



PUBLIC NOTICE

Federal Communications Commission
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DA 04-126
January 20, 2004

**APPLICATION OF TOUCH AMERICA, INC. (DEBTOR-IN-POSSESSION) TO
DISCONTINUE DOMESTIC TELECOMMUNICATIONS SERVICES NOT
AUTOMATICALLY GRANTED, FURTHER PUBLIC COMMENT REQUESTED**
WC Docket No. 03-259
Comp. Pol. File No. 667

Comments Due: January 27, 2004

On **December 8, 2003, Touch America, Inc. (Debtor-in-Possession)** (Touch America DIP or Applicant), located at **130 North Main Street, Butte, Montana 59701-9331**, filed an application with the Federal Communications Commission (FCC or Commission), requesting authority under section 214(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(a), and section 63.71 of the Commission's rules, 47 C.F.R. § 63.71, to discontinue the provision of its domestic, interstate, interexchange Asynchronous Transfer Mode (ATM) and Frame Relay services in the contiguous United States. By this Public Notice, the Wireline Competition Bureau announces that Touch America DIP's application to discontinue service is not automatically granted.

Touch America DIP's application indicates that it currently provides domestic, interstate, interexchange ATM and Frame Relay services to approximately 350 customers located in Alabama, Arizona, California, Colorado, Florida, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Jersey, New Mexico, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, West Virginia, and Wyoming. Touch America DIP states that it provides these services primarily to commercial customers and to Northrop Grumman, a prime contractor with the U.S. Department of Treasury. According to Touch America DIP, the services provided to these customers range in capacity from DS-0 to OC-3, but the majority of customers take services in the DS-0 to DS-1 range.

The application indicates that on June 19, 2003, Touch America Holdings, Inc. and several subsidiaries, including Touch America, Inc., filed voluntary petitions under Chapter 11 of the bankruptcy code in order to reorganize their business and financial structure. Touch America DIP states that as a result of its financial inability to maintain ATM/Frame Relay services

indefinitely, it plans to discontinue providing these services on January 31, 2004, and that, on December 2, 2003, it notified its customers in writing of this planned discontinuance of service.

By Public Notice dated December 19, 2003, the Commission notified the public that, in accordance with 47 C.F.R. § 63.71(c), the application would be deemed to be automatically granted on the thirty-first (31st) day after the release date of the notice, unless the Commission notifies the Applicant that the grant will not be automatically effective. Accordingly, the automatic grant date for the application would have been January 20, 2004. The Public Notice also indicated that Touch America DIP notified its customers that it would not discontinue service until January 31, 2004, and that Touch America DIP could not therefore discontinue service until that date.

The Commission will normally authorize proposed discontinuances of service unless it is shown that customers or other end users would be unable to receive service or a reasonable substitute from another carrier, or that the public convenience and necessity would be otherwise adversely affected. Numerous Touch America DIP ATM/Frame Relay customers have filed comments objecting to Touch America DIP's application, arguing that more time would be necessary to obtain alternative service.¹ Specifically, commenters state that permitting Touch America DIP to discontinue service on January 31, 2004, might result in loss of service to customers that have not yet obtained alternative services. Commenters argue that because Touch America DIP's ATM/Relay service is integral to their businesses, any discontinuance of service would affect them adversely. As a result, these commenters request additional time in order to complete transition to an alternative service provider. In addition, Qwest Communications Corporation, which is providing alternative services to many Touch America DIP customers, filed comments requesting that the Commission require Touch America DIP to continue providing service to all its customers through February 28, 2004.

Where comments on a discontinuance application allege that the service has no reasonable substitute or that either present or future public convenience and necessity will be adversely affected, the Commission will scrutinize the discontinuance application, consistent with its statutory obligations. See 47 U.S.C. § 214(a), 47 CFR § 63.71. The Supreme Court has ruled that the Commission has considerable discretion in deciding how to make its section 214 public interest finding. *FCC v. RCA Communications, Inc.*, 73 S.Ct 998, 1002 (1953). Because the comments raise significant concerns, we find that the public interest will not be served by automatic grant of Touch America DIP's application. Therefore, by this Public Notice, Touch America DIP is notified that its application to discontinue the provision of its ATM/Frame Relay services will not be granted automatically. We emphasize that our removal of Touch America DIP's application from the automatic grant process should not be construed as a denial.

We seek further information from the public regarding Touch America DIP's application and hereby request comments no later than **January 27, 2004**. This proceeding is considered a "permit but disclose" proceeding for purposes of the Commission's *ex parte* rules, 47 C.F.R. §§ 1.1200-1.1216. Such comments should refer to **WC Docket No. 03-259 and Comp. Pol. File No. 667**. Comments should include specific information about the impact of this proposed discontinuance on the commenter, including any inability to acquire reasonable substitute

¹ On January 16, 2004, Touch America DIP submitted a letter providing written assurance that it would not discontinue service to four of these customers prior to March 1, 2004.

service. 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 send an original and four (4) copies of the comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. 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. Two (2) copies of the comments should also be sent to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 6-A207, Washington, D.C. 20554, Attention: Carmell Weathers. In addition, comments should be served upon the Applicants. Commenters are also requested to fax their comments to the FCC at (202) 418-2345, Attention: Carmell Weathers.

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, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The application will be available for review and copying during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554, (202) 418-0270. A copy of the application may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail at qualexint@aol.com.

For further information, contact Carmell Weathers, (202) 418-2325 (voice), carmell.weathers@fcc.gov, or Brad Koerner, (202) 418-0866 (voice), brad.koerner@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau.

The TTY number is (202) 418-0484. For further information on procedures regarding Section 214 please visit [http://www.fcc.gov/wcb/cpd/other adjud](http://www.fcc.gov/wcb/cpd/other_adjud).

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