

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

In the Matter of
Corban Telecommunications Inc.'s Application
to Discontinue Domestic Telecommunications
Services
Comp. Pol. File No. 603

ORDER ON RECONSIDERATION

Adopted: November 26, 2002

Released: November 26, 2002

By the Wireline Competition Bureau:

1. On September 20, 2002, the Common Carrier Bureau (Bureau) released an Order granting in part and denying in part an application to discontinue service filed by Corban Communications. Subsequent to the release of the September 27, 2002 order, four parties filed petitions for clarification or reconsideration of that order. Two of these parties, AT&T and Grande, did not participate in the underlying proceeding. For the reasons indicated below, we grant these petitions. We also correct the location of certain routes mistakenly identified in the September 27 Order.

BACKGROUND

2. On, August 22, 2002, Corban filed an application (Application) with the Commission requesting authority under section 214(a) of the Act and section 63.71 of the Commission's rules to discontinue the provision of select interstate microwave transmission services as of

1 Application of Corban Telecommunications Inc. to Discontinue Domestic Telecommunications Services, Order, DA 02-2437 (rel. Sept. 27, 2002) (September 27 Order).

2 Petitions for reconsideration were filed by AT&T Corp. (AT&T), Grande Communications, Inc. (Grande), the Post Company, licensee of KIFI-TV (KIFI), and WorldCom. Additional comments objecting to price increases for Corban's services were filed by Sunbelt Communications, KTVQ and KXLF, Verizon Wireless, Montana Broadcasters Association, Pacific Microwave Joint Venture, and Millennium Digital Media. These comments are being separately treated as informal complaints and are being addressed by the Commission's Consumer and Governmental Affairs Bureau.

3 Both the routes identified by the petitioners and the corrected routes are included as part of the attached Appendix.

4 47 U.S.C. § 214(a).

5 47 C.F.R. § 63.71.

October 19, 2002. In its application, Corban included a copy of the letter notifying its customers of Corban's intent to discontinue service as of October 19, 2002. As indicated in the application, in the two months prior to its application, Corban had provided two additional notices to its customers indicating Corban's intent to discontinue these services.⁶

3. By Public Notice dated August 29, 2002, the Commission notified the public that, in accordance with section 63.71(c) of the rules,⁷ 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 Applicants that the grant would not be automatically effective.⁸ Numerous broadcast licensees, broadcasters' associations, municipalities, and community groups in Montana and Wyoming filed comments opposing Corban's application. According to these commenters, without the retransmission of the broadcasters' signals, large segments of the public in portions of those states would be unable to receive crucial local programming and public safety services (such as weather, school closings, road conditions, and emergency broadcasting). The commenters claimed that there is currently no other alternative to the retransmission service supplied by Corban, and that thirty-one days was insufficient time for them to find alternative service. Corban's customers in northern California and southern Oregon filed similar comments.⁹ In addition, Verizon Wireless filed comments stating that without Corban's service, its customers would lose service in many parts of Montana, Wyoming and South Dakota.¹⁰ MCI WorldCom Network Services (WorldCom) objected to discontinuation of select microwave transmission services it uses to provide service to the Federal Aviation Administration.¹¹ Commenters argued that they needed additional time to obtain substitute service,¹² in some cases because of severe winter weather conditions that would make it impossible to put replacement services in place until next spring.¹³ Corban did not file a reply.¹⁴

⁶ Corban Application at 2.

⁷ 47 C.F.R. § 63.71(c).

⁸ *Comments Invited on Corban Communications Inc. Application to Discontinue Domestic Telecommunications Services*, Public Notice, NSD File No. W-P-D-572, DA 02-650 (rel. March 18, 2002) (Notice).

⁹ *See* Comments of Pacific Microwave Joint Venture at 1-3, Comments of Millennium Digital Media.

¹⁰ *See* Comments of Verizon Wireless at 2-5.

¹¹ Letter from Lynn Darrow Carson, Associate Counsel, WorldCom, to Marlene Dortch, Secretary, Federal Communications Commission (Sept. 26, 2002).

¹² *See, e.g.*, Comments of the Montana Broadcasters Association at 3 (on behalf of 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; and KJWY-TV, Jackson WY); KTVQ Communications, Inc.; and Glendive Broadcasting Corporation.

¹³ *See, e.g.*, Comments of the Montana Broadcasters Association at 3, Comments of Sunbelt Communications at 2 (on behalf of KPVI-TV, Pocatello, ID and KJWY-TV, Jackson, WY).

¹⁴ Corban filed an *ex parte* in response to an inquiry by the Bureau. *See* Letter from Rodney Joyce, Counsel for Corban, to Marlene Dortch, Secretary, Federal Communications Commission (Sept. 24, 2002).

4. On September 27, 2002, the Bureau released an Order denying in part and granting in part Corban's application.¹⁵ The Bureau determined that the commenters in the proceeding had made a convincing showing that the public convenience and necessity would be adversely affected if Corban were to discontinue its microwave transmission services to the commenting parties on October 19, 2002.¹⁶ Accordingly, the Bureau denied Corban's application to discontinue service to its customers that had filed comments. The Bureau noted that this was without prejudice for Corban to request permission to discontinue service to any of the commenting customers once it was able demonstrate that those customers could obtain a reasonable alternative to the service they currently obtain from Corban. The Bureau permitted Corban to discontinue service on October 19, 2002, to customers other than those that had filed comments.

5. On October 10, 2002, AT&T filed a letter requesting that the Bureau reconsider its September 27 Order in order to give AT&T sufficient time to migrate the service it receives from Corban to an alternative carrier.¹⁷ AT&T states that it did not file comments in the underlying proceeding because it was previously unaware that it had received Corban's notices, and that AT&T only recently became aware that additional time would be required to complete the migration authorized by the September 27, 2002 Order. According to AT&T, discontinuance of Corban's service would result in loss of service to 45 end-offices along the Dallas/Athens/Longview, Texas route and would interrupt service to as many as 30,000 end-users along that route. Similarly, on October 11, 2002, Grande filed a Petition for Nunc Pro Tunc Filing of Opposition to, or In the Alternative, For Waiver of Deadline to Oppose, Corban's Application.¹⁸ Grande states that it received the August 21, 2002 notice from Corban advising it of the discontinuance, but that this notice was inadvertently misrouted and overlooked, with the result that Grande's legal staff was not able to file a timely opposition to Corban's application. According to Grande it also receives services from Corban for end-users along the Dallas/Athens/Athens route. Grande requests that that this service be maintained, as well as service that extends from that route to end-offices in Texarkana. According to Grande, if service were discontinued to the Texarkana end-offices, Grande's customers would have no alternative provider of service and would be faced with a complete loss of basic telephone and internet

¹⁵ September 27 Order, *see n. 1, infra*.

¹⁶ *Id.* at 3-4.

¹⁷ Letter from Patrick H. Merrick, Director – Regulatory Affairs, AT&T Corp. to Jeffrey Carlisle, Senior Deputy Bureau Chief, Wireline Competition Bureau, Federal Communications Commission (Oct. 10, 2002) (AT&T letter). AT&T subsequently filed a supplement to this letter. Letter from Patrick H. Merrick, Director – Regulatory Affairs, AT&T Corp. to Jeffrey Carlisle, Senior Deputy Bureau Chief, Wireline Competition Bureau, Federal Communications Commission (Oct. 17, 2002) (AT&T supplement).

¹⁸ Grande Communications Networks, Inc., Petition for Nunc Pro Tunc Filing of Opposition to, or In the Alternative, For Waiver of Deadline to Oppose, Corban's Application (filed Oct. 11, 2002). Grande subsequently filed a supplement to its original filing which addressed the specific standards set forth in 47 U.S.C. § 1.106. *See* Grande Communications Networks, Inc., Supplemental Petition Pursuant to Section 1.106 of the Commission's Rules (filed Oct. 17, 2002) (Grande Supplement). Accordingly, we will treat Grande's petition as a Petition for Reconsideration.

service in that area.¹⁹ Grande also states that loss of Corban's services would negatively impact its ability to comply with its 911 obligations.²⁰ WorldCom made two post-release filings. The first, made on October 3, 2002 notified the Bureau that WorldCom had misidentified the routes in question in its first filing and requests the Commission to correct that error.²¹ The second, filed on October 17, 2002 requests that the Bureau require Corban to maintain WorldCom's traffic on the Dallas to Athens route as well.²² Finally, KIFI filed a petition for reconsideration requesting the Commission require Corban to continue carrying its signal for rebroadcast in Jackson, Wyoming.²³ According to KIFI, it provides one of the two television signals that are received in Jackson, Wyoming and broadcasts local news including information such as school closings, road conditions, and weather alerts. KIFI argues that it was unable to participate previously because it is not a direct customer of Corban, but rather of AT&T Broadband. KIFI states that the only notice of the planned discontinuance that it received was a notice sent by AT&T Broadband on September 27, 2002, the same day the September 27 Order was released.

DISCUSSION

6. Petitions for reconsideration of actions taken pursuant to delegated authority by one of the Commission's operating bureaus may be acted upon by that bureau.²⁴ Accordingly the Bureau will act upon these petitions. Although petitions for reconsideration may be filed by parties that did not previously appear in the proceeding, such parties must satisfy a two part test by stating with particularity that their interests were adversely affected by the order at issue, and showing good reason why it was not possible for them to participate previously.²⁵

7. KIFI satisfies the first part of this test by demonstrating that it would be affected by the September 27 Order because it would lose access to the Jackson, Wyoming market if Corban no longer retransmits KIFI's signal. KIFI also satisfies the second part of test by demonstrating that it did not receive adequate notice of the underlying proceeding and therefore could not reasonably have been expected to have participated in that proceeding.

8. AT&T, Grande, and WorldCom also satisfy the first part of the two part test by showing that their end-user customers would lose basic telephone service if Corban is allowed to discontinue service. Concerning the second part of the test, AT&T, Grande, and WorldCom

¹⁹ Grande Supplement at 3.

²⁰ *Id.* at 2-3.

²¹ Letter from Lynn Darrow Carson, Associate Counsel, WorldCom, to Marlene Dortch, Secretary, Federal Communications Commission (Oct. 3, 2002) (WorldCom October 3 Letter).

²² Letter from Lynn Darrow Carson, Associate Counsel, WorldCom, to Marlene Dortch, Secretary, Federal Communications Commission (Oct. 17, 2002). WorldCom specifically identified this route as Texarkana, Texas to Longview, Texas.

²³ Letter from Dawn M. Sciarrino, Counsel, for KIFI, to Marlene Dortch, Secretary, Federal Communications Commission (Oct. 3, 2002)

²⁴ 47 C.F.R. § 1.106(a)(1).

²⁵ 47 C.F.R. § 1.106(b)(1).

explain that they were unable to participate previously because, although they received the notices from Corban, these notices were lost, misfiled, or otherwise failed to identify the routes at issue. As a result, the parties argue that they were unable to identify these routes to the Commission in the underlying proceeding. Given the significant prejudice that customers in the affected communities would suffer if their service were discontinued, and the lack of prejudice that Corban would suffer if these parties' petitions were granted, we conclude that the reasons given by AT&T, Grande, and WorldCom are sufficient to excuse these parties' previous non-participation.²⁶ The AT&T, Grande, and WorldCom explanations of their failure to respond to the repeated notices provided by Corban, as well as to the Public Notice released by the Bureau, are only minimally adequate to satisfy the standard set forth in the Commission's rules, however, and we caution that our decision here should not be considered precedent to justify similar late filings in the future.²⁷ Customers of telecommunications services, whether end-users or carriers, must take discontinuation notices seriously, and corporate entities must have adequate procedures in place to acknowledge and respond to them in a timely fashion, as we will not normally exercise our discretion to allow a late filed pleading simply because a party has been negligent in protecting its rights.

9. We conclude that if we permit Corban to discontinue providing its service to AT&T, WorldCom and Grande along the Dallas/Athens/Longview/Texarkana route, there will be a severe interruption of service to rural customers, thus adversely affecting the public interest.²⁸ We also conclude that interruption of service to KIFI would adversely affect the public interest in much the same way that that interruption of service would affect the broadcasters subject to our September 27, 2002 Order. Accordingly, we direct Corban to take such reasonable steps as are necessary to continue providing service to AT&T, Grande, WorldCom, and KIFI in a manner consistent with that required in the September 27 Order.

10. Finally, we grant WorldCom's request that we correct the routes misidentified in the September 27 Order.²⁹ Further, upon further review, we found that we had inadvertently attributed an affiliation between Pacific Microwave Joint Ventures and KPVI-TV, Pocatello, Idaho and KJWY-TV, Jackson, Wyoming. We hereby revise the September 27 order accordingly to correct these errors.

11. On November 21, 2002, the United States Coast Guard (Coast Guard or U.S.C.G.) filed a letter in this proceeding asserting that it had been informed by Corban that its service from Louisville, Kentucky to Pittsburgh, Pennsylvania would be disconnected no later than

²⁶ See Midwest Bell Communications Petition for Reconsideration of Grant of License for Station WPPU614, Parma, Ohio, *Order on Reconsideration*, 15 FCC Rcd 11005 (2000).

²⁷ See Application of Regionet Wireless License, LLC For Renewal of License for Station WRV374 to Provide Automated Maritime Telecommunications System Services to the Atlantic Coast, *Memorandum Opinion and Order*, FCC 02-289 (rel. Oct. 25, 2002)

²⁸ AT&T Supplement.

²⁹ WorldCom October 3 Letter.

November 30, 2002.³⁰ According to the Coast Guard, such a discontinuance of such service would adversely affect the U.S.C.G. National Distress and Response Remote Communications Site at Louisville, Kentucky. The Coast Guard further asserts that a critical remote VHF-FM Coast Guard radio facility, which uses Defense Communications Agency (DCA) services, will be unable to communicate with the maritime community in an important part of the Western River System. The Coast Guard further asserts that this would adversely affect its ability to perform National Security, Marine Safety and Environmental Protection mission in this region. Although the Coast Guard does not explain why it did not participate in this proceeding previously, we believe that the negative impact to public safety and national security that would result from Corban's discontinuance of service to the Coast Guard is sufficiently serious that we must take steps to ensure that service to the Coast Guard is not interrupted. Accordingly, we direct Corban to continue to provide service to the Coast Guard in a manner consistent with that required in the September 27 Order while we work with the DCA to determine the extent and nature of the national security related services at issue and the time frame for transitioning these services to alternative providers.

ORDERING CLAUSES

12. Accordingly, pursuant to sections 1, 4(i), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, and sections 0.91, 0.291, 1.106, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.106, and 63.71, IT IS ORDERED that the petitions for reconsideration filed by AT&T Corp., Grande Communications Networks, Inc., MCI WorldCom Communications and KIFI-TV ARE GRANTED in a manner consistent with this order and that the relief requested by the United States Coast Guard is GRANTED to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.
Bureau Chief
Wireline Competition Bureau

³⁰ Letter from Captain C.S. Campbell, Deputy Commander Maintenance & Logistics Command Atlantic, United States Coast Guard, to Federal Communications Commission (November 21, 2002).

Appendix – List of Affected Parties

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. (between Rapid City, South Dakota /Denver, Colorado and Scots-Bluff/Gering, Nebraska/Denver and between Texarkana, Texas and Longview, Texas)
AT&T (service between Dallas, Texas and Athens, Texas)
Grande Communications, Inc. (service between Dallas, Texas and Athens, Texas and between Longview, Texas and Texarkana, Texas)
United States Coast Guard