



PUBLIC NOTICE

Federal Communications Commission
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DA 03-3547

Released: November 4, 2003

DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF TOUCH AMERICA, INC. BY 360NETWORKS (USA) INC.

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-227

On October 27, 2003, 360networks (USA) inc (360networks) and Touch America, Inc. (Debtor-in-Possession) (Touch America) (collectively, Applicants) filed an application, pursuant to sections 63 03 and 63 04 of the Commission's rules,¹ to enable 360networks to acquire certain of Touch America's assets.² Touch America is currently operating under the protection of Chapter 11 of the U.S. Bankruptcy Code³ Accordingly, Applicants request expedited treatment of their application

Applicants assert that the proposed transaction is eligible for presumptive streamlined treatment under section 63 03(b)(2)(i) of the Commission's rules because the proposed transaction will result in 360networks having a market share in the interstate, interexchange market of less than 10 percent; the transferee 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; and the Applicants are not dominant with respect to any service. Because the Commission received comments raising public interest concerns that require further Commission review on a previous application involving the same parties and many of the same assets, we conclude that the application is appropriate for non-streamlined processing.⁴

¹ 47 C F R §§ 63 03, 63 04, *see* 47 U S C § 214

² On October 27, 2003, the Applicants withdrew their original application (Acquisition of Assets of Touch America, Inc by 360networks (USA) inc , WC Docket No 03-150, DA 03-2220 (rel Jul 7, 2003)) Applicants also withdrew their related wireless transfer of control application and associated Petition for Declaratory Ruling

³ *See* Chapter 11 Case No 03-11915-MFW *et al* (Bankr D Del.)

⁴ 47 C F R § 63 03(c)

Touch America is organized under the laws of Montana. Touch America currently provides private line, Internet services, and ATM/Frame Relay services to customers located in several western and midwestern states.

360networks is wholly owned by 360networks Corporation, a company organized under the laws of Canada. J.P. Morgan Chase & Co. and WLR Recovery Fund II, L.P. both own over 10 percent equity in 360networks Corporation. 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 long and local distance voice products, Internet, transport and LAN/WAN connectivity. 360networks' existing optical mesh fiber network, which spans 29,000 route miles, reaches 69 major cities in the U.S. and Canada, and includes 13 metro fiber networks in the largest U.S. cities and 23 fiber networks in nine Canadian provinces.

On June 19, 2003, Touch America Holdings, Inc. (TA Holdings) and all of its subsidiaries, including Touch America (together, Touch Debtors), filed voluntary petitions under Chapter 11 of the U.S. Bankruptcy Code to reorganize their business and financial structure. 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, 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.⁵ On September 10, 2003, the Bankruptcy Court entered an order approving the sale of certain Touch America assets to 360networks Corporation. Applicants note that 360networks Corporation is negotiating with the Touch Debtors to acquire Touch America's ATM/Frame Relay business. Because those assets are still under negotiation, we do not include them in this request for comment or our review of the application.

Applicants state that the proposed transaction is in the public interest by avoiding any interruption of service and inconvenience to affected Touch America customers. The Applicants maintain that this 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. Applicants contend that by providing stability to those private line and dedicated Internet customers, the proposed transaction will ensure that those customers continue to receive services. 360networks states they will provide services on the same rates, terms and conditions of service that customers currently receive from Touch America. Moreover, Applicants argue, this proposed transaction will help 360networks 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.

⁵ 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 and collocation facilities.

GENERAL INFORMATION

The acquisition of assets identified herein has been found, upon initial review, to be acceptable for filing as a non-streamlined application. The Commission reserves the right to return any acquisition of assets application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days** and **reply comments within 21 days** of this notice⁶. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed Reg 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>". A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

⁶ See 47 C.F.R. § 63.52(b).

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S W . Room CY-B402 Washington, D C 20554, e-mail qualexint@aol.com, facsimile (202) 863-2898, phone (202) 863-2893,
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S W , Room 5-C437, Washington, D C 20554, e-mail twilson@fcc.gov;
- (3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S W , Room 6-A461, Washington, D C 20554, e-mail dcjohnso@fcc.gov;
- (4) Julie Veach, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S W . Room 5-C124, Washington, D C 20554, e-mail julie.veach@fcc.gov,
- (5) Imani Ellis-Cheek, Telecommunications Division, International Bureau, 445 12th Street, S W . Room 6-A739, Washington, D C 20554, email ielis@fcc.gov;
- (6) Christopher Killion, Office of General Counsel, 445 12th Street, S. W , Room 8-C740, Washington, D C 20554, e-mail ckillion@fcc.gov

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson, at (202) 418-1394, or Dennis Johnson at (202) 418-0809.

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