

Agenda Date: January 30, 2002
Item Number: 2A

Docket: UT-011225
Company Name: Touch America, Inc.

Staff: Dennis Shutler, Compliance Specialist
Vicki Elliott, Assistant Director, Consumer Affairs

Recommendation:

Issue a Complaint against Touch America, Inc. Accept the proposed Settlement Agreement to resolve the Complaint.

Discussion:

The proposed Complaint and Settlement Agreement in this matter comes from a Staff investigation into the complaint response practices of Touch America, Inc. (Touch America).

Staff began this investigation because of its experience with Touch America in the informal complaint process. Staff alleged that Touch America was not responding within the required two working days, as required by WAC 480-120-101(5), to Commission-referred complaints from customers of Touch America. In some cases, the company did not respond for one or more months, despite repeated requests from Staff for a response.

Staff began its investigation on September 4, 2001. During the ensuing investigation, Staff reviewed 22 complaints filed with the Commission between January 22, 2001, and September 4, 2001, finding a total of 633 violations of WAC 480-120-101(5).

In October 2001, Staff notified Touch America of its findings and invited the company to enter into discussions to resolve these issues. Staff and Touch America shared information and discussed a possible resolution. These discussions resulted in the proposed Settlement Agreement presented today.

Briefly, in the Agreement, Touch America has agreed to total penalties of \$47,475 for 633 violations of WAC 480-120-101(5). Of this amount, Touch American will pay the Commission penalties of \$15,825. The Commission will suspend the remaining \$31,650 for a period of one year and will not require the company to pay this amount unless, within that one-year period, the company violates specific benchmarks related to responding to Commission-referred complaints as described in the attached Agreement. In addition, Touch America will reimburse the Commission for the cost of the investigation in the amount of \$2,197.13, and will implement changes to its process that result in immediate and continued compliance with all state laws and rules.

Recommendation

Staff recommends the Commission issue a Complaint against Touch America, Inc., and accept the proposed Settlement Agreement to resolve the Complaint.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET NO. UT-011225
)	
Complainant,)	
)	SETTLEMENT AGREEMENT
v.)	
)	
TOUCH AMERICA, INC.)	
)	
Respondent.)	
.....)	

1 This Settlement Agreement is entered into by all parties to this proceeding for the purpose of resolving all issues raised in the above docket.

I. PARTIES

2 The parties to this Agreement are Touch America, Inc. and the Staff of the Washington Utilities and Transportation Commission (Staff) (collectively, “the Parties”).

II. BACKGROUND

3 Staff initiated an investigation into the complaint response practices of Touch America. Staff alleged that Touch America failed to respond to Staff within two working days regarding complaints filed with the Commission by Touch America customers, as required by WAC 480-120-101(5). In its investigation, Staff reviewed 22 complaints filed with the Commission between January 22, 2001, and September 4, 2001, finding a total of 633 violations of WAC 480-120-101(5). Staff issued a report on September 24, 2001.

III. AGREEMENT

4 The Parties have reached agreement on the issues raised in the above docket and wish to present their agreement for the Commission’s consideration and approval. The Parties therefore adopt the following Settlement Agreement, which the Parties entered into voluntarily to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding.

5 The Parties agree that Touch America will pay the Commission a total of \$18,022.13. This amount represents penalties of \$15,825.00 for 633 violations of WAC 480-120-101(5), and reimbursement to the Commission for the cost of the investigation in the amount of \$2,197.13. The total amount shall be ordered due and payable 15 days after the Commission issues its order.

6 By this Settlement Agreement, Touch America agrees to an additional suspended penalty of \$31,650.00. This amount will be suspended for one year and will not be imposed unless, as measured on a quarterly basis:

- Touch America responds to a Commission-referred complaint more than six business days after the date it is referred by Staff; and,
- Touch America does so in more than four instances.

If the above conditions exist, Touch America agrees to pay the suspended penalty. The year, as well as the first quarter, will begin on January 1, 2002. Commission Staff will measure and report, on a quarterly basis, Touch America's progress toward meeting the requirements of WAC 480-120-101(5).

7 The Parties agree that Touch America will revise its internal complaint tracking system to ensure Commission-referred complaints are properly recorded, tracked, and responded to in accordance with WAC 480-120-101(5).

8 The Parties agree that Touch America will ensure adequate personnel is available for working Commission-referred complaints to respond to complaints to in accordance with WAC 480-120-101(5).

9 The Parties agree that Touch America will comply with all applicable Commission rules. Under the Settlement Agreement, Touch America commits to full compliance with Washington's complaints and disputes rules set forth in WAC 480-120-101(5). This Agreement does not preclude the Commission from pursuing penalties for violations of Commission rules not related to the subject matter of this Agreement, or for subsequent violations of WAC 480-120-101(5).

IV. GENERAL PROVISIONS

10 The Parties agree that this Settlement Agreement is a settlement of all contested issues between them in this proceeding. The Parties understand that this Settlement Agreement is not binding on the Commission.

11 The Parties agree to cooperate in submitting this Agreement promptly to the Commission for acceptance. The Parties agree to support adoption of this Agreement in proceedings before the Commission through testimony or briefing. No party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement. Nothing in this Agreement shall limit or bar any other entity from pursuing legal remedies against Touch America or Touch America's ability to assert defenses to such claims.

12 The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission Order fully adopting those terms. This Agreement shall not be construed against either party because it was a drafter of this Agreement.

13 The Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Agreement in its entirety.

14 The Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. Copies sent by facsimile are as effective as original documents.

15 The Parties shall take all actions necessary as appropriate to carry out this Agreement.

16 In the event that the Commission rejects all or any portion of this Agreement, each party reserves the right to withdraw from this Agreement by written notice to the other party and the Commission. Written notice must be served within 10 days. In such event, neither party will be bound or prejudiced by the terms of this Agreement, and either party shall be entitled to seek reconsideration of the Order rejecting all or part of the Agreement. Additionally, the Parties will jointly request a pre-hearing conference be reconvened for purposes of establishing a procedural schedule to complete the case.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION STAFF

CHRISTINE O. GREGOIRE
Attorney General

TOUCH AMERICA, INC.

LISA WATSON
Assistant Attorney General
Counsel for Commission Staff
Dated: _____, 2001.

MICHAEL J. MELDAHL
President
Dated: _____, 2001.