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June 26, 2003

VIA COURIER

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Wireline Competition Bureau
P.O. Box 358145
Pittsburgh, PA 15251-5145

FCC/MELLON JUN 26 2003

DOCKET FILE COPY ORIGINAL

Re: Joint Application of 360networks (USA) inc. and Touch America, Inc.
(Debtor-in-Possession) for Domestic Section 214 Authority to Transfer Certain
Assets, Including Relevant Customer Base, of an Authorized Domestic Carrier

Dear Ms. Dortch:

On behalf of 360networks (USA) inc. ("360networks") and Touch America, Inc. (Debtor-in-Possession) ("Touch America"), enclosed please find an original and six (6) copies of the application for domestic Section 214 authority to transfer certain of Touch America's assets, including the relevant customer base, to 360networks.

Also enclosed is a completed Fee Remittance Form 159 containing a VISA credit card number and expiration date for payment, in the amount of \$860.00, to the Federal Communications Commission, which satisfies the filing fee required for this Application under line 2.b of Section 1.1105 of the Commission's rules. Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided.

Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,



Grace R. Chiu

Counsel for 360networks (USA) inc.

Ms. Marlene H. Dortch, Secretary
June 26, 2003
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Enclosures

cc via e-mail:

William Dever (WCB)
Tracy Wilson (WCB)
Mike Zimmerman (Touch America)
Jonathan S. Marashlian (Helein Law Group)
Lin Gentemann (360networks)
Ron Gustafson (360networks)
Andrew D. Lipman

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63.04 of the Commission's rules.³ As described below, Touch America is currently operating under the protection of Chapter 11 of the U.S. Bankruptcy Code.⁴

II. SUMMARY OF THE PROPOSED ASSET TRANSACTION

On June 19, 2003, Touch America Holdings, Inc. ("TA Holdings") and all of its subsidiaries, including Touch America, filed voluntary petitions under Chapter 11 of the U.S. Bankruptcy Code to reorganize their business and financial structure.⁵ On June 19, 2003, 360networks' indirect corporate parent, 360networks Corporation, and TA Holdings and certain of its subsidiaries, including Touch America, entered into an Asset Purchase Agreement ("Agreement"), wherein Touch America has agreed to sell and 360networks has agreed to acquire substantially all of the assets and customer base comprising Touch America's existing private line and dedicated Internet businesses subject to the approval of the Bankruptcy Court and other required approvals.⁶

Applicants emphasize that the transition of Touch America's private line and dedicated Internet businesses to 360networks will be seamless and virtually transparent to the Touch America customer base that 360networks will acquire. Following the transfer of assets, 360networks will continue to provide the same services to those Touch America private line and dedicated Internet customers, under the same rates and terms and conditions of service as those customers currently receive from Touch America.

³ *Id.*

⁴ See Chapter 11 Case No. 03-11915-MFW *et al.* (Bankr. D. Del.).

⁵ *Id.*

⁶ The proposed transaction contemplates the transfer of substantially all of the assets associated with Touch America's existing private line and dedicated Internet businesses, including customer accounts, certain fiber leases, network equipment, co-location facilities, and wireless licenses. Touch America currently provides private line and dedicated Internet services to customers located in 11 states: Colorado, Idaho, Minnesota, Montana, New Mexico, North Dakota, Oregon, Texas, Utah, Washington and Wyoming.

In accordance with applicable requirements, Applicants have sent written notice to affected customers of Touch America informing them of the proposed transaction. Service to these customers will not be transferred until the requisite approvals have been obtained. In addition, 360networks will file with the Commission the notice and certification required by Section 64.1120(e) of the Commission's rules. Applicants seek to complete the proposed transaction on an expedited basis so that 360networks can integrate the acquired operations into its existing business and thereby expand and improve its ability to offer a diverse range of broadband network and infrastructure services to these market segments.

III. REQUEST FOR EXPEDITED CONSIDERATION

In light of the current bankrupt status of Touch America, the transaction proposed herein is necessary to ensure that the Touch America customer base that 360networks will acquire will continue to receive uninterrupted service. Due to its uncertain financial position, Touch America is vulnerable to erosion of its existing customer base. Touch America also is presently unable to compete effectively for new customers as a result of its capital constraints and the uncertainty of its current financial position. Rapid completion of the transaction therefore is a critical factor in order to minimize the risk of interruption of service or other inconvenience to affected Touch America customers. Accordingly, Applicants respectfully request that the Commission expedite the processing of this Application and grant the requested authority to permit Applicants to consummate the transaction as soon as possible following approval of the proposed transaction by the Bankruptcy Court. If, however, the Bankruptcy Court permits a carrier other than 360networks to acquire the subject assets of Touch America, Applicants will promptly notify the Commission of such change in circumstance and amend or withdraw this Application accordingly.

IV. INFORMATION REQUIRED BY SECTION 63.04

Applicants submit the following information in support of their request for Section 214 authority pursuant to Section 63.04 of the Commission's rules.

(a) **Name, Address and Telephone Number of Each Applicant**

Transferor: Touch America, Inc. (Debtor-in-Possession) ("Touch America")
130 North Main Street
Butte, MT 59701-9331
(406) 497-5100
FRN: **0005806468**

Transferee: 360networks (USA) inc. ("360networks")
2401 4th Avenue, 11th Floor
Seattle, Washington 98121
(206) 239-4360
FRN: **0006213185**

(b) **State of Organization**

Transferor: Touch America is organized under the laws of the State of Montana.

Transferee: 360networks is organized under the laws of the State of Nevada.

(c) **Contact persons for this Application**

Questions or inquiries concerning this Application may be directed to:

For 360networks:

Grace R. Chiu
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
(202) 424-7697 (Tel)
(202) 424-7645 (Fax)
Email: GRChiu@swidlaw.com

For Touch America:

Michael Zimmerman
Touch America, Inc.
130 North Main Street
Butte, Montana 59701-9331
(406) 497-5426 (Tel)
(406) 497-5376 (Tel)
Email: mike.zimmerman@tamerica.com

with a copy to:

Jonathan S. Marashlian
The Helein Law Group, P.C.
8180 Greensboro Drive, Suite 700
McLean, Virginia 22102
(703) 714-1313 (Tel)
(703) 714-1330 (Fax)
Email: jsm@thlglaw.com

- (d) Equity Ownership. The following entity directly owns ten percent (10%) or more of the equity of 360networks.

Name: 360networks holdings (USA) inc.
Address: 2401 4th Avenue, 11th Floor
Seattle, Washington 98121
Citizenship: U.S.
Principal Business: Telecommunications
% Equity: 100%

The following entities directly own ten percent (10%) or more of the equity of **360networks holdings (USA) inc.**

Name: 360networks (CDN fiber) ltd.
Address: #1500-1066 West Hastings Street
Vancouver, British Columbia
V6E 3X1
Citizenship: Canada
Principal Business: Telecommunications
% Equity: 18%

Name: 360networks Corporation
Address: #1500-1066 West Hastings Street
Vancouver, British Columbia
V6E 3X1
Citizenship: Canada
Principal Business: Telecommunications
% Equity: 82%

The following entity directly owns 100% of the equity of **360networks (CDN fiber) Ltd.:**

Name: 360networks Corporation
Address: #1500-1066 West Hastings Street
Vancouver, British Columbia
V6E 3X1
Citizenship: Canada
Principal Business: Telecommunications
% Equity: 100%

The following entity directly owns ten percent (10%) or more of the equity of **360networks Corporation.**

Name: WLR Recovery Fund II, L.P.
Address: c/o WL Ross & Co. LLC
Manhattan Tower
101 East 52nd Street, 19th Floor
New York, New York 10022.
Citizenship: U.S.
Principal Business: Investment
% Equity: 11%

The general partner of **WLR Recovery Fund II, L.P. is:**

Name: WLR Recovery Fund II, LLC
Address: c/o WL Ross & Co. LLC
Manhattan Tower
101 East 52nd Street, 19th Floor
New York, New York 10022.
Citizenship: U.S.
Principal Business: Investment

No other person or entities directly or indirectly owns ten percent (10%) or more of the equity of **360networks Corporation.**

- (e) Certification. 360networks and Touch America each certify pursuant to Sections 1.2001 through 1.2003 of the Commission's rules that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 3301.
- (f) Description of the transaction. Please see Section II of this Application.
- (g) Geographic description of areas served. Touch America currently provides private line and dedicated Internet services in 11 states: Colorado, Idaho Minnesota, Montana, New Mexico, North Dakota, Oregon, Texas, Utah, Washington and Wyoming. The addition of the Touch America network supporting its private line and dedicated Internet businesses complements 360networks' existing optical mesh fiber network, which spans 33,000 route miles, reaches 60 major cities in the U.S. and Canada, and includes 12 metro fiber networks in the largest U.S. cities and 17 metro fiber networks in nine Canadian provinces.
- 360networks currently provides telecommunications services and network infrastructure to more than 13,000 carrier and enterprise customers. 360networks offers a comprehensive range of services including traditional local and long distance voice products, Internet, transport and LAN/WAN connectivity.
- (h) Streamlined Treatment. Applicants submit that the proposed transaction would result in 360networks having a market share in the interstate, interexchange market of substantially less than 10 percent, and 360networks would provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction. Further, neither Applicant is dominant with respect to any service. Accordingly, this Application presumptively qualifies for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's rules.⁷
- (i) Related FCC Applications. Concurrent with the filing of this Application, Touch America is filing *pro forma* wireless assignment applications on FCC Form 603 to reflect Touch America's debtor-in-possession status.
- (j) Special Consideration. As noted previously, 360networks proposes to acquire the private line and dedicated Internet businesses of Touch America, a company that is currently in bankruptcy. Applicants request expeditious processing of this Application to permit the proposed transaction to be completed as soon as possible following approval of the proposed transaction by the Bankruptcy Court. Permitting Applicants to complete the proposed transaction at the earliest possible opportunity will minimize the risk of interruption of service or other inconvenience to affected Touch America customers.

⁷ 47 C.F.R. § 63.03(b)(2)(i).

- (k) Waiver Requests. Applicants have not filed any waiver requests in conjunction with the proposed transaction.

- (l) Public Interest Considerations. The proposed transaction will serve the public interest by avoiding any interruption of service and inconvenience to affected Touch America customers. By providing stability to those private line and dedicated Internet customers, the proposed transaction will ensure that those customers continue to enjoy superior broadband services backed by exceptional support services. Given that 360networks will provide these services on the same rates, terms and conditions of service that these customers currently receive from Touch America, the transaction will be virtually transparent to customers in terms of the services they receive. Moreover, as explained above, Applicants have provided written notice of the proposed transaction to assure that affected Touch America customers will understand how the proposed change in service provider will affect them.

Applicants note that Touch America's financial position at this stage precludes it from effectively competing for new customers and renders it vulnerable to erosion of its existing customer base. The proposed transaction, however, will help to offset these impacts by enabling 360networks to expand its private line and dedicated Internet customer base and network, thereby enhancing its presence in the market as a competitive provider of broadband communications services. Accordingly, Applicants respectfully submit that the proposed transaction will serve the public interest.

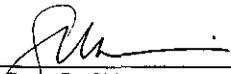
V. **CONCLUSION**

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application. This Application is contingent on the closing of the transaction as reported herein. If the closing does not occur, Applicants will promptly notify the Commission.

Respectfully submitted,

Jonathan S. Marashlian
THE HELEIN LAW GROUP, P.C.
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McLean, Virginia 22102
(703) 714-1313 (Tel)
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Counsel to **Touch America, Inc.**
(Debtor-in-Possession)

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Counsel to **360networks (USA) inc.**

Dated: June 26, 2003

CERTIFICATION

I, Lin Gentemann, General Counsel of 360networks Corporation, hereby certify that I am authorized to make this Certification on behalf of Transferee in the foregoing application, that the information in the foregoing application as it pertains to 360networks and Transferee is true and accurate to the best of my knowledge, and that neither 360networks Corporation nor Transferee is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853(a), as amended.



Lin Gentemann

Date: June 26, 2003

CERTIFICATION

I, Jerrold P. Pederson, VP & CFO of Touch America, Inc. (Debtor-in-Possession) ("Touch America"), hereby certify that the information in the attached application, as it pertains to Touch America is true and accurate to the best of my knowledge and that Touch America is not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853(a), as amended.

A handwritten signature in cursive script, reading "J P Pederson", is written over a horizontal line.