

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

In the Matter of)
)
)
Cable & Wireless USA, Inc. Application for) Comp. Pol. File No. 631
Authority to Discontinue Certain U.S.)
Domestic Telecommunications Services)
)
)
)

ORDER

Adopted: March 31, 2003

Released: March 31, 2003

By the Chief, Competition Policy Division:

1. In this Order, we grant Cable & Wireless USA, Inc.’s (Cable & Wireless) application to discontinue the provision of certain U.S. domestic telecommunications services, pursuant to section 214(a) of the Communications Act of 1934, as amended,¹ and section 63.71 of the Federal Communications Commission’s (Commission) rules.² As explained in further detail below, authority to discontinue is granted consistent with Cable & Wireless’s agreement to provide service until May 1, 2003 to Grande Communications Networks, Inc. (Grande) and Cingular Wireless LLC (Cingular), the commenters in this proceeding, to facilitate these commenters’ transition to other carriers.

BACKGROUND

2. On February 13, 2003, Cable & Wireless filed an application with the Commission requesting authority under section 214(a) of the Act and section 63.71 of the Commission's rules to discontinue certain domestic telecommunications services. Specifically, the application states that Cable & Wireless seeks authority to discontinue the provision of U.S domestic interstate frame relay and private-line services to customers served by two nodes of Cable & Wireless’s network located in St. Louis, Missouri, and Indianapolis, Indiana.³ Cable & Wireless states that approximately twenty (20) customers will be affected by the proposed discontinuance, and that it notified affected customers by sending personalized letters via overnight delivery on February 13, 2003.⁴ In a letter dated February 14, 2003, Cable & Wireless amended language in its

¹ 47 U.S.C. § 214(a).

² 47 C.F.R. § 63.71.

³ The application indicates that C&W is non-dominant with respect to these services.

⁴ See 47 C.F.R. § 63.71(a).

original application to indicate that it plans to discontinue services on March 31, 2003, and to clarify that notice to affected customers correctly referenced this date.

3. By Public Notice dated February 28, 2003, the Commission notified the public that, in accordance with 47 C.F.R. § 63.71(c), the application would be deemed to be automatically granted on the thirty-first (31st) day after the release date of the notice, unless the Commission notified Cable & Wireless that the grant would not be automatically effective.⁵ Accordingly, the automatic grant date for the application is March 31, 2003. The Commission received comments in opposition from Grande and Cingular, two Cable & Wireless customers who claim that they need additional time to secure alternative service.

4. 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.”⁶ The primary purpose of this requirement 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 As the Commission has stated, “we have retained the right to delay grant of a discontinuance authorization if we believe an unreasonable degree of customer hardship would result,”⁸ and will review each application to determine whether proper notice has been given, whether customers or other end users are able to receive service or a reasonable substitute from another carrier, and whether the public convenience and necessity is otherwise adversely affected.⁹

DISCUSSION

5. The Commission has considerable discretion in making a finding under section 214.¹⁰ We find that the record in this proceeding makes clear that, to the extent Grande and Cingular allege they are unable to migrate within the 31-day period, Cable & Wireless has provided sufficient assurances that it will maintain service for these customers for a reasonable, additional period of time in order to allow them to migrate. In an *Ex Parte* letter filed on March 28, 2003, Cable & Wireless indicates that it has reached commercial agreements with Grande and Cingular to

⁵ *Comments Invited on Cable and Wireless USA, Inc. Application to Discontinue Domestic Telecommunications Services*, Public Notice, Comp. Pol. File No. 631, DA 03-610 (rel. February 28, 2003).

⁶ 47 U.S.C. § 214(a).

⁷ *See* 47 U.S.C. § 201.

⁸ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (Competitive Carrier First Report and Order)*, 85 FCC 2d 1, 49 (1980).

⁹ *See* 47 C.F.R. § 63.71(a); *see, e.g., AT&T Application to Discontinue Interstate Sent-Paid Coin Service Not Automatically Granted*, Public Notice, NSD File No. W-P-D-497 (Aug. 3, 2001) (requiring AT&T to show how it will minimize the negative impact on the affected customers).

¹⁰ *FCC v. RCA Communications, Inc.*, 73 S.Ct. 998, 1002 (1953).

continue to provide services to these carriers until May 1, 2003.¹¹ On the basis of this agreement, on March 27, 2003, Cingular withdrew its comments.¹² Grande also filed an ex parte on March 28, 2003, acknowledging its agreement with Cable & Wireless.¹³ On the basis of Cable & Wireless's representation, we find that the proposed discontinuance will not result in an unreasonable degree of customer hardship, and, therefore, that there will be no adverse effect on the public convenience and necessity. Accordingly, Cable & Wireless may discontinue service on March 31, 2003, to the customers affected by this application in a manner consistent with its filed representations in this proceeding.

ORDERING CLAUSE

6. Accordingly, pursuant to 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 the application of Cable & Wireless USA, Inc. to discontinue domestic telecommunications IS GRANTED, consistent with its filed representations in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Competition Policy Division
Wireline Competition Bureau

¹¹ See Letter from Audrey Glenn, Director, Domestic Regulatory Affairs, Public Policy - USA, Cable & Wireless, to Ms. Marlene Dortch, Secretary, Federal Communications Commission (March 28, 2003).

¹² See Request to Dismiss with Prejudice Comments in Opposition filed by Cingular Wireless LLC (March 27, 2003)(indicating that Cingular reached a letter agreement with Cable & Wireless pursuant to which Cable & Wireless will discontinue the service at issue no sooner than May 1, 2003).

¹³ See Letter from L. Elise Dieterich, Counsel to Grande Communications Networks, Inc., to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission (March 28, 2003)(indicating that Grande's written agreement with Cable & Wireless fully addresses the objection set forth in Grande's comments).