

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
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)
Complaint Against Internet Commerce &)
Communications, Inc. f/k/a RMI.NET, INC.)
and ICC Speed Cell, LLC for Failure to)
Comply with Statutory (47 U.S.C. § 214) and)
Regulatory (47 C.F.R. § 63.71))
Discontinuance Requirements)

ORDER

Adopted: November 2, 2001

Released: November 2, 2001

By the Common Carrier Bureau:

1. In this Order, we address the issues raised in the emergency complaint filed by William English, owner of ONRAMP, Inc. (ONRAMP), P.O. Box 1037, Cloudcroft, NM 88317, about claimed statutory and regulatory violations committed by its provider of T1 services, Internet Commerce and Communications, Inc. (ICC). ONRAMP complains that its services are in the process of being discontinued in violation of section 214 of the Telecommunications Act of 1934, as amended,¹ (the Act), and without proper notice as required under FCC regulations. ONRAMP states that this discontinuance is likely to cause significant harm to its and the other similarly-situated customers' business operations. In addition, the Bureau has learned that as of October 30, 2001, the services previously provided by ICC have been transferred to ICC Speed Cell, LLC (ICC Speed Cell) in connection with a bankruptcy court-approved sale of ICC's assets. For the reasons discussed herein, the Common Carrier Bureau (Bureau) grants ONRAMP's request, finding that both ICC and ICC Speed Cell appear to be providing regulated telecommunications services, and, therefore, are obligated to comply with both the statutory provisions of Title 47, Section 214 and the Commission's regulations promulgated pursuant thereto, including the obligation to provide the requisite notice to customers before discontinuing service.² Nevertheless, it appears that either one or both providers may have discontinued or is in the process of discontinuing service to certain of their customers in derogation of these statutory and regulatory requirements. Accordingly, we issue this order to notify both ICC and ICC Speed Cell

¹ 47 U.S.C. §§ 151 *et seq.*

² *See* 47 CFR § 63.71(a)(5)(i).

that they may not discontinue such service without complying with FCC regulations, or at least, without seeking some extraordinary alternative relief from the Bureau or Commission allowing them to otherwise proceed with discontinuance.

BACKGROUND

2. On October 31, 2001, William English, the owner of ONRAMP, filed a complaint with the Commission about the practices of ICC. The complaint alleges that ICC is a competitive local exchange carrier (CLEC), is publicly traded on NASDAQ, is a Delaware corporation, and is doing business in the state of Colorado. The complaint also states that ICC has filed a bankruptcy case under chapter 11 (Title 11 of the United States Code) in the United States Bankruptcy Court for the district of Colorado.

3. The complaint asserts that on Thursday, October 18, 2001, ICC submitted a disconnection order to MCI/WorldCom for its dedicated circuits linked to approximately one hundred fifty-seven (157) customers. According to the complaint, these customers, which include ONRAMP, range from Internet Service Providers (ISPs) to companies dependent upon dedicated circuits for internal company LANS. Mr. English states that he received neither notice that ICC had filed a chapter 11 bankruptcy case, nor that it was planning to disconnect his business from the dedicated lines upon which his business is dependent. The complaint explains that disconnection of the dedicated lines will result in the immediate and catastrophic loss of business for all of the ISPs that use these dedicated circuits to reach the Internet backbone, but will also affect ONRAMP and approximately one hundred thousand (100,000) end users who utilize these services. Consequently, the complaint asserts that this disconnection violates 47 U.S.C. § 214 and 47 C.F.R. § 63.71.

4. On Tuesday, October 30, 2001, general counsel for and a principal of ICC Speed Cell informed the Commission that it had agreed to purchase all, or substantially all, of ICC's assets, including portions of its customer base, in a bankruptcy court approved agreement. Subsequently, ICC Speed Cell informed the Commission that it was providing service to ONRAMP and other similarly situated customers, although it had not anticipated doing so. ICC Speed Cell explained that these customers should have been disconnected from ICC's circuits prior to the consummation of the sale agreement because just prior to consummation, ICC had placed a disconnection order with MCI/WorldCom. However, as MCI/WorldCom had yet to process that order by Wednesday, October 31, 2001, those customers were now connected to and receiving services from ICC Speed Cell. According to ICC Speed Cell, one of its employees called MCI/WorldCom and rescinded ICC's disconnect order. ICC Speed Cell alleges that the employee did not have authority to make this call. Regardless, we have confirmed that this rescission was in fact implemented. Thus, notwithstanding its intentions at the time it entered into the bankruptcy court approved sale agreement with ICC, it appears that ICC Speed Cell is providing service identical to that provided by ICC as a common carrier.

DISCUSSION

5. Section 214(a) of the Communications Act, as amended, states that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor

future public convenience and necessity will be adversely affected thereby.”³

6. Under section 63.71 of the Commission’s regulations, a carrier must submit an application to the Commission for authority to discontinue service to its customers.⁴ In its application, the carrier must indicate that, at or before the time it filed its application with the Commission, it notified all affected customers. In its notice, the carrier must indicate its intent to discontinue service, and must also state that the Commission will normally authorize the requested discontinuance unless customers would be unable to receive substitute service or the public convenience and necessity is adversely affected. The notice must also indicate that customers may file comments with the Commission about the impact of the discontinuance, including any inability customers might have to acquire reasonable substitute service.⁵ Finally, the regulations provide that an application is automatically granted 31 (thirty-one) days after the Commission releases public notice of the application, without further Commission action, unless the Commission notifies the applicant that it will not be granted automatically.⁶ The primary purpose of these requirements is to reduce the harm to consumers caused by discontinuances of service, which is an important aspect of the Commission’s general obligation under the Communications Act to protect and promote the public interest.⁷

7. These statutory and regulatory requirements apply to all telecommunications carriers⁸ providing telecommunications services.⁹ First, the sale of any portion of ICC’s customer base to ICC Speed Cell constitutes a discontinuance of service to those customers of ICC, and, thus, is subject to section 214 of the Act and section 63.71 of the Commission’s rules.¹⁰ The Commission has found that providing access services to ISPs falls within the purview of the Commission’s Section 201 authority.¹¹ Specifically, the Commission stated that “Under Section 201, the Commission has long exercised its jurisdictional authority to regulate the interstate access services that [local exchange carriers (LECs)] provide to connect callers with interexchange carriers

³ 47 U.S.C. § 214(a).

⁴ 47 C.F.R § 63.71.

⁵ 47 C.F.R § 63.71(a).

⁶ 47 C.F.R § 63.71(c).

⁷ See 47 U.S.C. § 201.

⁸ See 47 U.S.C. § 151(44).

⁹ See 47 U.S.C. § 151(46).

¹⁰ The lack of notice to ICC’s customers may also have constituted a violation of the Commission’s slamming rule by ICC Speed Cell. See 47 C.F.R. §§ 64.1100 *et seq.* See also n. 13, *infra*. This order does not address any such potential violation.

¹¹ See *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996, Inter-carrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001).

(IXCs)] or ISPs Access services to ISPs for Internet-bound traffic are no exception.”¹² Thus, providers of access services to ISPs, such as ICC (and from our current understanding of the facts, ICC Speed Cell), are subject to section 214 of the Act and section 63.71 of the Commission’s rules.

8. Furthermore, earlier this year, the Commission reminded carriers that the requirements of section 214 and corresponding Commission regulations apply to discontinuances of domestic service of all types, including but not limited to discontinuances resulting from sales of exchanges by LECs, sales of customer bases by IXC resellers, and business dissolutions or bankruptcies.¹³ In fact, the Bureau subsequently proved its intent to strictly enforce its discontinuance provisions by declining to allow a carrier to discontinue service without complying with the notice requirements, even though the carrier was, similar to ICC, in a bankruptcy proceeding.¹⁴ Despite the carrier’s assertions that it had an urgent need to discontinue service on an expedited basis, the Bureau nonetheless denied the discontinuance application because it needed time to adequately analyze customer comments. In the matter at hand, the Bureau certainly has not had enough time to analyze the concerns of customers, since neither ICC nor ICC Speed Cell have even provided the requisite notice of discontinuance to customers. In fact, the Bureau first learned of ICC’s proposed discontinuance and concomitant efforts on Monday afternoon (October 29, 2001). Thus, ICC (and from our present understanding of the facts, ICC Speed Cell), as providers of, among other things, access services to ISPs, are required to give notice of the discontinuance of that service, notwithstanding the carriers’ involvement in a bankruptcy proceeding.¹⁵

¹² *Id.* at ¶ 52. For examples of applications that pertain to these types of services, see the following non-exhaustive list of such applications: *Rhythms Links Application to Discontinue Domestic Telecommunications Services*, NSD File No. W-P-D-517; *DSLnet Communications, LLC Application to Discontinue Domestic Telecommunications Services*, NSD File No. W-P-D-516; *Pathnet Application to Discontinue Domestic Telecommunications Services*, NSD File No. W-P-D-503; *Network Access Solutions Corporation and Network Access Solutions LLC Application to Discontinue Domestic Telecommunications Services*, NSD File No. W-P-D-510; *Broadband Office Communications, Inc. Application to Discontinue Domestic Telecommunications Services*, NSD File No. W-P-D-509; *Log On America Application to Discontinue Domestic Telecommunications Services*, NSD File No. W-P-D-507; and *Bluestar Networks, Inc. Application to Discontinue Domestic Telecommunications Services*, NSD File No. W-P-D-506.

¹³ *See Reminder to Common Carrier Regarding Discontinuance of Domestic Service Under Section 214 of the Communications Act*, Public Notice, NA 01-1173 (rel. May 8, 2001).

¹⁴ *Rhythms Links Inc. Emergency Application to Discontinue Domestic Telecommunications Services*, Order, NDS File No. W-P-D-523 (Sept. 7, 2001).

¹⁵ ICC Speed Cell may discontinue service to customers it acquired from ICC if it complies with the Commission’s rules. The Commission has allowed a carrier to discontinue service to the customers it acquired from a bankrupt carrier. *See Time Warner Telecom Inc. Discontinuance of Service*, Public Notice, DA 01-1448, NSD File No. W-P-D-493 (rel. June 8, 2001). In that matter, Time Warner Telecom (TWT) acquired certain assets and customers from GST Telecommunications, Inc. After review of the customer contracts, TWT decided that it no longer desired to keep some of those customers on its network. TWT recognized its regulatory responsibilities and filed an application for discontinuance authority pursuant to section 63.71 of the Commission’s rules. In fact, TWT took the additional step of assuring the Commission that no customer would (continued....)

9. Based on the allegations in the complaint filed by On-Ramp, and the facts the Bureau has been able to glean from the very limited investigation it has had time to conduct over the past several days, the Bureau concludes that as providers of telecommunications services, it would appear that both ICC and ICC Speed Cell were, and are, obligated to comply with section 214 and the Commission's rules. Accordingly, ICC and ICC Speed Cell are notified that they must either solely or jointly file a section 214 application for discontinuance authority, or seek such other relief from the Bureau or Commission as may be appropriate. Absent compliance with section 214 or securing such other relief, any action that either ICC or ICC Speed Cell takes or has already taken to discontinue service to any customer constitutes a violation of federal law and agency regulations. To the extent either ICC or ICC Speed Cell have taken any action intended to initiate a discontinuance of service, they are hereby ordered to immediately reverse those actions.

ORDERING CLAUSE

10. In accordance with sections 1, 4(1), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(1), 214, and sections 0.91, 0.291, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.71, IT IS ORDERED that ICC and ICC Speed Cell refrain from discontinuing service without first complying with all applicable statutory and regulatory requirements.

11. IT IS FURTHER ORDERED that in accordance with sections 1, 4(1), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(1), 214, and sections 0.91, 0.291, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.71, ICC and ICC Speed Cell immediately reverse any action that either carrier may have already taken which would otherwise result in discontinuance of service to any customer.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
Senior Deputy Bureau Chief
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be discontinued from its network until they successfully migrated their service to another carrier. Convinced that no risk of customer disruption would occur from the discontinuance, the Commission approved the application.