

## §51.331

copy, the date on which the filing is received by the Secretary or the FCC Mailroom is considered the official filing date. All subsequent filings responsive to a notice shall refer to the ECFS docket number assigned to the notice.

[61 FR 47351, Sept. 6, 1996, as amended at 67 FR 13225, Mar. 21, 2002; 71 FR 65750, Nov. 9, 2006; 80 FR 1588, Jan. 13, 2015; 81 FR 62655, Sept. 12, 2016]

EFFECTIVE DATE NOTE: At 81 FR 62655, Sept. 12, 2016, §51.329 was amended by revising paragraph (c)(1). This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

### §51.331 Notice of network changes: Timing of notice.

(a) An incumbent LEC shall give public notice of planned changes at the make/buy point, as defined in paragraph (b) of this section, but at least 12 months before implementation, except as provided below:

(1) If the changes can be implemented within twelve months of the make/buy point, public notice must be given at the make/buy point, but at least six months before implementation.

(2) If the changes can be implemented within six months of the make/buy point, public notice may be given pursuant to the short term notice procedures provided in §51.333.

(b) For purposes of this section, the *make/buy point* is the time at which an incumbent LEC decides to make for itself, or to procure from another entity, any product the design of which affects or relies on a new or changed network interface. If an incumbent LEC's planned changes do not require it to make or to procure a product, then the make/buy point is the point at which the incumbent LEC makes a definite decision to implement a network change.

(1) For purposes of this section, a *product* is any hardware or software for use in an incumbent LEC's network or in conjunction with its facilities that, when installed, could affect the compatibility of an interconnected service provider's network, facilities or services with an incumbent LEC's existing telephone network, facilities or serv-

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ices, or with any of an incumbent carrier's services or capabilities.

(2) For purposes of this section a *definite decision* is reached when an incumbent LEC determines that the change is warranted, establishes a timetable for anticipated implementation, and takes any action toward implementation of the change within its network.

[61 FR 47352, Sept. 6, 1996, as amended at 68 FR 52305, Sept. 2, 2003; 69 FR 77954, Dec. 29, 2004; 80 FR 63371, Oct. 19, 2015]

### §51.332 Notice of network changes: Copper retirement.

(a) *Definition.* For purposes of this section, the retirement of copper is defined as:

(1) Removal or disabling of copper loops, subloops, or the feeder portion of such loops or subloops;

(2) The replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops, as those terms are defined in §51.319(a)(3); or

(3) The failure to maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling.

(b) *Methods for providing public notice.* In providing the required notice to the public of network changes under this section, an incumbent LEC must comply with the following requirements:

(1) The incumbent LEC must file a notice with the Commission.

(2) The incumbent LEC must provide each entity within the affected service area that directly interconnects with the incumbent LEC's network with a copy of the notice filed with the Commission pursuant to paragraph (b)(1) of this section.

(3) If the copper retirement will result in the retirement of copper loops to the premises, the incumbent LEC must directly provide notice through electronic mail or postal mail to all retail customers within the affected service area who have not consented to the retirement; *except* that the incumbent LEC is not required to provide notice of the copper retirement to retail customers where:

(i) The copper facilities being retired under the terms of paragraph (a) of this section are no longer in use in the affected service area; or

(ii) The retirement of facilities pursuant to paragraph (a)(3) of this section is undertaken to resolve a service quality concern raised by the customer to the incumbent LEC.

(iii) The contents of any such notice must comply with the requirements of paragraph (c)(2) of this section.

(iv) Notice to each retail customer to whom notice is required shall be in writing unless the Commission authorizes in advance, for good cause shown, another form of notice. If an incumbent LEC uses email to provide notice to retail customers, it must comply with the following requirements in addition to the requirements generally applicable to the notice:

(A) The incumbent LEC must have previously obtained express, verifiable, prior approval from retail customers to send notices via email regarding their service in general, or planned network changes in particular;

(B) Email notices that are returned to the carrier as undeliverable must be sent to the retail customer in another form before carriers may consider the retail customer to have received notice; and

(C) An incumbent LEC must ensure that the subject line of the message clearly and accurately identifies the subject matter of the email.

(4) The incumbent LEC shall notify and submit a copy of its notice pursuant to paragraph (b)(1) of this section to the public utility commission and to the Governor of the State in which the network change is proposed, to the Tribal entity with authority over the Tribal lands in which the network change is proposed, and to the Secretary of Defense, Attn. Special Assistant for Telecommunications, Pentagon, Washington, DC 20301.

(c) *Content of notice*—(1) *Non-retail*. The notices required by paragraphs (b)(1), (2), and (4) of this section must set forth the information required by § 51.327. In addition, the notices required by paragraphs (b)(1), (2), and (4) of this section must include a description of any changes in prices, terms, or conditions that will accompany the planned changes.

(2) *Retail*. (i) The notice to retail customers required by paragraph (b)(3) of this section must provide sufficient in-

formation to enable the retail customer to make an informed decision as to whether to continue subscribing to the service to be affected by the planned network changes, including but not limited to the following provided in a manner that is clear and conspicuous to the average consumer:

(A) The information required by § 51.327(a)(1) through (4) and (a)(6);

(B) A statement that the retail customer will still be able to purchase the existing service(s) to which he or she subscribes with the same functionalities and features as the service he or she currently purchases from the incumbent LEC, *except that* if this statement would be inaccurate, the incumbent LEC must include a statement identifying any changes to the service(s) and the functionality and features thereof; and

(C) A neutral statement of the services available to the retail customers from the incumbent LEC, which shall include a toll-free number for a customer service help line, a URL for a related Web page on the provider's Web site with relevant information, contact information for the Federal Communications Commission including the URL for the Federal Communications Commission's consumer complaint portal, and contact information for the relevant state public utility commission.

(ii) If any portion of a notice is translated into another language, then all portions of the notice must be translated into that language.

(iii) An incumbent LEC may not include in the notice required by paragraph (b)(3) of this section any statement attempting to encourage a customer to purchase a service other than the service to which the customer currently subscribes.

(iv) For purposes of this section, a statement is "clear and conspicuous" if it is disclosed in such size, color, contrast, and/or location that it is readily noticeable, readable, and understandable. In addition:

(A) The statement may not contradict or be inconsistent with any other information with which it is presented.

(B) If a statement materially modifies, explains or clarifies other information with which it is presented, then the statement must be presented in proximity to the information it modifies, explains or clarifies, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner.

(C) Hyperlinks included as part of the message must be clearly labeled or described.

(d) *Certification.* No later than ninety (90) days after the Commission's release of the public notice identified in paragraph (f) of this section, an incumbent LEC must file with the Commission a certification that is executed by an officer or other authorized representative of the applicant and meets the requirements of § 1.16 of this chapter. This certification shall include:

(1) A statement that identifies the proposed changes;

(2) A statement that notice has been given in compliance with paragraph (b)(1) of this section;

(3) A statement that the incumbent LEC timely served a copy of its notice filed pursuant to paragraph (b)(1) of this section upon each entity within the affected service area that directly interconnects with the incumbent LEC's network;

(4) The name and address of each entity referred to in paragraph (d)(3) of this section upon which written notice was served;

(5) A statement that the incumbent LEC timely notified and submitted a copy of its public notice to the public utility commission and to the Governor of the State in which the network change is proposed, to any federally recognized Tribal Nations with authority over the Tribal lands in which the network change is proposed, and to the Secretary of Defense in compliance with paragraph (b)(4) of this section;

(6) If customer notice is required by paragraph (b)(3) of this section, a statement that the incumbent LEC timely served the customer notice required by paragraph (b)(3) of this section upon all retail customers to whom notice is required;

(7) If a customer notice is required by paragraph (b)(3) of this section, a copy

of the written notice provided to retail customers;

(8) A statement that the incumbent LEC has complied with the notification requirements of § 68.110(b) of this chapter or that the notification requirements of § 68.110(b) do not apply;

(9) A statement that the incumbent LEC has complied with the good faith communication requirements of paragraph (g) of this section and that it will continue to do so until implementation of the planned copper retirement is complete; and

(10) The docket number and NCD number assigned by the Commission to the incumbent LEC's notice provided pursuant to paragraph (b)(1) of this section.

(e) *Timing of notice.* (1) Except pursuant to paragraph (e)(2) of this section, an incumbent LEC must provide the notices required by paragraphs (b)(2) and (4) of this section no later than the same date on which it files the notice required by paragraph (b)(1) of this section.

(2) Where the copper facilities being retired under the terms of paragraph (a) of this section are no longer being used to serve any customers, whether wholesale or retail, in the affected service area, an incumbent LEC must provide the notices required by paragraphs (b)(2) and (4) of this section no later than ninety (90) days after the Commission's release of the public notice identified in paragraph (f) of this section.

(3) An incumbent LEC must provide any notice required by paragraph (b)(3) of this section to all non-residential customers to whom notice must be provided no later than the same date on which it files the notice required by paragraph (b)(1) of this section.

(4) An incumbent LEC must provide any notice required by paragraph (b)(3) of this section to all residential customers to whom notice must be provided no later than ninety (90) days after the Commission's release of the public notice identified in paragraph (f) of this section.

(f) *Implementation date.* The Commission will release a public notice of filings of the notice of copper retirement pursuant to paragraph (b)(1) of this section. The public notice will set forth

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the docket number and NCD number assigned by the Commission to the incumbent LEC's notice. The notices of copper retirement required by paragraph (b) of this section shall be deemed approved on the 180th day after the release of the Commission's public notice of the filing.

(g) *Good faith requirement.* An entity within the affected service area that directly interconnects with the incumbent LEC's network may request that the incumbent LEC provide additional information to allow the interconnecting entity where necessary to accommodate the incumbent LEC's changes with no disruption of service to the interconnecting entity's end user customers. Incumbent LECs must work with such requesting interconnecting entities in good faith to provide such additional information.

[80 FR 63371, Oct. 19, 2015]

### **§ 51.333 Notice of network changes: Short term notice, objections thereto.**

(a) *Certificate of service.* If an incumbent LEC wishes to provide less than six months notice of planned network changes, the public notice or certification that it files with the Commission must include a certificate of service in addition to the information required by § 51.327(a) or § 51.329(a)(2), as applicable. The certificate of service shall include:

(1) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each telephone exchange service provider that directly interconnects with the incumbent LEC's network; and

(2) The name and address of each such telephone exchange service provider upon which the notice was served.

(b) *Implementation date.* The Commission will release a public notice of filings of such short term notices. The public notice will set forth the docket number assigned by the Commission to the incumbent LEC's notice. The effective date of the network changes referenced in those filings shall be deemed final on the tenth business day after the release of the Commission's public

notice, unless an objection is filed pursuant to paragraph (c) of this section.

(c) *Objection procedures for short term notice.* An objection to an incumbent LEC's short term notice may be filed by an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the incumbent LEC, no later than the ninth business day following the release of the Commission's public notice. All objections filed under this section must:

(1) State specific reasons why the objector cannot accommodate the incumbent LEC's changes by the date stated in the incumbent LEC's public notice and must indicate any specific technical information or other assistance required that would enable the objector to accommodate those changes;

(2) List steps the objector is taking to accommodate the incumbent LEC's changes on an expedited basis;

(3) State the earliest possible date (not to exceed six months from the date the incumbent LEC gave its original public notice under this section) by which the objector anticipates that it can accommodate the incumbent LEC's changes, assuming it receives the technical information or other assistance requested under paragraph (c)(1) of this section;

(4) Provide any other information relevant to the objection; and

(5) Provide the following affidavit, executed by the objector's president, chief executive officer, or other corporate officer or official, who has appropriate authority to bind the corporation, and knowledge of the details of the objector's inability to adjust its network on a timely basis:

"I, (name and title), under oath and subject to penalty for perjury, certify that I have read this objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay. I have appropriate authority to make this certification on behalf of (objector) and I agree to provide any information the Commission may request to allow the