

In the Matter of)
)
ACS of Anchorage, LLC Public Notice of)
Copper Retirement and Request for Waiver)
of the Commission's Rules)

Exhibit A: A copy of the notice sent to affected telephone exchange service providers; and

Exhibit B: The certificate of service required by Section 51.333(a) of the Commission’s rules.

¹ While Section 51.333(b)(2) generally requires a 90-day notice period, it also shortens to 15 days the notice period for copper retirement “involving copper facilities not being used to provision services to any customers,” 47 C.F.R. § 51.333(b)(2).

Alaska Communications intends to take this opportunity to replace its outdated copper facilities in the affected areas of Bootleggers Cove with modern fixed wireless facilities that will offer improved service and faster broadband speeds and reliability, while decreasing the burden of physical last-mile facilities on municipal rights-of-way in the area. As an alternative, to ensure a seamless transition, ACS of Anchorage has entered into an agreement with GCI Communications Corp. ("GCI") to resell GCI's cable-based voice service to serve customers that prefer a wireline option, or if the copper facilities must be retired before that fixed wireless network is in place.

In order to provide as much public notice of this event as possible, ACS of Anchorage requests a waiver of the requirement set forth in Section 51.333(a)(2) of the Commission's rules, 47 C.F.R. § 51.333(a)(2), to wait five business days following service of the notice on affected providers of telephone exchange service.

Background

The Anchorage Municipal Code (the "Code") requires all newly installed or relocated utility lines to be placed underground.² The Code classifies aerial utility lines as "nonconforming"³ and requires electric utilities (which own virtually all poles in Anchorage) systematically to remove their poles and place the attached lines underground.⁴ When the electric utility does so, all other utilities that attach lines to the affected poles must remove their facilities from the poles at the same time.⁵ In the Bootleggers Cove area of the city, these poles

² Anchorage Municipal Code § 21.07.050(A)(1) (providing that, in general, "all newly installed or relocated utility distribution lines . . . shall be placed underground").

³ *Id.* at § 21.07.050(D).

⁴ *Id.* at § 21.07.050(G)(1) ("An electric utility that owns poles that support nonconforming utility distribution lines shall remove the poles and place those lines underground. Any other utility that attaches to such poles shall place its lines underground at the same time that the pole owner places lines underground.").

⁵ *Id.*

are owned by Municipal Light & Power ("ML&P"), the electric utility publicly owned and operated by the Municipality of Anchorage itself.

ML&P has recently informed ACS of Anchorage that it will be removing its poles in the Bootleggers Cove area of Anchorage this summer, and that the work will be complete no later than August 15, 2018. Thus, the Code requires ACS of Anchorage to remove its aerial copper facilities from those poles before that date. Because of uncertainty regarding this work it was impossible to comply with the Commission's 90-day notice period governing retirement of copper.

ACS of Anchorage provides circuit-switched voice telephone service over copper last mile distribution lines to approximately 40 residential customers in Bootleggers Cove that will be affected by this work, and its lines pass approximately 200 additional customer locations that do not take service from ACS of Anchorage. Given the expense and performance limitations of replacing the legacy copper with new, ACS of Anchorage intends to seize this opportunity to upgrade the capabilities of its network by deploying modern fixed wireless facilities that will deliver improved services and faster broadband connections.

If the aerial copper must be replaced before these fixed wireless facilities are fully operational, or to meet the needs of customers that prefer a wireline option, ACS of Anchorage has also entered into an agreement with GCI to resell GCI's cable-based voice service to any customer in the area affected by this copper retirement.

ACS of Anchorage is working closely with its affected customers and interconnected telephone exchange service providers to ensure a smooth and seamless transition and no loss of service, regardless of whether the customers will migrate to the fixed wireless or GCI resale option. ACS of Anchorage is already well underway with implementing both options. It has begun planning and siting the new fixed wireless facilities, and it has also been in close

communication with GCI to establish procedures for both companies to execute their resale arrangement. Between now and August 15, 2018, ACS of Anchorage will work in a coordinated manner with its affected local exchange customers to minimize any impact of the transition.

Therefore, pursuant to Sections 51.333(b)(2) and (g)(2) of the Commission's rules, ACS of Anchorage hereby provides abbreviated notice of this retirement of copper to permit it to comply with its obligations under the Code, as discussed herein. In addition, on June 6, 2018, ACS of Anchorage sent formal notice of the copper retirement, as required by Section 51.327(a), to all telephone exchange service providers that directly interconnect with the incumbent LEC's network. Because that date is fewer than five business days before the date of this Commission filing, ACS of Anchorage requests a waiver of the waiting period prescribed in Section 51.333(a)(2) of the Commission's rules, in order to provide the greatest possible notice to the Commission and the public of this change.

Discussion

Notice under Sections 51.333(b)(2) and (g)(2). Although Section 51.333(b)(2) of the Commission's rules⁶ ordinarily provides that an ILEC's notice of copper retirement is deemed final 90 days after the Commission's release of a Public Notice of the filing, there are two exceptions relevant to this Notice. *First*, Section 51.333(b)(2) also provides for an abbreviated 15-day notice period in the case of retirement of a retirement of copper "involving copper facilities not being used to provision services to any customers," 47 C.F.R. § 51.333(b)(2). The majority of the aerial copper facilities being retired as a result of the work described in this Notice connect to customer locations where they are no longer utilized to provide service, presumably because the residents have chosen a different service provider or option.

⁶ 47 C.F.R. § 51.333(b)(2).

Second, Section 51.333(g)(2) provides that, when circumstances (other than *force majeure* events, which are addressed separately) prevent the ILEC from providing a full 90 day notice period, the ILEC “must give notice of the copper retirement as soon as practicable and will be entitled to a reduced waiting period commensurate with the circumstances at issue.”⁷ The rule explicitly states that compliance with “federal, state, or local municipal mandates,” such as the Code sections mandating retirement of aerial facilities at issue here, is one such circumstance.⁸ ACS of Anchorage is required, under the Code, to incur an extraordinary and uneconomic expense of retiring its aerial facilities in Bootleggers Cove and moving them underground on a timeline dictated by the electric utility that owns the poles. It has no ability to delay the work to reflect the Commission’s default 90-day notice period.⁹

ACS of Anchorage is taking steps to minimize the impact on directly interconnected telephone exchange service providers. No provider of telephone exchange service purchases unbundled network elements or wholesale local exchange services to serve its customers in the affected area. GCI serves a commanding majority of the telephone exchange service customers

⁷ 47 C.F.R. § 51.333(g)(2)(i).

⁸ 47 C.F.R. § 51.333(g)(2)(iii); *see also 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, 32 FCC Rcd 11128 (2017), at ¶ 74 (revising the rules governing copper retirement to “require that an incumbent LEC give notice of a copper retirement resulting from a municipal mandate . . . as soon as practicable, and permit a reduced waiting period commensurate with the amount of notice provided to the incumbent LEC by the municipal authority”).

⁹ The Code also limits an attaching utility’s annual liability for such undergrounding expenses to “two percent of its annual gross retail revenues derived from utility service connections within the municipality,” § 21.07.050(G)(1)(b). To take advantage of this limitation, ACS of Anchorage would be required to assume the alternative – but also extraordinary – expense of owning and maintaining the poles themselves. Given the limited capabilities of the copper last mile facilities in Bootleggers Cove, and the advanced age and poor condition of the associated poles, ACS of Anchorage has determined that it is a better alternative to deploy the fixed wireless solution described in this Notice.

in the area, other than those few that continue to purchase that service from ACS of Anchorage. GCI is well aware of the circumstances, and the two companies have agreed that ACS of Anchorage may resell GCI's telephone exchange service to customers that wish to continue to purchase such service from ACS of Anchorage. Beyond the mandate of the Commission's copper retirement rule, this arrangement will independently require that the parties cooperate and coordinate closely, to ensure that the transition proceeds smoothly for ACS of Anchorage telephone exchange service customers.

Furthermore, ACS of Anchorage is in the process of deploying new fixed wireless facilities that will offer improved service and faster broadband speeds than the legacy copper facilities being retired. Thus, not only is ACS of Anchorage taking steps to minimize any adverse impact on its affected customers, it is seizing the opportunity to offer those customers a greater choice among a better range of more modern service options.

Waiver of Section 51.333(a)(2). ACS of Anchorage requests a waiver of the mandatory five-day waiting period following service of the Notice for making this filing.¹⁰ The Commission may waive its rules for "good cause shown."¹¹ More specifically, the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹² In making this analysis, the Commission may take into account consideration of

¹⁰ 47 C.F.R. § 51.333(a)(2).

¹¹ 47 C.F.R. § 1.3.

¹² *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).

hardship, equity, or more effective implementation of overall policy on an individual basis.¹³ This request meets that standard.

Municipal demands contained in the Code necessitate this retirement of copper on fewer than 90 days' notice. Nevertheless, the Commission's rules require ACS of Anchorage to "give notice of the copper retirement as soon as practicable."¹⁴ Under the circumstances, it would better serve the purpose of the notice rule for the Commission to accept this filing at the earliest possible date, without regard for the five-day waiting period. By waiving that waiting period, the Commission will receive this filing earlier than would otherwise be permitted, and therefore will be able to issue its own Public Notice of the filing at the earliest possible date. The waiver will therefore facilitate the goal of Section 51.333(g)(2) to afford as much advance notice of this retirement of copper as possible.

¹³ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹⁴ 47 C.F.R. § 51.333(g)(2)(i).

Conclusion

As described herein, ACS of Anchorage hereby provides abbreviated notice of a retirement of copper under Section 51.333(b)(2) and (g)(2) of the Commission's rules, 47 C.F.R. §§ 51.333(b)(2) and (g)(2), and requests that the Commission grant a waiver of the five-day waiting period for making this filing set forth in Section 51.333(a)(2) of the Commission's rules, 47 C.F.R. § 51.333(a)(2).

Respectfully submitted,

Leonard A. Steinberg
Senior Vice President & General Counsel
ALASKA COMMUNICATIONS SYSTEMS GROUP, INC.
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Richard@CameronLawPolicy.com

Counsel for ACS of Anchorage, LLC

**cc: Rodney McDonald
Carmell Weathers**

Exhibit A

Notice sent to affected telephone exchange service providers

Secretary

**Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554**

Carmell Weathers

**Wireline Competition Bureau
Competition Policy Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554**

June 6, 2018

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: ACS of Anchorage, LLC Public Notice of Copper Retirement Under 47 C.F.R. § 51.333

Dear Ms. Dortch:

Pursuant to Section 51.333 of the Commission's rules, 47 C.F.R. § 51.333, ACS of Anchorage, LLC hereby submits the attached Public Notice of Copper Retirement Under Section 51.333 of the Commission's rules.

This filing is being made through the FCC's Electronic Comment Filing System.

Please contact me at 907.297.3130 if you have any questions concerning this matter.

Sincerely,

A handwritten signature in black ink that reads 'Lisa Phillips'.

Lisa Phillips
Senior Manager, Regulatory Affairs and
Risk Management

Attachments



Public Notice of Copper Retirement Under Rule 51.333
ACS of Anchorage, LLC's Internet address: <http://www.acsalaska.com>

June 6, 2018

RE: Network Change Notification

Carrier: ACS of Anchorage, LLC d/b/a Alaska Communications, 600 Telephone Ave., Anchorage, Alaska 99503

Implementation Date:

This network change has been scheduled for August 1-15, 2018.

Description of the Planned Network Change:

Anchorage Municipal Light and Power has informed Alaska Communications that it will be removing its poles in the Bootleggers Cove area of Anchorage this summer, and that the work will be complete by August 15, 2018. As a result, Alaska Communications is required to remove its aerial copper facilities from those poles before that date. As Alaska Communications did not receive notice of this work more than 90 days in advance of the completion date, it was not possible to comply with the Commission's mandatory 90-day notice period governing retirement of copper. Pursuant to 51.333(g)(2) Alaska Communications requests a limited exemption from advance notice and timing requirements for copper retirement. Alaska Communications expects to complete this work between August 1 and August 15, 2018.

Description of Reasonably Foreseeable Impact(s) of the Planned Change(s):

Alaska Communications provides circuit-switched voice telephone service over copper last mile distribution lines to approximately 40 residential customers in Bootleggers Cove that will be affected by this work, and its lines pass approximately 200 additional customer locations that do not take service from Alaska Communications. The cost of deploying new underground lines to serve this small number of affected customers is economically prohibitive; therefore, Alaska Communications intends to retire the aerial copper lines and not deploy new underground facilities in the area.

The Planned Network Change Will Occur at the Following Location:

Bootlegger's Cove, Anchorage, Alaska 99501

Technical Contact	Stuart Chasse, Network Engineering Foreman 907-564-1789
Interconnection Contact	Kerri Lookabaugh, Service Assurance Manager 907-565-6678

Exhibit B
Certificate of Service

**Certificate of Service of Public Notice of Copper Retirement under
Section 51.333(a) of the Commission's Rules**

I, Lisa Phillips, certify as follows:

On June 6, 2018, I served a copy of the "Public Notice of Copper Retirement under Rule 51.333" relating to a planned retirement of copper in the area of Bootleggers Cove in Anchorage, Alaska, upon each telephone exchange service provider that directly interconnects with the incumbent LEC's network. ACS of Anchorage, LLC, has requested a waiver of the five-day waiting period before filing this Public Notice of Copper Retirement with the Commission. The name and address of each telephone exchange service provider upon which the notice was served is as follows:

Mary Devore
Carrier Relations Director
GCI Liberty, Inc.
2550 Denali Street, Suite 1000
Anchorage, AK 99503
mdevore@gci.com

Under penalty of perjury, the foregoing is true and correct, to the best of my knowledge, information, and belief.



Lisa Phillips
Senior Manager, Regulatory Affairs and
Risk Management