

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

In the Matter of)
Resilient Networks) PS Docket No. 21-346
Amendment to Part 4 of the Commission's Rules) PS Docket No. 15-80
Concerning Disruptions to Communications)
New Part 4 of the Commission's Rules Concerning) ET Docket No. 04-35
Disruptions to Communications)

ORDER

Adopted: May 16, 2024

Released: May 16, 2024

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, the Federal Communications Commission's (Commission) Public Safety and Homeland Security Bureau (Bureau) grants the limited waiver request jointly submitted by Southern Communications Services, Inc. d/b/a Southern Linc (Southern Linc) and Pine Belt Cellular, Inc. (Pine Belt). Southern Linc and Pine Belt request a limited waiver of the Commission's Mandatory Disaster Response Initiative (MDRI) bilateral roaming testing requirement to allow the parties to defer testing of their roaming capabilities pursuant to their roaming under disaster (RuD) agreement from the expected compliance date of May 1, 2024 until six months after Pine Belt has completed the removal, replacement, and disposal of all covered ZTE equipment on its network. Based on the circumstances discussed below, we find that a waiver of the Commission's rule would serve the public interest.

II. BACKGROUND

2. In 2022, the Commission adopted the MDRI in order to improve the reliability and resiliency of facilities-based mobile wireless networks in light of disasters and other emergencies of increasing frequency and severity. The MDRI codified the voluntary commitments of the Wireless Network Resiliency Cooperative Framework making such commitments mandatory and extended them to all facilities-based mobile wireless providers. Under the MDRI, all facilities-based mobile wireless providers are required to: (1) provide for reasonable RuD arrangements when technically feasible; (2) establish mutual aid agreements with other facilities-based mobile wireless providers; (3) take

1 Request for Limited Waiver by Southern Linc and Pine Belt Cellular, PS Docket Nos. 21-346 and 15-80, and ET Docket No. 04-35 (filed Apr. 22, 2024) https://www.fcc.gov/ecfs/search/search-filings/filing/1042261095263 (Joint Waiver).

2 Joint Waiver at 1-2.

3 Resilient Networks; Amendments of Part of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications, PS Docket Nos. 21-346 and 15-80 and ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-50 (rel. July 6, 2022) (Order).

4 Order at para. 3.

reasonable measures to enhance municipal preparedness and restoration; (4) take reasonable measures to increase consumer readiness and preparation; and (5) take reasonable measures to improve public awareness and stakeholder communications on service and restoration status, through Commission posting of data on cell site outages on an aggregated, county-by-county basis in the relevant area through its Disaster Information Reporting System (DIRS).⁵ Facilities-based mobile wireless providers are required to perform “annual testing of their roaming capabilities and related coordination processes, with such testing performed bilaterally with other providers that may foreseeably roam, or request roaming from, the provider during times of disaster or other exigency.”⁶

3. In its *Order on Reconsideration* in this proceeding, the Commission established a single compliance date of May 1, 2024 for all facilities-based mobile wireless providers to implement all provisions of the MDRI under section 4.17.⁷ The *Order on Reconsideration* also recognized the possibility that a provider’s need to complete activities pursuant to the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program)⁸ prior to implementing or completing initial testing of RuD or mutual aid agreements under the MDRI could delay timely compliance with the MDRI rules, stating that such instances could be addressed in a petition for waiver.⁹

4. On April 22, 2024, Southern Linc and Pine Belt jointly filed a Request for Limited Waiver pursuant to section 1.925 seeking an extension of the May 1, 2024 compliance deadline to complete initial bilateral testing of their RuD agreement as required by section 4.17(b).¹⁰ Southern Linc, a wholly owned subsidiary of Southern Company, operates a commercial digital 800 MHz ESMR system in Georgia, Alabama, and southeastern Mississippi that is widely used by state and local public safety agencies, school districts, rural local governments, public utilities, and other emergency responders.¹¹ Southern Linc also provides private network services that support “critical electric utility operations.”¹² To protect the security of its network and electric grid operations, Southern Linc prohibits “any

⁵ *Order* at paras. 5 and 11.

⁶ 47 CFR § 4.17(b).

⁷ *Resilient Networks; Amendments of Part of the Commission’s Rules Concerning Disruptions to Communications; New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, PS Docket Nos. 21-346 and 15-80 and ET Docket No. 04-35, *Order on Reconsideration*, FCC 23-71, at para 1 (rel. Sept. 15, 2023) (*Order on Reconsideration*),.

⁸ Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, § 4(a)-(c), 134 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601-1609). The Commission adopted rules implementing the Secure Networks Act on December 10, 2020. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Second Report and Order, 35 FCC Rcd 14284 (2020). On July 13, 2021, the Commission amended its rules, consistent with amendments to the Secure Networks Act included in the Consolidated Appropriations Act, 2021. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Third Report and Order, 36 FCC Rcd 11958, 11959, Appx. A (2021) (*2021 Supply Chain Order*). The Commission later clarified that, for purposes of the Reimbursement Program, covered communications equipment or services is limited to the communications equipment or services produced or provided by Huawei Technologies Company (Huawei) or ZTE Corporation (ZTE) that were obtained by providers on or before June 30, 2020. *See 2021 Supply Chain Order*, 36 FCC Rcd at 11965, Appx. A; *see also generally Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – Huawei Designation*, PS Docket No. 19-351, *Order*, 35 FCC Rcd 6604 (PSHSB 2020); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – ZTE Designation*, PS Docket No. 19-352, *Order*, 35 FCC Rcd 6633 (PSHSB 2020).

⁹ *See Order on Reconsideration* at para. 22.

¹⁰ Joint Waiver at 1-2.

¹¹ *Id.* at 2, 3.

¹² *Id.* at 3.

communications equipment or service” on its network that is on the Commission’s Covered List as well as “any infrastructure connection with any network or system that has covered communications equipment or services.”¹³

5. Pine Belt operates a commercial mobile wireless LTE network that provides 4G mobile voice and data services to customers in west central Alabama.¹⁴ Pine Belt is a participant in the Commission’s Reimbursement Program and is in the process of removing, replacing and disposing of covered ZTE equipment and services from its network.¹⁵ Pine Belt separately requested and received a six-month extension until January 17, 2025 to complete its removal, replacement, and disposal activities in light of significant and unavoidable delays due to supply chain and other logistical issues, as well as significant financial constraints due to the lack of full Reimbursement Program funding.¹⁶

6. Southern Linc and Pine Belt jointly seek a waiver pursuant to section 1.925 of the Commission’s rules for the completion of the initial round of bilateral testing of roaming capabilities between the parties.¹⁷ The request argues that in light of the specific factual circumstances presented, grant of the limited waiver requested would be in the public interest.¹⁸ Southern Linc and Pine Belt assert they are unable to perform a complete first round of testing under their RuD agreement by the May 1, 2024 compliance date because, given insecure elements present on Pine Belt’s network,¹⁹ establishing the connections necessary to perform such testing would introduce security vulnerabilities and create increased security risks to Southern Linc’s network.²⁰ The waiver request represents that it is not possible to remove the insecure elements of Pine Belt’s network before the May 1, 2024 MDRI compliance date.²¹ The Joint Waiver describes how Southern Linc implements security measures to “mitigate some risks,” but expresses concern about “the potential for a sophisticated nation-state actor, like China’s Volt Typhoon, to exploit a roaming partner’s network as a conduit for attacks against Southern Linc, Southern Company, and the broader Southeast United States electric grid....”²² The parties assert that to protect Southern Linc’s network security and electric grid operations, Southern Linc “cannot permit any infrastructure connections – including those required to test and support roaming – with Pine Belt’s network” until Pine Belt removes and replaces all ZTE communications equipment and services on its network.²³

III. DISCUSSION

7. Under section 1.925(b)(3), the Commission may grant a request for waiver if it is shown

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 4 and Attachment A. See also *Streamlined Resolution of Requests Under the Secure and Trusted Communications Networks Reimbursement Program*, Public Notice, DA 24-407, at 7 (rel. Apr. 30, 2024).

¹⁷ *Id.* at 1, 9. Southern Linc and Pine Belt do not request a waiver of any other provisions of the MDRI rules. Joint Waiver at 9.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 8. These elements include Pine Belt’s “insecure ZTE 4G LTE core and several ZTE 4G LTE RAN nodes....” *Id.* (citing *Id.* at Attachment A at 2). “[T]hese insecure elements will need to remain in service until funds are available to make the final replacements or the allowed time expires....” *Id.* (citing *Id.* at Attachment A at 2).

²⁰ *Id.* at 7.

²¹ *Id.* at 9.

²² *Id.*

²³ Joint Waiver at 8-9.

that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²⁴ In addition, section 1.3 provides that the Commission may waive any provision of its rules on its own motion for good cause.²⁵ In this case, we are persuaded that based on the factual circumstances of the instant case, it would be contrary to the public interest to require strict application of the May 1, 2024 compliance date.

8. Southern Linc has demonstrated that its networks carry a variety of public safety communications and support critical electric utility operations. We agree that completing initial testing of bilateral RuD arrangements as required by the MDRI rules would require Southern Linc and Pine Belt to have network infrastructure connections between their systems. We find that the ZTE equipment and services on Pine Belt's network present national security risks and that infrastructure connections between Pine Belt and Southern Linc could, therefore, introduce vulnerabilities and run counter to Southern Linc's established network security practices. We further agree that it is not feasible for Pine Belt to remove the insecure ZTE equipment and services by the May 1, 2024 MDRI compliance deadline in light of its ongoing removal, replacement, and disposal efforts under the Reimbursement Program. We appreciate the high level of caution Southern Linc exercises to protect the critical traffic carried on its networks from known security risks and its recognition that existing risk mitigation measures may not provide complete protection from threats from sophisticated actors.

9. We are therefore persuaded that, in light of the critical traffic and electric grid operations Southern Linc's networks support, it would not serve the public interest to require Southern Linc to establish network infrastructure connections with a network that has equipment and services known to pose a national security risk and thereby create vulnerabilities and introduce risks to its own network security. We find that granting a limited waiver of section 4.17(b) as requested in the Joint Waiver will promote important network and national security interests and best support critical infrastructure and public safety operations. Indeed, the Joint Waiver is precisely the sort of waiver request the Commission anticipated and provided for in the *Order on Reconsideration*. Accordingly, we grant the Joint Waiver and allow Southern Linc and Pine Belt until six months after the removal, replacement, and disposal of covered ZTE equipment and services in Pine Belt's network to complete initial bilateral testing of their RuD agreement. We condition this grant on Pine Belt keeping the Bureau apprised of its Reimbursement Program timeline. To this end, we therefore require Pine Belt to notify the Bureau by filing updates in the above-captioned dockets of (1) any extension(s) Pine Belt receives from the Commission to its Reimbursement Program removal, replacement, and disposal term deadline beyond January 17, 2025; and (2) the date Pine Belt completes the removal, replacement, and disposal of covered ZTE equipment and services in Pine Belt's network.

IV. ORDERING CLAUSE

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i)-(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i)-(j), and Section 1.925 of the Commission's rules, 47 CFR § 1.925, Section 4.17(b) of the Commission's rules, 47 CFR § 4.17(b), **IS WAIVED**, to extend the compliance date for Southern Linc and Pine Belt to complete initial bilateral testing of their RuD agreement from May 1, 2024 until six months after the date Pine Belt has completed removal, replacement, and disposal of covered ZTE equipment and services in Pine Belt's network, subject to the conditions described herein. This action is taken under delegated authority pursuant to Sections 0.191

²⁴ 47 CFR § 1.925.

²⁵ 47 CFR § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."); *see also Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

and 0.392 of the Commission's rules, 47 CFR §§ 0.191 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief
Public Safety and Homeland Security Bureau