

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Section 251 Network Change Notification) INBOX-51.329
)

PETITION FOR WAIVER

Pursuant to Section 1.3 of the Commission’s rules, Frontier Communications Corporation (“Frontier”) hereby petitions for waiver of Section 51.332 to permit a “retirement of copper” upon fewer than the 180 days’ notice to interconnecting entities otherwise required by Section 51.332. Specifically, in April 2016, a contractor cut into and destroyed Frontier’s copper plant serving 30 residential customers in Fort Wayne, Indiana, and Frontier was required to make emergency repairs to restore service. While Frontier does not believe a waiver of the Commission’s rules are necessary because no interconnecting carrier is actually affected by the action,¹ particularly considering that no carrier that interconnects at this Frontier wire center relies on residential loops, Frontier nonetheless files this limited request for waiver.

Background

In April 2016, a contractor cut into and destroyed Frontier’s copper plant used to serve 30 residential customers. While Frontier’s original notice indicated many more potentially affected addresses, Frontier in fact only had 30 existing customers that were affected by the copper cable cut, all of which were residential.² No businesses were affected by the cable cut, and no

¹ No retail notice is necessary because all affected retail customers voluntarily consented to the upgraded services. *See* 47 C.F.R. § 51.332(b).

² *See* Letter from Glen Hatheway, Manager, Government and External Affairs, Frontier, to Marlene H. Dortch, FCC, Inbox 51.329 (July 12, 2016) (Attachment A). Frontier provided initial

competitive local exchange carriers (“CLECs”) relied on the copper plant affected by the cut. Indeed, in the affected Fort Wayne, Indiana, wire center (CLLI: FTWYINXL), no interconnecting carrier purchases or relies on residential copper loops.

Due to this unplanned interruption of service, Frontier was forced to quickly make emergency repairs. As an interim measure, Frontier was able to restore service using copper plant; however, this configuration was not a feasible long-term solution. Additionally, Frontier was under significant time pressure to implement a permanent solution – there was a very large open construction pit on the side of the road – 20 feet by 30 feet and 8 foot deep – which of course needed to be filled in as swiftly as possible and could only be closed once a long-term solution was implemented.³

Frontier determined that fiber-to-the-home would be the most cost-effective solution, and Frontier began contacting customers directly. 26 of the 30 residential customers affected customers voluntarily consented to the upgrades, and while Frontier was not able to receive a response from the remaining 4 customers, Frontier was able to find an alternative route using copper lines.⁴ At this point, after determining that it would be making fiber-to-the-home upgrades, Frontier notified all providers interconnecting at the affected Frontier wire center.⁵ Frontier filed this notice in good faith as a courtesy, even though no businesses or CLECs were directly affect and no CLECs actually use residential loops in that wirecenter.

notice on June 8, 2016 for the interconnection customers at the affected Frontier Fort Wayne, Indiana Wire Center (CLLI: FTWYINXL).

³ See Attachment B.

⁴ Frontier was able to support a very limited number of these 30 customers with copper plant and could not have supported all 30 customers without installing new plant.

⁵ See Attachment A.

Standard of Review

The Commission may grant a petition to waive its rules “for good cause shown.”⁶ The Commission has explained that waiver of its rules is appropriate if “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”⁷

Discussion

There is good cause to grant Frontier’s waiver because Frontier was forced to make repairs due to an emergency situation, Frontier provided notice to all affected parties as soon as feasible, no parties were adversely affected, and indeed, 26 customers voluntarily received improved broadband services.

In particular, Frontier had no advance notice of the circumstances giving rise to the copper cut and had to make emergency repairs. Due to circumstances outside of Frontier’s control, a contractor cut into and destroyed Frontier’s copper plant. With services to its customers compromised and a very large construction pit on the side of a well-traveled road,⁸ Frontier was forced to quickly make repairs in order to restore service. After evaluating costs, Frontier determined that replacing the copper plant with fiber-to-the-home plant would be more cost effective and offer superior services to affected customers. It simply would not have been feasible to keep these customers on copper plant for any extended period of time.

⁶ See 47 C.F.R. § 1.3; see also *ACS of Anchorage, LLC Request for Waiver of Section 51.332 of the Commission’s Rules*, Order, WC Docket No. 16-176 (rel. July 29, 2016) (“*ACS Copper Retirement Waiver*”).

⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972); see also *ACS Copper Retirement Waiver* ¶ 5.

⁸ See Attachment B.

While there was no way to provide the standard 180-days' notice because immediate repairs were required, Frontier nonetheless provided notice as soon as feasible. Frontier first discussed the proposed changes with its residential customers, directly contacting 26 of the 30 customers and receiving voluntary consent for the upgrades. After determining that it would pursue these fiber-to-the-home upgrades, Frontier notified all providers interconnecting at the affected Frontier wire center, even though, as described below, no carriers in the wire center rely upon residential loops, and no carriers or businesses were directly affected by the damaged plant.⁹ Frontier, in good faith, immediately filed the relevant notice with the Commission.¹⁰

Importantly, no customers – neither business nor residential – were adversely affected by the copper retirement. Indeed, the fiber-to-the-home plant that Frontier installed was able to dramatically improve customer broadband speeds in a more cost-effective manner than attempting to repair the destroyed legacy copper plant. While 26 of the 30 affected residential customers voluntarily agreed to the upgraded fiber-to-the-home broadband service, Frontier was able to find an alternative route using copper lines for the remaining four customers.¹¹ Moreover, no businesses were affected by the cable cut, and no CLECs relied on the copper plant affected by the cut. Indeed, in the affected Fort Wayne, Indiana, wire center, no interconnecting carrier purchases or relies on residential copper loops.

⁹ See Attachment A. Frontier provided initial notice on June 8, 2016 for the interconnection customers at the affected Frontier Fort Wayne, Indiana Wire Center (CLLI: FTWYINXL).

¹⁰ See *id.*

¹¹ There were insufficient legacy copper facilities in place to attempt this for all customers.

Conclusion

For all of the foregoing reasons, Frontier requests that the Commission grant a waiver of Section 51.332 of its rules, 47 C.F.R. § 51.332, to the extent necessary, to permit this limited copper retirement with fewer than 180 days' notice.

Respectfully submitted,

FRONTIER COMMUNICATIONS

/s/ AJ Burton

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