

PENDING PETITION MEMO

Date: 3/17/2005

TO : Office of Telecommunications  
FROM: CENTRAL OPERATIONS  
UTILITY: NTT AMERICA, INC.  
SUBJECT: 05-C-0342

Petition of NTT America, Inc. for an Original Certificate of Public Convenience and Necessity to provide facilities-based and resold intrastate interexchange telecommunications services.

RECEIVED  
PUBLIC SERVICE  
COMMISSION  
ALBANY

WolfBlock

250 Park Avenue, New York, New York 10177

Tel: (212) 986-1116 ■ Fax: (212) 986-0604 ■ www.WolfBlock.com

0505 MAR 10 AM 11:42

David E. Bronston  
Direct Dial: (212) 883-4942  
Direct Fax: (212) 672-1142  
E-mail: dbronston@wolfblock.com

March 9, 2005

VIA FEDERAL EXPRESS

Hon. Jaclyn Brilling  
Secretary  
New York Department of Public Service  
Three Empire State Plaza  
Albany, NY 12223-1350

Re: Petition for a Certificate of Public Convenience and  
Necessity

Dear Ms. Brilling:

Enclosed for filing with the New York State Department of Public Service please find the original and three copies of a Petition for a Certificate of Public Convenience and Necessity of NTT America, Inc. Also enclosed is a duplicate of this filing and a self-addressed stamped envelope. Please date stamp the duplicate upon receipt and return it in the envelope provided.

If you require any additional information or have any questions regarding this filing, please contact me. Thank you for your attention to this matter.

ack/18

Sincerely,

David E. Bronston  
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DEB  
Enclosures

NYC:510646.1/NTT001-223074

Cherry Hill, NJ ■ Harrisburg, PA ■ New York, NY ■ Norristown, PA ■ Philadelphia, PA ■ Roseland, NJ ■ Wilmington, DE

WolfBlock Government Relations: Harrisburg, PA and Washington, DC  
Wolf, Block, Schorr and Solis-Cohen LLP, a Pennsylvania Limited Liability Partnership

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

Petition of )  
 )  
**NTT America, Inc.** ) Docket No. \_\_\_\_\_  
  
For a Certificate of Public Convenience )  
and Necessity to Provide Facilities-Based )  
and Resold Intrastate Telecommunications Services )

**PETITION FOR A CERTIFICATE  
OF PUBLIC CONVENIENCE AND NECESSITY**

Under N.Y. PUBLIC SERVICE LAW § 99(1) (McKinney 2000) and N.Y. COMP. CODES R. & REGS ("NYCRR"), tit. 16, §§ 21.1-21.10 (2004 Supp.), NTT America, Inc. ("NTTA" or "Petitioner"), hereby requests a Certificate of Public Convenience and Necessity ("CPCN") to provide on a non-dominant, state-wide basis, facilities-based and resold intrastate services including voice, frame relay, ATM, IP-VPN and other private line and/or switched services. NTTA is not requesting authority to provide local exchange services. In support of this Petition, NTTA states as follows:

**I. THE APPLICANT**

NTTA is a Delaware corporation with its principal office and place of business located at 101 Park Avenue, 41st Floor, New York, New York, 10178. NTTA's Certificate of Incorporation is attached as Exhibit A. NTTA's Certificate of Authority to Do Business in New York is attached as Exhibit B. NTTA's Federal Identification Number is 133922003.

NTTA is an indirect, wholly-owned subsidiary of Nippon Telegraph and Telephone Corporation ("NTT"), a Japanese corporation. The Japanese Ministry of Finance owns 46 percent of NTT, and the remaining 54 percent is publicly traded on the Tokyo Stock Exchange. NTTA's President and Chief Executive Officer is Mr. Tatsuo Kawasaki. Mr. Kawasaki can be reached at NTT America, Inc., 101 Park Ave., 41st Floor, New York, N.Y. 10178, telephone: (212) 661-0810, fax: (212) 661-1078.

## **II. DESIGNATED CONTACTS**

The designated primary contact for this Petition is:

David E. Bronston, Esq.  
Wolf, Block, Schorr & Solis-Cohen, L.P.  
250 Park Avenue  
New York, N.Y. 10177  
Tel: 212-883-4942  
Fax: 212-672-1142  
E-mail: [dbronston@wolfblock.com](mailto:dbronston@wolfblock.com)

Copies of all correspondence, notices and orders pertaining to this Petition also should be sent to:

Dawn M. Fasano, Esq.  
NTT America, Inc.  
101 Park Ave., 41st Floor  
New York, New York 10178  
Tel: 212-808-2281  
Fax: 212-661-1078  
E-mail: [dfasano@ntta.com](mailto:dfasano@ntta.com)

## **III. REQUESTED AUTHORITY AND PROPOSED SERVICES**

### **Service Descriptions Generally**

NTTA seeks authority to provide on a non-dominant basis facilities-based and resold intrastate interexchange telecommunications services. NTTA does not seek authority to provide any local exchange services. NTTA's initial service offerings will be both inter and intra-city switched and non-switched services. These offerings will include asynchronous transfer mode ("ATM"), frame relay and global IP-VPN services, and also will include point-to-point private line services. NTTA may also offer certain voice applications over time. Although it will serve business customers exclusively at the inception of its service, NTTA may expand at some point in the future to offer residential services as well, and therefore seeks authority to provide these services.

#### **Resold Services**

NTTA will resell various types of exchange and carrier access lines, including private lines, as well as various inter and intra-city, inter and intraLATA, and interstate services and facilities of communications common carriers. These services may include managed private line networks, frame relay and ATM services, global IP-VPN services, and other services and facilities of communications common carriers and other entities.

#### **Facilities-Based Services**

NTTA may construct, lease or operate its own switching and routing facilities to connect customers to interexchange points of presence, or to other offices and customers on an inter and intra-city, inter and intraLATA basis. These facilities may carry both switched and private line traffic. The NTTA facilities may include facilities that NTTA currently uses only to provide interstate and international services, or that NTTA may subsequently build, and that NTTA may use separately or in conjunction with facilities obtained from or provided by other carriers or

entities. NTTA expects to conduct initial operations in the County of New York, but requests statewide certification in order to permit rapid expansion into other areas. NTTA does not intend to offer or otherwise provide any residential or business voice local exchange services.

#### **IV. PUBLIC INTEREST CONSIDERATIONS**

##### **Enhancing Competition**

NTTA's entry into the facilities-based and resold common carrier services markets will enhance competition in New York through NTTA's provision of innovative, efficient, cost-effective and reliable services. NTTA serves many large multinational corporations with interstate and international data communications needs. These customers seek end-to-end packaged and customized services, and increasingly seek solutions that connect intrastate offices and networks. NTTA's entry into this market will lead to more competitive pricing and additional customized service offerings, and also will spur innovation in technology with its attendant promotion of overall efficiency.

NTTA will be able to compete across international, interstate and intrastate product lines. It will be able to package and offer a variety of new services and options in competition with other carriers, and to customize client solutions by extending existing service offerings, thus providing users with the opportunity to maximize savings on volume and capacity discounts. NTTA also will be better positioned to acquire common carriage from others at bulk rates and to repackage this capacity as services to end users at rates that these users could not obtain for themselves. This will benefit end users that lack the critical size and capacity requirements that larger end users exploit for cost savings.

NTTA also will be able to adapt existing facilities and to construct new facilities to provide and extend its services. This will encourage both NTTA and its competitors to deploy state-of-the-art equipment and technologies to further rapid, cost-effective communications services. More efficient equipment and technology will lead to lower unit prices, which competition will cause to be reflected in lower end-user customer prices.

In short, NTTA's entry into the New York market will enhance the introduction of innovative new services and the extension and upgrading of existing services, further the introduction of new equipment and technologies, foster conditions leading to overall market efficiencies and promote cost-effective service for end-user customers. Granting NTTA's petition will enhance the overall competitiveness of the New York communications markets and is in the public interest.

#### **Prevention of Unauthorized Switching**

NTTA has never acquired a customer from another company without the customer's authorization, and has never been the subject of any investigation for slamming or other unauthorized customer switching practices for any communications service.

#### **Compliance With Laws and Non-Dominance**

NTTA hereby agrees to abide by all applicable statutes, orders, rules and regulations adopted by the State of New York and by the New York Public Service Commission ("PSC") pertaining to the provision of telecommunications services. Because NTTA will be a non-dominant, competitive provider of telecommunications services in New York, it respectfully

requests that it be permitted to enjoy the same level of streamlined regulatory treatment that the PSC affords other competitive carriers in New York.

#### **Consent of Local Authorities**

Pursuant to § 21.1(f) of the Commission rules, NTTA certifies that it has obtained or will obtain all necessary local consents or franchises prior to the placement of any facilities.

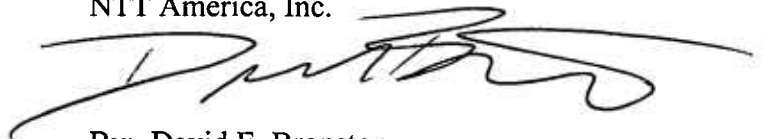
#### **Requested Waivers and Authority**

NTTA requests that the Commission waive Sections 21.2, 21.3, 641 through 644 inclusive, and any other pertinent section of 16 NYCRR in connection with this petition, and to afford NTTA the same regulatory treatment that other non-dominant carriers enjoy in New York.

NTTA further requests that the Commission grant it authority to offer its business services either under tariff and/or under individualized contracts in lieu of tariffs, consistent with the provisions of Section 605.2(d) of 16 NYCRR, and that the Commission waive any requirement for NTTA to file tariffs at this time for any of its business services, or to file an exemplar tariff with this petition.

Respectfully submitted,

NTT America, Inc.



By: David E. Bronston  
Wolf, Block, Schorr & Solis-Cohen LLP  
250 Park Avenue, New York, N.Y. 10177

Dated: March 8, 2005



**VERIFICATION**

I, Tatsuo Kawasaki, hereby verify as President and CEO of NTT America, Inc., that the facts stated and materials provided in the foregoing Petition for a CPCN are true and accurate to the best of my knowledge, information and belief.



Tatsuo Kawasaki  
President and CEO  
NTT America, Inc.  
101 Park Ave., 41st Floor  
New York, New York  
Dated: March 8<sup>th</sup>, 2005





**CERTIFICATE OF AMENDMENT  
OF  
THE CERTIFICATE OF INCORPORATION  
OF  
ntta.com, inc.**

Under to Section 242 of the  
General Corporation Law of the State of Delaware

The undersigned, being the President of ntta.com, inc. (the "Corporation"),  
does hereby certify and set forth:

FIRST: The name of the Corporation is ntta.com, inc.

SECOND: The Certificate of Incorporation of the Corporation is hereby  
amended by striking out Article 1 thereof and by substituting in lieu of said Article the  
following new Article:

"1. NAME

The name of this corporation is NTT America, Inc. (the  
"Corporation")."

THIRD: This amendment to the Certificate of Incorporation of the  
Corporation was authorized by the consent in writing of all of the members of the  
Board of Directors of the Corporation, followed by the written consent of the holder of  
all of the outstanding shares of the Corporation entitled to vote on this amendment to  
the Certificate of Incorporation.

FOURTH: That the aforesaid amendment was duly adopted in accordance  
with the applicable provisions of Sections 228 and 242 of the General Corporation Law  
of the State of Delaware.

IN WITNESS WHEREOF, the undersigned who has executed and signed this  
certificate affirms under the penalties of perjury that the statements made herein are  
true and correct this 2<sup>nd</sup> day of April, 2001.

  
Akihiko Okada  
President & CEO

**CERTIFICATE OF INCORPORATION**  
**OF**  
**NTTA.COM, INC.**

**1. NAME**

The name of this corporation is *ntta.com, inc.* (the "Corporation").

**2. REGISTERED OFFICE AND AGENT**

The registered office of the Corporation shall be located at 1013 Centre Road, Wilmington, Delaware 19805 in the County of New Castle. The registered agent of the Corporation at such address shall be Corporation Service Company.

**3. PURPOSE AND POWERS**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law"). The Corporation shall have all power necessary or helpful to engage in such acts and activities.

**4. CAPITAL STOCK**

**4.1. Authorized Shares**

The total number of shares of all classes of stock that the Corporation shall have the authority to issue is One Thousand (1,000). All of such shares shall be Common Stock, all of one class, having a par value of \$.01 per share ("Common Stock").

**4.2. Common Stock**

**4.2.1. Relative Rights**

The Common Stock shall be subject to all of the rights, privileges, preferences and priorities of the Preferred Stock as set forth in the certificate of designations filed to establish the respective series of Preferred Stock. Each share

of Common Stock shall have the same relative rights as and be identical in all respects to all the other shares of Common Stock.

#### **4.2.2. Dividends**

Whenever there shall have been paid, or declared and set aside for payment, to the holders of shares of any class of stock having preference over the Common Stock as to the payment of dividends, the full amount of dividends and of sinking fund or retirement payments, if any, to which such holders are respectively entitled in preference to the Common Stock, then dividends may be paid on the Common Stock and on any class or series of stock entitled to participate therewith as to dividends, out of any assets legally available for the payment of dividends thereon, but only when and as declared by the Board of Directors of the Corporation.

#### **4.2.3. Dissolution, Liquidation, Winding Up**

In the event of any dissolution, liquidation, or winding up of the Corporation, whether voluntary or involuntary, the holders of the Common Stock shall become entitled to participate in the distribution of any assets of the Corporation remaining after the Corporation shall have paid, or set aside for payment, to the holders of any class of stock having preference over the Common Stock in the event of dissolution, liquidation or winding up the full preferential amounts (if any) to which they are entitled.

#### **4.2.4. Voting Rights**

Each holder of shares of Common Stock shall be entitled to attend all special and annual meetings of the stockholders of the Corporation and, share for share and without regard to class, together with the holders of all other classes of stock entitled to attend such meetings and to vote (except any class or series of stock having special voting rights), to cast one vote for each outstanding share of Common Stock so held upon any matter or thing (including, without limitation, the election of one or more directors) properly considered and acted upon by the stockholders.

### **5. INCORPORATOR; INITIAL DIRECTORS**

#### **5.1. Incorporator**

The name and mailing address of the incorporator (the "Incorporator") are Kathleen Crowley, Corporation Service Company, 1013 Centre Road, Wilmington, Delaware 19805. The powers of the Incorporator shall terminate upon the filing of this Certificate of Incorporation.

## 5.2. Initial Directors

The following persons, having the following mailing addresses, shall serve as the directors of the Corporation until the first annual meeting of the stockholders of the Corporation or until their successors are elected and qualified:

<u>NAME</u>	<u>ADDRESS</u>
Keisuke Nakasaki	NTT America, Inc. 101 Park Avenue, 41st Floor New York, NY 10178
Richard E. Nohe	NTT America, Inc. 101 Park Avenue, 41st Floor New York, NY 10178
Frederick O. Schweizer, Jr.	NTT America, Inc. 101 Park Avenue, 41st Floor New York, NY 10178

## 6. BOARD OF DIRECTORS

### 6.1. Number; Election

The number of directors of the Corporation shall be such number as from time to time shall be fixed by, or in the manner provided in, the bylaws of the Corporation. Unless and except to the extent that the bylaws of the Corporation shall otherwise require, the election of directors of the Corporation need not be by written ballot.

### 6.2. Limitation of Liability

No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that this provision shall not eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders; (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (c) for the types of liability set forth in Section 174 of the Delaware General Corporation Law; or (d) for any transaction from which the director received any improper personal benefit.

## 7. INDEMNIFICATION

To the extent permitted by law, the Corporation shall fully indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding.

The Corporation shall advance expenses (including attorneys' fees) incurred by a director or officer in advance of the final disposition of such action, suit or proceeding upon the receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that such director or officer is not entitled to indemnification.

## 8. AMENDMENT OF BYLAWS

In furtherance and not in limitation of the powers conferred by the Delaware General Corporation Law, the Board of Directors of the Corporation is expressly authorized and empowered to adopt, amend and repeal the bylaws of the Corporation.

IN WITNESS WHEREOF, the undersigned, being the Incorporator hereinabove named, for the purpose of forming a corporation pursuant to the Delaware General Corporation Law, hereby certifies that the facts hereinabove stated are truly set forth, and accordingly executes this Certificate of Incorporation on December 9, 1996.

CORPORATION SERVICE COMPANY  
Incorporator

By: *Kathleen Crowley*  
Kathleen Crowley







DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

*FG 161224000603*

ENTITY NAME NTIA.COM, INC.

DOCUMENT TYPE NAME RESERVATION (NEW) (FOR BUSINESS

SERVICE COMPANY CSC NETWORKS/PRENTICE HALL

SERVICE CODE 45

APPLICANT NAME NTIA.COM, INC.

11/26/1996 DURATION 01/27/1997 CASH 961126000736 FILING 961126000700

FOR PROCESS



SUBMIT RECEIPT WHEN FILING CERTIFICATE

FILER

NTIA.COM, INC. JODY CARLSON, LEGAL ASST.  
HOGAN & HARTSON  
555 13TH STREET, N.W. 12TH FLOOR  
WASHINGTON, DC 20004

FEES

FILING  
TAX  
CERT  
COPIES  
HANDLING

45.00  
20.00  
0.00  
0.00  
25.00

PAYMENTS

CASH 0.00  
CHECK 0.00  
BILLED 45.00

REFUND

0.00

F 010405000 T16

APPLICATION FOR AMENDED AUTHORITY

OF

NTTA.COM, INC.

Section 1309 of the Business Corporation Law

Piler: Sachiko Komagata, Corp Spec.  
Ntt America, Inc.  
101 Park Avenue, 41st Floor  
New York, NY 10178

Cust. Ref#103376DAV

BRANDOWN

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 05 2000

TAXES

BY:

WGL  
Albany

2

010405000 T16

F010405000

CERTIFICATE OF AMENDMENT  
OF  
APPLICATION FOR AUTHORITY  
OF  
ntta.com, inc.

CSC 45

Under Section 1309 of the  
Business Corporation Law of the State of New York

FIRST: The name of the corporation as said name appears on the index of names of existing domestic and foreign corporations of any type or kind in the New York Department of State is ntta.com, inc.

SECOND: The jurisdiction of incorporation of the corporation is the State of Delaware.

THIRD: The date the corporation was authorized to do business in the State of New York is December 24, 1996.

FOURTH: The amendment of the Application for Authority hereby effected is as follows:

To change the name of the corporation in the State of New York.  
The statement of the name of the corporation in the Application for Authority of the corporation, as now in force and effect, is amended to read as follows:

"NTT America, Inc."

The change of name of the corporation herein stated was effected under the laws of the jurisdiction of incorporation of the corporation on April 2, 2001

IN WITNESS WHEREOF, the undersigned who has executed and signed this certificate as of this 2<sup>nd</sup> day of April, 2001

  
Akimiko Okada  
President and CEO