

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

In the Matter of )
Petition of BellSouth Corporation for Special )
Temporary Authority and Waiver )
To Support Disaster Planning and )
Response )
Petition of Verizon for Special Temporary ) WC Docket No. 06-63
Authority and Waiver )
To Support Disaster Planning and )
Response )
Petition of Qwest Communications International )
Inc. for Special Temporary Authority and Waiver )
To Support Disaster Planning and )
Response )

ORDER

Adopted: June 9, 2006

Released: June 9, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. Through our action today, the Wireline Competition Bureau (Bureau) provides limited but critical relief from potential impediments for certain carriers to prepare for and respond to natural and other disasters. In this Order, the Bureau grants a petition filed by BellSouth Corporation (BellSouth),<sup>1</sup> and grants in part petitions filed by the Verizon telephone companies (Verizon)<sup>2</sup> and Qwest Communications International Inc. (Qwest, collectively with BellSouth and Verizon, the Petitioners)<sup>3</sup> to

1 Petition of BellSouth Corporation for Special Temporary Authority and Waiver to Support Disaster Planning and Response, WC Docket No. 06-63 (filed Apr. 4, 2006) (BellSouth Petition). The Bureau issued a public notice requesting comments on this Petition. See Pleading Cycle Established for Comments on Petition of BellSouth for Special Temporary Authority and Waiver to Support Disaster Planning and Response, Public Notice, DA 06-812 (WCB Apr. 11, 2006).

2 Petition of Verizon for Special Temporary Authority and Waiver to Support Disaster Planning and Response, WC Docket No. 06-63 (filed Apr. 3, 2006) (Verizon Petition). The Verizon telephone companies are included in Attachment A of the Verizon Petition. Verizon simultaneously filed a Memorandum in Support of Verizon's Petition for Special Temporary Authority and Waiver to Support Disaster Planning and Response, WC Docket No. 06-63 (filed Apr. 3, 2006) (Verizon Memorandum). The Bureau issued a public notice requesting comments on this Petition. See Pleading Cycle Established for Comments on Petition of Verizon for Special Temporary Authority and Waiver to Support Disaster Planning and Response, Public Notice, DA 06-811 (WCB Apr. 11, 2006). On May 25, 2006, Verizon filed a supplement to its Petition expanding on its request for additional relief from certain Commission requirements. Letter from Paul Brigner, Executive Director - Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC (filed May 25, 2006) (Verizon Petition Supplement).

3 Petition of Qwest Communications International Inc. for Special Temporary Authority and Waiver to Support Disaster Planning and Response, WC Docket No. 06-63 (filed Apr. 13, 2006) (Qwest Petition). Qwest filed its

(continued...)

the extent they seek time-limited Special Temporary Authority (STA) from the enforcement of specific statutory provisions and waiver of certain Commission rules implementing such provisions to plan for and undertake disaster recovery. This Order extends to the Petitioners relief consistent with the relief granted by this Bureau in the recent *AT&T STA Order*.<sup>4</sup>

2. For purposes of disaster relief planning only, the Bureau issues today a one-year STA from the enforcement of, and waiver of the rules implementing, section 272 of the Communications Act of 1934, as amended (Act or Communications Act) to allow the companies to share non-public, Bell Operating Company (BOC) network information with their section 272 and other affiliates.<sup>5</sup> We also grant Verizon a one-year waiver of the structural separation requirements of Part 64, Subpart T of the Commission's rules to allow Verizon to engage in integrated disaster recovery planning with its former GTE affiliates.<sup>6</sup> Moreover, for purposes of disaster response, we grant the Petitioners, upon invocation of their disaster response plans, limited STA from the enforcement of section 272 of the Act and waiver of (1) the accompanying rules, to permit the Petitioners use of their corporate network, personnel and facilities, including their affiliates, throughout their entire regions;<sup>7</sup> (2) the "arm's length" negotiations requirement of section 32.27 of the Commission's affiliate transaction rules;<sup>8</sup> (3) dominant carrier tariffing requirements of Part 61 of the Commission's rules;<sup>9</sup> (4) customer advance notice requirements of the Commission's "slamming" rules;<sup>10</sup> and (5) the Commission's network disclosure rules' prior notice and waiting period requirements.<sup>11</sup> We find that the additional relief granted in this Order further clarifies the relief granted in the *AT&T STA Order* and, therefore, the STA and waivers set forth herein also apply to AT&T as necessary.

## II. BACKGROUND

3. As discussed below, this Commission has previously granted limited STAs and waivers of its rules to allow carriers to plan for and undertake disaster recovery. We do so again here.

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Petition on behalf of its affiliates, including Qwest Communications Corporation, Qwest LD Corp. and Qwest Corporation. The Bureau issued a public notice requesting comments on this Petition. *See Pleading Cycle Established for Comments on Petition of Qwest Communications International Inc. for Special Temporary Authority and Waiver to Support Disaster Planning and Response*, Public Notice, DA 06-902 (WCB Apr. 19, 2006).

<sup>4</sup> *See Petition of AT&T Inc. for Special Temporary Authority and Waiver to Support Disaster Planning and Response*, Order, WC Docket No. 06-63, DA 06-914 (WCB Apr. 20, 2006) (*AT&T STA Order*).

<sup>5</sup> 47 U.S.C. § 272. The structural safeguards of section 272(b) require that BOCs operate independently from their section 272 affiliates. *See* 47 U.S.C. § 272(b)(1). Moreover, section 272(c) requires that a BOC, in dealing with its section 272 affiliate, may not discriminate between its affiliate and an unaffiliated provider in the "provision or procurement of goods, services, facilities, and information, or the establishment of standards." *See* 47 U.S.C. § 272(b)(1).

<sup>6</sup> 47 C.F.R. §§ 64.1901-1903 (separate affiliate requirements for incumbent, independent LECs that provide in-region, interstate domestic interexchange services or in-region international interexchange services).

<sup>7</sup> For purposes of this Order, the accompanying rules of section 272 of the Act include section 32.27 of the Commission's price cap rules, and the Commission's tariffing rules in Part 61. *See* 47 C.F.R. § 32.27 and Part 61.

<sup>8</sup> 47 C.F.R. § 32.27.

<sup>9</sup> 47 C.F.R. Part 61.

<sup>10</sup> 47 C.F.R. § 64.1120(e).

<sup>11</sup> 47 C.F.R. §§ 51.325-335.

4. *Commission Decisions.* In response to Hurricane Katrina, the Bureau granted BellSouth a limited 120-day STA from the enforcement of section 272 and a waiver of the Commission's rules implementing section 272 to enable it to use its corporate network in its entire region to restore service after Hurricane Katrina.<sup>12</sup> The Bureau also granted BellSouth a limited STA from the enforcement of section 272 to the extent that such compliance was a condition precedent to BellSouth's authority to carry in-region, interLATA traffic within its region under section 271.<sup>13</sup> In response to Hurricane Rita, the Bureau granted SBC similar relief from section 272 and the Commission's rules governing compliance with section 272 limited to 45 days.<sup>14</sup> The Bureau further granted BellSouth and other affected incumbent local exchange carriers (LECs) a limited 180-day waiver of the prior notice and waiting period requirements of the Commission's network disclosure rules.<sup>15</sup> The Bureau held that compliance with these requirements would impede restoration efforts and therefore temporarily waived these rules to allow affected incumbent LECs to make necessary network changes in response to Hurricane Katrina.<sup>16</sup>

5. With respect to the Commission's rules regarding changes in preferred telecommunications service providers or "slamming" rules, the Consumer and Governmental Affairs Bureau (CGB) granted affected carriers a temporary, limited waiver of section 64.1120(e), which requires, among other things, that an acquiring carrier provide customers 30-days notice of a carrier change.<sup>17</sup> CGB determined that due to the damage to telecommunications systems and to promote the maintenance and rebuilding of communities affected by Hurricane Katrina, it was in the public interest to waive the 30-day customer notice requirement of section 64.1120(e).<sup>18</sup>

6. In preparation for the upcoming 2006 hurricane season, AT&T requested the flexibility to engage in disaster response planning ahead of an actual disaster, and also requested that the Commission grant it permission to invoke a disaster recovery plan, parts of which require STA or waivers. In April 2006, the Bureau granted AT&T a limited STA from the enforcement of section 272 and waiver of the Commission's rules implementing section 272 structural separation and nondiscrimination safeguards and a limited waiver of the Commission's network disclosure rules.<sup>19</sup> In granting AT&T this relief, the Bureau recognized that (1) the structural separation and nondiscrimination safeguards contained in section 272 ensure that the competitors of the BOCs' section 272 affiliates have nondiscriminatory access to essential inputs to provide competing services,<sup>20</sup> and (2) that with regard to network changes made by incumbent LECs, sections 51.325-335 of the Commission's nondisclosure rules require advance notice

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<sup>12</sup> See *Joint Application by BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Florida and Tennessee*, Order, 20 FCC Rcd 14657, 14659, para. 4 (WCB 2005) (*BellSouth STA Order*).

<sup>13</sup> *BellSouth STA Order*, 20 FCC Rcd at 14659, para. 4.

<sup>14</sup> See *Application by SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Order, 20 FCC Rcd 14832, 14835, paras. 4-5 (WCB 2005) (*SBC STA Order*).

<sup>15</sup> See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order, 20 FCC Rcd 14713, para. 1 (WCB 2005) (*Network Disclosure Waiver Order*); see also 47 C.F.R. §§ 51.325-335.

<sup>16</sup> *Network Disclosure Waiver Order*, 20 FCC Rcd at 14713, para. 1.

<sup>17</sup> See *Implementation of the Subscriber Carrier Section Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129; *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 00-257, Order, 20 FCC Rcd 14517-18, para. 1 (CGB 2005) (*Section 64.1120(e) Waiver Order*); see also 47 C.F.R. § 64.1120(e)(3).

<sup>18</sup> *Section 64.1120(e) Waiver Order* at 14518-19, para. 4. CGB required that carriers certify compliance with the requirements of section 64.1120(e) other than the 30-day customer notice period.

<sup>19</sup> *AT&T STA Order* at 4-5, paras. 9-11.

<sup>20</sup> *AT&T STA Order* at 2, para. 2.

and waiting periods before certain network changes can be made.<sup>21</sup> The Bureau determined, however, that the limited relief granted to AT&T from the section 272 structural separation and nondiscrimination safeguards and the Commission's network disclosure rules would provide AT&T the ability to engage in disaster relief planning and response without compromising the Commission's structural separation and network disclosure requirements.<sup>22</sup>

7. *BellSouth Petition.* On April 4, 2006, BellSouth filed a petition seeking the same relief as AT&T from the section 272 structural separation and nondiscrimination safeguards and the Commission's network disclosure rules.<sup>23</sup> In its Petition, BellSouth argues that based on its "experience in responding to Hurricanes Katrina and Rita, the relief requested by AT&T is critical to disaster preparedness."<sup>24</sup> Therefore, BellSouth seeks the same STA and waiver requested by AT&T.<sup>25</sup>

8. *Verizon and Qwest Petitions.* Verizon and Qwest also filed petitions on April 3, 2006 and April 13, 2006, respectively, seeking the same relief as AT&T and seeking relief from specific additional Commission rules.<sup>26</sup> Specifically, Verizon and Qwest also seek waiver of the following requirements: (1) dominant carrier tariffing and price cap requirements in Part 61 of the Commission's rules;<sup>27</sup> (2) accounting requirements in Part 32 of the Commission's rules;<sup>28</sup> (3) acquisition, discontinuance, and transfer of control requirements in Part 63 of the Commission's rules;<sup>29</sup> (4) the Commission's *Computer III* requirements;<sup>30</sup> and (5) any other Commission rule that could inhibit disaster planning and response.<sup>31</sup> Verizon also seeks a waiver of the affiliate requirements for independent incumbent telephone companies in Part 64 of the Commission's rules as they apply to its former GTE affiliates.<sup>32</sup>

### III. DISCUSSION

9. An STA is appropriate when the proposed action will serve the public interest, convenience and necessity.<sup>33</sup> A waiver of the Commission's rules is only appropriate if special circumstances warrant

<sup>21</sup> See *AT&T STA Order* at 5, para. 11; see also 47 C.F.R. §§ 51.325-335.

<sup>22</sup> *AT&T STA Order* at 3-5, paras. 7-11.

<sup>23</sup> BellSouth Petition at 1-2.

<sup>24</sup> BellSouth Petition at 1.

<sup>25</sup> BellSouth Petition at 1-2.

<sup>26</sup> See Verizon Petition at 1-3; see also Qwest Petition at 2-4.

<sup>27</sup> 47 C.F.R. §§ 61.28, 61.32, 61.33, 61.38, 61.41-61.49, 61.58 and 61.59; see also Verizon Petition at 2; Qwest Petition at 3.

<sup>28</sup> *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, 11 FCC Rcd 17539 (1996); see also Verizon Petition at 2; Qwest Petition at 3.

<sup>29</sup> 47 C.F.R. §§ 63.12(b)(2), 63.19(b), 63.21(c), and 63.71(c) (second half of section); see also Verizon Petition at 2-3; Qwest Petition at 3.

<sup>30</sup> *Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, Report and Order, 104 FCC 2d 958, 1026-27, paras. 127-31 (1986); *Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation*, Report and Order, 9 FCC Rcd 4922 (1994); see also Verizon Petition at 2; Qwest Petition at 3.

<sup>31</sup> Verizon Petition at 3; Qwest Petition at 3. The requested relief from Part 63 of the Commission's rules and the Commission's *Computer III* requirements are not granted at this time.

<sup>32</sup> 47 C.F.R. § 64.1903(a); see also Verizon Petition at 2.

<sup>33</sup> See *Accounting Safeguards Under the Telecommunications Act of 1996*, Order, 16 FCC Rcd 17969, 17970, para. 3 (CCB 2001) (applying STA standards to a request by Verizon Communications, Inc. to repair damage to telecommunications facilities in New York City after September 11, 2001, implicating section 272 and

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a deviation from the rule and such deviation will better serve the public interest than adherence to the rule.<sup>34</sup> The Bureau finds that to ensure the most rapid and efficient response possible in times of public emergencies, it is in the public interest to grant the Petitioners temporary STA from the enforcement of certain statutory requirements and waiver of certain Commission rules to plan for, and implement, disaster recovery.

10. Accordingly, for the reasons set forth in the *AT&T STA Order* and as discussed below, we grant the Petitioners a limited STA from the enforcement of section 272 and waiver of the relevant rules implementing section 272 information sharing prohibitions.<sup>35</sup> Moreover, in the event of a disaster, the Bureau grants the Petitioners a limited STA from section 272 and waiver of the rules implementing section 272 structural separation and nondiscrimination safeguards, including section 32.27 and Part 61 of the Commission's rules. The Bureau also grants Petitioners a limited waiver of certain Commission "slamming" rules and certain Commission network disclosure rules. Consistent with the *AT&T STA Order*, the relief for disaster recovery planning begins immediately and runs for one year from the date of the issuance of this Order, and the time-limited relief for disaster recovery response begins as of the date either BellSouth, Verizon or Qwest invokes its disaster recovery plan.<sup>36</sup>

#### A. Integrated Disaster Recovery Planning

11. We grant the Petitioners a one-year STA from the enforcement of section 272 of the Act and waiver of the Commission's accounting and non-accounting structural separation safeguards to share non-public, BOC network information with its section 272 affiliates (as well as other affiliates that adhere to the section 272-like safeguards), as necessary, to engage in integrated disaster planning.<sup>37</sup> We agree with BellSouth's statement that sharing information prohibited by the structural separation safeguards is critical to "the development of and continuous updates to disaster plans."<sup>38</sup> We recognize, as we did in the *AT&T STA Order*, that the Petitioners need to identify vulnerable points, or "choke points" throughout their networks to prepare for alternate routing in the case of a disaster.<sup>39</sup> Moreover, Verizon and Qwest

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implementing rules); see also *Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Order, 16 FCC Rcd 15957, 15958, para. 3 (CCB 2001) (addressing standard for granting STAs); 47 U.S.C. §§ 154(i), 214(a), 303(r).

<sup>34</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>35</sup> For Verizon, this includes the structural separation requirements of Part 64, Subpart T as they apply to the former GTE company affiliates. See *infra* para. 13.

<sup>36</sup> *AT&T STA Order* at 3, para. 6.

<sup>37</sup> See BellSouth Petition at 4-5; see also Verizon Memorandum at 3-4; Qwest Petition at 2-3; *AT&T STA Order* at 3-4; *Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17359 (1996), Second Order on Reconsideration, 15 FCC Rcd 1161 (2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996), First Order on Reconsideration, 12 FCC Rcd 2297 (1997), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997), *aff'd sub nom. Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, 14 FCC Rcd 16299 (1999); 47 C.F.R. §§ 32.27, 53.1-213, 64.901-904.

<sup>38</sup> BellSouth Petition at 6.

<sup>39</sup> *AT&T STA Order* at 3-4, para. 7; see also BellSouth Petition at 6 ("Through the sharing of such information, BellSouth would be able to evaluate and establish alternate retreat points and paths for the routing of traffic in the case of a catastrophe."); Verizon Memorandum at 2-3 ("Verizon is also continuing to identify vulnerable points in its networks and resources that could be used to repair failures at those vulnerable points. These efforts can be done more efficiently and effectively on an integrated basis across Verizon's affiliated entities.") Qwest Petition at 5

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note that, like AT&T, they seek to implement an integrated disaster recovery plan to minimize service outages to their federal and state government customers.<sup>40</sup>

12. We find that the sharing of such non-public, BOC network information between the Petitioners and their respective affiliates is reasonable and serves the public interest as limited to the disaster recovery planning efforts as described herein. As in the *AT&T STA Order*, the unique circumstances of a hurricane or other disaster warrant a deviation from section 272 and the accompanying rules, and such deviation will better serve the public interest in a time of emergency.<sup>41</sup> Further, as ordered in the *AT&T STA Order*, the relief granted in this Order shall become effective immediately upon release to allow the Petitioners to commence preparations for the upcoming hurricane season.<sup>42</sup>

13. We also grant Verizon a one-year waiver of the structural separation requirements for incumbent, independent LECs in Part 64, Subpart T of the Commission's rules as they apply to its former GTE company affiliates.<sup>43</sup> These rules set forth prohibitions on the types of corporate sharing necessary to engage in integrated disaster relief planning.<sup>44</sup> Therefore, in order to allow Verizon the flexibility to plan for upcoming hurricanes or other disasters with all of its affiliates, including the former GTE companies, we find that the public interest is served by limited relief from the separate affiliate rules governing incumbent, independent LECs. This relief shall become effective immediately upon release of this Order.

## B. Disaster Recovery Response

14. *Relief from Structural Separation Requirements.* We grant the Petitioners a limited STA from the enforcement of section 272 and waiver of the Commission's accompanying rules, so they may use their corporate networks, personnel and facilities, including their affiliates, throughout their entire regions to respond to a disaster.<sup>45</sup> To fully implement the section 272 relief, we grant the Petitioners relief from the Commission's "arms length" requirement in section 32.27 of the Commission's rules, *i.e.*, negotiating at arm's length, reducing such transactions to writing on an Internet site, and valuing such transactions in accordance with the affiliate transaction rules.<sup>46</sup> We find that compliance with this rule

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("Qwest must be allowed to do the necessary advance work to create an effective plan and to coordinate this effort across the entire Qwest family of companies. Among other things, this requires that all Qwest entities have the ability to identify vulnerabilities ahead of time and to attempt to integrate incident response management.").

<sup>40</sup> See *AT&T STA Order* at 3-4, para. 7; see also Verizon Memorandum at 3 ("Verizon's federal government customers include the Executive Branch, the Legislature, the Judiciary and nearly all independent agencies. Verizon also provides these services to state and local governments, including 911 response centers, hospitals, fire departments, law enforcement agencies and mass transit providers."); Qwest Petition at 4 ("Given that Qwest is also a major telecommunications provider to government and non-government agencies that are directly involved in disaster response, disaster planning and responses are equally critical to Qwest."). Nothing in this Order shall override the restoration priority rules of Part 64, Subpart D. See 47 C.F.R. § 64.401.

<sup>41</sup> See *AT&T STA Order* at 4, para. 8.

<sup>42</sup> *Id.*

<sup>43</sup> 47 C.F.R. §§ 64.1901-1903; see also Verizon Petition Supplement at 3-4. Although Verizon requests indefinite relief from these requirements, we limit the duration to one year and can revisit at the appropriate time whether it is necessary to extend the relief.

<sup>44</sup> See Verizon Petition Supplement at 4.

<sup>45</sup> BellSouth Petition at 4-7; Verizon Petition at 1; Qwest Petition at 7.

<sup>46</sup> 47 C.F.R. §32.27; see also *Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150; *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149; *In re Application of GTE Corporation, Transferor, and Bell Atlantic*

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may be impossible during a hurricane or other disaster and at a minimum, would impede efforts at disaster recovery.<sup>47</sup> We grant this relief for a 45-day period after BellSouth, Verizon or Qwest invokes its disaster recovery plan.<sup>48</sup> As noted by Verizon, after the emergency is over, Petitioners will use whatever records are available and rely, if necessary, on estimates or other reasonable means to establish the prices for the provision of assets and services between companies for purposes of Part 32.<sup>49</sup>

15. *Relief from Tariff Filing Requirements.* We also find that compliance with the dominant carrier tariffing requirements of Part 61 of the Commission's rules may be impossible during a hurricane or other disaster or would otherwise impede efforts at disaster recovery. Accordingly, we grant the Petitioners a waiver of the Part 61 filing requirements for tariffs or contracts associated with restoral services that would otherwise apply to interstate telecommunications services provided by the Petitioners on an integrated basis.<sup>50</sup> We find a waiver of these rules serves the public interest in achieving rapid and efficient recovery in the event of a hurricane or other disaster. We grant this relief for a 45-day period after BellSouth, Verizon or Qwest invokes its disaster recovery plan.<sup>51</sup> As noted by Verizon, this relief will allow Petitioners to install services to other carriers and customers during the emergency and determine following the 45-day period whether such services are covered by existing tariffs or require modified or new tariffs to be filed.<sup>52</sup> Such filings would go through the normal tariff review process.<sup>53</sup>

16. Moreover, consistent with the *AT&T STA Order*, we limit the Petitioners' authority by the following two conditions. First, each of the Petitioners will notify the Commission as soon as possible, and in no event later than 24 hours, that it has invoked its disaster recovery plan and will not be complying with section 272 and the accompanying rules, including the tariff filing requirements, discussed above. Second, if the Petitioners require additional time beyond 45 days to operate without complying with section 272 and the accompanying rules, including the tariff filing requirements, we expect that each of the Petitioners will request additional relief from the Commission, accompanied by a status report addressing its progress and indicating when it expects to resume compliance with these requirements.<sup>54</sup>

17. *Relief from Certain Commission Rules Regarding Slamming.* The Bureau further grants the Petitioners a limited waiver of the Commission's rules regarding "slamming." Specifically, we grant the Petitioners a waiver of the customer 30-day notice period in section 64.1120(e) of the Commission's rules, consistent with the *Section 64.1120(e) Waiver Order* issued in response to Hurricane Katrina.<sup>55</sup> Section 64.1120(e), as part of the Commission's streamlined carrier change authorization rules, requires an acquiring carrier, no later than 30 days before a planned carrier change, to notify the Commission in

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*Corporation, Transferee for Consent to Transfer Control of Domestic and International 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License, CC Docket No. 98-184, Order, 16 FCC Rcd 17969, 17970-71, para. 4 n.7 (WCB 2001).*

<sup>47</sup> Verizon Petition Supplement at 5.

<sup>48</sup> See *AT&T STA Order* at 4, para. 9.

<sup>49</sup> See Verizon Petition Supplement at 5.

<sup>50</sup> See *BellSouth STA Order*, 20 FCC Rcd at 14659, para. 4.

<sup>51</sup> See *AT&T STA Order* at 4, para. 9.

<sup>52</sup> See Verizon Petition Supplement at 6.

<sup>53</sup> *Id.*

<sup>54</sup> *AT&T STA Order* at 4-5, para. 10.

<sup>55</sup> *Section 64.1120(e) Waiver Order*, 20 FCC Rcd at 14517-18, para. 1.

writing of its intention to acquire subscribers.<sup>56</sup> Moreover, the acquiring carrier must certify that it will comply with all required procedures, which include the provision of 30-day advance written notice to all affected subscribers.<sup>57</sup>

18. We find it is in the public interest to allow carriers the flexibility to migrate customers in an effort to restore service in the event of a hurricane or other disaster and therefore, waive the 30-day customer notice requirement of section 64.1120(e) of the Commission's rules. However, consistent with the *Section 64.1120(e) Waiver Order*, the Petitioners, as acquiring carriers, must provide customers with notice of any transfer as soon as is practicable, including the rates, terms and conditions of the service provided in accordance with Commission rules.<sup>58</sup> In addition, the Petitioners should provide the Commission, as soon as is practicable, certification of compliance with the requirements of section 64.1120(e), except the 30-day notice period waived herein.<sup>59</sup> This certification to the Commission should (1) be filed in CC Docket No. 00-257, (2) indicate that the Petitioner has complied with the terms of this waiver, and (3) include a copy of the notice sent to the affected subscribers.<sup>60</sup> We expect that Petitioners will provide the affected customers with the same rates, terms and conditions of service as the customers' originally authorized carrier.<sup>61</sup> In addition, when the originally authorized carriers of the affected customers are once again able to provide service, the Petitioners must facilitate the return of customers to their original carriers. As ordered in the *Section 64.1120(e) Waiver Order*, we limit the waiver period to nine months from the date of the invocation of the Petitioners' disaster recovery plans.<sup>62</sup>

19. *Relief from the Commission's Network Disclosure Rules.* We further grant the Petitioners a limited waiver of the Commission's network disclosure rules that require advance notice and waiting periods before certain incumbent LECs' network changes can be made.<sup>63</sup> As we found in the *AT&T STA Order* as well as our *Network Disclosure Waiver Order*, we find that in the event of a disaster, requiring compliance with these rules would impede restoration efforts and delay recovery and therefore waiver of the Commission's network disclosure rules serves the public interest given the unique circumstances of a hurricane or other disaster.<sup>64</sup> As ordered in the *AT&T STA Order* and the *Network Disclosure Waiver Order*, we limit the waiver period to 180 days after the Petitioners invoke their disaster recovery plans.<sup>65</sup> Moreover, the waiver is limited to only those advance notice and waiting period requirements associated with network changes that are a direct result of damage to the Petitioners' network infrastructure caused by the disaster. Further, during the period covered by this waiver, the Petitioners must continue to comply with section 51.325(a)<sup>66</sup> and must communicate with other carriers to ensure that such carriers are

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<sup>56</sup> 47 C.F.R. § 64.1120(e)(1).

<sup>57</sup> 47 C.F.R. § 64.1120(e)(3).

<sup>58</sup> *Section 64.1120(e) Waiver Order*, 20 FCC Rcd at 14518, para. 3.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> As held in the *Section 64.1120(e) Waiver Order*, if the rates charged by the acquiring carrier are higher than the rates charged by the originally authorized carrier, we expect that the difference in rates will be refunded to the customers. *See id.*

<sup>62</sup> *Section 64.1120(e) Waiver Order*, 20 FCC Rcd at 14518, para. 3.

<sup>63</sup> *See* 47 C.F.R. §§ 51.325-335.

<sup>64</sup> *See AT&T STA Order* at 5, para. 11; *see also Network Disclosure Waiver Order*, 20 FCC Rcd at 14713, para. 1; 47 C.F.R. § 1.3 (permitting the Commission to waive its rules for good cause shown).

<sup>65</sup> *See AT&T STA Order* at 5, para. 11; *see also Network Disclosure Waiver Order*, 20 FCC Rcd at 14714, para. 4.

<sup>66</sup> 47 C.F.R. § 51.325(a) (setting forth the circumstances in which an incumbent LEC must provide public notice of a network change, including, among other things, network changes that will affect a competing service provider's

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aware of any changes being made to their networks that may impact their operations. Finally, consistent with Commission precedent, if the Petitioners need additional relief beyond the expiration of the waiver, they must request such authority accompanied by a status report addressing their progress and indicating when they expect to resume compliance with these requirements.<sup>67</sup>

#### IV. ORDERING CLAUSE

20. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), 5, 201, 214(a), 251(c)(5), 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 155, 201, 214(a), 251(c)(5), 271, 272, and 303(r) and sections 0.91, 0.291, 1.3, 32.27, 51.325-335, Part 61, 64.1120(e), and 64.1901-1903 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 32.27, 51.325-335, Part 61, 64.1120(e), and 64.1901-1903 BellSouth's Petition IS GRANTED and the Verizon and Qwest Petitions ARE GRANTED to the extent set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin  
Chief, Wireline Competition Bureau

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(...continued from previous page)  
ability to provide service and an incumbent LEC's interoperability with other service providers); *id.* at §§ 51.325(a)(1)-51.325(a)(2).

<sup>67</sup> *AT&T STA Order* at 5, para. 11.