No charges will appear on your bill as a result of the transfer of your service to Touch America. The only change you will notice is Touch America's name on the long distance portion of your monthly telephone bill replacing Qwest's name. The transfer of your account to Touch America is subject to the approval of the Federal Communication Commission and the Public Utility Commission in the state where you reside.

While you have the right to select another long distance carrier for your service, as Touch America's President, I want you to know that Touch America is committed to satisfying your communications needs and ensuring that you have the latest, best, and most affordable telecommunications services available. Touch America takes pride in the service it provides to each of its customers without exception.

You will be notified when your service has been transferred to Touch America in a follow-up letter.

If you have any questions, please call Touch America's customer service at 1-8XX-XXX-XXXX. Operators are standing by to assist you.

Very truly yours,

Michael J. Meldahl
President
Touch America
Your Telecommunications Company for the 21st Century

Sample Customer Notification – Post-Migration

WELCOME

Welcome to the modern world of telecommunications provided to you by Touch America. Touch America has purchased your long distance account from Qwest Communications. On _____, 2000, Qwest merged its business with U S WEST and, as a result, can no longer offer long distance services in the 14 states formerly served by U S WEST.

Touch America is delighted to be able to serve your communications needs. Organized in 1983 and headquartered in Montana, we've been providing high quality, technologically advanced, affordable telecommunications services with a personal touch to business and residential customers in the Northwest, Rocky Mountain and Great Plains States.

As President of Touch America, I would like to take this opportunity to assure you that, although your long distance service is now being provided by Touch America, your long distance service and prices have not changed as a result. Also, no charges should have appeared on your bill as a result of the transfer of your service to Touch America. The only change you will notice is Touch America's name on the long distance portion of your monthly telephone bill replacing Qwest's name. The transfer of your account to Touch America was approved by the Federal Communication Commission and the Public Utility Commission in the state where you reside.

While you have the right to select another long distance carrier for your service, as President of Touch America, I want you to know that Touch America is committed to satisfying your communications needs and ensuring that you have the latest, best, and most affordable telecommunications services available. Touch America takes pride in the service it provides to each of its customers without exception.

If you have any questions, please call Touch America's customer service at 1-8XX-XXX-XXXX. Operators are standing by to assist you.

Very truly yours,

Michael J. Meldahl
President
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Your Telecommunications Company for the 21st Century