

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

In the Matter of)
)
)
Request for Waiver of Section 51.333) NSD File No. NSD-L-01-200
of the Commission's Rules)
)
)

ORDER

Adopted: December 7, 2001

Released: December 10, 2001

By the Common Carrier Bureau:

I. INTRODUCTION

1. In this order, we grant Verizon a limited waiver of the network change notification requirements in section 51.333 of the Commission’s rules.¹ On December 6, 2001, Verizon filed a petition seeking temporary authority to provide a specialized arrangement with IBM Corporation (IBM) for service to Bank of New York, an IBM customer.² This waiver enables Verizon to implement a limited network change so that Verizon and IBM can provide replacement services to the Bank of New York, whose facilities were destroyed in the September 11, 2001 terrorist attacks on New York City. We note that the one affected service provider, IBM, does not object to the implementation of this change and we rely on Verizon’s representations that this change will not adversely affect any competing service provider’s performance or ability to provide service nor will it adversely affect Verizon’s interoperability with any other service provider.

¹ 47 C.F.R. § 51.333.

² Letter from Richard T. Ellis, Director - Federal Affairs for Verizon, to Jeff Carlisle, Senior Deputy Bureau Chief, Common Carrier Bureau, FCC (December 6, 2001) (Verizon Petition). On December 7, 2001 Verizon filed an amended letter in support of its original petition. Letter from Richard T. Ellis, Director - Federal Affairs for Verizon, to Jeff Carlisle, Senior Deputy Bureau Chief, Common Carrier Bureau, FCC (December 7, 2001) (Amended Verizon Petition).

II. BACKGROUND

2. On November 19, 2001, Verizon filed a Certification of Public Notice of Short Term Network Changes pursuant to section 51.333 of the Commission's rules.³ On December 4, 2001, the Common Carrier Bureau released a public notice announcing receipt of Verizon's Certification.⁴ Section 51.333 of the Commission's rules provides that "short term notices shall be deemed final on the tenth business day after the release of the Commission's public notice, unless an objection is filed."⁵

3. On December 6, 2001, Verizon filed the instant request seeking to activate the proposed network change no later than December 7, 2001.⁶ According to Verizon, the necessary upgrades to its system must be activated prior to expiration of the regular 10 day notice period.⁷ Verizon states that after the Bank of New York's facilities were destroyed in the September 11, 2001 terrorist attacks in New York City, the Bank made an agreement for temporary service to its backup data center in North Bergen, New Jersey and that this agreement will expire on December 7, 2001.⁸ IBM has filed a letter in support of Verizon's request for waiver.⁹

III. DISCUSSION

4. Section 251(c)(5) of the Act and the Commission's rules require incumbent LECs to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.¹⁰ The Commission has stated that this section requires notice when an incumbent LEC makes a decision to implement a change that either: (1) affects competing service providers' performance or ability to provide service; or (2) otherwise affects the ability of the incumbent LEC's and a competing

³ Letter from Suzanne Carmel, Manager, Regulatory Affairs for Verizon, to Magalie R. Salas, Secretary, FCC (November 19, 2001) (Verizon Certification).

⁴ Common Carrier Bureau Network Change Notification Filed By Verizon, *Public Notice*, Report No. NCD-581 (CCB December 4, 2001).

⁵ 47 C.F.R. § 51.333.

⁶ Verizon Petition at 1-2 (stating that these changes will enable IBM in providing the Bank of New York with dedicated point-to-point services over a backbone network consisting of Dense Wave Division Multiplexing (DWDM) technology and diversely routed fiber facilities).

⁷ *Id.*

⁸ Verizon states that the Bank of New York is required by Federal Reserve Board regulations to maintain a secondary, backup data center.

⁹ Letter from Edward F. Carreiro, Vice President, IBM Global Services, to Jeffrey Carlisle, Senior Deputy Bureau Chief, Common Carrier Bureau, FCC (December 6, 2001) (IBM Letter).

¹⁰ 47 U.S.C. § 251(c)(5); 47 C.F.R. §§ 51.325 *et seq.*

service provider's facilities or network to connect, to exchange information, or to use the information exchanged.¹¹

5. Waiver of our rules is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹² We find that it is appropriate to waive the ten (10) day notice requirement of section 51.333 in this case because of the special circumstances arising out of the events of September 11, 2001¹³ and because the only party affected by this network change, IBM, has indicated its support.¹⁴ We note that Verizon states that its proposed network change will not adversely affect any competing service provider's performance or ability to provide service nor will it adversely affect its interoperability with any other service provider.¹⁵

6. We rely on Verizon's representations that this network change will only affect service to one customer. However, because in the absence of a waiver other parties would have until December 17, 2001 to comment on Verizon's proposed network change under our rules, we grant the request in part by authorizing a limited waiver for a period of forty-five (45) days. This will allow us to consider any timely filed comments before permanent authority is granted pursuant to section 51.333.¹⁶

¹¹ Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order, CC Docket No. 96-96, FCC 96-333 (rel. Aug. 8, 1996).

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹³ See Verizon Petition at 1 (explaining that the Bank of New York's primary data center was destroyed by the September 11, 2001 terrorist attacks).

¹⁴ Amended Verizon Petition at 2 (stating that "[t]he DWDM Multiplexing Backbone Channel offered by Verizon will not impact a competing service providers' performance or ability to provide service" and that "[t]he DWDM Multiplexing Backbone Channel equipment does not directly interface with public network switches"). Letter from Edward F. Carreiro, Vice President for IBM Global Services, to Jeffrey Carlisle, Senior Deputy Bureau Chief, Common Carrier Bureau, FCC (Dec. 6, 2001).

¹⁵ Amended Verizon Petition at 2.

¹⁶ We make clear that in the event that no parties file objections by December 17, 2001, Verizon's original proposed network change shall be deemed granted in full.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 251, and pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, Verizon's petition is GRANTED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Jeffery J. Carlisle
Senior Deputy Chief,
Common Carrier Bureau