
Federal Communications Commission

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

In the Matter of)	
)	
ACS of Anchorage, LLC Request for Waiver of)	WC Docket No. 16-176
Section 51.332 of the Commission's Rules)	Report No. NCD-2541
)	
Technology Transitions)	GN Docket No. 13-5
)	
Policies and Rules Governing Retirement of)	RM-11358
Copper Loops by Incumbent Local Exchange)	
Carriers)	

ORDER

Adopted: July 29, 2016

Released: July 29, 2016

By the Chief, Competition Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. ACS of Anchorage, LLC (Alaska Communications) has filed a request for waiver of Section 51.332 of the Commission's rules in order to permit Alaska Communications to retire certain copper loop plant in fewer than 180 days after the Commission's public notice of the proposed network changes.¹ In this order, we grant Alaska Communications a limited waiver of the network change notification requirements in section 51.332 of the Commission's rules.² This waiver enables Alaska Communications to implement network changes prompted by two major road projects scheduled by the Alaska Department of Transportation & Public Facilities (AK-DOT), on or after July 31, 2016. Our grant of the waiver request is premised on Alaska Communications' assertion that it has worked closely with the only customer directly affected by the planned changes, GCI, to ensure a smooth transition with no loss of service to GCI or any of its customers, and on the absence of any comments in the record in opposition to Alaska Communications' waiver request.

II. BACKGROUND

2. On May 6, 2016, Alaska Communications filed public notice of network changes involving the retirement of copper in the vicinity of 10949 Old Seward Highway (Old Seward location) and 251 E. Klatt Road (E. Klatt Road location) in Anchorage, Alaska, as required by section 51.332(b)(1) of the rules of the Federal Communications Commission (FCC).³ In addition, Alaska Communications filed certification of compliance pursuant to section 51.332(d),⁴ and a request for waiver of section 51.332

¹ ACS of Anchorage, LLC Request for Waiver of Section 51.332 of the Commission's Rules, GN Docket No. 13-5 (May 6, 2016) (<https://www.fcc.gov/ecfs/filing/60002153931>) (Alaska Communications Waiver Request).

² See 47 CFR § 51.332.

³ Letter from Lisa Phillips, Manager, Regulatory Affairs, Alaska Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-176 (May 6, 2016) (<https://www.fcc.gov/ecfs/filing/60001739175>) (Alaska Communications Network Change Filing).

⁴ See Alaska Communications Waiver Request at Exhibit C; see also 47 CFR § 51.332(d).

to the extent necessary to allow approval for implementation of the proposed copper retirement and transfer of customers to new digital loop carrier (DLC) facilities upon fewer than 180 days' notice.⁵ In its waiver request, Alaska Communications explains that road work planned by the AK-DOT will result in the destruction of Alaska Communications copper loop plant, and that work will need to be completed before the end of the Alaska summer construction season with transfer of customers to new DLC facilities by July 31, 2016 and by approximately August 15, 2016 as specified in the filing.⁶ According to Alaska Communications, permanent replacement copper facilities could not be ordered, delivered to Anchorage, Alaska, and installed in time to meet an accelerated AK-DOT schedule.⁷ Alaska Communications states, however, that General Communications, Inc. (GCI) is the only Alaska Communications customer directly affected by the resulting projects, and that GCI has been assured that the planned copper retirements and fiber replacements will not result in a loss of service to GCI or any of its customers.⁸ Alaska Communications maintains that it has been working closely with GCI in order to allow for a smooth transition, and that GCI has indicated that it does not object to the planned copper retirement.⁹

3. On June 17, 2016, the Competition Policy Division of the Wireline Competition Bureau released a public notice announcing receipt of the Alaska Communications Network Change Filing and Waiver Request.¹⁰ The Public Notice explained that incumbent LEC public notices of network change filed for the retirement of copper pursuant to section 51.332 are deemed approved on the 180th day after the release of the Commission's public notice of the filing.¹¹ It also requested comment on Alaska Communications' particular waiver request and established that comments on the waiver request could be filed no later than June 27, 2016.¹² No comments were filed in response to Alaska Communications' request.

III. DISCUSSION

4. Section 251(c)(5) of the Communications Act of 1934, as amended, requires each incumbent LEC 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."¹³ The Commission's rules require an incumbent LEC to provide public notice regarding any network change that: (1) will affect a competing service provider's performance or ability to provide service; (2) will affect the incumbent LEC's interoperability with other service providers; (3) will affect the manner in which customer premises equipment is attached to the interstate network; or (4) will result in the retirement of copper, as defined in section 51.332.¹⁴

⁵ See Alaska Communications Waiver Request at 1.

⁶ Alaska Communications Waiver Request at 2-4, Exhibit B.

⁷ *Id.* at 7.

⁸ *Id.* at 4-5.

⁹ *Id.*

¹⁰ *Wireline Competition Bureau Copper Retirement Network Change Notification & Waiver Request Filed By ACS Of Anchorage, LLC D/B/A Alaska Communications*, WC Docket No. 16-176, Report No. NCD-2541, Public Notice (WCB/CPD June 17, 2016), 2016 WL 3408357 (Public Notice).

¹¹ Public Notice at 2.

¹² *Id.*

¹³ 47 U.S.C. § 251(c)(5).

¹⁴ See 47 C.F.R. §§ 51.325 *et seq.*

5. The Commission may grant a petition to waive its rules – in whole or in part – “for good cause shown.”¹⁵ Waiver of our rules is appropriate if “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”¹⁶ We find that it is appropriate to waive a portion of the notice period required by section 51.332 of our rules because of the special circumstances involved in Alaska Communications’ proposed copper retirement. Alaska Communications has indicated that the destruction of its copper loop plant is occurring as a result of major road improvement projects planned by the AK-DOT and placed on an accelerated schedule for completion before the end of the Alaska summer construction season.¹⁷ According to Alaska Communications, it did not receive definitive notice of the final construction plans and project timing for the Old Seward location from the AK-DOT until April 2016, at which time it would not have been able to provide the 180-days’ notice required under the new copper retirement notice requirements.¹⁸ In addition, Alaska Communications states that there was insufficient time to order, receive, and install replacement copper facilities in response to the AK-DOT projects. Alaska Communications indicates, however, that fiber optic cable and DLC equipment were more readily available on a timely basis. Alaska Communications submits that it will be able to maintain service to customers in the Old Seward location using temporary copper facilities until July 31, 2016, but that at that point the AK-DOT work will also destroy the temporary copper facilities, and customers will need to be transferred to Alaska Communications’ new DLC facilities.¹⁹ Alaska Communications also maintains that while it has not received formal notice of the start date for road work at the E. Klatt Road location, work in any event will need to be completed before the end of the summer construction period, and is likely to be completed before the mid-August start of the school year.²⁰

6. Alaska Communications asserts that the only customer directly affected by the proposed changes in these areas is GCI, and that it has coordinated with GCI for a smooth transition without any objection from GCI.²¹ In the Public Notice, we also sought comment on the waiver request, and we note that no comments were received in opposition to the request. Alaska Communications maintains that a waiver under these circumstances serves the public interest because the replacement of copper loop facilities with new fiber-fed DLCs will shorten the customer loops in the affected areas and potentially improve the speed and performance of available telecommunications and broadband Internet access service without disruption to GCI or service interruption to end users.²² Given the nature of the changes involved, and the totality of these special circumstances, we find Alaska Communications’ representations to be reasonable. In granting a limited waiver of section 51.332 of the Commission’s rules, we rely in part on Alaska Communications’ representations in the record and the absence of any objections in opposition to a limited waiver of our rules. In these narrow special circumstances, we conclude that the public interest would be served by granting the waiver.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), and 251 of the

¹⁵ 47 C.F.R. § 1.3.

¹⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *Request for Waiver of Section 51.333 of the Commission’s Rules*, Order, 16 FCC Rcd 21896 (CCB 2001) (granting a limited waiver of the network change notification requirements in section 51.333 of the Commission’s rules on delegated authority).

¹⁷ Alaska Communications Waiver Request at 2-4.

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 2.

²⁰ *Id.* at 3.

²¹ *Id.* at 4.

²² *Id.* at 6.

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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, Alaska Communications' waiver request is GRANTED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Daniel Kahn
Chief
Competition Policy Division
Wireline Competition Bureau