

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

In the Matter of)
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)
Application of Corban Communications Inc. to) Comp. Pol. File No. 603
Discontinue Domestic Telecommunications)
Services)
)
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ORDER

Adopted: January 24, 2002

Released: January 24, 2002

By the Wireline Competition Bureau:

INTRODUCTION

1. This order addresses petitions from two customers seeking an extension of our previous order requiring Corban Communications (Corban) to continue providing service to specified customers until January 25, 2003. In this order we conclude that the public interest would be adversely affected in the absence of such an extension and therefore we extend our previous order through March 31, 2003.

BACKGROUND

2. On August 22, 2002 Corban filed an application (Application) with the Federal Communications Commission (Commission), requesting authority under section 214(a) of the Act¹ and section 63.71 of the Commission's rules² to discontinue the provision of select interstate microwave transmission services as of October 19, 2002. The Application stated that Corban's microwave transmitters were located on about 350 towers in the states Corban serves, 280 of which were owned by Pinnacle Towers, currently in bankruptcy proceedings in the Southern District of New York. According to Corban, it was unable to negotiate a successful resolution to a longstanding dispute with Pinnacle, had been unable to obtain an economic alternative to Pinnacle's towers, and accordingly, had no choice other than to terminate microwave service to all customers that were being provided service through equipment sited on Pinnacle's towers. On August 29, 2002, the Commission released a Public Notice notifying the public that, in accordance with section 63.71 of the Commission's rules, the application would be deemed to be

¹ 47 U.S.C. § 214(a).

² 47 C.F.R. § 63.71(c).

automatically granted on the thirty-first (31st) day after the release date of the notice, unless the Commission notified Applicants that the grant would not be automatically effective.³

3. Numerous customers, including broadcasters, municipalities, wireless service providers, and community groups filed comments opposing Corban's application, claiming that there was no alternative to the retransmission service supplied by Corban.⁴ According to these customers, without the retransmission of the broadcasters' signals large segments of the public in the mountainous portions of those states would be unable to receive crucial local programming and public safety service (such as weather, school closings, road conditions, and emergency broadcasting). On September 27, 2002, the Commission's Wireline Competition Bureau released an Order denying in part and granting in part Corban's application.⁵ In pertinent part, the Bureau required Corban to continue providing service to those customers that had filed comments for an additional 120 days to allow those customers to seek alternative providers and to allow the Bureau to further develop the record as to the availability of alternatives for these customers. The Bureau noted that many of the customers had requested the Commission to require Corban to provide service for longer than the 120 days provided for in the order, and stated that the 120-day period would be subject to further extension if customers were not able to obtain service or a reasonable substitute from another carrier, or if the public convenience and necessity was otherwise adversely affected by discontinuance. Subsequently, on November 26, 2002, in response to a number of petitions from parties that had not filed comments previously,⁶ the Bureau issued an Order on Reconsideration extending the protections of the September Order to additional customers and routes.⁷

4. The 120-day period required in the September Order is scheduled to expire on January 25, 2003. On January 17, 2003, the Post Company (Post), on behalf of KIFI-TV, filed a petition seeking to extend the September Order an additional 120 days. According to Post, the further extension was justified because the extreme weather conditions in Jackson, Wyoming had made it impossible for KIFI to provision its new facilities any sooner. The Montana Broadcaster's Association (Montana Broadcasters) also filed a request on behalf of some of its member television

³ *Comments Invited on Corban Communications Inc. Application to Discontinue Domestic Telecommunications Services*, Public Notice, Comp. Pol. File No. 603, DA 02-650 (rel. August 29, 2002).

⁴ Comments were filed by The Post Company, licensee of KIFI-TV; KUSM Montana PBS; KTVQ-TV; Billings, MT; KULR-TV, Billings, MT; KSVI-TV, Billings, MT; KHMT-TV, Hardin, MT; KTVM-TV, Butte, MT; KXLF-TV, Butte, MT; KXGN-TV, Glendive, MT; KUSM-TV, Bozeman, MT; KYUS-TV, Miles City, MT; Millennium Digital Media; Pacific Microwave Joint Ventures; Verizon Wireless; Sunbelt Communications; MCI WorldCom Network Services, Inc.

⁵ Application of Corban Communications Inc. to Discontinue Domestic Telecommunications Services, *Order on Reconsideration*, 17 FCC Rcd 18392 (September Order).

⁶ Comments of Grande Communication, Comments of Post Company (Post), Comments of AT&T, Comments of MCI WorldCom, Comments of United States Coast Guard.

⁷ Application of Corban Communications Inc. to Discontinue Domestic Communications Services, *Order on Reconsideration*, DA 02-3204 (rel. Nov. 26, 2002) (Recon Order). Among the petitioners seeking reconsideration was the Post Company (Post) licensee of the KIFI-TV and TV Translator Station K59DY.

stations seeking to extend service on certain routes for an additional one to seven months in order to allow time to secure alternative services. According to the Montana Broadcasters, although two of its member stations would have a new transmission path in operation as early as February 28, 2003, at least eight other stations would not be able to obtain alternative service until September, 2003, after certain licenses and permits were obtained and construction completed.⁸

5. On January 24, 2003, Corban filed a response to the two petitions for extension of the September Corban Order.⁹ In its response, Corban notes that it has signed an agreement with Pinnacle Towers, Inc., pursuant to which it is anticipated that Corban Communications will purchase 282 towers across the country. The deal is scheduled to close on February 14, 2003, and is subject to bankruptcy approval, a hearing for which is scheduled for January 30, 2003. Further, Corban agrees, under certain conditions to provide service to the two petitioners (and any others that may file subsequently) under certain conditions until the earlier of March 31, 2003, or the date on which the petitioner signs a valid contract with Corban Communications, Inc., and/or Colorado 419 Network, Inc. for the continuation of these services. Corban's conditions are (1) that an entity has previously filed and been granted an extension of the discontinuation deadline; (2) that the entity has contacted Corban to discuss its ongoing need for service after the expiration of the initial order; and (3) that the customer is in compliance in all respects with the service order(s), including the payment of all fees, which they have with either Corban Communications, Inc. and/or Colorado 4 19 Network, Inc.¹⁰

DISCUSSION

6. As we indicated in the September Order, the commenters in this proceeding made a convincing showing that the public convenience and necessity would be adversely affected if Corban were to discontinue its microwave transmission services to them, and accordingly, we denied Corban's application as it applied to those commenters.¹¹ We also noted that the Commission has considerable discretion in making a finding under section 214,¹² a discretion we exercised in a manner intended to minimize burdens on Corban, yet protect its customers from service disruptions. Finally, we stated that we would further extend the order if necessary.

7. We continue to believe that the public interest would be adversely affected by discontinuance of the services in question for the same reasons we discussed in our September Order. Under the circumstances presented here, however, it would be premature for us to grant the Requests for Partial Extension for the length of time requested by the commenters. Rather, we

⁸ The petitions identify the routes for which extensions are requested.

⁹ In the Matter of Corban Communications Inc. Application to Discontinue Domestic Telecommunications Services, Response to Petitions for Extension of Service Termination Date (filed Jan. 24, 2003).

¹⁰ Corban also explains that it has also voluntarily provided Homeland Security assistance to the Coast Guard by maintaining for them an additional spur beyond their initial request.

¹¹ September Order, 17 FCC Rcd at 18396.

¹² *FCC v. RCA Communications, Inc.*, 73 S. Ct. 998, 1002 (1953).

believe that we will have a much better idea concerning the availability of alternative service to Corban's customers if and when Corban has purchased and is operating the Pinnacle towers.

8. The Corbin/Pinnacle transaction is expected to close on or around February 14, 2003, subject to approval from the Bankruptcy Court. A hearing on this issue is currently scheduled for January 30, 2003. Further, Corban has conditionally indicated that it will not be discontinuing service to any of its customers prior to March 31, 2003. We understand from Corban that the filing and discussion conditions noted above have already been met by the petitioners. To the extent that issues regarding payment may exist, they are currently subject to informal complaints pending before the Consumer and Governmental Affairs Bureau. We note, however, that while carriers may always terminate service for nonpayment, they are under a general obligation under Sections 201 and 202 of the Act¹³ to provide service under rates, terms and conditions that are just, reasonable and nondiscriminatory, and may only terminate for nonpayment in accordance with the terms of their tariffs or service agreements.

9. Should the Corban/Pinnacle transaction be approved and close, Corban will be in a position to provide the services that it previously received from Pinnacle and thus will be able to continue to supply the services it currently provides. Corban has agreed to maintain service to the commenters until March 31, 2003, a date by which we expect the issues surrounding Corban's purchase of the Pinnacle towers to be resolved. Accordingly, we will require Corban to continue to maintain service to the petitioners through March 31, 2003.¹⁴ Corban or its customers may file a request for modification of this extended period to the extent that its customers find alternative service or in the event that circumstances otherwise require.

ORDERING CLAUSE

10. 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 petitions filed by the Post Company and the Montana Broadcasters Association ARE GRANTED to the extent described herein, and that Corban Communications, Inc. SHALL maintain service to these parties through March 31, 2003 in a manner consistent with this order.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
Senior Deputy Bureau Chief
Wireline Competition Bureau

¹³ 47 U.S.C. §§ 201, 202.

¹⁴ This requirement shall apply only to the routes specifically described by the commenters.