

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

In the Matter of)
)
Petition of AT&T Inc. for Special)
Temporary Authority and Waiver) WC Docket No. 06-63
To Support Disaster Planning and)
Response)

ORDER

Adopted: April 20, 2006

Released: April 20, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In the wake of the devastating 2005 hurricane season, the Commission has encouraged the telecommunications industry to take proactive steps to protect the telecommunications infrastructure in the event of future disasters.¹ Through our action today, the Wireline Competition Bureau (Bureau) provides limited but critical relief from potential impediments to preparation for and response to natural and other disasters. In this Order, the Bureau grants a petition filed by AT&T, Inc. (AT&T) seeking time-limited Special Temporary Authority (STA) and waiver of certain statutory provisions and Commission rules in order to provide AT&T with the flexibility necessary to plan for and undertake disaster recovery, similar in many respects to the regulatory relief granted in response to the 2005 hurricane season.² Specifically, with regard to disaster response planning, we grant AT&T a limited, one-year STA and waiver of section 272 and the Commission’s rules to allow it to share non-public, Bell Operating Company (BOC) network information with its section 272 and other affiliates, as necessary. We also grant AT&T, upon its invocation of its disaster response plan, a limited STA and waiver of section 272 and the accompanying rules to permit use of AT&T’s corporate network, personnel and facilities, including its affiliates, throughout its entire region; and a waiver of the Commission’s network disclosure rules’ prior notice and waiting period requirements.³

¹ In response to Hurricane Katrina, the Commission established an independent panel to review the impact of Hurricane Katrina on the telecommunications and media infrastructure and make recommendations to the Commission regarding ways to improve disaster preparedness. See Announcement of Federal Advisory Committee, known as the “Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks,” 71 Fed. Reg. 933 (2005); see also The FCC Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Charter, available at www.fcc.gov/eb/hkip/.

² Petition of AT&T Inc. for Special Temporary Authority and Waiver to Support Disaster Planning and Response, WC Docket No. 06-63 at 6 (filed Mar. 10, 2006) (AT&T Petition). The Bureau issued a public notice requesting comments on this Petition. See Pleading Cycle Established for Comments on Petition of AT&T Inc. for Special Temporary Authority and Waiver to Support Disaster Planning and Response, Public Notice, DA 06-590 (WCB Mar. 17, 2006).

³ See AT&T Petition at 1-4; see also 47 U.S.C. § 272, 47 C.F.R. §§ 51.325-51.335.

II. BACKGROUND

2. 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. The structural safeguards of section 272(b) require that BOCs operate independently from their section 272 affiliates.⁴ 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."⁵ With regard to network changes made by incumbent local exchange carriers (LECs), sections 51.325-51.335 of the Commission's nondisclosure rules require advance notice and waiting periods before certain network changes can be made.⁶

3. In response to the 2005 hurricane season, the Bureau granted STAs and waivers from the structural separation requirements of section 272 and the Commission's network disclosure rules in order to allow carriers to engage in disaster recovery. Specifically, in response to Hurricane Katrina, the Bureau granted BellSouth an STA for a limited 120-day period to enable it to use its corporate network in its entire region without complying with section 272 and the Commission's rules implementing section 272.⁷ The Bureau also waived compliance with 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 271.⁸ 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.⁹ With respect to the Commission's network disclosure rules, the Bureau granted BellSouth a limited 180-day waiver of the prior notice and waiting period requirements of sections 51.325-51.335 in order to allow BellSouth to make necessary network changes in response to Hurricane Katrina.¹⁰

4. On March 10, 2006, AT&T filed a petition seeking an STA and waiver of the statute and the Commission's rules to engage in integrated disaster planning and response. AT&T seeks this relief in advance of the upcoming hurricane season in order to put AT&T in the best position to prevent, or at least minimize, service disruption in the event of a disaster.¹¹ Specifically, AT&T seeks the following relief: (1) immediate relief from section 272 with respect to the prohibition on sharing non-public, BOC network information with affiliates in order to begin disaster planning; (2) in the event of a disaster, relief from section 272 structural separation and nondiscrimination safeguards so it may use its corporate network, personnel and facilities, including its affiliates, throughout its entire region; and (3) in the event of a disaster, relief from the prior notice and waiting period requirements of the Commission's network disclosure rules.¹²

⁴ See 47 U.S.C. § 272(b)(1).

⁵ See 47 U.S.C. § 272(c)(1).

⁶ See 47 C.F.R. §§ 51.325-51.335.

⁷ *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*).

⁸ *BellSouth STA Order* at 14659 para. 4.

⁹ 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 para. 4 (WCB 2005) (*SBC STA Order*).

¹⁰ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order, 20 FCC Rcd 14713 (WCB 2005) (*Network Disclosure Waiver Order*).

¹¹ AT&T Petition at 2.

¹² AT&T Petition at 1, 3-4.

5. As discussed below, with respect to AT&T's request for immediate relief from the section 272 requirements, for planning purposes, the Bureau grants AT&T a limited STA and waiver of the relevant section 272 information sharing prohibitions for a one-year period. Moreover, in the event of a disaster, the Commission grants AT&T a limited STA and waiver of the section 272 structural separation and nondiscrimination safeguards for a period of 45 days and a limited waiver of the Commission's network disclosure rules for a period of 180 days. We find such limited relief will provide AT&T the ability to engage in disaster relief planning and response without compromising the Commission's structural separation and network disclosure requirements.

III. DISCUSSION

6. In determining whether to grant an STA, we look at whether the proposed action will serve the public interest, convenience and necessity.¹³ Moreover, the Commission has authority to waive any provision of its rules for good cause shown.¹⁴ The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.¹⁵ A party seeking a waiver of a Commission rule must demonstrate that the rule is unjust as applied to the party given the unique circumstances of the situation.¹⁶ Thus, waiver is appropriate only if special circumstances warrant a deviation from the rule and such deviation will better serve the public interest than adherence to the rule.¹⁷ To ensure the most rapid and efficient response possible in times of public emergencies, we find that the public interest is best served by granting AT&T temporary relief from certain requirements to plan for, and implement, disaster recovery. As described in more detail below, 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 AT&T invokes a disaster recovery plan.

A. Integrated Disaster Recovery Planning

7. We grant AT&T a one-year STA and waiver of section 272 of the Act and the Commission's accounting and non-accounting structural separation safeguards.¹⁸ Specifically, we permit AT&T to share

¹³ 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 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).

¹⁴ See 47 C.F.R. § 1.3 ("The provisions of this chapter may be suspended, revoked, amended or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.").

¹⁵ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁶ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) ("An applicant for waiver faces a high hurdle even at the starting gate."); see also *Rio Grande Family Radio Fellowship, Inc., v. FCC*, 406 F.2d 664, 666 (D.C. Cir. 1968) ("When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.").

¹⁷ *Northeast Cellular Tel. Co.*, 897 F.2d at 1166.

¹⁸ See AT&T Petition at 3; see also *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*

(continued....)

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.¹⁹ We agree with AT&T that the importance and logistics of disaster preparation necessitate relief from the structural separation safeguards. AT&T asserts that in order to develop an adequate disaster contingency plan, it needs to share proprietary network information among personnel across AT&T's affiliates, including its section 272 long-distance affiliates, in order to understand how various disaster scenarios could affect its network.²⁰ AT&T claims that by doing so, it will identify network vulnerabilities, such as "choke points," facilities that are critical to the proper functioning of the local network, but that may be vulnerable in a disaster, such as certain local tandem and transport facilities.²¹ AT&T further asserts such integrated planning is critical not only to minimize service outages to consumers during a disaster, but also to minimize service outages to certain AT&T government customers that are responsible for disaster response, including the Department of Homeland Security and the Federal Emergency Management Agency.²²

8. We find that the sharing of such non-public, BOC network information between AT&T and its affiliates is reasonable and serves the public interest where it is limited to the disaster recovery planning efforts as described in the AT&T Petition. 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. This relief will allow AT&T to develop risk mitigation strategies and contingency plans that will reduce the likelihood and duration of any service outage, and will permit AT&T's network to continue to operate in the event a "choke point" is compromised.²³ This Order shall become effective immediately upon release to allow AT&T to commence preparations for the upcoming hurricane season.

B. Disaster Recovery Response

9. *Relief from Section 272 Structural Separations.* We also grant AT&T a limited STA and waiver of section 272, and the Commission's accompanying rules, so that AT&T has the ability to use its corporate network, personnel and facilities, including its affiliates, in its entire region to respond to a disaster.²⁴ We grant this relief for a 45-day period after AT&T invokes its disaster recovery plan, similar to the relief the Bureau granted carriers in response to Hurricanes Katrina and Rita.²⁵

10. Restoring full telecommunications service in regions affected by a disaster as quickly as possible is critical to the overall recovery operation in the event of a disaster. Thus, there is a compelling

(...continued from previous page)

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, 53.1-53.213, 64.901-64.904.

¹⁹ Commenters support the relief requested in the AT&T Petition. See, e.g., Verizon Comments at 1; see also Qwest Comments at 1; *Petition of BellSouth Corporation for Special Temporary Authority And Waiver to Support Disaster Planning and Response* (filed April 4, 2006) (requesting the same relief from section 272 and the Commission's network disclosure rules as AT&T).

²⁰ AT&T Petition at 3.

²¹ AT&T Petition at 11.

²² AT&T Petition at 2-3. AT&T also provides service to local government bodies, airports, police, fire and emergency responders. AT&T Petition at 8; Letter from Michelle M. Sclater, Associate Director – Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC (filed Mar. 27, 2006) (*AT&T Ex Parte Letter*).

²³ See *AT&T Ex Parte Letter* Attachment.

²⁴ AT&T Petition at 14.

²⁵ See *BellSouth STA Order*, 20 FCC Rcd 14657; see also *SBC STA Order*, 20 FCC Rcd 14832.

public interest in rapidly restoring the flow of telecommunications traffic throughout a disaster area that warrants a waiver of section 272 and the accompanying rules. In order to allow AT&T to respond to a disaster rapidly and efficiently, we find it is reasonable to grant AT&T's request. We limit AT&T's authority, however, by the following two conditions: (1) AT&T will notify the Commission as soon as possible, and in no event later than 24 hours, that it has invoked its disaster recovery plan without complying with the section 272 requirements; and (2) should AT&T require additional time beyond 45 days to operate without complying with section 272, we expect it will request additional relief from the Commission, accompanied by a status report addressing its progress and indicating when it expects to resume compliance with section 272 requirements.

11. *Relief from the Commission's Network Disclosure Rules.* We further grant AT&T a limited waiver of the Commission's network disclosure rules. Sections 51.325-51.335 of the Commission's rules require advance notice and waiting periods before certain incumbent LECs' network changes can be made.²⁶ We find that in the event of a disaster, requiring compliance with these rules would impede restoration efforts and delay recovery.²⁷ We therefore waive these network disclosure rules as adherence to these rules would not serve the public interest given the unique circumstances of a hurricane or other disaster. The Bureau limits the waiver in time and scope consistent with the *Network Disclosure Waiver Order* the Bureau issued in response to Hurricane Katrina.²⁸ Specifically, we limit the waiver period to 180 days after AT&T invokes its disaster recovery plan. 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 AT&T's network infrastructure caused by the disaster. Further, during the period covered by this waiver, AT&T must continue to comply with section 51.325(a) and must communicate with other carriers to ensure that such carriers are aware of any changes being made to their networks that may impact their operations. Should AT&T need additional relief beyond the expiration of the waiver, AT&T must request such authority accompanied by a status report addressing its progress and indicating when it expects to resume compliance with these requirements.

IV. ORDERING CLAUSE

12. 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, and 51.325-51.335 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 51.325-51.335 AT&T's Petition IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief, Wireline Competition Bureau

²⁶ See 47 C.F.R. §§ 51.325-51.335.

²⁷ See 47 C.F.R. § 1.3 (permitting the Commission to waive its rules for good cause shown); see also *Network Disclosure Waiver Order*, 10 FCC Rcd 14713.

²⁸ See *Network Disclosure Waiver Order*, 10 FCC Rcd 14713, para. 4.