

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Application of	)	
PNG Telecommunications, Inc.	)	
d/b/a PowerNet Global Communications	)	Case No. <u>XM-2008-0291</u>
For Authority To Acquire Certain Assets of	)	
GlobalTouch Telecom, Inc.	)	

**APPLICATION FOR APPROVAL TO ACQUIRE ASSETS  
AND MOTION FOR EXPEDITED TREATMENT**

PNG Telecommunications, Inc. d/b/a PowerNet Global Communications ("PNG" or "Applicant"), pursuant to Section. 392.300.1. RSMo, 4 CSR 240-2.060 and 4 CSR 240-3.520, by and through undersigned counsel, hereby seeks approval from the Missouri Public Service Commission ("Commission") for PNG to acquire a portion of the customer base of GlobalTouch Telecom, Inc. PNG also moves the Commission for expedited treatment of this application pursuant to 4 CSR 240-2.080(16) and requests Commission approval no later than April 30, 2008. In support of this Application, PNG states as follows:

**I. Description of Applicant**

1. PNG is a corporation duly organized and existing under and by virtue of the laws of the State of Ohio and is duly authorized to transact business in the State of Missouri. PNG was certificated by the Commission to provide interexchange services in Case No. TA-99-574 and basic local exchange services in Case No. TA-2001-433. PNG Communications, Inc., previously adopted the fictitious name PowerNet Global Communications in Case No. CN-2005-0186. A copy of documentation from the Missouri Secretary of State, as required by 4 CSR 240-2.060(1)(C), is attached to this

Application as **Exhibit A**. The character of business performed by Applicant is telecommunications services. Applicant's principal place of business is:

100 Commercial Drive  
Fairfield OH 45014  
Tel: Tel. (513)645-4932  
Fax: (513)645-4960  
Toll-Free Number for customer inquiries or complaints: (800)860-9495.

2. An officer's verification is attached hereto.

## **II. Contact Information**

3. Correspondence or communications pertaining to this Application should be directed to:

Mary Ann (Garr) Young  
William Steinmeier  
William D. Steinmeier, P.C.  
2031 Tower Drive  
P.O. Box 104595  
Jefferson City, MO 65110-4595  
Telephone: (573) 353-8109  
Facsimile: (573) 634-8224  
Email: [myoung@wdspc.com](mailto:myoung@wdspc.com)  
[wds@wdspc.com](mailto:wds@wdspc.com)

With copies to:

Dennis Packer  
General Counsel  
PowerNet Global Communications  
100 Commercial Drive  
Fairfield, Ohio 45014  
Tel. (513)645-4932  
Fax: (513)645-4960  
E-mail: [dpacker@pngmail.com](mailto:dpacker@pngmail.com)

### **III. Description of the Proposed Transaction**

4. As stated above, PNG proposes to acquire a portion of the customer base of GlobalTouch Telecom, Inc. The transaction will be transparent to the customers affected, as PNG will provide service to these customers under the same rates, terms and conditions as those services are currently provided. To the extent tariff changes are required to accommodate the customers' current rates PNG will make those changes expeditiously. The proposed transfer of customers will have no adverse impact on customers. To avoid customer confusion and ensure a seamless transition, notice is being provided to all affected customers of Global Touch, explaining the change in service provider in accordance with applicable Commission regulations for changing a customer's presubscribed carrier. A copy of the sample notice of the transfer is attached as **Exhibit B**.

### **IV Responses to 4 CSR 240-3.520**

(A) Brief Description of the Property Involved: Approximately 206 Interexchange service customers.

(B) Contract or Agreement of Sale: See **Exhibit C** attached.

(C) Verification of Authority of Person Signing: Requirement not applicable per 4 CSR 240-3.520(1).

(D) Reasons not Detrimental to the Public Interest: Please see Section V. below.

(E) Balance Sheet and Income Statement: Requirement not applicable per 4 CSR 240-3.520(1).

(F) Tax Impact: None. The proposed transaction will have no impact on the tax revenues of any political subdivision of the state. The transaction does not involve the sale or disposition of any structures, facilities or equipment.

(G) Customer Notice: See **Exhibit B** for form of customer notice.

**V. Public Interest Statement**

The transfer of customers from Global Touch to PNG will serve the public interest, as PNG is a strong company that will continue to provide high quality services to the acquired customers. Customers not only will continue to receive the same services they currently purchase but also will have access to additional and enhanced products and services offered by PNG. The proposed transfer does not present any competitive issues, as there are a number of other carriers operating in the market.

PNG has extensive experience offering telecommunications services. The affected customers will also be given sufficient notification of the proposed transaction and their rights. As such, the Parties anticipate that customers will experience a seamless transition of service providers.

**VI. Information provide in compliance with 4 CSR 240-2.060**

Applicant states, in accordance with 4 CSR 240-2.060(1)(K), that there are no pending actions or final unsatisfied judgments or decisions against Applicant in any state or federal agency or court which involve customer service or rates, which action, judgment or decision has occurred within three (3) years of the date of this Application. Pursuant to 4 CSR 240 240-2.060(1)(L), Applicant states that the Company does not have any overdue annual reports or assessment fees owed to the Commission.

## **VII. Motion for Expedited Treatment**

PNG requests that the Commission act on this application no later than April 30, 2008, if possible.

PNG is purchasing customers from Global Touch in a number of states and customer notice was issued simultaneously in several states, prior to identification of all states in which regulatory approval was required. This Application was filed as soon as possible after negotiations for the transaction were completed and a determination made that regulatory approval was required in Missouri. There will be no negative effect on the customers involved; in fact, expeditious action by the Commission will reduce the possibility of customer confusion.

## **Conclusion**

For the reasons stated above, Applicant respectfully submits that the public interest, convenience, and necessity would be furthered by a grant of this Application. PNG respectfully requests the Commission give this Application expedited treatment and approve transfer of customers requested no later than April 30, 2008.

Respectfully submitted,

/s/ Mary Ann Young

Mary Ann (Garr) Young MoBar #27951

William Steinmeier MoBar # # 25689)

William D. Steinmeier, P.C.

2031 Tower Drive, P.O. Box 104595

Jefferson City, MO 65110-4595

Telephone: (573) 353-8109

Facsimile: (573) 634-8224

Email: myoung@wdspc.com

Email: wds@wdspc.com

Counsel for PNG Telecommunications, Inc.  
d/b/a PowerNet Global Communications

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Verified Application has been served electronically on the General Counsel's Office and the Office of the Public Counsel this 5th day of March 2008.

/s/ Mary Ann Young

Mary Ann (Garr) Young

### **List of Exhibits**

Exhibit A      Missouri Secretary of State Certification

Exhibit B      Sample Customer Notice

Exhibit C      Asset Purchase Agreement

Officer's Verification

**EXHIBIT A**

**Missouri Secretary of State Certification**





**State of Missouri**  
Matt Blunt, Secretary of State

No. X 391007

Corporations Division

**Registration of Fictitious Name**

(Submit in duplicate with filing fee of \$7)

(Must be typed or printed)

#42413  
7-B

This information is for the use of the public and gives no protection to the name. There is no provision in this Chapter to keep another person or business from adopting and using the same name. (Chapter 417, RSMo.)

We, the undersigned, are doing business under the following name, and at the following address:

Business name to be registered: PowerNet Global Communications  
Business Address: 4839 Business Center Way  
(P.O. Box alone not acceptable)  
City, State and Zip Code: Cincinnati OH 45246

The parties having an interest in the business, and the percentage they own are (if a business entity is owner, indicate business name and percentage owned. If all parties are jointly and severally liable, percentage of ownership need not be listed):

Name of Owners, Individual or Business Entity	Street and Number	City	State and Zip Code	If listed, Percentage of ownership must equal 100%
<u>PNG Telecommunications, Inc.</u>	<u>4839 Business Center Way</u>	<u>Cincinnati</u>	<u>OH 45246</u>	<u>100%</u>
<u>F405644 ag</u>				

Return to: Secretary of State  
Corporations Division  
P.O. Box 778  
Jefferson City, Mo. 65102

(Over)

Corp. #56 (11/00)

**FILED**

MAY 22 2001

Mark Blunt  
SECRETARY OF STATE

The undersigned, being all the parties owning interest in the above company, being duly sworn, upon their oaths each did say that the statements and matters set forth herein are true.

Individual  
Owners  
Sign Here

{

X \_\_\_\_\_ X \_\_\_\_\_  
X \_\_\_\_\_ X \_\_\_\_\_  
X \_\_\_\_\_ X \_\_\_\_\_

391007

The undersigned business entity has caused this application to be executed in its name by its

President

Title of Authorized Person

, on this

5/8/01

month/day/year

If  
Business Entity  
Is  
Owner,  
Authorized  
Person  
Execute  
Here

X Bernie Stevens

Authorized Signature (If corporation, President or Vice President)

Bernie Stevens

Printed Name

President

Title

Roberta Stevens

If corporation, Signature of Secretary or Asst. Secretary

Roberta Stevens

Printed Name

Secretary

Title

(Corporate Seal)  
If no seal, state "none".

State of Ohio

County of Butler

} ss

I, DENNIS PACKER, A Notary Public, do hereby certify that on 05/08/01  
month/day/year

personally appeared before me BERNIE STEVENS, and being duly sworn by me, acknowledged that  
he/she signed as his/her own free act and deed the foregoing document in the capacity therein set forth and declared that the statements  
therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

(Notarial Seal or Stamp)

Dennis Packer

Notary Public **DENNIS M. PACKER, Attorney at Law**  
Notary Public, State of Ohio  
My Commission Has No Expiration Date  
Section 147.03

My commission expires \_\_\_\_\_

My County of Commission \_\_\_\_\_

Corp. #56 (5/99)

# STATE OF MISSOURI



Robin Carnahan  
Secretary of State

**CORPORATION DIVISION  
CERTIFICATE OF GOOD STANDING**

I, ROBIN CARNAHAN, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

**PNG TELECOMMUNICATIONS, INC.**

using in Missouri the name

**PNG TELECOMMUNICATIONS, INC.**

**F00405644**

a OHIO entity was created under the laws of this State on the 9th day of January, 1995, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, this 27th day of February, 2008

*Robin Carnahan*

Secretary of State



Certification Number: 10475132-1    Reference:  
Verify this certificate online at <http://www.sos.mo.gov/businessentity/verification>

**EXHIBIT B**

**Sample Customer Notice**

[Date]

[Customer Name]

[Address ]

### IMPORTANT NOTICE REGARDING YOUR TELEPHONE SERVICE

Dear GlobalTouch Telecom Customer:

There is some exciting news to report regarding your telecommunications services. We are proud to announce that GlobalTouch Telecom has entered into an agreement with PowerNet Global Communications ("PNG") through which your telecommunications services, currently provided by GlobalTouch Telecom, will now be provided by PNG.

PNG is a nationwide integrated telecommunications provider serving customers with a full suite of voice and data services, including local and long distance telephone service and high-speed internet service. PNG's mission has always been to deliver outstanding value to its customers through a commitment to excellence in products and customer support.

There is no action required on your part. Your long distance service will be transferred automatically to PNG and you will continue to receive long distance services at the same rates, terms and conditions that you have currently. There also will be no charges assessed to your bill as a result of this transfer. Following the transfer, notice of any future changes in rates, terms and conditions of service will be provided to you as required by the law of your state.

PNG expects that the transfer will occur on or about [Date]; depending on when we receive the appropriate regulatory approvals. Please be advised that if you have placed a "freeze" on your long distance services to prevent their unauthorized transfer to another carrier, it will be automatically lifted to implement a seamless transfer of your services to PNG. If you would like your freeze protection reestablished, please contact your local service provider after the transfer takes place.

Although you are free to choose another long distance carrier at any time, we value your business and are confident that you will be pleased with the superior service that you will receive from PNG. If you do not choose a new long distance carrier before [Date], your long distance service will be transferred automatically to PNG where we pledge our commitment to provide you with quality services and personalized customer care as we move forward.

If you have questions about the transfer or your service to PNG, you may contact our Customer Care department at [toll-free number to be used]. Once again, we look forward to serving you and welcome to PowerNet Global.

Sincerely,



Stuart Chowning  
President - Consumer Solutions  
PowerNet Global Communications  
Telecom

Sincerely,



Cliff Rees  
President and COO  
GlobalTouch

**EXHIBIT C**

**Asset Purchase Agreement**

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("Agreement") is dated as of the date executed by Buyer (the "Effective Date"), by and among PNG Telecommunications, Inc. d/b/a PowerNet Global Communications, an Ohio corporation ("Buyer"); and GlobalTouch Telecom, Inc., a Delaware corporation ("Seller").

### RECITALS

Seller owns a base of customers who purchase switched domestic and international long distance telecommunications services from Seller (the "Switched Long Distance Business");

Buyer desires to purchase and Seller desires to sell these customers and certain associated assets of Seller subject to the terms and conditions contained in this Agreement.

The parties, intending to be legally bound, agree as follows:

#### 1 Definitions and Usage

##### 1(a) Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Section 1(a):

"Assets"--as defined in Section 2(a)

"Breach"--any breach of, or any inaccuracy in, any representation or warranty or any breach of, or failure to perform or comply with, any covenant or obligation, in or of this Agreement or any other Contract, or any event which with the passing of time or the giving of notice, or both, would constitute such a breach, inaccuracy or failure.

"Business Day"--any day other than (a) Saturday or Sunday or (b) any other day on which banks in Ohio are permitted or required to be closed.

"Buyer"--as defined in the first paragraph of this Agreement.

"Closing"--as defined in Section 2(d).

"Closing Date"--the date on which the Closing actually takes place.

"Commission"--six percent (6%) of the revenue collected from the Purchased Customers by Buyer.

"Consent"--any approval, consent, ratification, waiver or other authorization.

"Damages"--as defined in Section 11(b).

"Encumbrance"--any charge, claim, condition, equitable interest, lien, option, pledge, security interest, right of first option, right of first refusal or similar restriction, including any restriction on transfer, receipt of income or exercise of any other attribute of ownership.

"Governing Documents"--with respect to any particular entity, (a) if a corporation, the articles or certificate of incorporation and the bylaws; (b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (d) if a limited liability company, the articles of organization and operating agreement; (e) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person; (f) all equityholders' agreements, voting agreements, voting trust agreements, joint venture agreements, or other agreements or documents relating to the organization, management or operation of any Person or relating to the rights, duties and obligations of the equityholders of any Person; and (g) any amendment or supplement to any of the foregoing.

"Governmental Authorization"--any Consent, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body"--any:

- (a) nation, state, county, city, town, borough, village, district or other jurisdiction;
- (b) federal, state, local, municipal, foreign or other government;
- (c) governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers);
- (d) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or
- (e) official of any of the foregoing.

"Indemnified Person"--as defined in Section 11(f).

"Indemnifying Person"--as defined in Section 11(f).

"Knowledge"--an individual will be deemed to have Knowledge of a particular fact or other matter if:

- (a) that individual is actually aware of that fact or matter; or
- (b) a prudent individual could be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement.

"Legal Requirement"--any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty.

"Liability"--with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"Ordinary Course of Business"--an action taken by a Person will be deemed to have been taken in the Ordinary Course of Business only if that action:

- (a) is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person;
- (b) does not require authorization by the board of directors or shareholders of such Person (or by any Person or group of Persons exercising similar authority) and does not require any other separate or special authorization of any nature; and
- (c) is similar in nature, scope and magnitude to actions customarily taken, without any separate or special authorization, in the ordinary course of the normal, day-to-day operations of other Persons that are in the same line of business as such Person.

"Person"--an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Body.

"Proceeding"--any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

"Purchased Customers" -- all customers of the Switched Long Distance Business as of the Closing Date.

"Purchase Price"--as defined in Section 2(b).

"Record"--information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. Particularly with respect to the Switched Long Distance Business and the Purchased Customers, Records include, but are not limited to:

- (a) all customer list information for the Purchased Customers, including the name and address of each Purchased Customer;



- (b) each and every telephone number, including toll-free numbers, associated with each Purchased Customer's account;
- (c) the type of service(s) purchased by each Purchased Customer from Seller;
- (d) information associated with the method of payment employed by each Purchased Customer, including bank account routing and account numbers and credit card information including type, account numbers and expiration dates;

"Seller"--as defined in the first paragraph of this Agreement.

"Seller Customer Contract" -- with respect to any Purchased Customer, all of Seller's right, title and interest in Seller's contract with each Purchased Customer for switched domestic and international long distance telecommunications services but excluding any right to payment from the Purchased Customer for services provided to the Purchased Customer by Seller.

"Switched Long Distance Business"--as defined in the Recitals.

"Third Party"--a Person that is not a party to this Agreement.

"Third-Party Claim"--any claim against any Indemnified Person by a Third Party, whether or not involving a Proceeding.

#### 1(b) USAGE

1(b)(i) Interpretation. In this Agreement, unless a clear contrary intention appears:

1(b)(i)(1) the singular number includes the plural number and vice versa;

1(b)(i)(2) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

1(b)(i)(3) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

1(b)(i)(4) reference to any Legal Requirement means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

1(b)(i)(5) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof;

1(b)(i)(6) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

1(b)(i)(7) "or" is used in the inclusive sense of "and/or";

1(b)(i)(8) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; and

1(b)(i)(9) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

1(b)(ii) Legal Representation of the Parties. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

#### 2 Sale and Transfer of Assets; Closing

##### 2(a) ASSETS TO BE SOLD

Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller, free and clear of

any Encumbrances, all of Seller's right, title and interest in and to all assets associated with the Switched Long Distance Business, whenever acquired and wherever located, including the following:

- 2(a)(i) all Seller Customer Contracts,
- 2(a)(ii) all data and Records related to the Switched Long Distance Business, including customer lists and Records,
- 2(a)(iii) all of the intangible rights and property of Seller associated with the Switched Long Distance Business, including going concern value and goodwill;
- 2(a)(iv) all rights of Seller relating to deposits or prepayments made by Purchased Customers;

All of the property and assets to be transferred to Buyer hereunder are herein referred to collectively as the "Assets."

Notwithstanding the foregoing, the transfer of the Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Assets.

#### 2(b) CONSIDERATION

The consideration for the Assets (the "Purchase Price") will be (a) Two Hundred Forty Thousand dollars (\$240,000) plus the Commissions. Buyer shall pay the Purchase Price as follows: (a) Two Hundred Forty Thousand dollars (\$240,000) by wire transfer paid to Seller as specified in Section 2(f)(i) and (b) the Commission as specified in Section 2(c)

#### 2(c) COMMISSION

- 2(c)(i) As an estimate of the Commission, PNG shall pay Seller six percent (6%) of the usage charges billed by PNG each month. PNG will pay the Commission on usage charges only and no other charges on the Purchased Customer's invoices will be used as the base for calculation of the Commission. For clarity and without limiting the foregoing, the base charges for calculation of the Commission will not include any monthly recurring charges, surcharges, universal service charges or taxes. PNG may deduct from any Commission payment Commissions that were paid to Seller based on usage charges billed to but not collected from Purchased Customers. PNG will make Commission payments within sixty (60) days of the date that the Purchased Customer is billed by PNG. Notwithstanding the foregoing, the first Commission payment will not be due before ninety (90) days after the Effective Date.

- 2(c)(ii) PNG will not pay Seller any Commission for usage by any Purchased Customer during the month of March, 2008.

#### 2(d) CLOSING

The purchase and sale provided for in this Agreement (the "Closing") will take place on January 16, 2008.

#### 2(e) SELLER'S CLOSING OBLIGATIONS

In addition to any conditions of Closing specified in Section 7, at the Closing, Seller shall deliver to Buyer:

- 2(e)(i) all Records associated with the Purchased Customers in an electronic format specified by Buyer.
- 2(e)(ii) an assignment in the form of Exhibit 2(e)(ii) of all contracts between Seller and the Purchased Customers.
- 2(e)(iii) a certificate executed by Seller as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 3 and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 5; and

- 2(e)(iv) a certificate of the Secretary of Seller certifying and attaching all requisite resolutions or actions of Seller's board of directors approving the execution and delivery of this Agreement and the consummation of the transaction contemplated by this Agreement and certifying to the incumbency and signatures of the officers of Seller executing this Agreement and any other document relating to the transaction contemplated by this Agreement.

#### 2(f) BUYER'S CLOSING OBLIGATIONS

In addition to any conditions of Closing specified in Section 8, at the Closing, Buyer shall deliver to Seller:

2(f)(i) Two Hundred and Forty Thousand dollars (\$240,000) by wire transfer to an account specified by Seller in a writing delivered to Buyer at least two (2) Business Days prior to the Closing Date; and

2(f)(ii) a certificate executed by Buyer as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 4 and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 6; and

2(f)(iii) a certificate of the Secretary of Buyer certifying and attaching all requisite resolutions or actions of Buyer's board of directors approving the execution and delivery of this Agreement and the consummation of the transaction contemplated by this Agreement and certifying to the incumbency and signatures of the officers of Buyer executing this Agreement and any other document relating to the transaction contemplated by this Agreement.

#### 2(g) EFFECT OF CLOSING; SURVIVAL

The representations, warranties and obligations of the parties contained in Sections 2(c) 3, 4, 5, 6(b), 10 and 11 shall survive the Closing and the consummation of the transaction contemplated by this Agreement.

#### 3 Representations and Warranties of Seller

Seller represents and warrants to Buyer as follows:

##### 3(a) ORGANIZATION AND GOOD STANDING

Seller is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, with full corporate power and authority to conduct its business as it is now being conducted.

##### 3(b) ENFORCEABILITY; AUTHORITY; NO CONFLICT

3(b)(i) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms. Seller has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and such action has been duly authorized by all necessary action by Seller's shareholders and board of directors.

3(b)(ii) Neither the execution and delivery of this Agreement nor the consummation or performance of the transaction contemplated by this Agreement will, directly or indirectly (with or without notice or lapse of time):

3(b)(ii)(1) breach (A) any provision of any of the governing documents of Seller or (B) any resolution adopted by the board of directors or the shareholders of Seller; or

3(b)(ii)(2) result in the imposition or creation of any Encumbrance upon or with respect to any of the Assets;

3(b)(iii) Except as set forth in Section 3(b)(i), Seller is not required to give any notice to or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of the transaction contemplated by this Agreement.

##### 3(c) FINANCIAL STATEMENTS AND CUSTOMER ACCOUNT INFORMATION

Seller has delivered to Buyer (a) spreadsheets and other data showing the revenues, costs of services sold, and costs of sales for the Switched Long Distance Business; (b) usage, billing and payment information for each Purchased Customer's account; and (c) call data records for the Switched Long Distance Business for each month January through November 2007. All information provided by Seller to Buyer fairly present the financial condition and the results of operations of the Switched Long Distance Business. The information and statements provided by Seller to Buyer were prepared from and are in accordance with the Records of Seller.

##### 3(d) ACCOUNT INFORMATION AND RECORDS

The account information and other financial Records that Seller has provided to Buyer, are complete and correct and represent actual, bona fide transactions and have been maintained in accordance with sound business practices.

### 3(e) TITLE TO ASSETS; ENCUMBRANCES

Seller owns good and marketable title to the Assets, free and clear of any Encumbrances.

### 3(f) TAXES

Seller has, and through the Closing will, duly and timely file all federal, state, local and other tax returns, estimates and reports required to be filed by it on or before Closing, other than such returns, estimates or reports the non-filing of which is not reasonably likely to have a material adverse effect on the Switched Long Distance Business, the Assets or the Purchased Customers and all such returns are, or will be when filed, true, complete and correct in all material respects and Seller has paid or will pay all Taxes imposed upon or claimed to be owed by, Seller, which are due and payable or claimed by any taxing authority to be due and payable through periods ending on or before the Closing, in each case to the extent Buyer would incur liability for Seller's failure to file such returns or pay such Taxes. All sales taxes required to be collected and remitted by Seller for services provided to the Purchased Customers have been properly or will be paid up to and including the Closing. Seller does not have Knowledge of any audits, assessments, notices of deficiency, deficiencies, investigations, claims or demands for Taxes or proposed deficiencies against Seller for any Taxes. No issue or issues have been raised in connection with any prior or pending inquiry into, or audit of, any tax filings of Seller which may be expected to be raised in the future by such taxing authorities and no facts exist or have existed which would constitute grounds for the assessment of any further tax liabilities with respect to the Purchased Customers, which individually or in the aggregate are material. Seller has received no written notice of any claims that have been asserted with respect to any Taxes of Seller for which Buyer reasonably could be held liable and Seller has no Knowledge of any basis for the assertion of any such claim. Seller has paid to the proper taxing authorities, or will pay when due, all amounts which were required to be withheld or paid with respect to all taxes on income, unemployment, workers' compensation, social insurance or other similar programs or benefits with respect to salary and other compensation of their respective directors, officers and employees and taxes required to be withheld.

### 3(g) CONDUCT OF BUSINESS IN ORDINARY COURSE

Since December 1, 2007, Seller has conducted its business in the ordinary course with respect to the Purchased Customers and there has been no: (a) material adverse change in the Switched Long Distance Business, the Assets or the Purchased Customers, other than changes in the Ordinary Course of Business; or (b) transactions by Seller, other than in the Ordinary Course of Business, which have had any material adverse effect on the Purchased Customers. The term "material adverse effect" or "material adverse change", as used in this Agreement, means any circumstance, change in or effect that is, or is reasonably likely in the future to be, materially adverse to the value of operations of the Switched Long Distance Business.

## 4 Representations and Warranties of Buyer

Buyer represents and warrants to Seller and Shareholders as follows:

### 4(a) ORGANIZATION AND GOOD STANDING

Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio, with full corporate power and authority to conduct its business as it is now conducted.

### 4(b) AUTHORITY; NO CONFLICT

4(b)(i) This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Buyer has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and such action has been duly authorized by all necessary action by Buyer's shareholders and board of directors.

4(b)(ii) Neither the execution and delivery of this Agreement nor the consummation or performance of any of the transaction contemplated by this Agreement will, directly or indirectly (with or without notice or lapse of time) breach (A) any provision of any of the governing documents of Buyer or (B) any resolution adopted by the board of directors or the shareholders of Buyer.

## 5 Covenants of Seller

### 5(a) OPERATION OF THE BUSINESS OF SELLER

Seller shall with respect to the Purchased Customers, conduct its business in the Ordinary Course of Business.

#### 5(b) FURTHER ASSURANCES

Seller shall cooperate reasonably with Buyer in connection with any steps required to be taken as part of gaining Governmental Consents and transferring Records regarding Purchased Customers, and shall (a) furnish upon request to Buyer such further information; (b) execute and deliver to Buyer such other documents; and (c) do such other acts and things, all as Buyer may reasonably request for the purpose of carrying out the intent of this Agreement and the transaction contemplated by this Agreement.

#### 6 Covenants of Buyer

##### 6(a) DOWN PAYMENT

Buyer will, prior to or at the Closing, make the payment specified in Section 2(f)(i).

##### 6(b) PAYMENT OF COMMISSION

Buyer will pay the Commission as specified in Section 2(c) subject to the provisions of Sections 2(c) and 11(e).

#### 7 Conditions Precedent to Buyer's Obligation to Close

Buyer's obligation to purchase the Assets and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

##### 7(a) ACCURACY OF REPRESENTATIONS

All of Seller's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate in all material respects as of the date of this Agreement and shall be accurate in all material respects as of the time of the Closing as if then made.

##### 7(b) SELLER'S PERFORMANCE

All of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been duly performed and complied with in all material respects.

#### 8 Conditions Precedent to Seller's Obligation to Close

##### 8(a) ACCURACY OF REPRESENTATIONS

All of Buyer's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate in all material respects as of the date of this Agreement and shall be accurate in all material respects as of the time of the Closing as if then made.

##### 8(b) BUYER'S PERFORMANCE

All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been duly performed and complied with in all material respects.

#### 9 Termination

##### 9(a) TERMINATION EVENTS

By notice given prior to or at the Closing, this Agreement may be terminated as follows:

9(a)(i) by Buyer if a material Breach of any provision of this Agreement has been committed by Seller or Shareholders and such Breach has not been waived by Buyer;

9(a)(ii) by Seller if a material Breach of any provision of this Agreement has been committed by Buyer and such Breach has not been waived by Seller;

9(a)(iii) by Buyer if any condition in Section 7 has not been satisfied as of the date specified for Closing in Section 2(d) or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement), and Buyer has not waived such condition on or before such date;

9(a)(iv) by Seller if any condition in Section 8 has not been satisfied as of the date specified for Closing in the first sentence of Section 2(d) or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Seller or the Shareholders to comply with their obligations under this Agreement), and Seller has not waived such condition on or before such date;

9(a)(v) by mutual consent of Buyer and Seller;

#### 9(b) EFFECT OF TERMINATION

Each party's right of termination under Section 9(a) is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of such right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9(a), all obligations of the parties under this Agreement will terminate, except that the obligations of the parties under the Mutual Non-Disclosure Agreement between the parties.

### 10 Additional Covenants

#### 10(a) NONCOMPETITION

For a period of two (2) years after the Closing Date, Seller shall not, directly or indirectly solicit the business of any Purchased Customer for any product or service that competes or would serve as a replacement for any product or service offered by Buyer.

#### 10(b) MISDIRECTED CUSTOMER PAYMENTS

Buyer promptly shall forward to Seller all payments received by Buyer from any Purchased Customer for services provided to the Purchased Customer by Seller. Seller promptly shall forward to Buyer all payments received by Seller from any Purchased Customer for services provided to the Purchased Customer by Buyer.

### 11 Indemnification; Remedies

#### 11(a) SURVIVAL

All representations, warranties, covenants and obligations in this Agreement shall survive the Closing and the consummation of the transaction contemplated by this Agreement. The right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations shall not be affected by any investigation conducted with respect to, or any Knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations.

#### 11(b) INDEMNIFICATION AND REIMBURSEMENT BY SELLER

Seller will indemnify and hold harmless Buyer and will reimburse Buyer for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) or diminution of value, whether or not involving a Third-Party Claim (collectively, "Damages"), arising from or in connection with:

11(b)(i) any Breach of any representation or warranty made by Seller in (i) this Agreement, (ii) the certificates delivered pursuant to Section 2(e) (iii) any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

11(b)(ii) any Breach of any covenant or obligation of Seller in this Agreement or in any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

11(b)(iii) any Liability arising out of the ownership or operation of the Switched Long Distance Business prior to the Closing; or

11(b)(iv) any brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any Person with Seller (or any Person acting on Seller's behalf) in connection with any of the transaction contemplated by this Agreement;

#### 11(c) INDEMNIFICATION AND REIMBURSEMENT BY BUYER

Buyer will indemnify and hold harmless Seller, and will reimburse Seller, for any Damages arising from or in connection with:

11(c)(i) any Breach of any representation or warranty made by Buyer in this Agreement or in any certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

11(c)(ii) any Breach of any covenant or obligation of Buyer in this Agreement or in any other certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

11(c)(iii) any Liability arising out of the ownership or operation of the Switched Long Distance Business after the Closing;

11(c)(iv) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by such Person with Buyer (or any Person acting on Buyer's behalf) in connection with any of the transaction contemplated by this Agreement

#### 11(d) TIME LIMITATIONS

Each party will have liability (for indemnification or otherwise) under this Section 11 only if on or before one (1) year after Closing, the party claiming indemnification notifies the party from whom indemnification is sought of a claim specifying the factual basis of the claim in reasonable detail to the extent then known.

#### 11(e) RIGHT OF SETOFF

Upon notice to Seller specifying in reasonable detail the basis therefor, Buyer may set off any amount to which it may be entitled under this Section 11 against the Commission otherwise payable in accordance with Section 2(c). The exercise of such right of setoff by Buyer in good faith, whether or not ultimately determined to be justified, will not constitute an event of default under this Agreement. Neither the exercise of nor the failure to exercise such right of setoff or to give a notice of a claim under this Agreement will constitute an election of remedies or limit Buyer in any manner in the enforcement of any other remedies that may be available to it.

#### 11(f) THIRD-PARTY CLAIMS

Promptly after receipt by a Person entitled to indemnity under Section 11(b) or 11(c) (an "Indemnified Person") of notice of the assertion of a Third-Party Claim against it, such Indemnified Person shall give notice to the Person obligated to indemnify under such Section (an "Indemnifying Person") of the assertion of such Third-Party Claim, provided that the failure to notify the Indemnifying Person will not relieve the Indemnifying Person of any liability that it may have to any Indemnified Person, except to the extent that the Indemnifying Person demonstrates that the defense of such Third-Party Claim is prejudiced by the Indemnified Person's failure to give such notice. Both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third-Party Claim. The parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

#### 11(g) OTHER CLAIMS

A claim for indemnification for any matter not involving a Third-Party Claim may be asserted by notice to the party from whom indemnification is sought and shall be paid promptly after such notice.

#### 12 Confidentiality

The Mutual Non-Disclosure Agreement between the Parties shall survive the execution and/or termination of this Agreement, the Closing and the consummation and closing of the transaction contemplated by this Agreement.

#### 13 General Provisions

##### 13(a) EXPENSES

Each party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the transaction contemplated by this Agreement.

##### 13(b) NOTICES

All notices, Consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by

nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a party may designate by notice to the other parties):

**Seller**

GlobalTouch Telecom, Inc.  
11845 W. Olympic Blvd., Suite. 600  
Los Angeles, California 90064  
Attention: Gregory C. Welch  
Chief Executive Officer  
Fax no.: 310-861-4877  
E-mail address: [gwelch@gttvoip.com](mailto:gwelch@gttvoip.com)

with a copy to:

GlobalTouch Telecom, Inc.  
11845 W. Olympic Blvd., Suite. 600  
Los Angeles, California 90064  
Attention: Cliff Rees  
President and COO  
Fax no.: 310-861-4808  
E-mail address: [crees@gttvoip.com](mailto:crees@gttvoip.com)

**Buyer:**

PowerNet Global Communications  
100 Commercial Drive  
Fairfield, Ohio 45014  
Attention: Stuart Chowning  
President, Consumer Services  
Fax no.: \_\_\_\_\_  
E-mail address: [schowning@pngmail.com](mailto:schowning@pngmail.com)

with a copy to:

PowerNet Global Communications  
100 Commercial Drive  
Fairfield, Ohio 45014  
Attention: Dennis Packer  
General Counsel  
Fax no.: (513)645-4960  
E-mail address: [dpacker@pngmail.com](mailto:dpacker@pngmail.com)

**13(c) JURISDICTION; GOVERNING LAW**

Any Proceeding arising out of or relating to this Agreement or the transaction contemplated by this Agreement must be brought in the United States District Court for the Southern District of Ohio, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such Proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in such court and agrees not to bring any Proceeding arising out of or relating to this Agreement or the transaction contemplated by this Agreement in any other court. This Agreement shall, in all respects, be governed by and construed and enforced in accordance with the laws of the State of Ohio, without respect to the state's conflict of laws provisions.

**13(d) WAIVER; REMEDIES CUMULATIVE**



The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

#### 13(e) ENTIRE AGREEMENT AND MODIFICATION

This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter (including any letter of intent between Buyer and Seller) except for the Mutual Non-Disclosure Agreement and constitutes (along with the other documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the party to be charged with the amendment.

#### 13(f) ASSIGNMENTS, SUCCESSORS AND NO THIRD-PARTY RIGHTS

No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as shall inure to a successor or permitted assignee.

#### 13(g) SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

#### 13(h) EXECUTION OF AGREEMENT

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or e-mail shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or e-mail shall be deemed to be their original signatures for all purposes.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

PNG TELECOMMUNICATIONS, INC.

GLOBALTOUCH TELECOM, LLC

W. Stuart Channing  
Signature

Chiff Rees  
Signature

W. STUART CHANNING  
Printed Name

Chiff Rees  
Printed Name

PRESIDENT, Consumer Solutions  
Title

President & COO  
Title

1/14/2008  
Date

1/10/2008  
Date

## **Verification**

VERIFICATION

STATE OF Ohio )  
 )  
COUNTY OF Butler )

I, Dennis Packer being first duly sworn, state that I am  
the General Counsel and Secretary of PNG  
Telecommunications, Inc. d/b/a PowerNet Global Communications, Applicant herein;  
that I am authorized to sign this Verification on Applicant's behalf, that I have reviewed  
the matters set forth in the Application, and that the statements set forth therein are true  
to the best of my knowledge and belief.



Name: Dennis Packer  
Title: General Counsel and Secretary

Sworn to and subscribed before me this 4<sup>th</sup> day of MARCH 2008.

ROBERT A. JOHNSON, JR.  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 05-19-10

  
Notary Public