

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of QWEST)
COMMUNICATIONS CORPORATION, LCI)
INTERNATIONAL TELECOM CORPORATION,)
and TOUCH AMERICA SERVICES, INC. (fka)
TELEDISTANCE, INC.), for a Certificate of Public)
Convenience and Necessity to Provide Competitive)
Resold and Facilities-Based Interexchange)
Telecommunications Services in Utah and for)
Authority to Assign Certain Assets)

DOCKET NO. 00-2310-01

SUBSTITUTE REPORT AND ORDER

ISSUED: September 11, 2000

SYNOPSIS

By this Report and Order, the Public Service Commission of Utah (the "Commission") grants the request of TOUCH AMERICA SERVICES, INC. ("Applicant"), for a Certificate of Public Convenience and Necessity ("Certificate") authorizing Applicant to provide interexchange services within the State of Utah. The Commission, having considered the record in this proceeding and the applicable law, hereby makes, adopts, and enters the following Report and Order. Additionally, the Commission approved the asset transfer and waived certain customer notice requirements.

By The Commission:

PROCEDURAL HISTORY

In our previous Order in this matter, we misconstrued the scope of the authority sought and issued a Certificate broader in scope than that Applicant sought. To correct said misconception, we withdraw the former Order and substitute therefor the following Report, Order, and Certificate, to wit:

TOUCH AMERICA SERVICES, INC. (fka TELEDISTANCE, INC), ("Applicant"), with its parent, Qwest Communications Corporation and other involved affiliates, filed its Application for Authority to Provide Interexchange Service on February 17, 2000, pursuant to Utah Code Annotated § 54-8b-1.1 *et. seq.*, and Title 63, Chapter 46b of the Utah Administrative Procedures Act. Additionally, the Applicants seek Commission approval for the transfer of certain assets to Teledistance, Inc., and waiver of the Commission's requirement of notice to customers of provider change. On June 21, 2000, Applicants filed notice that TELEDISTANCE, INC., had changed its name to TOUCH AMERICA SERVICES, INC.

The transactions for which approval is requested here are adjunct to the pending merger of U.S. West Communications, Inc., and Qwest, Inc. Specifically, these are preliminary steps in the ultimate divestiture of interLATA services by Qwest, Inc., that is required by Section 271 of the Communications Act of 1934, as amended ("Section 271"), as a prerequisite to closing the merger. As the final step in that divestiture process, ownership of Touch America Services/TeleDistance will be transferred to a third-party buyer (the "Buyer") via the sale of the stock of the parent of Touch America Services/TeleDistance, to occur prior to the closing of the merger.

Since there appears to be no meritorious opposition, and Applicant has made out its *prima facie* case in support of the application, there appears to be no reason to convene an evidentiary hearing on the matter. Accordingly, the Administrative Law Judge, having been fully advised in the premises, enters the following Report, containing proposed

Findings of Fact, Conclusions of Law, and the Order based thereon.

FINDINGS OF FACT

- Applicant is a Delaware-domiciled corporation qualified to do business in Utah. Applicant has requested that the Commission grant a Certificate of Public Convenience and Necessity authorizing it to provide interexchange service throughout the State of Utah.
- Touch America Services/TeleDistance was created as a temporary company for purposes of facilitating a smoother transition of Utah Qwest interLATA customers to Touch America, the buyer of the assets of which Qwest, Inc., is divesting itself. Specifically, Touch America Services/TeleDistance was created to hold all assets, which must be divested by Qwest, Inc., before the closing of its merger with U.S. West Communications, Inc. Under these circumstances, Touch America Services/TeleDistance relies primarily on the managerial, financial and technical qualifications of its parent corporation, Qwest, Inc., to provide telecommunications services in the State of Utah.
- Applicant will utilize its managerial and technical expertise to support its Utah operations.
- Applicant has sufficient technical resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.
- Applicant has sufficient managerial resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.
- Applicant has a secure and sufficient source of funding for its Utah operations that will enable it to meet projected capital and operating expenses and to implement its business plans.
- Applicant has sufficient financial resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.
- In its provision of intrastate services, Applicant will be subject to competition from USWC and other certified interexchange providers.
- Applicant's service offerings will provide customers with a wider range of choices in meeting their telecommunications needs and will support the development of competition.
- The issuance of a Certificate to Applicant to provide public telecommunications services is in the public interest.
- The reporting requirements in Exhibit B attached hereto are in the public interest and should be binding upon Applicant until modified by the Commission.
- Applicant has applied for exemptions from the requirements of various procedures of the Utah Code and the Commission's Rules and Regulations.
- The grant of exemptions from the provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B, is in the public interest.
- It is our understanding that the transfer of assets (Utah customers) from Qwest and its subsidiaries to Touch America Services/TeleDistance, and the ultimate acquisition by Touch America of TD Holdings, will take place simultaneously at the close of the merger transaction. Because of the simultaneous nature of this multi-step transaction, the transfer of assets from Qwest to Touch America/TeleDistance will be relatively transparent to the Utah intraLATA customer. Qwest's technical and operational ability will be maintained throughout the transfer and the subsequent transfer to Touch America thus mitigating any adverse affect from the transfer. We have reviewed the qualifications of the buyer, Touch America, in a separate proceeding.
- Affected Utah customers will be provided notice of the transfer of the parent of Touch America/TeleDistance to Buyer, which we understand to mean from Qwest to Touch America ("Buyer"). According to responses to data requests to the Division of Public Utilities, Utah Department of Commerce (DPU), Touch America will distribute pre- and post-migration customer notification letters to current Qwest customers who will be affected by the transition. The letters will advise customers that they have the right to change carriers. Further, affected Utah customers will not be responsible for any presubscribed interexchange carrier ("PIC") change charge in association with their assignment to Touch America/TeleDistance and the transfer to Touch America; such charge will be paid by Qwest Inc. and/or Touch America. Moreover, Qwest, Inc., and/or Touch America will reimburse one PIC change charge for any customer changing carriers within 60 days of notice of the transfer of the customer=s account to Touch America, provided that Qwest, Inc., and/or Touch America will not reimburse charges separately paid and/or reimbursed by another carrier.

CONCLUSIONS OF LAW

- It is in the public interest to convert this matter to an informal proceeding, pursuant to § 63-46b-4(3), UCA 1953, as amended.
- Applicant meets each of the statutory requirements (§§ 54-8b-2.1, *et. seq.*, UCA 1953, as amended) for issuance of a Certificate as a telecommunications corporation.
- Applicant meets each of the statutory requirements (§§ 54-8b-2.1, *et. seq.* ,UCA 1953, as amended) for authorization to provide the public telecommunications services for which it seeks a Certificate.
- The issuance of a Certificate to Applicant to provide the telecommunications services for which it has applied is in accord with the legislative policy declarations set forth in Utah Code § 54-8b-1.1.
- The proposed asset transfer should be approved, and the requirements of R746-349-5, Utah Administrative Code, should be waived.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- This matter be, and it is, converted to an informal proceeding pursuant to ' 63-46b-4(3), UCA 1953, as amended.
- The Commission hereby grants to TOUCH AMERICA SERVICES, INC., the Certificate that is attached hereto as Exhibit A and by this reference made a part of this Report and Order.
- TOUCH AMERICA SERVICES, INC., shall provide reports to the Commission and to the Division of Public Utilities, Utah Department of Commerce, as set forth in Exhibit B and by this reference made part of this Report and Order.
- TOUCH AMERICA SERVICES, INC., is exempt from certain provisions of the Utah Code and the Commission=s Rules and Regulations, as set forth in Exhibit B.
- Prior to providing intrastate services, TOUCH AMERICA SERVICES, INC., shall post a bond in the amount of \$100,000 to provide security for customer deposits or other liabilities to customers of TOUCH AMERICA SERVICES, INC., and any penalties assessed by the Commission for violation of its rules and regulations or any order of the Commission. The bond shall be used for the purposes set forth herein and shall not be used to cover any other liability imposed upon TOUCH AMERICA SERVICES, INC.
- The proposed transfer of assets, as set forth in the Application, be, and it is approved.
- The requirements of R746-349-5, Utah Administrative Code, be, and they are, waived.

DATED at Salt Lake City, Utah, this 11th day of September, 2000.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 11th day of September, 2000, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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COMMUNICATIONS CORPORATION,)
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CORPORATION, and TOUCH AMERICA)
SERVICES, INC. (fka TELEDISTANCE,)
INC.), for a Certificate of Public)
Convenience and Necessity to Provide)
Competitive Resold and Facilities-Based)
Interexchange Telecommunications Services)
in Utah and for Authority to Assign Certain)
Assets)

DOCKET NO. 00-2310-01

CERTIFICATE

ISSUED: September 11, 2000

By The Commission:

The Public Service Commission of Utah, pursuant to the Utah Code Ann. §§ 54-8b-2.1, *et. seq.*, hereby issues a Certificate of Public Convenience and Necessity authorizing TOUCH AMERICA SERVICES, INC. ("Grantee"), to provide interexchange services and other public telecommunications services, including facilities-based as well as resold services, anywhere within the State of Utah, as described in Exhibits which shall be filed effective ten (10) days after filing. The Exhibits shall define the service territory in the State and shall specify the public telecommunications services offered.

Grantee shall file a revised Exhibit at such time as said grantee intends to expand or otherwise change the public telecommunications services it offers or the geographic area in which it offers public telecommunications services within the State.

U.S. West Communications, Inc., or the Division of Public Utilities, Utah Department of Commerce, may file a Request for Agency Action that seeks to expand or contract the definition of said grantee's service territory as specified in any Exhibit filed in accordance with this Certificate. The mere filing of a Challenge to the Exhibit shall not suspend its effectiveness. No suspension or charge of an Exhibit can occur without a hearing. No hearing shall be required if a challenge to the Exhibit is not filed. The Commission shall after notice and hearing have the right, jurisdiction and power to require said Grantee to refile the Exhibit in accordance with the Commission's decision on the proper definition of said grantee's service territory.

DATED at Salt Lake City, Utah, this 11th day of September, 2000.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

EXHIBIT B

I. Annual Report

TOUCH AMERICA SERVICES, INC., shall file an Annual Report, which shall be subject to a Protective Order issued by the Commission, on or before March 31 of each year, unless said grantee requests and obtains an extension. The Annual Report shall contain the following:

A. Annual Revenues from operations attributable to the State of Utah by major

service categories. Such information would be provided on a "Total Utah" and "Utah Intrastate" basis. "Total Utah" will consist of the total of interstate and intrastate revenues. "Utah Intrastate" will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Intrastate Utah revenues shall be reported according to at least the following classes of service:

- (1) private line and special access,
- (2) business local exchange,
- (3) residential local exchange,
- (4) measured interexchange, and
- (5) vertical services.

Business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible.

B. Annual Expenses and Estimated Taxes attributed to operations in the State of Utah.

C. Year End Balances by Account for Property, Plant, Equipment, Annual

Depreciation, and Accumulated Depreciation for telecommunications investment in Utah. The Actual Depreciation Rates which were applied in developing annual and accumulated depreciation figures shall also be shown.

D. Financial Statements maintained in accordance with generally accepted accounting principles in the ordinary course of business. These financial statements shall at a minimum include an income statement, balance sheet and statement of cash flows.

E. List of Services offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served.

F. Number of Access Lines in Service by geographic area, segregated between business and residential customers.

G. Number of Messages and Minutes of Services for measured services billed to end users.

H. List of Officers and Responsible Contact Personnel updated annually.

I. Chart of Accounts. In addition to the foregoing, said grantee will provide its chart of accounts as existing and updated (no less than annually). Said Grantee will also work with the Division in good faith to develop a method of estimating intrastate expenses and investments.

II. Applicable Statutory Provisions and Exemptions from Statutes and Waiver of Regulations.

TOUCH AMERICA SERVICES, INC., shall be exempted from the following statutory provisions and regulations:

A. Exemptions from Title 54

54-3-8, 54-3-19 -- Prohibitions of discrimination

54-7-12 -- Rate increases or decreases

54-4-21 -- Establishment of property values

54-4-24 -- Depreciation rates

54-4-26 -- Approval of expenditures

B. Waivers of Regulations

R746-340-2(D) – Uniform System of Accounts (47 C.F.R. 32)

R746-340-2(E)(1) -- Tariff filings required

R746-340-2(E)(2) -- Exchange Maps

R746-341 -- Lifeline

R746-344 -- Rate case filing requirements

R746-401 -- Reporting of construction, acquisition and disposition of assets

R746-405 -- Tariff formats

R746-600 -- Accounting for post-retirement benefits

III. Obligations with Respect to Provision of Services.

To the extent Applicant functions as a non-facilities based reseller of local exchange telecommunication service, TOUCH AMERICA SERVICES, INC., agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

A. TOUCH AMERICA SERVICES, INC.'s obligation to furnish service to customers is dependent upon the availability of suitable facilities on the networks of its underlying carriers (e.g., U.S. West Communications, Inc.). TOUCH AMERICA SERVICES, INC., will provide a map identifying the areas within the state of Utah where it is offering service through resale. The map will be updated no less frequently than annually.

B. TOUCH AMERICA SERVICES, INC., will only be responsible for the operation and maintenance of services that it provides.

IV. Modification

It is anticipated that to the extent such requirements impact competitive entry or impact effective competition that they will be subject to the rulemaking requirements of the Utah Code Ann. § 54-8b-2.2 and that the provisions set forth herein shall be superseded by any such rule adopted by the Commission.