

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

In the Matter of
Petition of Qwest Corporation for Emergency
Waiver of Section 51.333(b)(2) of the
Commission's Rules
WC Docket No. WC 09-171
Report No. NCD-1738

ORDER

Adopted: September 24, 2009

Released: September 24, 2009

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On September 24, 2009, Qwest filed a petition seeking an emergency waiver of section 51.333(b)(2) of the Commission's rules in order to permit Qwest to retire certain copper plant in Yuma, Arizona less than 90 days after the Commission's public notice of the proposed network change.

II. BACKGROUND

2. On July 9, 2009, Qwest filed a Certification of Short Term Public Notice under Rule 51.333(a) and a Certification of Public Notice of Network Change under Rule 51.329(a) of the Commission's rules with respect to proposed copper retirements in Arizona, Colorado, Iowa, Minnesota, Montana and Washington.

1 Qwest Corporation Petition for Emergency Waiver of Section 51.333(b)(2) of the Commission's Rules, WC Docket No. 09-171 (September 24, 2009) (Qwest Petition).

2 See 47 C.F.R. § 51.333.

3 Letter from Melissa E. Newman, Vice President, Federal Relations, Qwest Communications International, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (July 9, 2009) (Qwest Network Change Filing).

4 Id.

Wireline Competition Bureau released a public notice announcing receipt of the Qwest Network Change Filing.<sup>5</sup> Section 51.333(b) 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" but "notices of replacement of copper loops or copper subloops with fiber-to-the-home loops or fiber-to-the-curb loops shall be deemed approved on the 90th day after the release of the Commission's public notice of the filing, unless an objection is filed."<sup>6</sup>

3. On September 24, 2009, Qwest filed the instant request seeking a waiver of section 51.333(b)(2) of the Commission's rules in order to allow Qwest to implement certain of the proposed network changes no later than September 25, 2009.<sup>7</sup> Qwest indicates that it had originally set financial retirement of the affected copper facilities for December 30, 2009.<sup>8</sup> However, Qwest states that the Arizona Department of Transportation has notified Qwest that it will be necessary to remove several copper feeder lines across the I-8/16th Street Bridge no later than Friday September 25, 2009, in order to make way for an Arizona Department of Transportation bridge-widening project in Yuma, Arizona.<sup>9</sup> Qwest states the earliest date that it could have implemented these copper replacements under the Commission's rules is November 16, 2009.<sup>10</sup> Qwest therefore seeks a waiver of section 51.333(b)(2) of the Commission's rules in light of the new September 25, 2009 deadline set by the Arizona Department of Transportation.

### 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."<sup>11</sup> 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 loops or copper subloops, and the replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops.<sup>12</sup>

5. The Commission may grant a petition to waive its rules – in whole or in part – "for good cause shown."<sup>13</sup> Thus, waiver of our rules is appropriate if "special circumstances warrant a deviation

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<sup>5</sup> Wireline Competition Bureau Short Term Network Change Notification Filed By Qwest, *Public Notice*, Report No. NCD-1738 (August 18, 2009).

<sup>6</sup> 47 C.F.R. § 51.333(b).

<sup>7</sup> Qwest Petition.

<sup>8</sup> Qwest Petition at 2.

<sup>9</sup> Qwest Petition at 1-2.

<sup>10</sup> *Id.* at 2 (acknowledging that the recently requested September 25, 2009 date falls before November 16, 2009 and is thus less than 90 days from the date of the Commission's public notice of Qwest's filing). See 47 C.F.R. § 51.333(b)(2). The proposed September 25, 2009 date is also less than 90 days from Qwest's July 9, 2009 filing with the Commission, but only slightly less than 90 days from Qwest's June 30, 2009 website posting of notice of the proposed change.

<sup>11</sup> 47 U.S.C. § 251(c)(5); see 47 C.F.R. §§ 51.325 *et seq.*

<sup>12</sup> 47 C.F.R. § 51.325.

<sup>13</sup> 47 C.F.R. § 1.3.

from the general rule and such deviation will serve the public interest.”<sup>14</sup> We find that it is appropriate to waive a portion of the notice period required by section 51.333 of our rules because of the special circumstances involved in this situation. Qwest has indicated that the new September 25, 2009 removal date was set by the Arizona Department of Transportation in order to allow a bridge-widening project in Yuma, Arizona to proceed.<sup>15</sup> Qwest also asserts that it immediately contacted the only customer affected by the proposed acceleration of copper removal upon learning about this new schedule.<sup>16</sup> Qwest maintains that it has devised an acceptable transition method allowing for copper-equivalent service to this customer until the originally planned December 30, 2009 implementation date.<sup>17</sup>

6. Qwest asserts that a waiver of the rule allowing this adjustment to its proposed network change will serve the public interest by allowing the bridge construction to proceed without delay while still allowing Qwest and its one affected customer to continue with service as expected until December 30, 2009.<sup>18</sup> We rely on Qwest's representations that this adjustment to its planned network change will only affect service to one customer and note that this waiver of our rules only applies to the removal of copper facilities for purposes of the bridge construction in Yuma, Arizona. Qwest indicates that it will modify its formal network disclosure to reflect this change.<sup>19</sup> All of Qwest's other planned network changes under Qwest Disclosure Number 698 shall proceed as usual.

#### 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, Qwest's petition is GRANTED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett  
Chief  
Wireline Competition Bureau

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<sup>14</sup> *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).

<sup>15</sup> Qwest Petition at 1-2.

<sup>16</sup> Qwest Petition at 2.

<sup>17</sup> Qwest Petition at 2-3.

<sup>18</sup> Qwest Petition at 3.

<sup>19</sup> *Id.*