

Federal Communications Commission

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

In the Matter of)	
)	
Verizon Pennsylvania LLC Request for Waiver of)	WC Docket No. 18-13
Section 51.332 of the Commission's Rules)	Report No. NCD-2796

ORDER

Adopted: April 30, 2018

Released: April 30, 2018

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

I. INTRODUCTION

1. In this order, the Wireline Competition Bureau (Bureau) grants Verizon Pennsylvania, LLC (Verizon) a limited waiver of the Commission's network change notification requirements¹ to allow Verizon to retire certain copper facilities in fewer than 180 days after release of the Commission's public notice of the proposed network changes.² This waiver enables Verizon to implement changes to its network prompted by the Southeastern Pennsylvania Transportation Authority (SEPTA) and the Pennsylvania Department of Transportation's (PennDOT) schedule for replacing two bridges in the City of Philadelphia, on May 1, 2018 and July 1, 2018.

II. BACKGROUND

2. On January 12, 2018, Verizon filed a notice of network changes involving its originally proposed retirement of copper on or after April 1, 2018, in the vicinity of the Allens Lane Bridge in the Chestnut Hill, Pennsylvania wire center and the Woodland Avenue Bridge in the Saratoga, Pennsylvania wire center, as required by the Commission's rules.³ In addition, Verizon filed a request for waiver of the Commission's rules, to the extent necessary, seeking approval for implementation of the proposed copper retirement and transfer of customers to fiber facilities upon fewer than 180 days' notice.⁴ In its waiver request, Verizon explains that SEPTA and PennDOT provided Verizon with less than 180 days' notice of bridge replacements that will sever Verizon's copper facilities at the Allens Lane and Woodland Avenue bridges. According to Verizon, it has already deployed fiber facilities in these areas, so instead of having to reinstall the severed legacy copper facilities it intends to retire the copper and continue to provide service to affected customers over fiber facilities.⁵ Verizon specifies that approximately 900 addresses with about 90 active circuits will be impacted by the proposed copper retirements. According to Verizon,

¹ See 47 CFR § 51.332. All references herein are to the Commission's rules currently in effect.

² Verizon Pennsylvania LLC Request for Waiver of Section 51.332 of the Commission's Rules, WC Docket No. 18-13 (Jan. 12, 2018) (Waiver Request).

³ Letter from Debra P. Dexter, Associate Director, Federal Regulatory and Legal Affairs, Verizon, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-13 (Jan. 12, 2018) (Verizon Network Change Filing).

⁴ See Waiver Request at 1.

⁵ *Id.* at 3.

most customers served by copper at these locations purchase “plain old telephone service” (POTS) and will be migrated to like services on fiber at the same or better price. Verizon adds that it is working with customers that receive services other than POTS to ensure their services are transferred to the fiber network or handled on a customer-by-customer basis to address their particular needs.⁶ Verizon further maintains that it will work with interconnecting entities and with all of its customers to minimize the impact of the timing of these copper retirements.⁷

3. On January 25, 2018, the Bureau released a public notice announcing receipt of the Verizon Network Change Filing and Waiver Request, and explaining that these network changes are deemed approved on the 180th day after the release of the Commission’s public notice of the filing.⁸ The Public Notice also requested comment on Verizon’s Waiver Request and established that comments on the Waiver Request could be filed no later than February 5, 2018.⁹ No comments were filed in response to Verizon’s request.

4. On March 29, 2018, Verizon filed an *ex parte* letter to inform the Commission that the planned dates for construction have been extended by SEPTA and PennDOT. According to Verizon, construction on the Woodland Avenue Bridge is now scheduled to occur on May 1, 2018, and construction on the Allens Lane Bridge is now scheduled to occur on July 1, 2018.¹⁰

III. DISCUSSION

5. Although the original date for the Woodland Avenue and Allens Lane bridge replacements has since been extended to May 1, 2018 and July 1, 2018, respectively, implementation of the resulting copper retirements on or shortly before the new dates would still provide fewer than the 180 days of notice required under the Commission’s current network change disclosure rules.¹¹ A limited waiver of our current rules therefore will be necessary if Verizon is to be permitted to make these changes to its network in time for the SEPTA and PennDOT bridge replacements.

6. The Commission may grant a petition to waive its rules for “good cause shown.”¹² Waiver of our rules is appropriate if “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”¹³

⁶ *Id.* at 4.

⁷ *Id.* at 3.

⁸ *Wireline Competition Bureau Copper Retirement Network Change Notification & Waiver Request Filed By Verizon Pennsylvania LLC*, WC Docket No. 18-13, Report No. NCD-2796, Public Notice (WCB Jan. 25, 2018) (Public Notice). On January 31, 2018, Verizon filed its Certification of Public Notice of Copper Retirement Under Rule 51.332, which included certification of notice to interconnected entities, retail customers, and all appropriate government entities. See Letter from Debra P. Dexter, Associate Director, Federal Regulatory and Legal Affairs, Verizon, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-13 (Jan. 31, 2018) (Verizon Certification); see also 47 CFR § 51.332(d).

⁹ *Id.*

¹⁰ Letter from Frederick E. Moacdieh, Executive Director, Federal Regulatory and Legal Affairs, Verizon, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-13 (March 29, 2018) (Verizon Ex Parte).

¹¹ See Verizon Ex Parte at 2; see also 47 CFR § 51.332(f).

¹² 47 CFR § 1.3.

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

7. Upon consideration of the record and consistent with precedent,¹⁴ we find that it is appropriate to waive our rules to allow Verizon to proceed with copper retirement for the approximately 900 addresses and 90 active circuits impacted by SEPTA and PennDOT bridge construction projects at issue here. In this instance, the local and state authorities, not Verizon, control the construction schedule that is prompting the request; Verizon is able to provide a fiber-based replacement service in the affected areas; there was notice and an opportunity to object to the waiver request and no objections were received; the retirement will occur more than three months after the public notice was released informing the public of the planned retirements and of the request for a waiver of the 180 day time frame; and Verizon has assured us that it will continue efforts to minimize the impact of this copper retirement and migration of interconnected entities and customers to fiber facilities. Moreover, although the new rules are not yet effective, late last year, the Commission modified its rules to allow a 90-day copper retirement notice period and an exception to that period for circumstances beyond the incumbent LEC's control such as local municipal mandates.¹⁵ If those rules were effective, Verizon would not need a waiver, both because the notice was published more than 90 days ago and because the retirement is being prompted by circumstances created by SEPTA and PennDOT. Thus, granting a waiver is consistent with the Commission's current policies.

8. Given the totality of these special circumstances we conclude that the public interest will be served by granting Verizon's request for a limited waiver of section 51.332 of the Commission's rules.

IV. ORDERING CLAUSES

9. 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 CFR §§ 0.91, 0.291, and 1.3, Verizon's waiver request is GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Daniel Kahn
Chief
Competition Policy Division
Wireline Competition Bureau

¹⁴ See *ACS of Anchorage, LLC Request for Waiver of Section 51.332 of the Commission's Rules; Technology Transitions; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, WC Docket No. 16-176, GN Docket No. 13-5 and RM-11358, Order, 2016 WL 4182798 (July 29, 2016) (granting a limited waiver of section 51.332 of the Commission's rules in order to allow Alaska Communications to make changes in response to major road projects scheduled by the Alaska Department of Transportation & Public Facilities).

¹⁵ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC 17-154, 2017 WL 5969302 (Nov. 29, 2017) (*Wireline Infrastructure Order*). Office of Management and Budget approval pursuant to the Paperwork Reduction Act of changes to the Commission's copper retirement rules made in that order remains pending.