



PUBLIC NOTICE

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

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DA 13-37
Released: January 11, 2013

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

WC Docket No. 13-9
Comp. Pol. File No. 1072

Comments Due: January 28, 2013

Section 214 Application **Applicant: FiberTower Corporation**

On **December 4, 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; Denver, Colorado; Washington, D.C.; Tampa, Florida; Atlanta, Georgia; Baltimore, Maryland and other suburban portions of Maryland; Boston, Massachusetts; Detroit, Michigan; New Jersey; New York; Cleveland, Ohio; Pittsburgh, Pennsylvania; Austin, Dallas, Houston, San Antonio and Waco, Texas; 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 (Affected Services) in the Service Areas. FiberTower states, however, that on July 17, 2012, it filed a petition for relief under Chapter 11 of the Bankruptcy Code along with FiberTower Licensing Corp., FiberTower Network Services Corp. and FiberTower Spectrum Holdings LLC. FiberTower submits that a majority of its first lien creditors initially endorsed a FiberTower support agreement that would have allowed 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 asserts, however, that this support agreement and proposed chapter 11 plan were contingent on FiberTower maintaining its 24 and 39 GHz licenses, and acknowledges that the Commission has denied its extension requests for these

¹ See *Notification of FiberTower Corporation Regarding the Discontinuance of Telecommunications Service*, Application, WC Docket No. 13-9 (filed Dec. 4, 2012) (FiberTower Application). FiberTower maintains that it is a private interstate carrier and does not believe that it is subject to the discontinuance procedures applicable to interstate common carriers as set forth in 47 C.F.R. §§ 63.60, et. seq. and 101.305. FiberTower states, 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.

licenses.² FiberTower asserts that it consequently will not be able to successfully restructure its business and will not have the financial resources to continue providing services.

On November 15, 2012, a public notice was released announcing FiberTower's initial plans to discontinue the Affected Services on December 9, 2012.³ FiberTower subsequently withdrew its original discontinuance application and filed the present application to announce its plans to discontinue the Affected Services in the Service Areas on April 30, 2013, subject to extension under certain circumstances.⁴ In its new application, FiberTower explains that it reached an agreement with several of its carrier customers that allows for the orderly migration of services off of FiberTower's backhaul network beyond the originally planned December 9, 2012 discontinuance date. FiberTower specifies that this Binding Term Sheet (Term Sheet) calls for the discontinuance of the Affected Services on April 30, 2013 with an option for participating carrier customers to receive an extension for one or more markets of not more than ninety days pursuant to the Term Sheet.⁵ FiberTower states that it mailed written notice of the originally planned discontinuance to affected customers on November 9, 2012. FiberTower further states that it mailed a second written notice on December 4, 2012 to advise affected customers of its revised April 30, 2013 discontinuance date consistent with the requirements of section 63.71 of the Commission's rules. FiberTower maintains that the proposed discontinuance is reasonable and necessary, and submits that its customers have had considerable notice of its financial circumstances and have been aware for some time of the possibility that services provided over FiberTower's legacy network might be terminated. 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 the Affected Services in the Service Areas on April 30, 2013, subject to extension pursuant to the Term Sheet. Accordingly, pursuant to section 63.71(c), the terms of FiberTower's application and the Term Sheet, absent further Commission action, FiberTower may terminate the Affected Services in the Service Areas on or after **April 30, 2013**, in accordance with the Term Plan and 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.

² See *FiberTower Spectrum Holdings LLC*, Memorandum Opinion and Order, 27 FCC Rcd 13562 (2012).

³ See *Comments Invited on Application of FiberTower Corporation to Discontinue Domestic Telecommunications Services*, Public Notice, WC Docket No. 12-334, DA 12-1848 (rel. Nov. 15, 2012) (seeking comment on FiberTower's proposed discontinuance and allowing for a potential discontinuance of service on or after December 16, 2012 absent further Commission action).

⁴ See *FiberTower Corporation Discontinuance of Service*, Withdrawal of Discontinuance Notification, WC Docket No. 12-334 (filed Dec. 4, 2012).

⁵ See FiberTower Application, Exhibit A. FiberTower states that the Binding Term Sheet, dated November 20, 2012, was approved by the Bankruptcy Court on November 28, 2012. FiberTower further explains that the participating carrier customers include AT&T Services, Inc.; Cellco Partnership d/b/a Verizon Wireless; Clear Wireless LLC; Cricket Communications, Inc.; MetroPCS Texas, LLC; MetroPCS Wireless, Inc.; Nextel of California, Inc.; Nextel Communications of the Mid-Atlantic, Inc.; Nextel of New York, Inc.; Nextel Partners, Inc.; Nextel South Corp.; Nextel of Texas, Inc.; Nextel West Corp.; Sprint Communications Company, L.P.; Sprint Spectrum, L.P.; and T-Mobile USA, Inc.

Comments objecting to this application must be filed with the Commission on or before **January 28, 2013**. Such comments should refer to **WC Docket No. 13-9 and Comp. Pol. File No. 1072**. 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.⁶ 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.

⁶ 47 C.F.R. §§ 1.1200 *et seq.*

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.

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