



PUBLIC NOTICE

Federal Communications Commission
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DA 03-2717

Released: August 21, 2003

DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF TOUCH AMERICA, INC. BY BUYERS UNITED, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-183

On July 21, 2003, Buyers United, Inc., d/b/a buyersonline, d/b/a United Carrier Networks (Buyers or Transferee) and Touch America, Inc. (Touch America or Transferor) (together, Applicants) filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ for consent to allow Buyers to acquire certain customers of Touch America.² As described below, Touch America is currently operating under the protection of Chapter 11 of the U.S. Bankruptcy Code.³

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 would result in Buyers having a market share in the interstate, interexchange market of substantially less than 10 percent; Buyers 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 neither Applicant is dominant with respect to any service.⁴

Touch America is organized under the laws of the Montana. Touch America provides switched and dedicated voice long distance services to customers in the following states: Arizona, California, Colorado, Iowa, Idaho, Minnesota, Montana, Nebraska, New Mexico, North

¹ 47 C.F.R §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² *See* Letter from Jonathan S. Marashlian, Counsel for Buyers United, Inc. to Marlene F. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03- (filed Aug. 8, 2003) (amending the original application).

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

⁴ 47 C.F.R. § 63.03(b)(2)(i).

Dakota, Oregon, Texas, Utah, Washington, and Wyoming.

Buyers is organized under the laws of Delaware. Theodore Stern (10.4%) is the only person or entity that directly or indirectly owns ten percent or more of the equity in Buyers. Buyers primarily provides 1+ long distance services, calling cards and toll free access on a resold basis in the 48 contiguous states and Hawaii. Buyers United provides its telecommunications services to niche markets under two businesses as (d/b/a) names – buyersonline is intended to cater to the residential consumer and United Carrier Networks targets business customers.

On June 6, 2003, Buyers and Touch America entered into an Asset Purchase Agreement (Agreement), wherein Touch America agreed to sell, and Buyers agreed to acquire, Touch America's existing switched and dedicated voice long distance customer base for the 15 states.⁵ On June 19, 2003, Touch America Holdings, Inc. (TA Holdings) and all of its subsidiaries, including Touch America, filed with the U.S. Bankruptcy Court voluntary petitions under Chapter 11 of the U.S. Bankruptcy Code to reorganize their business and financial structure.⁶ Although entered into prior to Touch America's bankruptcy filing, the Agreement may be subject to the approval of the Bankruptcy Court. The customer base transfer contemplated by the Agreement is subject to notification requirements and/or the approvals of certain state public utility commissions.

Applicants state that the proposed transaction is in the public interest by avoiding any interruption of service and inconvenience to affected Touch America customers. Following the proposed transaction, Applicants maintain that Buyers will continue to provide the same interLATA switched and dedicated voice services at the same or lower usage rates.⁷ Moreover, as explained above, Applicants assert that they 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. Finally, 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, the

⁵ According to the Applicants, the proposed transaction between Touch America and Buyers does not in any way affect the proposed transaction between Touch America and 360 networks, nor does it affect the referenced 360/TA Joint Application because of the distinct nature of the services and assets being transferred pursuant to Touch America's respective agreements with 360 networks and Buyers. *See Domestic Section 214 Application Filed for Acquisition of Assets of Touch America, Inc. by 360networks (USA) inc.*, Public Notice, WC Docket No. 03-151, DA 03-2220 (rel. July 7, 2003).

⁶ *Id.*

⁷ Applicants note that within two billing cycles after the transfer of customer accounts from Touch America to Buyers, certain customers may notice additional charges on their invoices. Examples are: PCCC charges and other monthly recurring charges, such as local loop and toll free fees. Applicants state that all such charges are either authorized by the Commission and/or were contracted for or subscribed to by these customers, but were not previously billed by Touch America due to certain billing system limitations. According to the Applicants, customers will be notified in advance of any changes in their billing.

Applicants claim, will help to offset these impacts by enabling Buyers to expand its voice long distance customer base, thereby enhancing its presence in the market as a competitive provider of telecommunications services.

GENERAL INFORMATION

The acquisition of assets identified herein has been found, upon initial review, to be acceptable for filing as a 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 notice.⁸ Unless otherwise notified by the Commission, Applicants are permitted to transfer assets on the 31st day after the date of this notice.⁹ 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, Vistrionix, 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,

⁸ See 47 C.F.R. § 63.03(a).

⁹ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

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:

- (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) Jeremy Miller, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C211, Washington, D.C. 20554; e-mail: jemiller@fcc.gov;
- (5) 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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