



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News media information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
Internet: <http://www.fcc.gov>
TTY 202 / 418-2555

DA 01-1257
May 22, 2001

REQUIREMENTS FOR CARRIERS TO OBTAIN AUTHORITY BEFORE DISCONTINUING SERVICE IN EMERGENCIES

AND

NORTHPOINT COMMUNICATIONS, INC. AUTHORITY TO DISCONTINUE SERVICE

NSD File No. W-P-D-488

Section 214 Application

Applicant: NorthPoint Communications, Inc.

Carriers Discontinuing Service in Emergencies

The Federal Communications Commission (Commission) reiterates that all carriers must obtain Commission authority under section 214(a) of the Communications Act of 1934 before they may lawfully discontinue service.¹ Section 214(a) states, “No carrier shall discontinue, reduce, or impair service ... unless and until there shall have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.”

This statutory requirement applies to all carriers, including competitive local exchange carriers (CLECs), incumbent local exchange carriers (ILECs), and interexchange carriers (IXCs, both underlying IXCs and resellers). It also applies under all circumstances, including bankruptcy. The Commission further urges all carriers to assist carriers that are discontinuing service in transitioning customers to other providers offering the same or comparable service in as seamless a manner as possible. The Commission directs carriers, and the industry as a whole, to develop systematic and effective approaches for ensuring that customers are given sufficient notice before their service is scheduled to be discontinued in the future. Adequate notice is necessary for customers to obtain the same or comparable services from alternate sources.

¹ 47 U.S.C. § 214(a).

ILECs, CLECs, and IXC's should consider including in their interconnection and resale agreements as well as in other contractual arrangements, provisions that will ensure continued service by underlying service provider(s) in the event of bankruptcy or other disability of a service provider. ILECs, CLECs and IXC's should also establish migration procedures that facilitate quick and seamless transfer of customers to comparable service from alternate providers. We expect that ILECs, in cooperation with CLECs and IXC's, will work toward developing streamlined order processing systems to enable circuit migration to take place on a large-scale basis rather than singly. Such streamlined order processing systems will avoid service disrupting "disconnect" and "reconnect" scenarios with the attendant risks of failure and delay. To minimize disruption to the end user, ILECs should also consider continuing to provide wholesale service to carriers seeking permission to discontinue service until a transition is made to a new provider, particularly when alternative providers have taken steps to migrate customers from the bankrupt carrier. IXC's providing connectivity to CLECs should likewise consider continuing to provide service to CLECs as they migrate end user customers to alternative providers. Furthermore, ILECs, CLECs and IXC's should develop and communicate to all affected parties clearly stated policies on how to quickly and efficiently handle customer transfers in a manner that is minimally disruptive to end users. Finally, we expect that all carriers will respond to state commission guidance concerning the methods and procedures necessary to migrate customers from carriers discontinuing service.

NorthPoint Communications, Inc. Authority to Discontinue Service

On March 23, 2001, NorthPoint Communications, Inc. (NorthPoint) filed an application requesting authority under section 214(a) of the Act and section 63.63 of the Commission's regulations,² to discontinue providing telecommunications services permanently, effective March 26, 2001. Section 63.63 of our rules provides, in emergency situations, that a carrier is automatically granted discontinuance authority for 60 days, beginning the day it files its application, unless the Commission informs it to the contrary within the first 15 days.³ This section anticipates that service will resume when the emergency that necessitated the discontinuance ends, but permits the applicant, by the 50th day after seeking discontinuance, to request renewal of the authority for an indefinite period, or permanently. NorthPoint sought permanent discontinuance authority at the time it filed its application, stating that it filed for bankruptcy on January 16, 2001, that it continued to seek additional funding through an auction that ended without success on March 22, 2001, and that it cannot obtain funding to sustain operations.⁴

While NorthPoint's application for authority to permanently discontinue service has been granted in a Order and Certificate released on May 22, 2001, it appears that NorthPoint might reasonably have anticipated its need to discontinue service as early as January 16, 2001, when it filed

² 47 C.F.R. § 63.63.

³ Accordingly, NorthPoint's application was automatically granted until May 22, 2001.

⁴ NorthPoint stated in a supplemental letter that the Bankruptcy Court confirmed its liquidation of assets, which entailed a sale of most of the company's assets, including collocation arrangements, Operations Support Systems, and related assets, but not the company as a whole, to AT&T Corporation. NorthPoint indicated that it provided service over 117,860 circuits nationwide. Letter from Michael Olsen, NorthPoint, to Dorothy Attwood and Marty Schwimmer., FCC (April 2, 2001).

for bankruptcy.⁵ At that time, NorthPoint could have given its customers written notice under section 63.71 of the Commission's regulations. Section 63.71 specifically requires a carrier to give written notice to all affected customers on or before the date it applies for authority to discontinue or impair service under section 214. Had that procedure been followed, NorthPoint customers would have been given an opportunity, early on, to make arrangements with other carriers to obtain substitute service or to submit comments to the Commission indicating whether substitute service is available.

As discussed above, the Commission urges all carriers, especially CLECs, ILECs, and IXCs participating in contractual arrangements with NorthPoint, to assist NorthPoint in transitioning its customers to new service providers that offer the same or comparable service in as seamless a manner as possible. This may require continuation of some service agreements for a limited period of time until effective transfer of all customers occurs.

Furthermore, the Commission admonishes all carriers that are situated similarly to NorthPoint now, or that may be in the future, to fully comply with the letter and intent of the Commission's regulations implementing section 214.⁶ These regulations are designed to avoid unexpected service disruptions as much as possible, even when resulting from a carrier's insolvency, by ensuring that customers receive adequate notice of impending discontinuances of service so that they may arrange for alternate service.

For further information, contact Marty Schwimmer, (202) 418-2320 (voice), mschwimm@fcc.gov, of the Network Services Division, Common Carrier Bureau. The TTY number is (202) 418-0484.

- FEDERAL COMMUNICATIONS COMMISSION -

⁵ *NorthPoint Communications, Inc. Application for Authority for Permanent Discontinuance of Service Pursuant To Section 63.63*, NSD File No. W-P-D-488, Certificate and Order, DA 01-1234 (Com. Car. Bur. Rel. May 22, 2001).

⁶ *See Reminder To Common Carriers Regarding Discontinuance Of Domestic Service Under Section 214 Of The Communications Act*, Public Notice, DA 01-1173 (Com. Car. Bur. Rel. May 8, 2001).