

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Focal Communications Corporation of California (U-5922-C) for Authority to Discontinue DSL Services in the State of California.

Application 02-12-035  
(Filed December 26, 2002)

**DECISION GRANTING AUTHORITY  
TO DISCONTINUE DSL SERVICES****Summary**

We grant the application of Focal Communications Corporation of California (“Focal” or “Focal of California”) to discontinue its special access DSL service in California, pursuant to our General Order 96-A and Decision 02-01-038. Focal will continue to provide all other existing telecommunications services (including local exchange and interexchange voice services) in California.

**Discussion**

Focal is the California affiliate of Focal Communications Corporation, a national communications provider of voice and data services to users in major metropolitan areas including Los Angeles, San Francisco, and San Jose. Focal provides DSL services for only fourteen customers in California.

On December 19, 2002, Focal Communications Corporation and its affiliates (including Focal of California) filed for bankruptcy and the companies are now operating under the protection of the U.S. Bankruptcy Court for the

District of Delaware. The Focal Group has filed a motion with the Bankruptcy Court requesting the court's permission to reject their agreements with DSL customers in five states. In its application of December 26, 2002, Focal of California has also requested our authority to discontinue DSL service in California and has asked that we do so on an expedited *ex parte* basis. The application is unopposed.

### **Comments on Draft Decision**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

### **Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and John E. Thorson is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Focal Communications Corporation of California is regulated by the California Public Utilities Commission as a telecommunications utility (U-5922-C) under the California Public Utilities Code.
2. Focal provides special access DSL service, used for high speed internet access, to fourteen customers generally located in the San Francisco, San Jose, and Los Angeles areas of California.
3. On December 19, 2002, Focal Communications Corporation and twenty-five related corporations, including Focal of California, filed under Chapter 11 of the Bankruptcy Code; and they now operate as debtors-in-possession under the protection of the U.S. Bankruptcy Court for the District of Delaware, *In re Focal Communications Corp.*, No. 02-113709 (KJC).

4. On December 24, 2002, the Focal Group moved the Bankruptcy Court for permission to reject DSL contracts in California and four other states, effective as of January 31, 2003. The Focal Group represented that it is losing \$600,000 per month under these contracts. We do not know whether the Bankruptcy Court has acted on this motion.

5. On December 24, 2002, Focal sent a letter titled "Discontinuance of DSL Service," by first class mail, to all fourteen of its California DSL customers. The letter indicated that DSL service would be withdrawn as of January 31, 2003; stated that customers could select a new DSL service provider and that they should do so immediately; indicated that discontinuance of service was subject to the permission of the Bankruptcy Court, the Federal Communications Commission, and the California Public Utilities Commission; provided a toll-free telephone number for customer inquiries; and also provided customers with "all pertinent end-user circuit information and a Letter of Agency required to transfer service to another provider."

6. On December 26, 2002, Focal filed this application for permission to discontinue DSL services in California. The application was published in the *Daily Calendar* on December 27, 2002. Asserting the uncontroversial nature of its request, Focal requested *ex parte* expedited approval of the application that would have shortened the protest period to twelve days over the New Years holiday.

7. On January 16, 2003, we ratified the preliminary determination of this application as ratesetting and requiring no hearing. Resolution ALJ 176-3105, Agenda ID # 1415.

8. Focal alleges that the DSL services provided by it and affiliated companies in four other states result in a loss of \$600,000 per month; and, since the

application is unopposed, this allegation is deemed true solely for the purpose of this proceeding. Discontinuation of DSL service to fourteen customers in California and other customers in four other states may assist in a successful business reorganization allowing Focal to continue its other telecommunications services to California customers.

9. Focal provides DSL services in California on a non-dominant, competitive basis. Adequate alternative DSL service is available to customers in the metropolitan areas now served by Focal.

10. The costs of reassigning the existing DSL contracts to another service provider would exceed any benefit to those customers (who would be denied their choice in provider) or to the applicant.

11. The protest period ended January 27, 2003. No protest has been filed to Focal's application.

### **Conclusions of Law**

1. Focal has compiled with General Order 98-A and Decision 02-01-038 in its application for approval to discontinue DSL service in California.

2. Focal has provided an insufficient basis under our *Rules of Practice and Procedure* for shortening the protest period specified by Rule 44.1.

3. Our approval of Focal's application serves the public convenience and necessity and is in the public interest.

4. Our approval of Focal's application is expressly conditioned upon the approval of the Bankruptcy Court and of the Federal Communications Commission, pursuant to its authority under 47 CFR 63.71 (discontinuance of service).

**O R D E R**

**IT IS ORDERED** that:

1. Focal Communications Corporation of California's application to discontinue DSL service in California is granted, as described above. Service may be discontinued after the effective date of this decision, or on the earliest day thereafter that approval of both the Bankruptcy Court and the Federal Communications Commission has been obtained.

2. Focal shall notify us within five days, by a filing in this proceeding, of any disapproval of the Bankruptcy Court or the Federal Communications Commission of discontinuation of DSL service in California.

3. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.