

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

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| In the Matter of |) | |
| |) | |
| NACS Communications, Inc. d/b/a Texcom |) | |
| USA Application for Authority for |) | Comp. Pol. File No. 651 |
| Emergency Discontinuance of Interexchange |) | |
| Telecommunications Services Pursuant to |) | |
| Section 63.63 |) | |
| |) | |
| |) | |

ORDER

Adopted: May 20, 2003

Released: May 20, 2003

By the Chief, Competition Policy Division:

I. INTRODUCTION AND BACKGROUND

1. In this Order, we deny NACS Communications, Inc. d/b/a Texcom USA's (Texcom) application for emergency discontinuance, filed May 5, 2003, pursuant to section 214(a) of the Communications Act of 1934, as amended (the Act),¹ and section 63.63 of the Commission's rules,² seeking authorization for its May 1, 2003 discontinuance of resold interexchange telecommunications services.³ Texcom's Emergency Application explains that for "many months" prior to May, it had experienced financial difficulties and, increasingly, could not obtain operating funds.⁴ As a result, Texcom indicates that it decided to discontinue service to its customers and liquidate under Chapter 7 of the U.S. Bankruptcy Code. The Emergency Application states that Texcom did not notify its customers of its intent to discontinue services,⁵

¹ 47 U.S.C. § 214(a).

² 47 C.F.R. § 63.63.

³ Letter from Cristián Gálvez, NACS Communications, Inc. d/b/a Texcom USA, to Federal Communications Commission, dated May 1, 2003, received May 5, 2003 (Emergency Application). Texcom sold prepaid calling cards and provided equal access international long distance services. Emergency Application at 1-2.

⁴ Texcom indicates that it was operating with funds contributed by its major shareholder, who recently informed Texcom that these payments would cease. After Texcom failed to obtain another source of funding, Texcom states that it decided to cease operations. Texcom states that its service providers, which enabled Texcom to serve its own customers, also began to discontinue service to Texcom, including Global Crossing on April 15, 2003. Emergency Application at 1-2.

⁵ Emergency Application at 1-2.

nor did Texcom file an application for discontinuance authority under section 63.71 of the rules.⁶

II. DISCUSSION

2. Under section 214(a) of the Act, before a carrier may discontinue service, it must obtain a certificate from the Commission stating that the public convenience and necessity would not be adversely affected.⁷ This requirement applies to all carriers, including resale interexchange carriers, and applies under all circumstances, including bankruptcy.⁸ Under section 63.63 of the Commission's rules, emergency authorization shall be deemed to have been granted unless the Commission notifies the applicant to the contrary within 15 days after the carrier has filed its application.⁹ In its application for emergency discontinuance, a carrier must describe, among other things, the nature of the conditions causing the discontinuance,¹⁰ facts showing that these conditions could not have been reasonably foreseen in sufficient time to prevent discontinuance,¹¹ and steps the carrier took to restore service – or establish comparable service – as expeditiously as possible.¹²

3. We deny Texcom's Emergency Application because Texcom has failed to satisfy the requirements of section 63.63. Texcom has not shown that any unforeseen conditions caused its discontinuance, nor has it outlined any steps it took to establish comparable service.¹³ As the Commission found in *Rhythms*, financial difficulty is not sufficient cause in itself to justify emergency discontinuance.¹⁴ Texcom acknowledges that it was aware for “many months” that it was having financial difficulties and that its problems were worsening, yet it failed to notify its customers that it would discontinue operations¹⁵ and failed to contact the Commission to inform

⁶ 47 C.F.R. § 63.71. Under section 63.71, once a non-dominant carrier has notified its customers of the planned discontinuance, and has applied with the Commission for discontinuance authority, the application is automatically granted on the 31st day after the Commission releases a public notice announcing its filing, 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 is otherwise adversely affected. See 47 C.F.R. §§ 63.71(a), (a)(5)(ii), (c).

⁷ See 47 U.S.C. § 214(a). See also 47 C.F.R. § 63.71.

⁸ See *Requirements for Carriers to Obtain Authority Before Discontinuing Service in Emergencies and Northpoint Communications, Inc. Authority to Discontinue Service*, Public Notice, 16 FCC Rcd 10924 (2001).

⁹ 47 C.F.R. § 63.63(b). Authority for the emergency discontinuance lasts for 60 days, after which the rules contemplate that service will resume. A carrier may request renewal of emergency authority. *Id.*

¹⁰ 47 C.F.R. § 63.63(a)(2).

¹¹ 47 C.F.R. § 63.63(a)(3).

¹² 47 C.F.R. § 63.63(a)(7).

¹³ Emergency Application at 1-2.

¹⁴ See *Rhythms Link Inc. Emergency Application to Discontinue Domestic Telecommunications Services*, Order (*Rhythms*), 16 FCC Rcd 16372, 16374-75 (2001) (denying Rhythms's application for emergency discontinuance because it failed to show conditions existed that it could not have foreseen in time to prevent discontinuance).

¹⁵ Emergency Application at 1-2.

it of its intent to discontinue.¹⁶ Texcom's customers were given no advance warning and no opportunity to avoid disruption of service by seeking alternative providers. We conclude that, by its own admission, Texcom had ample opportunity to contact its customers and the Commission prior to discontinuing service, and thus cannot show that the conditions causing discontinuance could not have been foreseen or forestalled. Therefore, Texcom has failed to satisfy the requirements of sections 63.63(a)(3) and (7), and its application for emergency discontinuance is accordingly denied.

III. ORDERING CLAUSE

4. IT IS ORDERED, pursuant to sections 0.91, 0.291, and 63.63(b) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.63(b), that NACS Communications, Inc. d/b/a Texcom USA's application for emergency discontinuance IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Competition Policy Division

¹⁶ In *Rhythms*, the carrier also experienced financial trouble, not a sudden service disruption suitable for relief under section 63.63, but it nevertheless notified its customers of its impending bankruptcy and filed for permanent discontinuance under section 63.71 before ceasing operations. See *Rhythms*, 16 FCC Rcd at 13374-75.