

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

In the Matter of)
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Cable & Wireless USA, Inc. Application for) Comp. Pol. File No. 663
Authority to Discontinue Certain U.S.)
Domestic Telecommunications Services)
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ORDER

Adopted: December 22, 2003

Released: December 22, 2003

By the Chief, Competition Policy Division:

I. INTRODUCTION

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 (the Act),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 agreements to continue providing service to Public Storage, Seisint and TeleManagement Systems, Inc. (TeleManagement), commenters in this proceeding, to facilitate these commenters' transition to alternative services.

II. BACKGROUND

2. On November 18, 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.³ Specifically, the application states that Cable & Wireless seeks authority to discontinue the provision of U.S. domestic interstate frame relay and asynchronous transfer mode (ATM) services to customers located in Arizona, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington and

¹ 47 U.S.C. § 214(a).

² 47 C.F.R. § 63.71.

³ On November 21, 2003, Cable & Wireless filed a letter to supplement its application.

Wisconsin.⁴ Cable & Wireless states that it notified affected customers by sending personalized letters beginning on October 14, 2003 and ending on November 3, 2003.⁵

3. By Public Notice dated November 21, 2003, the Commission notified the public that, in accordance with section 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.⁶ The Commission further noted that Cable & Wireless indicated in its application that it would not discontinue service until January 2, 2004. Accordingly, the Commission stated that pursuant to section 63.71(c), and absent further Commission action, Cable & Wireless could not terminate services to the customers affected by this application until January 2, 2004. The Commission received four comments in response to Cable & Wireless's notice to its customers.⁷ Specifically, Alcatel, Public Storage, Seisint, Inc., and TeleManagement, filed comments objecting to the proposed discontinuance on the grounds that they could not secure alternative service by the proposed discontinuance date.⁸ On December 10, 2003, Alcatel submitted a letter withdrawing its request for additional time to find alternative service.⁹ Cable & Wireless and other commenters also submitted letters acknowledging that they have been able to enter commercial agreements regarding alternative services, and that Cable & Wireless has agreed to continue to provide frame relay and ATM services to Public Storage, Seisint and TeleManagement to facilitate these commenters' transition to alternative services.¹⁰

4. Section 214(a) of the Communications Act, as amended, states that "[n]o carrier shall

⁴ The application indicates that Cable & Wireless is non-dominant with respect to these services.

⁵ Cable & Wireless Application at 2. *See* 47 C.F.R. § 63.71(a).

⁶ *Comments Invited on Cable & Wireless USA, Inc. Application to Discontinue Domestic Telecommunications Services*, Public Notice, Comp. Pol. File No. 663, DA 03-3759 (rel. Nov. 21, 2003).

⁷ *See* Alcatel Comments; Public Storage Comments; Seisint, Inc. Comments; TeleManagement Comments.

⁸ *See* Alcatel Comments at 1 (requesting an additional 120 days); Public Storage Comments at 1 (requesting more than 60 days from Oct. 14, 2003); Seisint, Inc. Comments at 1 (recommending an extension to Feb. 15, 2004); TeleManagement Comments at 1 (requesting an extension to Mar. 1, 2004).

⁹ Letter from M.E. McNeel, C.P.M., Alcatel, to Rodney McDonald, Federal Communications Commission (Dec. 10, 2003) (Alcatel Withdrawal Letter).

¹⁰ *See* Letter from Cathleen K. Wasilewski, Director, Domestic Regulatory Affairs, Cable & Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, Comp. Pol. File No. 663, at 2 (dated Dec. 18, 2003) (indicating that Cable & Wireless has: (1) agreed to provide frame relay and ATM service to Public Storage for the majority of its sites until it has been migrated to an alternative Cable & Wireless service, and agreed that it will extend service to the remaining sites until Jan. 15, 2004; (2) received notice from TeleManagement that TeleManagement has migrated all but one circuit to Singapore to an alternative vendor, and that TeleManagement's remaining circuit should be migrated before Jan. 2, 2004; (3) agreed to provide Seisint with alternative services, and assured Seisint that it will continue to provide frame relay service until it has been successfully migrated); *see also e.g.*, Letter from Bob Marro, President, TeleManagement Systems, Inc., to Federal Communications Commission, at 1 (dated Dec. 19, 2003) (stating that Cable & Wireless has informed TeleManagement by e-mail that they will work with TeleManagement on the discontinuance date as TeleManagement migrates to alternative service).

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.”¹¹ 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.¹² 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,”¹³ 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.¹⁴

5. The Commission has considerable discretion in determining whether to grant a carrier authority to discontinue service pursuant to section 214.¹⁵ Balancing the interests of the carrier and the affected user community, the Commission considers a number of factors including: (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations.¹⁶

III. DISCUSSION

6. We find that the record supports granting Cable & Wireless’s request to discontinue service in accordance with its filed representations in this proceeding. Specifically, and as stated above, Cable & Wireless indicates that it has reached commercial agreements with Public Storage, Seisint, and TeleManagement to continue to provide services to these commenters to facilitate their

¹¹ 47 U.S.C. § 214(a).

¹² See 47 U.S.C. § 201.

¹³ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, CC Docket No. 79-252, 85 FCC 2d 1, 49 (1980) (*Competitive Carrier First Report and Order*).

¹⁴ 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).

¹⁵ *FCC v. RCA Communications, Inc.*, 73 S.Ct. 998, 1002 (1953). See also *Verizon Telephone Companies, Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, Order, WC Docket No. 02-237, FCC 03-256 (rel. Oct. 22, 2003).

¹⁶ *Application for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, File Nos. W-P-C-6670 and W-P-D-364, 8 FCC Rcd 2589, 2600, para. 54 (1993) (*Dark Fiber Order*); remanded on other grounds, *Southwestern Bell v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994). See *Verizon Telephone Companies, Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, Order, WC Docket No. 02-237, FCC 03-256 (rel. Oct. 22, 2003).

transition to alternative services.¹⁷ Some of the commenters have also submitted notices acknowledging their agreements with Cable & Wireless.¹⁸

7. On the basis of Cable & Wireless's agreements with Public Storage, Seisint, and TeleManagement, and considering the five factors identified by the Commission for evaluating applications to discontinue service, 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. Applying the first of the Commission's factors, the financial impact of continuing to provide the service for the carrier seeking to discontinue, we note that Cable & Wireless announced its intention to withdraw from the U.S. domestic market on June 4, 2003, and recently filed voluntary petitions for reorganization under Chapter 11 of the U.S. Bankruptcy Code in order to assist in an orderly and expedited transition of ownership of its business.¹⁹ We thus find that the financial impact of continuing to provide these services for an extended period beyond the planned discontinuance date could be significantly burdensome. Applying factors two and three, the need for the services in general and for the particular services in question, we note that commenters in this proceeding explain that the frame relay and ATM services they receive from Cable & Wireless are critical to their businesses.²⁰ Finally, considering factor four, the existence, availability, and adequacy of alternatives, the record indicates that some of the commenters may not have been able to transfer service to alternative providers within the time allowed by Cable & Wireless's originally planned discontinuance date.²¹ We find, however, as noted above, that the record in this proceeding makes clear that, to the extent commenters allege they would not be able to migrate within the proposed 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 balancing these factors, we find that Cable & Wireless should be allowed to discontinue its services in accordance with its filed representations.

¹⁷ See n.10, *supra* (describing Cable & Wireless' agreements with these commenters). We note that Alcatel has transferred to alternative services and has withdrawn its comments in opposition to Cable & Wireless's application. Alcatel Withdrawal Letter at 1.

¹⁸ See e.g., Letter from Bob Marro, President, TeleManagement Systems, Inc., to Federal Communications Commission, at 1 (dated Dec. 19, 2003) (stating that Cable & Wireless has informed TeleManagement by e-mail that they will work with TeleManagement on the discontinuance date as TeleManagement migrates to alternative service).

¹⁹ See Cable & Wireless Dec. 8, 2003 Press Release at 1-2.

²⁰ See Alcatel Comments at 1; Public Storage Comments at 1; Seisint, Inc. Comments at 1; TeleManagement Comments at 1.

²¹ See Alcatel Comments at 1; Public Storage Comments at 1; Seisint, Inc. Comments at 1; TeleManagement Comments at 1; *but see* Alcatel Withdrawal Letter at 1.

IV. ORDERING CLAUSE

8. 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, 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 to the extent declared herein, consistent with its filed representations in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

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