

030000-P4

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
TOUCH AMERICA HOLDINGS, INC., et al.,) Case No. 03-11915 (KJC)
Debtors.) (Jointly Administered)
Objection Deadline: July 31, 2003 @ 4:00 p.m.
Auction Date: August 6, 2003 @ 9:30 a.m.
Hearing Date: August 7, 2003 @ 10:00 a.m.

NOTICE OF AUCTION AND SALE HEARING

PLEASE TAKE NOTICE THAT:

Pursuant to the AMENDED ORDER UNDER 11 U.S.C. §§ 105(a) AND 363 AND FED. R. BANKR. P. 2002 AND 6004: (I) APPROVING (A) NOTICE AND BIDDING PROCEDURES AND (B) BID PROTECTIONS, INCLUDING, BREAK-UP FEE, OVERBID PROTECTIONS, AND NO-SOLICITATION PROVISIONS IN CONNECTION WITH THE PROPOSED SALE OF CERTAIN OF THE DEBTORS' ASSETS; AND (II) SCHEDULING HEARING AND SETTING BIDDING AND OBJECTION DEADLINES IN CONNECTION WITH SUCH SALE (the "Procedures Order"), approved by the United States Bankruptcy Court for the District of Delaware (the "Court") on July 15, 2003, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), will conduct an auction of certain of the Debtors' assets (the "Purchased Assets"), including certain unexpired leases and executory contracts (the "Assumed Agreements"). A copy of the Procedures Order is attached hereto as Exhibit A.

The Sale. Under the terms of the Asset Purchase Agreement, by and among 360networks Corporation (the "Proposed Purchaser"), and the Debtors (collectively, the "Sellers") (as amended from time to time, the "Purchase Agreement"), the Debtors propose to sell the Purchased Assets, and to assume and assign the Assumed Agreements, to the Proposed Purchaser, free and clear of liens, claims, encumbrances and interests (except for certain express assumed liabilities and permitted liens), all as more fully set forth in the Purchase Agreement, subject to higher and better offers and Court approval.

The Bid Deadline. As set forth in the Bidding Procedures Order, a Qualified Bidder that desires to make a bid shall deliver written copies of its bid to (i) Milbank, Tweed, Hadley & McCloy LLP, One Chase Manhattan Plaza, New York, NY 10005, Attention: John

- AUS
CAF
CMP
COM
CTR
ECR
GCL
OPC
MMS
SEC
OTH

John Nye

All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures (as defined herein) or the Procedures Order (as applicable).

DOCUMENT NUMBER DATE

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O'Conner, Esq. and (ii) Evercore Partners, 65 E. 55th Street, 33rd Floor, New York, NY 10022, Attention: Craig Moore, not later than 12 noon on August 5, 2003 (the "Bid Deadline").

The Auction. If a Qualified Bid (other than the Purchase Agreement) is received, the Debtors will conduct an auction (the "Auction") for the Purchased Assets beginning on August 6, 2003 at 9:30 a.m. (Eastern Time) at the offices of Young Conaway Stargatt & Taylor, 1000 West Street, The Brandywine Building, Wilmington, DE 19801. Attendance and participation at the Auction is subject to certain terms, conditions and procedures (collectively, the "Bidding Procedures") described in and annexed to the Procedures Order. All interested parties are invited to prequalify for the Auction and to present competing offers to purchase the Purchased Assets, including the Assumed Agreements in accordance with the Bidding Procedures attached hereto as Exhibit B.

Bidding at the Auction will commence at the purchase price stated in the highest or otherwise best Qualified Bid (taking into account the Breakup Fee), and will subsequently continue in the increments established by the Bidding Procedures. At the conclusion of the bidding, the Debtors will announce their determination as to the person or entity (the "Successful Bidder") submitting the highest or otherwise best bid for the Purchased Assets (the "Successful Bid").

If the Debtors do not receive any Qualified Bids (other than that of the Proposed Purchaser), the Debtors will report the same to the Court, the Proposed Purchaser's bid will be deemed the Successful Bid, and the Debtors will proceed with the transactions contemplated by the Purchase Agreement. If, however, the Debtors receive one or more Qualified Bids in addition to the Purchase Agreement and the Auction is conducted, the Debtors will notify the Court of the results of the Auction and proceed with a sale to the Successful Bidder. The Debtors will be deemed to have accepted any other bid only when the bid has been approved by the Court at the Sale Hearing.

Objections to the Sale of the Purchased Assets. Any Objection to the entry of the Sale Order, if any, must: (a) be in writing; (b) conform to the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of the United States Bankruptcy Court for the District of Delaware; (c) set forth the name of the objector and the nature and amount of any claim or interest held by and against the Debtors' estates or property; (d) state the legal and factual basis for the objection and the specific grounds therefor; (e) be filed with this Court; and (f) be served upon counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attn: Robert S. Brady, Esquire; counsel to the Proposed Purchaser, Willkie Farr and Gallagher, 787 Seventh Avenue, New York, New York 10019, Attn: Alan J. Lipkin, Esquire; counsel to the Committee, Winston and Strawn, 200 Park Avenue, New York, NY 10166-4193, Attn: David Neier, Esquire; and the Office of the United States Trustee, 844 N. King Street, Room 2311, Wilmington, Delaware 19801, Attn: Margaret Harrison, Esquire, so as to be actually received by no later than 4:00 p.m. (Eastern Time) on July 31, 2003. Only timely filed and served responses, objections or other pleadings will be considered by the Court at the Sale Hearing.

The Sale Hearing. A hearing (the "Sale Hearing") to approve the Sale of the Purchased Assets, including the assumption and assignment of the Assumed Agreements, to the Successful Bidder (the "Sale Order") will be held on August 7, 2003 at 10:00 a.m. in the United States Bankruptcy Court for the Eastern District of Pennsylvania before the Honorable Kevin J. Carey, United States Bankruptcy Judge, 900 Market Street, Philadelphia, PA 19107.

This notice is qualified in its entirety by the Procedures Order. All persons and entities are urged to read the Procedures Order and the provisions thereof carefully. To the extent this notice is inconsistent with the Procedures Order, the terms of the Procedures Order shall govern.

Copies of the Procedures Order, the Purchase Agreement and the motion seeking approval of the same are available upon written request to Bankruptcy Management Corporation, 1330 E. Franklin Ave., El Segundo, CA 90245.

Dated: July 16, 2003

YOUNG CONAWAY STARGATT & TAYLOR, LLP
Robert S. Brady (No. 2847)
Maureen D. Luke (No. 3062)
Edward J. Kosmowski (No. 3849)
Edmon L. Morton (No. 3856)
The Brandywine Building, 17th Floor
1000 West Street
P.O. Box 391
Wilmington, DE 19899-0391
Telephone: (302) 571-6600

Proposed Counsel for Debtors

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
TOUCH AMERICA HOLDINGS, INC., et al.,) Case No. 03-11915 (KJC)
)
Debtors.) (Jointly Administered)
)
) Ref. Docket No. 23

**AMENDED ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363
AND FED. R. BANKR. P. 2002 AND 6004: (I) APPROVING (A) NOTICE AND
BIDDING PROCEDURES AND (B) BID PROTECTIONS, INCLUDING, BREAK-UP
FEE, OVERBID PROTECTIONS, AND NO-SOLICITATION PROVISIONS IN
CONNECTION WITH THE PROPOSED SALE OF CERTAIN OF THE DEBTORS'
ASSETS; AND (II) SCHEDULING HEARING AND SETTING BIDDING AND
OBJECTION DEADLINES IN CONNECTION WITH SUCH SALE**

Upon the motion (the "Motion"), of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), for, among other things, entry of an order (the "Procedures Order") pursuant to 11 U.S.C. §§ 105(a) and 363 and Fed. R. Bankr. P. 2002 and 6004, among other things, (i) approving certain bid protections, including a break-up fee (the "Breakup Fee") and certain auction procedures and overbid requirements (collectively with the Breakup Fee, the "Bidding Procedures") with respect to the proposed sale (the "Sale") of certain of the assets of the Debtors to 360networks Corporation (the "Purchaser") pursuant to that certain Asset Purchase Agreement (as amended from time to time, the "Purchase Agreement")¹ by and among the Purchaser and those of the Debtors party to the Purchase Agreement (collectively, the "Sellers"), and certain Ancillary Agreements, substantially in the forms attached as exhibits to the Purchase Agreement (collectively, the "Sellers") to the Purchaser; or

¹ Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Motion or the Purchase Agreement, as the case may be. To the extent that any terms of this Order and those of the Purchase Agreement are inconsistent, this Order shall control.

another successful bidder (the “Successful Bidder”), (ii) scheduling a date for the hearing to approve the Sale (the “Sale Hearing”), (iii) setting auction procedures, bidding and objection deadlines in connection with the Sale, and (iv) approving the form and manner of notice thereof; and a hearing having been held on July 14, 2003 (the “Bidding Procedures Hearing”); and the Court having reviewed and considered: (a) the Motion; (b) the objections thereto, if any; and (c) the arguments of counsel made, and the evidence proffered or adduced, at the Bidding Procedures Hearing; and after due deliberation and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:²

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334 and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (N), and (O). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. Good and sufficient notice of the relief sought in the Motion with respect to the proposed Bidding Procedures, Breakup Fee, notice procedures and other related matters (as set forth herein) has been given and no other or further notice is required. A reasonable opportunity to object to or be heard regarding such relief has been, and with respect to the further notice required hereby, will be, afforded to all interested persons and entities including the following: (i) the Office of the United States Trustee; (ii) counsel to the Purchaser; (iii) to each of the thirty largest creditors of the Debtors (on a consolidated basis); (iv) counsel to Qwest Communications Corporation, Inc.; (v) all entities known to have expressed an interest in

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

acquiring any of the Purchased Assets; (vi) all entities known to have asserted any Lien in or upon any of the Purchased Assets; (vii) all federal, state and local taxing or regulatory authorities or recording offices that have (A) jurisdiction over the Relevant Business or any aspect thereof or (B) a reasonably known interest in the relief requested in the Motion; (viii) all governmental agencies having jurisdiction over the Relevant Business with respect to environmental laws; (ix) parties to governmental approvals or permits applicable to the Relevant Business; (x) the United States Attorney's office and the attorneys general of all states in which the Purchased Assets are located; (xi) the Federal Communications Commission and applicable state public utility commissions; and (xii) the Securities and Exchange Commission (collectively, the "Initial Notice Parties"). No other or further notice of the request for the relief granted herein need be given.

C. The Bidding Procedures, substantially in the form annexed hereto as Exhibit A, are fair, reasonable and appropriate and are designed to maximize the recovery on the Purchased Assets, including the Assumed Agreements.

D. The Debtors have demonstrated a compelling and sound business justification, under the circumstances, for authorizing the payment of the Breakup Fee to the Purchaser in accordance with the procedures set forth in the Motion as modified by this Order.

E. It appears that the Breakup Fee was negotiated by the parties to the Purchase Agreement in good faith and at arm's-length and is fair and reasonable.

F. The Debtors' payment to the Purchaser of the Breakup Fee under the conditions set forth in the Purchase Agreement as modified herein is: (a) an actual and necessary cost and expense of preserving the Debtors' estates, within the meaning of section 503(b) of the Bankruptcy Code; (b) of substantial benefit to the Debtors' estates; (c) reasonable and appropriate, given, among other things, the size and nature of the proposed Sale, the substantial

efforts that have been and will be expended by the Purchaser, and the benefits the Purchaser has provided to the Debtors' estates and creditors and all parties in interest herein by helping to maximize the value of the Purchased Assets, (d) not a penalty, but rather, a reasonable estimate of the damages to be suffered by Purchaser in the event the transactions contemplated by the Purchase Agreement are not consummated, and (e) necessary to ensure that the Purchaser will continue to pursue its proposed acquisition of the Purchased Assets. It appears that the Purchase Agreement was the culmination of a process undertaken by the Debtors and their professionals to negotiate a transaction with a bidder who was prepared to pay the highest or otherwise best consideration for the Purchased Assets (including the Assumed Agreements), while also assuming or otherwise satisfying certain Assumed Liabilities, in order to maximize the value of the Debtors' estates. The payment of the Breakup Fee should be approved because, among other things: (i) no other party to date has been willing to enter into a definitive agreement for the purchase of the Purchased Assets and the assumption of the Assumed Liabilities on terms acceptable to the Debtors; (ii) the protection afforded to the Purchaser by the Breakup Fee was a material inducement for, and an express condition of, the Purchaser's willingness to enter into the Purchase Agreement; (iii) the Purchaser is unwilling to commit to hold open its offer to purchase the Purchased Assets and consummate the other transactions under the terms of the Purchase Agreement unless it is assured of the payment of the Breakup Fee; and (iv) by, inter alia, inducing the Purchaser's bid and Purchaser's continued expenditure of time and effort concerning the proposed sale, the Break-Up Fee provisions will promote a more competitive bidding environment and thereby maximize the value of the Debtors' estates.

G. The entry of this Order is in the best interests of the Debtors and their estates, creditors and all other parties in interest herein; and it is therefore hereby

ORDERED, ADJUDGED AND DECREED THAT:

Overruling of Objections

1. Any objections to the entry of this Procedures Order or the relief granted herein and in the Motion that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits with prejudice.

Notice of Auction and Sale

2. The notice (the "Notice of Auction and Sale Hearing") of, among other things: (i) the Auction, (ii) the Sale; (iii) the assignment and assumption of the Initial Assumed Agreements; and (iv) the Bidding Procedures, substantially in the form attached hereto as Exhibit B, is approved in all respects.

3. As soon as practicable after the entry of this Procedures Order (and in any event, no later than July 21, 2003), the Debtors shall cause the Notice of Auction and Sale Hearing to be: (i) published in the national editions of either The Wall Street Journal or The New York Times; and (ii) served, pursuant to Bankruptcy Rule 2002(l), on (a) the Initial Notice Parties, (b) counsel to any statutory committee(s) appointed in these cases (collectively, the "Committee"), (iii) all non-Debtor parties to the Initial Assumed Agreements; and (iv) all other parties that filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 2002 as of the date of such service.

4. The service of the Notice of Auction and Sale Hearing (including the publication notice) in compliance with this Order shall be deemed to be good, sufficient and proper notice of the relief sought in the Motion with respect to the Auction, the Sale Hearing, the Sale, and other related matters including to those parties-in-interest unknown to the Debtors, and any requirements for other notice are waived and dispensed with pursuant to Bankruptcy Rules

2002, 6004, 6006 and 9007 and sections 102 and 105 of the Bankruptcy Code, and no other or further notice of the Bidding Procedures, the Sale, or the assumption and assignment of the Initial Assumed Agreements is required.

Notice of Proposed Assignment and Cure Amounts

5. The notice (the "Initial Assumption Notice") of, among other things: (i) the Debtors' intention to assume and assign to the Purchaser, as of the Closing Date, the Initial Assumed Agreements; and (ii) the amounts (each, a "Cure Amount"), if any, required to be paid to cure any monetary defaults related to each such Initial Assumed Agreement, substantially in the form annexed hereto as Exhibit C, is approved in all respects.

6. No later than July 21, 2003, the Debtors shall serve the Initial Assumption Notice on all non-Debtor parties to the Initial Assumed Agreements (collectively, the "Initial Assumption Notice Parties").

7. Each Initial Assumption Notice Party shall have until 4:00 p.m. (Eastern Daylight Savings Time) on July 31, 2003 (the "Assignment Objection Deadline") to file with the Court and serve upon the Debtors' and the Purchaser's respective counsel any objection to either (i) the assumption and assignment of its respective agreement or (ii) the Cure Amount with respect thereto, and must state in its objection (each, an "Assignment Objection") with specificity (y) the reason for its objection to such assumption and assignment, or (z) what Cure Amount it asserts is required (with appropriate documentation in support thereof). If no Assignment Objection is timely received from any such non-Debtor party: (a) the applicable Initial Assumed Agreement may be assigned to the Purchaser (or the Successful Bidder, as the case may be) on the Closing Date; (b) the applicable Cure Amount shall be fixed at the amount set forth in the Initial Assumption Notice, notwithstanding anything to the contrary in any Initial

Assumed Agreement or any other document; and (c) the Initial Assumption Notice Party shall be (i) deemed to have waived and released any right to assert an objection to the proposed assignment of the Initial Assumed Agreement or the Cure Amount with respect thereto, and to have otherwise consented to the assumption and assignment of the applicable Initial Assumed Agreement, and (ii) upon the payment of the applicable Cure Amount, if any, forever barred, permanently enjoined and estopped from asserting or claiming any other or further claims against the Debtors, their estates, the Purchaser (or the Successful Bidder, as the case may be), their respective successors and assigns, the Purchased Assets, or the property or assets of any or all such parties, with respect to such Initial Assumed Agreement or on grounds that any additional amounts are due or defaults exist, or conditions to assignment must be satisfied, under such Initial Assumed Agreement, except with respect to claims or defaults occurring wholly after the Closing Date.

8. If one or more Assignment Objections are received that have not been resolved prior to the Sale Hearing, hearings with respect to any such objections may be held: (a) at the Sale Hearing; or (b) at such other date as the Court may designate. However, if a disputed Cure Amount is not resolved by the time of the Sale Hearing, the relevant Initial Assumed Agreement may be assumed and assigned to the Purchaser, provided that the Cure Amount asserted by the objecting party (or such lower amount as may be fixed by the Court) shall be deposited with and held in a segregated account by the Sellers or such other person as the Court may direct pending further order of the Court or mutual agreement of the parties.

9. A properly filed Assignment Objection shall reserve such objecting party's rights against the Debtors (but not against any purchaser of the Purchased Assets) with

respect to the relevant Cure Amount obligation, but shall not constitute an objection to the remaining relief requested in the Motion.

10. The Debtors and the Purchaser (or the Successful Bidder, as the case may be) are hereby authorized to settle, compromise or otherwise resolve any disputed Cure Amounts with the relevant non-Debtor party to any Initial Assumed Agreement without further Bankruptcy Court approval or notice to any party.

Notice Regarding Undesignated Agreements

11. The notice, annexed hereto as Exhibit D, with regard to the procedures for post-closing assumption of certain agreements (the “Other Assumed Agreements”) and assignment thereof to Purchaser (the “Other Assumed Agreements Notice”), is hereby approved.

12. No later than October 14, 2003, the Debtors shall serve the Other Assumed Agreements Notice on all non-Debtor parties to each Other Assumed Agreement. Assumption and assignment of each of the Other Assumed Agreements shall be effected pursuant to a separate Order of this Court, upon proper notice and hearing.

Purchaser Protections

13. The Debtors are authorized and directed to pay the Breakup Fee to Purchaser, in the manner required under and pursuant to the Purchase Agreement as modified by this Order, without further order of the Court.

14. Purchaser’s claim in respect of the Breakup Fee shall be an administrative expense under section 503(b) of the Bankruptcy Code.

15. The Debtors are authorized to pay the Breakup Fee, including additional expense reimbursement, in the amount of \$500,000.00. That amount is in addition to the \$500,000.00 previously paid to the Purchaser pursuant to the Purchase Agreement, which

additional amount shall be retained irrevocably by Purchaser except as expressly provided herein.

16. The Breakup Fee, including those amounts designated as expense reimbursement, which shall be subject to review and verification, upon request, by the Committee and the U.S. Trustee, shall be payable upon the closing, within one year of the termination of the Purchase Agreement, of an Alternative Transaction as defined in the Motion and expanded herein to include, in the event the sale contemplated in the Purchase Agreement does not occur, the voluntary conversion of the Sellers' chapter 11 cases to chapter 7 cases or the confirmation of a chapter 11 plan for the Sellers.

17. The expense reimbursement portion of the Breakup Fee shall be payable upon a termination of the Purchase Agreement because of a material breach of the Purchase Agreement by Sellers.

18. Purchaser shall not be entitled to the Breakup Fee, including any amounts designated as expense reimbursement, if Purchaser is in material breach of the Purchase Agreement prior to any material breach by Sellers. In addition, in such event, Sellers may exercise all rights under the Purchase Agreement and related documents and seek all remedies, whether equitable or legal in nature, with respect to any such material breach by Purchaser, including, without limitation, to seek repayment of any funds paid that were designated as expense reimbursement, except such rights and remedies solely with respect to the reasonableness of the payment shall be limited to those set forth in Paragraph 16.

19. The rights of the Purchaser to the Breakup Fee shall all survive rejection or breach of the Purchase Agreement by the Sellers, and shall be unaffected thereby.

20. The Breakup Fee shall not be the sole remedy of Purchaser for breach of the Purchase Agreement if the Purchase Agreement is terminated under circumstances where the Breakup Fee is payable. In such circumstances, in addition to entitlement to the Breakup Fee, Purchaser shall be able to exercise all rights under the Purchase Agreement and related documents and seek all remedies, whether equitable or legal in nature, with respect to such material breach by Sellers.

Bidding Procedures

21. The Bidding Procedures attached hereto as Exhibit A (and incorporated herein in their entirety) are approved in all respects and shall apply with respect to, and shall govern all proceedings related to: (i) the Purchase Agreement; (ii) the Auction, (iii) the Sale, and (iv) the assumption and assignment of the Assumed Agreements.

22. Any person wishing to submit a higher or better offer for the Purchased Assets must do so strictly in accordance with the terms of the Bidding Procedures.

23. The Purchaser is deemed to be a Qualified Bidder (as defined in the Bidding Procedures) for all purposes.

The Auction

24. The Auction, if required, will commence at 9:30 a.m. (Eastern Time) on August 6, 2003, at the offices of Young Conaway Stargatt & Taylor, LLP or at such later time or other place as agreed by the Purchaser and the Sellers, and which the Sellers shall notify all Qualified Bidders who have submitted Qualified Bids.

The Sale Hearing

25. A hearing (the "Sale Hearing") to consider: (i) the Sale; (ii) the assumption and assignment of the Initial Assumed Agreements and certain other relief requested

in the Motion; and (iii) the entry of the proposed Sale Order, shall be held on August 7, 2003, at 10:00 a.m. (Eastern Time) before this Court.

26. Objections to the entry of the Sale Order, if any, must: (a) be in writing; (b) conform to the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of the United States Bankruptcy Court for the District of Delaware; (c) set forth the name of the objector and the nature and amount of any claim or interest held by and against the Debtors' estates or property; (d) state the legal and factual basis for the objection and the specific grounds therefor; (e) be filed with this Court; and (f) be served upon counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attn: Robert S. Brady, Esquire, counsel to the Proposed Purchaser, Willkie Farr and Gallagher, 787 Seventh Avenue, New York, New York 10019, Attn: Alan J. Lipkin, Esquire, counsel to the Committee, Winston and Strawn, 200 Park Avenue, New York, NY 10166-4193, Attn: David Neier, Esquire, and the Office of the United States Trustee, 844 N. King Street, Room 2311, Wilmington, Delaware 19801, so as to be actually received by no later than 4:00 p.m. (Eastern Time) on July 31, 2003 (the "Objection Deadline"). Only timely filed and served responses, objections or other pleadings will be considered by the Court at the Sale Hearing.

27. The failure of any person or entity to timely file its objection shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, the Sale or the consummation and performance of the Purchase Agreement and the transactions contemplated thereby (including, without limitation, the assumption and assignment of the Initial Assumed Agreements).

28. The Sale Hearing may be adjourned, from time to time, without further notice to creditors or parties in interest other than by announcement of said adjournment in Court or on the Court's calendar on the date scheduled for such hearing.

No Solicitation

29. Section 6.7(a) of the Purchase Agreement is approved in its entirety. Pursuant thereto, among other things, Sellers shall not, nor shall they cause their officers, agents, representative and other persons acting on their behalf to, seek or solicit offers for any transaction that would render impossible the transactions between the Sellers and Purchaser contemplated by the Purchase Agreement, ~~except in compliance with the Bidding Procedures and this Order; provided however~~, that the restrictions contained in section 6.7(a) of the Purchase Agreement shall not apply to the Committee.

30. Section 6.7(b) of the Purchase Agreement is approved in its entirety. Sellers shall promptly notify Purchaser orally and in writing of any request for information, proposal, discussion, negotiation or inquiry received after the date of the Purchase Agreement in connection with any Takeover Proposal and Sellers shall promptly (but in any event within one (1) Business Day) communicate to Purchaser the material terms and conditions of any such proposal, discussion, negotiation or inquiry which it may receive (and will promptly provide to Purchaser copies of any written materials received by Sellers in connection with such proposal, discussion, negotiation or inquiry) and the identity of the person making such proposal or inquiry or engaging in such discussions or negotiation.

31. Sections 6.7(c) and (d) of the Purchase Agreement are approved in their entirety. Sellers shall not furnish information concerning their business, properties or assets to any Third Party, except pursuant to a confidentiality agreement with terms and conditions no less

restrictive than those contained in the Confidentiality Agreement. Sellers shall not release any Third Party from, or waive any provision of, any such confidentiality agreement or any similar confidentiality or standstill agreement to which any Seller is a party. Sellers shall promptly provide to Purchaser any non-public information concerning the Sellers provided to any other Person which was not previously provided to Purchaser. Sellers shall keep Purchaser informed of the status and material details (including amendments or proposed amendments) of any such Takeover Proposal. Sellers shall promptly (and in any event within one business day) notify Purchaser in writing at such time as any Takeover Proposal has been determined to be a Qualified Bid.

Additional Provisions

32. The Debtors are authorized and empowered to take such steps, expend such sums of money, and do such other things as may be necessary to implement and effect the terms and requirements established by this Procedures Order.

33. The Debtors are hereby authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

34. The automatic stay provisions of section 362 of the Bankruptcy Code shall not apply to Purchaser's rights to terminate the Purchase Agreement in accordance with the terms thereof.

35. This Procedures Order shall be binding upon, and inure to the benefit of the Purchaser and its affiliates, successors and assigns and the Debtors, and their estates, including any chapter 7 or 11 trustee or other fiduciary appointed for the estates of the Debtors, whether in these cases, subsequent bankruptcy cases or upon dismissal of any of these cases.

36. Service of the notices described herein on the parties entitled to receive such notices pursuant to this Procedures Order shall constitute proper, timely, adequate and sufficient notice thereof and satisfies the requirements of sections 102, 105 and 363(b) and (f) of the Bankruptcy Code and Rules 2002, 6004, 9007 and 9008 of the Bankruptcy Rules

37. Notwithstanding Bankruptcy Rules 6004(g) and 6006(d), this Procedures Order shall not be stayed for ten (10) days after the entry hereof and this Procedures Order shall be effective and enforceable immediately upon entry on this Court's docket.

38. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Procedures Order, including, but not limited to, (i) any matter, claim or dispute arising from or relating to the Breakup Fee, the Bidding Procedures and/or the implementation of this Procedures Order.

Dated: Wilmington, Delaware
July 15, 2003

/s/ Kevin J. Carey
Kevin J. Carey
United States Bankruptcy Judge

EXHIBIT B

Touch America, Inc.

Bidding Procedures

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed with respect to the transactions contemplated by the Asset Purchase Agreement (as amended from time to time, the “Purchase Agreement”)¹ by and among 360networks Corporation (the “Proposed Purchaser”) and those of the Debtors that are parties to the Purchase Agreement (collectively, the “Sellers”), and certain Ancillary Agreements (including the Transition Services Agreement), substantially in the forms attached as exhibits to the Purchase Agreement (collectively, the “Sellers”), concerning the prospective sale (the “Sale”) of certain of the Sellers’ assets (as defined more specifically in the Purchase Agreement, the “Purchased Assets”). The Sellers have moved for, and will seek, entry of an order by the Bankruptcy Court authorizing and approving the Sale to a Qualified Bidder (as defined below) that the Sellers determine to have made the highest or otherwise best offer for the Purchased Assets.

The Bidding Process

The Sellers will: (i) receive offers from Qualified Bidders; (ii) determine whether any person is a Qualified Bidder; (iii) coordinate the efforts of Qualified Bidders in conducting their respective due diligence investigations regarding the Purchased Assets generally; and (iv) evaluate any offer made by a Qualified Bidder to purchase the Purchased Assets (collectively, the “Bidding Process”). Any person who wishes to participate in the Bidding Process must be a Qualified Bidder, and neither the Sellers nor their representatives are obligated to furnish any information of any kind whatsoever relating to the Sellers or the Purchased Assets to any person who is not a Qualified Bidder. The Sellers have the right to adopt such other rules for the Bidding Process which, after consultation with representatives of the Official Committee of Unsecured Creditors in these cases (the “Committee”) the Sellers’ and Committee believe in their judgment, will better promote the goals of the Bidding Process and which are not inconsistent with any of the other provisions hereof or of any Bankruptcy Court order.

Determination of “Qualified Bidder” Status

In order to participate in the Bidding Process, each person (a “Potential Bidder”), other than the Proposed Purchaser, must deliver (unless previously delivered) to the Sellers:

- (i) An executed confidentiality agreement in form and substance satisfactory to the Sellers and if there is any dispute with respect to the execution of such an agreement, after consultation with the Committee; and
- (ii) Current audited financial statements of the Potential Bidder or, if the Potential Bidder is an entity formed for the purpose of acquiring the Purchased Assets, current audited financial

¹ Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Purchase Agreement.

statements of the equity holder(s) of the Potential Bidder or such other form of financial disclosure acceptable to the Sellers and their advisors demonstrating such Potential Bidder's ability to adequately fund the newly-formed entity and close a proposed transaction.

A "Qualified Bidder" is a Potential Bidder that timely delivers the documents described in subparagraphs (i) and (ii) above; and that the board of directors of Touch America, Inc. (the "Board"), determines is financially able to consummate the purchase of the Purchased Assets. The determination that any Potential Bidder is not a Qualified Bidder shall be made by the Board only after consultation with the Committee. The Proposed Purchaser will be deemed a Qualified Bidder.

No later than two (2) business days after the Sellers receive from a Potential Bidder all of the materials required by subparagraphs (i) and (ii) above, they shall notify such Potential Bidder whether such potential bidder is a Qualified Bidder. At the same time that the Sellers notify the Potential Bidders that it is a Qualified Bidder, the Sellers shall deliver to such Qualified Bidder (unless previously delivered) (i) a confidential memorandum containing information and financial data relating to the Purchased Assets and (ii) a copy of the Purchase Agreement, including all schedules.

Due Diligence for Qualified Bidders

To obtain due diligence access or additional information from the Sellers, a Qualified Bidder must first advise the Sellers in writing of the nature and extent of additional due diligence such Qualified Bidder may wish to conduct. The Sellers will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from such Qualified Bidders. No conditions relating to the completion of additional due diligence will be permitted to exist after the Bid Deadline (as defined below) except as permitted by the Sellers after consultation with the Committee. None of the Sellers, their affiliates or any of their respective representatives are obligated to furnish any information relating to the Purchased Assets to any person except to a Qualified Bidder.

Bid Deadline

A Qualified Bidder who desires to make a bid must deliver a written copy of its bid to (a) Milbank, Tweed, Hadley & McCloy LLP, One Chase Manhattan Plaza, New York, NY 10005, Attention: John O'Connor, Esq. and (b) Evercore Partners, 65 E. 55th Street, 33rd Floor New York, NY 10022, Attention: Craig Moore, not later than 12:00 noon (Eastern Daylight Savings Time) on August 5, 2003 [or such other date as is two days prior to the date for the sale hearing established by the Court] (the "Bid Deadline") with the Sellers and the Committee being allowed in their discretion to accept late bids. The Sellers will promptly forward copies of all bids to representatives of the Committee. If the Sellers extend the Bid Deadline, they shall promptly notify all Qualified Bidders of such extension.

Determination of "Qualified Bid" Status

A bid received from a Qualified Bidder will constitute a "Qualified Bid" only if it includes all of the Required Bid Documents listed below and meets all of the Bid Requirements

set forth below. Notwithstanding the foregoing, the Purchase Agreement will be deemed a Qualified Bid for all purposes in connection with the Bidding Process, the Auction (as defined below) and the Sale.

Required Bid Documents. All bids must include the following documents (the "Required Bid Documents"):

- a. A written offer stating that: (i) the Qualified Bidder offers to purchase all or substantially all of the Purchased Assets and assume all or substantially all of the Assumed Liabilities; (ii) the Qualified Bidder is prepared to enter into a legally binding purchase and sale agreement for the acquisition of the Business on terms and conditions no less favorable to Sellers than the Purchase Agreement (other than those relating to the Breakup Fee) within not more than one Business Day after entry by the Bankruptcy Court of the Sale Order; and (iii) the Qualified Bidder's offer is irrevocable until the end of the business day following the closing of the purchase of the Purchased Assets.
- a. A good faith deposit (the "Good Faith Deposit") in the form of a certified or bank check (or other form acceptable to the Sellers in their sole discretion) payable to the order of the Sellers (or such other party as the Sellers may designate) in the amount of \$250,000.00; provided, however, that the Proposed Purchaser shall not be required to make the Good Faith Deposit.

Bid Requirements. All bids must satisfy the following requirements (collectively, the "Bid Requirements"):

- a. The bid must provide for an aggregate purchase price for the Purchased Assets of at least \$250,000 greater than the sum of: (x) the amount of the Breakup Fee; plus (y) the consideration to the Sellers arising out of the Purchase Agreement including the payment of the Purchase Price and the assumption of the Assumed Liabilities.
- b. The bid must be, in the Sellers' business judgment, on substantially the same or better terms and conditions than those set forth in the Purchase Agreement.
- c. The bid (other than the Proposed Purchaser's bid) is accompanied by satisfactory evidence of committed financing or other ability to perform the acquisition of the Purchased Assets.
- d. The bid is not conditioned upon the Bankruptcy Court's approval of any bid protections, such as a breakup fee, termination fee, expense reimbursement or similar type of payment.
- e. The bid acknowledges and represents that the bidder: (1) has had an opportunity to conduct any and all due diligence regarding the Purchased Assets prior to making its offer; (2) has relied solely upon its own independent review, investigation and/or

inspection of any documents and/or the Purchased Assets in making its bid; and (3) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures.

- f. The bid is received by the Bid Deadline.

Auction

If one or more Qualified Bids in addition to that of the Proposed Purchaser is received, the Sellers will conduct an auction (the "Auction") with respect to the Purchased Assets to determine the highest or otherwise best offer for the Purchased Assets (the "Successful Bid"). If no Qualified Bid (other than that of the Proposed Purchaser) is received by the Bid Deadline, the Proposed Purchaser's bid will be deemed the Successful Bid, and Sellers shall proceed with the transactions contemplated by the Purchase Agreement.

The Auction, if required, will commence at 9:30 a.m. (Eastern Daylight Savings Time) on August 6, 2003 [or such other date that is one date prior to the date of the sale hearing established by the Court], at the offices of Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, Wilmington, Delaware] or at such later time or other place as agreed by the Proposed Purchaser, the Committee and the Sellers, and of which the Sellers will notify all Qualified Bidders who have submitted Qualified Bids.

At least one (1) business day prior to the Auction, the Sellers will provide to the Proposed Purchaser and all other Qualified Bidders a copy of the highest or otherwise best Qualified Bid received and copies of all other Qualified Bids. In addition, the Sellers will inform the Proposed Purchaser and each Qualified Bidder who has expressed its intent to participate in the Auction of the identity of all Qualified Bidders that may participate in the Auction and copies of the bids of all such Qualified Bidders.

Only the Proposed Purchaser, Sellers, Qualified Bidders who have submitted Qualified Bids, their respective professionals, the United States Trustee, and representatives of the Committee will be entitled to attend, participate and be heard at the Auction, and only the Proposed Purchaser and Qualified Bidders will be entitled to make any subsequent Qualified Bids at the Auction.

During the Auction, bidding will begin at the purchase price stated in the highest or otherwise best Qualified Bid (taking into account the Breakup Fee), and will subsequently continue in minimum increments of at least \$250,000 higher than the previous Qualified Bid or in such increments as the Sellers, after consultation with the Committee, determine. Subsequent Qualified Bids submitted by the Proposed Purchaser will be deemed to include a credit in an amount equal to the sum of the Breakup Fee and shall not require a deposit.

Bidding at the Auction will continue until such time as the highest or otherwise best Qualified Bid is determined. Upon conclusion of the Auction, the Sellers will: (i) review

each Qualified Bid on the basis of financial and contractual terms and other factors relevant to the Sale process, including those factors affecting the speed and certainty of consummating the Sale; and (ii) after consultation with the Committee, identify the Successful Bid for the Purchased Assets (as defined above, the "Successful Bid").

Acceptance of Qualified Bids

At the Sale Hearing, the Sellers will seek entry of an order authorizing and approving the Sale: (i) if no Qualified Bid is received (other than that of the Proposed Purchaser), to the Proposed Purchaser pursuant to the terms and conditions set forth in the Purchase Agreement; or (ii) if another Qualified Bid is received by the Sellers, to the Proposed Purchaser or such other Qualified Bidder as the Sellers, in the exercise of their business judgment, determine to have made the Successful Bid (the "Successful Bidder"). The Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing.

The Sellers' presentation to the Bankruptcy Court for approval of a Successful Bid does not constitute the Sellers' acceptance of the bid, except with respect to the bid of the Proposed Purchaser as reflected in the Purchase Agreement (subject to higher or otherwise better Qualified Bids and subject to Bankruptcy Court approval). The Sellers will be deemed to have accepted any other bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing.

Following the Sale Hearing approving the Sale of the Purchased Assets to the Successful Bidder, if such Successful Bidder fails to consummate the Sale because of a breach or failure to perform on the part of such Successful Bidder, the entity that had submitted the next highest or otherwise best Qualified Bid, as disclosed at the Sale Hearing, will be deemed to be the Successful Bidder and the Sellers will be authorized, but not required, to consummate the Sale with the Qualified Bidder submitting such bid without further order of the Bankruptcy Court.

Return of Good Faith Deposit

The Good Faith Deposits of all Qualified Bidders will be retained by the Sellers and all Qualified Bids will remain open until the end of the first business day following the closing of the Sale; provided, however, that in no event shall the Proposed Purchaser be required to make the Good Faith Deposit.

If a Successful Bidder fails to consummate an approved Sale because of a breach or failure to perform on the part of such Successful Bidder, the Sellers will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, and such Good Faith Deposit irrevocably will become property of the Sellers' estates.

Modifications

The Sellers may: (a) determine, in their sole discretion after consultation with the Committee, which Qualified Bid, if any, is the highest or otherwise best offer; and (b) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid (other than that of the Proposed Purchaser) that, in the Sellers' sole discretion after consultation with the Committee, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures or the terms and conditions of the Purchase Agreement, or (iii) contrary to the best interests of the Sellers, their estates and their creditors. At or before the Sale Hearing, the Sellers may impose such other terms and conditions upon Qualified Bidders (other than the Proposed Purchaser) as they determine to be in the best interests of the Sellers' estates, their creditors and other parties in interest in these cases.

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