



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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COMMENTS INVITED ON APPLICATION OF FIBERTOWER CORPORATION TO DISCONTINUE DOMESTIC TELECOMMUNICATIONS SERVICES

WC Docket No. 12-334
Comp. Pol. File No. 1066

Comments Due: November 30, 2012

Section 214 Application **Applicant: FiberTower Corporation**

On November 9, 2012, **FiberTower Corporation** (FiberTower or Applicant), located at **185 Berry Street, Suite 4800, San Francisco, CA 94107**, filed an application with the Federal Communications Commission (FCC or Commission) requesting authority, under section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.71 of the Commission's rules, 47 C.F.R. § 63.71, to discontinue certain domestic telecommunications services in Gillette, Arkansas; Atlanta, Georgia; Baltimore, Maryland; Boston, Massachusetts; Cleveland, Ohio; Detroit, Michigan; Dallas, Houston, San Antonio, Austin and Waco, Texas; New York; New Jersey; Pittsburgh, Pennsylvania; Tampa, Florida; Washington, D.C.; and Virginia (collectively Service Areas).¹

FiberTower indicates that it currently offers point-to-point wireless and fiber optic backhaul and transport services utilizing fixed wireless and fiber optic circuits in the Service Areas. FiberTower states, however, that on July 17, 2012, FiberTower Network Services Corp., FiberTower Corporation, FiberTower Licensing Corp., and FiberTower Spectrum Holdings LLC filed a petition for relief under Chapter 11 of the Bankruptcy Code. FiberTower explains that a majority of its first lien creditors have endorsed a FiberTower support agreement allowing FiberTower to continue to operate and develop its spectrum services, carrier services, and other services during the bankruptcy proceedings and upon emergence from Chapter 11 protection. FiberTower explains further that the FiberTower Chapter 11 reorganization plan and the support agreement are contingent on FiberTower maintaining its 24 and 39 GHz licenses. FiberTower notes that, because the Commission has issued an order denying FiberTower's Extension Requests and holding that the licenses were terminated as of June 1, 2012, there may be no viable plan for reorganizing FiberTower. FiberTower represents that its secured creditors may therefore terminate the Plan Support Agreement that currently funds FiberTower's operations. Consequently, according to FiberTower, it would not have the financial resources to continue offering its services.

¹ FiberTower maintains that, as a private interstate carrier, it does not believe that it is subject to the discontinuance procedures that are applicable to interstate common carriers set forth in 47 CFR § 63.60, et. seq., and 101.305. FiberTower states in its application, however, that, out of an abundance of caution, it provided notice to its current customers and filed this application in accordance with the discontinuance procedures applicable to common carriers as set forth in 47 CFR § 63.71.

FiberTower states that it, therefore, plans to discontinue providing its service in the Service Areas on December 9, 2012. FiberTower states that it mailed written notice of the planned discontinuance to affected customers on November 9, 2012.

In addition, FiberTower emphasizes that it has been working with many of its customers, including its wireless carrier customers whose service represents over 99 percent of FiberTower's revenues, to keep them apprised of FiberTower's Chapter 11 proceedings. FiberTower maintains that, as a result, those customers have had considerable notice of FiberTower's financial circumstances and the precarious nature of its creditor-supported plan of reorganization which is dependent upon FiberTower maintaining its 24 and 39 GHz licenses. According to FiberTower, its customers have therefore been aware for some time of the possibility that services provided over FiberTower's legacy network may be terminated as a result of the ongoing bankruptcy. FiberTower states that its customers have also been aware for some time of a possible termination of service due to the Commission's rejection of the requests of FiberTower Spectrum Holdings LLC for extension of time to demonstrate substantial service and for waiver of the substantial service deadlines. FiberTower represents that it is non-dominant with respect to the services it proposes to discontinue.

In accordance with section 63.71(c) of the Commission's rules, FiberTower's application will be deemed to be granted automatically on the 31st day after the release date of this public notice, unless the Commission notifies FiberTower that the grant will not be automatically effective. In its application, FiberTower indicates that it plans to discontinue point-to-point wireless and fiber optic backhaul and transport services utilizing fixed wireless and fiber optic circuits in the Service Areas on December 9, 2012, subject to Commission authorization. Accordingly, pursuant to section 63.71(c) and the terms of FiberTower's application, absent further Commission action, FiberTower may terminate point-to-point wireless and fiber optic backhaul and transport services utilizing fixed wireless and fiber optic circuits in the Service Areas on or after **December 16, 2012**, in accordance with FiberTower's filed representations. The Commission normally will authorize proposed discontinuances of service unless it is shown that customers or other end users would be unable to receive service or a reasonable substitute from another carrier, or that the public convenience and necessity would be otherwise adversely affected.

Comments objecting to this application must be filed with the Commission on or before **November 30, 2012**. Such comments should refer to **WC Docket No. 12-334 and Comp. Pol. File No. 1066**. Comments should include specific information about the impact of this proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number.

Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. The filing hours are Monday through Friday, 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol

Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

Two copies of the comments should also be sent to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-C140, Washington, D.C. 20554, Attention: Carmell Weathers. In addition, comments should be served upon the Applicant. Commenters are also requested to fax their comments to the FCC at (202) 418-1413, Attention: Carmell Weathers.

This proceeding is considered a “permit but disclose” proceeding for purposes of the Commission’s *ex parte* rules.² Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

For further information, contact Carmell Weathers, (202) 418-2325 (voice), carmell.weathers@fcc.gov, or Kimberly Jackson, (202) 418-7393 (voice), kimberly.jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau. The tty number is (202) 418-0484. For further information on procedures regarding section 214 please visit http://www.fcc.gov/wcb/cpd/other_adjud.

– FCC –

² 47 C.F.R. §§ 1.1200 *et seq.*