

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

In the Matter of)

Application of Capital Telecommunications, Inc.) WC Docket No. 08-48
and Starvox Communications, Inc. to) Comp. Pol. File No. 860
Discontinue Domestic Telecommunications Services)
)

COMMENTS OF WOODFOREST

Woodforest National Bank ("WNB") hereby files its comments in response to the Commission's Public Notice in the dockets captioned above.¹

BACKGROUND

WNB is a national bank and a member of the Woodforest Financial Group. WNB has over 4,000 employees and 486 branches, most of which are located in Wal-Mart stores across thirteen states in the Midwest, Northeast, Atlantic coast, Southeast, and Southern regions of the United States. In addition, WNB operates approximately 600 automated teller machines ("ATMs") for its customers. WNB's branches provide financial services to hundreds of thousands of consumers -- WNB has over 500,000 accounts, typically processes in excess of 10 million transactions per month, and participates in 1 million calls with customers each

¹ *Comments Invited On Application of Capital Telecommunications, Inc. And Starvox Communications, Inc. To Discontinue Domestic Telecommunications Services, Public Notice, WC Docket No. 08-48, DA 08-791 (rel. Apr. 2, 2008) ("Starvox 214 Public Notice").*

month. Between its branches, ATMs, and other services, WNB typically processes over one billion dollars in transactions per month.

WNB's customers are predominantly individual consumers, but many business customers also use WNB's services and business customers are responsible for more than half of the bank's total transaction dollars.

For the past two years, WNB has obtained a substantial portion of its voice and data telecommunications services from Starvox. Today, the services provided to WNB by Starvox include not only all of the communications services used at 330 of WNB's branches to conduct banking operations and serve customers but a substantial portion of WNB's corporate connectivity, including the connections to WNB's backup disaster recovery data center. Disruption of the services supplied by Starvox would therefore severely disrupt the bank's operations and deny consumers access to banking services and their bank accounts.

On March 24, 2008, WNB received a letter by regular mail from Starvox advising WNB that Starvox would terminate all of the services it provides to WNB within 30 days, or as soon thereafter as this Commission permits it to do so.²

² Starvox claims in its *Section 63.71 Application* that it informed its customers on February 12 2008, that it would no longer be their local or long distance telephone, internet or data service provider. Application at 2. But the February 12 letter was not about discontinuance of service at all – it was about the transfer of Starvox's customers and assets to another carrier (bComm). The letter begins by stating that its purpose is "to assure that you continue to receive high quality service . . ." and goes on to promise that "As a customer of bComm, you will continue to receive all the features, terms and conditions of service, and current rates that you enjoy today." Only after the bComm transaction fell through did Starvox send a second letter (dated March 17, but received by WNB on March 24) stating that Starvox would be discontinuing service "effective thirty (30) days after the date of this letter, or as soon thereafter as the necessary regulatory approvals are obtained." (The two letters comprise Exhibit A to the *Section 63.71 Application*).

Starvox has also filed a bankruptcy action in the United States Bankruptcy Court for the Northern District of California.

Upon receipt of the Starvox letter, WNB immediately assessed the potential impact of Starvox's service termination and initiated efforts to seek alternative services as quickly as possible. WNB's objective is to obtain replacement service for all of its locations served by Starvox before May 3, 2008, the automatic discontinuance date currently applicable to Starvox under the Commission's rules. Although it is making every effort to expedite the transition, given the volume and complexity of the services at issue, at this time WNB does not know whether that objective is achievable.

WNB has also determined that most of the services it obtains from Starvox are dependent upon services Starvox purchases from other carriers. If those carriers discontinue the provision of *their* services to Starvox, the WNB services described above will cease to function, regardless of any authorization or timetable established by this Commission. WNB has therefore initiated discussions with Starvox's bankruptcy Trustee and underlying carriers to arrange for payment by WNB and other Starvox customers to the underlying carriers (either directly or via payments to the estate in bankruptcy from which the Trustee would pay the underlying carriers) to ensure that the service inputs required to maintain the services WNB receives from Starvox will continue until WNB no longer requires those services or this Commission authorizes their discontinuance. WNB has advised the bankruptcy court of these discussions so

that any payments WNB may negotiate will be made in whatever manner the court requires in the exercise of its jurisdiction over Starvox's estate as a debtor.

Starvox's underlying carriers also substantially affect WNB's ability to transition to other providers as the underlying carriers' cooperation is required to re-provision service quickly and efficiently, particularly for services that are provided over bottleneck access facilities.

DISCUSSION

Section 214 permits carriers to discontinue service only after the Commission certifies that neither the present nor future public convenience and necessity will be adversely affected thereby.³ The Commission has repeatedly observed that 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."⁴ The Commission has emphasized that, even for non-dominant carriers,⁵ it "retain[s] the right to delay a grant of a discontinuance authorization" if it believes that "an unreasonable degree of

³ 47 U.S.C. § 214 (a)

⁴ *Section 63.71 Application of KMC Telecom V, Inc. and KMC Telecom of Virginia, Inc. for Authority to Discontinue Domestic Telecommunications Services*, 20 FCC Rcd 20472 (2005) ("KMC"); *Section 63.71 Application of Choice One Communications Inc. on Behalf of Certain of its Subsidiaries for Authority to Discontinue Domestic Telecommunications Services*, 20 FCC Rcd 4392 (2005) ("Choice One"); *Section 63.71 Application of LDMI Telecommunications, Inc. for Authority to Discontinue the Provision of Domestic Telecommunications Services to Payphone Service Providers in Michigan and Ohio*, 18 FCC Rcd 11302 (2003) ("LDMI"); *Winstar Wireless, Inc. Application to Discontinue Domestic and International Telecommunications Services*, 17 FCC Rcd 7214 (2001) ("Winstar").

⁵ *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, 49 (1980).

customer hardship would result” and “will review each application to determine whether proper notice has been given, whether customers or 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.”⁶

The Commission must balance the interests of the carrier seeking authority to discontinue service and the end users who would be affected by that discontinuance, taking into account “(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.”⁷

A. Delay in Automatic Discontinuance Schedule

As noted above, WNB is making every effort to move the services provided to hundreds of locations as quickly as humanly possible, but it does not yet know whether it will be able to obtain alternative service for all of its locations by May 3, 2008. WNB is filing these comments to advise the Commission of its efforts to implement alternative services within the time period initially established by the *Starvox 214 Public Notice* and to alert the Commission to the fact that a delay in the automatic discontinuance period may be necessary in order for WNB and other Starvox customers to transition to other providers.

⁶ 47 U.S.C. §214 (a)

⁷ See KMC, ¶ 5; Choice One, ¶ 5.

If WNB *is* forced to request a discontinuance delay, the Commission should conclude that the delay is reasonable. The Commission can assign little weight in this case to the first of its five factors – the financial impact on Starvox of continuing to provide service. WNB’s willingness to pay the reasonable cost of services provided to Starvox by its underlying carriers greatly reduces the financial impact on both Starvox and its underlying carriers of maintaining service to WNB locations. Moreover, the Commission has previously found that the interests of consumers cannot be overridden by the “circumstances surrounding carriers that have filed for bankruptcy protection.”⁸ While “carriers...need the opportunity to close operations,” the public must not be “adversely affected” by a precipitous discontinuance.⁹ The Commission has found that, “[w]hile decision-makers may be sensitive to a service provider’s financial difficulties,” that factor is not determinative because “we cannot overemphasize the importance of our charge to protect the public interest by ensuring that consumers have adequate notice and a reasonable opportunity to obtain new service.”¹⁰

The remaining factors weigh conclusively in favor of delaying the discontinuance if WNB is unable, despite intensive ongoing efforts, to arrange for alternative services by May 3. Factors two and three – the need for service in general and for the particular facilities in question – are especially important in this case. WNB needs the services at issue, and the particular facilities used by Starvox to serve WNB’s locations, in order to deliver banking services to

⁸ *Rhythms Links Inc. Emergency Application to Discontinue Domestic Telecommunications Services*, 16 FCC Rcd 16374 (2001) (“*Rhythms Emergency Application*”).

⁹ *Id.*

¹⁰ See *Rhythms Emergency Application*, ¶ 9.

hundreds of thousands of customers. Because of the central role telecommunications have come to play in the delivery of financial services, WNB's customers need Starvox's service in order to conduct their most basic financial business, such as accessing checking and savings accounts, depositing paychecks, obtaining cash from ATMs, etc. The hardship to WNB resulting from a premature discontinuance of Starvox's service to WNB would be magnified exponentially for WNB's customers. And factor four – the existence, availability, and adequacy of alternatives – would by definition weigh in favor of delaying discontinuance because WNB would only seek a delay for locations that it has been unable to transition to another provider by May 3.

Starvox's cooperation with WNB's efforts to obtain service from other carriers does not change the calculus for delaying discontinuance past the automatic 30-day deadline. The Commission has delayed discontinuances in the past when necessary to allow end users to transition to other providers, even when that requires the 214 applicant's underlying carriers to continue service to a reseller who may not be able to pay them¹¹ (like Starvox in this case) or when the applicant provides the identity of its underlying vendors, circuit information, and letters of authorization to enable direct contact with underlying vendors¹² (as Starvox has done here).

¹¹ See KMC, ¶ 7 (carrier "does not have funding sufficient to pay its underlying network providers" and thus to maintain the provisioning of services to customers).

¹² See KMC, ¶ 9.

B. Service from Underlying Vendors

WNB recognizes that only Starvox is before the Commission seeking discontinuance of service in this proceeding. But Starvox's ability to provide service – even during the period before the Commission's automatic 30-day notice period expires – depends upon continued service from its underlying carriers. The Commission must ensure that Starvox's underlying providers do not moot this proceeding and deny consumers the protection of Section 214, thus defeating the purpose of the section, by discontinuing their service to Starvox.¹³ Their discontinuance of service would discontinue *de facto* Starvox's service to customers like WNB in violation of the timelines established by the statute and the Commission's rules.

Accordingly, WNB urges the Commission to exercise its jurisdiction over Starvox's underlying carriers and direct them to maintain service to Starvox until such time as Starvox's customers transition to alternative service or the Commission authorizes Starvox to discontinue its services. Commission intervention is particularly warranted in the case of Starvox customers like WNB

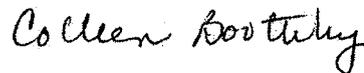
¹³ WNB has applied for an ex parte order from the Starvox bankruptcy court to that effect. *EX PARTE APPLICATION OF CREDITORS WOODFOREST NATIONAL BANK AND COUNTERFORCE, INC. (FORMERLY COUNTERFORCE USA) FOR ORDER PURSUANT TO 11 U.S.C. § 105(A) FOR A FINDING THAT ADEQUATE PROTECTION HAS BEEN ESTABLISHED UNDER 11 U.S.C. §§ 362 AND 366 AND TO EXTEND DEADLINE SET FORTH IN 11 U.S.C. § 366(A) UP TO AND INCLUDING MAY 3, 2008* (April 11, 2008). Although WNB offered in that application to pay for any services received, Level 3 – one of Starvox's principal backbone suppliers – nevertheless opposed the application. *LEVEL 3 COMMUNICATIONS, LLC'S RESPONSE AND OBJECTION TO EX PARTE APPLICATION OF CREDITORS WOODFOREST NATIONAL BANK AND COUNTERFORCE, INC. (FORMERLY COUNTERFORCE USA) FOR ORDER PURSUANT TO 11 U.S.C. § 105(A) FOR A FINDING THAT ADEQUATE PROTECTION HAS BEEN ESTABLISHED UNDER 11 U.S.C. §§ 362 AND 366 AND TO EXTEND DEADLINE SET FORTH IN 11 U.S.C. § 366(A) UP TO AND INCLUDING MAY 3, 2008* (April 15, 2008).

who are engaging in good faith efforts to arrange payment to the underlying carriers for services that support the customers' locations.

CONCLUSION

For the foregoing reasons, WNB requests that the Commission be prepared to delay Starvox's discontinuance of service should it prove impossible to move all of the services WNB is receiving from Starvox to alternative providers by May 3, 2008, and direct Starvox's underlying carriers to maintain service to Starvox until such time as Starvox's customers transition to alternative service or the Commission authorizes Starvox to discontinue its services.

Respectfully submitted,



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Certificate of Service

I, Dorothy R. Nederman, hereby certify that true and correct copies of the preceding Comments of Woodforest National Bank were filed electronically this 17th day of April, 2008 via the FCC's ECFS system and by email to:

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