

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Supplemental)	
Application and Petition of)	DOCKET UT-940148
)	
Touch America, Inc., f/k/a TRI Touch)	FIRST SUPPLEMENTAL ORDER
America, Inc.,)	AMENDING REGISTRATION
)	AND GRANTING COMPETITIVE
For an Amendment to its Registration as)	CLASSIFICATION
a Telecommunications Company and)	
Classification as a Competitive)	
Telecommunications Company.)	
.....)	

BACKGROUND

1 By supplemental petition filed May 18, 2001, in Docket UT-940148, Touch America, Inc., (Touch America) seeks to amend its registration authority as a telecommunications company and classification as a competitive telecommunications company pursuant to RCW 80.36.350 and 80.36.320. Touch America also filed revisions to its price list.

DISCUSSION

2 Touch America proposes to amend its competitive classification and registration authority with the Commission as a telecommunications company to offer local exchange service, alternate operator services, and prepaid calling services. Services specified in Exhibit A of its application but not included in its initial price list may not be offered until applicant amends its price list to include the description of service with rates and charges. In support of its petition, Touch America asserts that its services compete with other interexchange and local exchange carriers telecommunication services. Touch America states that customers have readily available equivalent alternatives and that there are no captive customers of the Company's services.

3 Touch America is a Montana corporation, headquartered in Butte, Montana, and is owned by Entech, Inc. Rates, terms, and conditions set forth in the revisions to its price list are structured similarly to rates filed by other interexchange and local exchange carriers for calls placed in the relevant market.

4 Touch America has provided information showing that it meets the requirements of RCW 80.36.350. Pursuant to statutes and rules governing registration applications and prepaid calling services proposals, Touch America has proposed a satisfactory bond agreement for protection of those customer prepayments. Initially, the bond agreement will be for \$500,000. It will increase proportionally as the outstanding amount of customer prepayments increases. Touch America will notify the Commission at least 30 days prior to terminating its operations, and will provide the insurer and the Commission notice in writing and within 24 hours of ceasing its operations with its list of all outstanding account numbers and customer balances.

5 Within 15 days after September 30, 2001, and within 15 days after the start of each calendar quarter thereafter, Touch America must submit to the Commission a report containing information detailed in ordering paragraph 10. Statements must be filed until the Commission notifies the applicant in writing that such reports are no longer required. Touch America will adjust the amount of the bond consistent with the information that it reports to assure compliance with WAC 480-120-058. Commission Staff may also request other current Company financial information. After one year's administration of the bond agreement, the reporting requirement may be modified to a semi-annual level, upon request by Touch America and authorization by the Commission.

6 Touch America must state an unconditional, money-back guarantee on each prepaid calling card or in supplemental materials provided at the time the prepaid calling card is purchased, and include a statement warning customers to safeguard their cards. If Touch America ceases its operations, it must provide refund information to its customers through the company's toll-free phone number for a minimum of six months after ceasing operations. Touch America must provide a free call-detail report to customers upon request.

7 Touch America has provided information showing that it meets the requirements of RCW 80.36.350. Applicant does not propose to collect deposits from customers.

8 In conjunction with classification, the Company is seeking waiver of:

RCW 80.04.300	Budgets to be filed by companies-- Supplementary budgets
RCW 80.04.310	Commission's control over expenditures
RCW 80.04.320	Budget rules
RCW 80.04.330	Effect of unauthorized expenditure-- Emergencies
RCW 80.04.360	Earnings in excess of reasonable rate-- Consideration in fixing rates
RCW 80.04.460	Investigation of accidents
RCW 80.04.520	Lease of utility facilities
RCW 80.36.100	Tariff schedules to be filed and open to public
RCW 80.36.110	Tariff changes--Statutory notice--Exception
Chapter 80.08 RCW	Securities (except RCW 80.08.140)
Chapter 80.12 RCW	Transfers of Property
Chapter 80.16 RCW	Affiliated Interests
Chapter 480-80 WAC	Tariffs
Chapter 480-140 WAC	Budgets
Chapter 480-143 WAC	Transfers of Property
Chapter 480-146 WAC	Securities and Affiliated Interests
WAC 480-120-026	Tariffs
WAC 480-120-031	Accounting
WAC 480-120-032	Accounting-Political information and political education activities

WAC 480-120-036	Finance--Securities, affiliated interests, transfer of property
WAC 480-120-046	Services offered
WAC 480-120-131	Reports of accidents

9 Rules invoked include WAC 480-121-061, WAC 480-121-062, WAC 480-121-063, and WAC 480-121-064. Statutes invoked include RCW 80.36.320 and 80.36.350. The ultimate issues are whether the proposed amendments to Touch America’s registration and competitive classification should be approved.

10 This matter was brought before the Commission at its regularly scheduled open meeting on June 13, 2001. The Commissioners, having been fully advised in the matter, and having determined the following order to be consistent with the public interest, directed the Secretary to enter the following order and related provisions.

FINDINGS OF FACT

- 11 (1) Touch America filed a supplemental application on May 18, 2001, to amend its registration authority as a telecommunications company and classification as a competitive telecommunications company pursuant to the provisions of RCW 80.36.350 and 80.36.320, to provide local exchange service, alternate operator services, and prepaid calling card services.
- 12 (2) As to form, the supplemental application and petition meet the requirements of RCW 80.36.350 and 80.36.320, and comply with the Commission’s rules and regulations.
- 13 (3) The amendment of the registration of Touch America to include local exchange, alternate operator services, and prepaid calling services as a telecommunications company is not inconsistent with the public interest.
- 14 (4) In this proceeding, the Commission in no way endorses the financial viability of applicant nor the investment quality of any securities it may issue.
- 15 (5) Alternative providers of service to that of Touch America include, but are not limited to, Qwest Corporation, Verizon Northwest, Inc., MCI WorldCom Communications, Inc., and Sprint Communications Company L.P. All services are fully available from alternative providers in the relevant market.
- 16 (6) The relevant market is the state of Washington.
- 17 (7) Touch America has no captive customer base.
- 18 (8) Touch America should be permitted to provide services under its proposed price list.

- 19 (9) Touch America requested waivers of certain laws and rules relating to telecommunications services. The laws and rules for which waivers should be granted are listed in Appendix A, incorporated by this reference and made a part of this Order.

CONCLUSIONS OF LAW

- 20 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this registration application and classification petition and Touch America.
- 21 (2)_ The services offered are subject to effective competition.
- 22 (3) Touch America should be authorized to provide local exchange service, alternate operator services, and prepaid calling services as a telecommunications company pursuant to RCW 80.36.350 and classified as a competitive telecommunications company pursuant to RCW 80.36.320(1).
- 23 (4) Touch America should be permitted to provide services under price lists promulgated under RCW 80.36.320 (2). These services will not include collecting deposits from customers.
- 24 (5) Touch America should be granted waivers of the laws and rules listed in Appendix A.

ORDER

THE COMMISSION ORDERS:

- 25 (1) Effective on the date of this Order and subject to any conditions imposed, the Commission approves the supplemental application of Touch America, Inc., requesting an order amending registration authorization as a telecommunications company to provide local exchange, alternate operator services, and prepaid calling services to the public in this state.
- 26 (2) The Commission approves the petition of Touch America, Inc., for classification as a competitive telecommunications company; and grants a waiver of the laws and rules listed in the attached Appendix A.
- 27 (3) Touch America, Inc., shall be permitted to provide services under price list.
- 28 (4) Registration of Touch America, Inc., as a telecommunications company shall not be construed as an endorsement of financial viability or of the investment quality of any securities it may issue.

- 29 (5) As a telecommunications company providing service to the public in this state, Touch America, Inc., is subject to the jurisdiction of this Commission under the provisions of Title 80 RCW and all rules adopted by the Commission.
- 30 (6) Touch America, Inc., is authorized to offer rates and services pursuant to its price list in the format prescribed by the Commission. Services specified in Exhibit A but not included in its initial price list may not be offered until applicant amends its price list to include the description of service with rates and charges. Any price list filed by Touch America, Inc., and subsequent changes to these price lists shall become effective only after ten days' notice to the Commission and to customers. In the event of a price reduction or of a change in terms and conditions that does not have rate impact, personal notice to customers is not required. To comply with the statutory notice requirement, Touch America, Inc., may publish notice of price reductions or changes in terms and conditions of service that do not have rate impact by a display advertisement in such newspaper(s) as are geographically situated to be circulated over the Company's service area.
- 31 (7) Touch America, Inc., must comply, as specified, with the requirements of WAC 480-120-141, Operator service providers rule.
- 32 (8) Touch America, Inc., is not authorized to collect deposits from customers.
- 33 (9) The bond agreement in the amount of \$500,000 filed by Touch America, Inc., is sufficient to initiate operations. Touch America, Inc., must adjust the amount of the bond to assure compliance with WAC 480-120-058. As part of the bond agreement, in the event the Company ceases operations Touch America, Inc., must provide 30 days' notice, in writing and within 24 hours, to the insurer and the Commission to include a list of outstanding account numbers and balances.
- 34 (10) Within 15 days after September 30, 2001, and within 15 days after the start of each calendar quarter thereafter, Touch America, Inc., must submit to the Commission a report containing the following information specific to its state of Washington operations: (a) total outstanding prepaid calling card balance at the beginning of the reporting period; (b) dollar amount of prepaid calling cards sold during the reporting period; (c) depleted usage of prepaid calling cards during the reporting period; (d) total outstanding prepaid calling card balance at the end of the reporting period. The applicant must continue to file statements within 15 days after each 3-month period thereafter until notified in writing by the Commission that such reports are no longer required. Based on this information, Touch America, Inc., must adjust the amount of the bond to assure compliance with WAC 480-120-058. In addition, Commission Staff may request, and applicant shall supply, current Company financial information. After one year's administration of the bond agreement, the reporting requirement may be modified to a semi-annual level, upon request by Touch America, Inc., and authorization by the Commission.

- 35 (11) Touch America, Inc., must state an unconditional money-back guarantee on the face of the prepaid calling card or on supplemental materials provided at the time the prepaid calling card is purchased along with a statement warning customers to safeguard their cards.
- 36 (12) In the event the Company ceases operations, Touch America, Inc., must provide refund information to its customers on the company's toll-free phone number for a minimum of six months.
- 37 (13) Touch America, Inc., must provide a free call-detail report to customers upon request.
- 38 (14) The Commission retains jurisdiction over the subject matter and the Company to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective this 13th day of June 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN, Secretary

Docket No. UT-940148

APPENDIX A

RCW 80.04.300	Budgets to be filed by companies--Supplementary budgets
RCW 80.04.310	Commission's control over expenditures
RCW 80.04.320	Budget rules
RCW 80.04.330	Effect of unauthorized expenditure--Emergencies
RCW 80.04.360	Earnings in excess of reasonable rate--Consideration in fixing rates
RCW 80.04.460	Investigation of accidents
RCW 80.04.520	Lease of utility facilities
RCW 80.36.100	Tariff schedules to be filed and open to public
RCW 80.36.110	Tariff changes--Statutory notice--Exception
Chapter 80.08 RCW	Securities (except RCW 80.08.140, State not obligated)
Chapter 80.12 RCW	Transfers of Property
Chapter 80.16 RCW	Affiliated Interests
Chapter 480-80 WAC	Tariffs
Chapter 480-140 WAC	Budgets
Chapter 480-143 WAC	Transfers of Property
Chapter 480-146 WAC	Securities and Affiliated Interests
WAC 480-120-026	Tariffs
WAC 480-120-031	Accounting
WAC 480-120-032	Accounting-Political information and political education activities
WAC 480-120-036	Finance--Securities, affiliated interests, transfer of property
WAC 480-120-043	Notice to Public of Tariff Changes
WAC 480-120-046	Services offered
WAC 480-120-131	Reports of accidents
WAC 480-120-541	Access charges
WAC 480-120-542	Collective consideration of Washington intrastate rate, tariff, or service proposals
WAC 480-120-543	Caller identification service
WAC 480-120-544	Mandatory cost changes for telecommunications companies