

WC 06-63

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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APR 13 2006

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Petition of Qwest Communications)
International Inc. for Special)
Temporary Authority and Waiver)
To Support Disaster Planning)
And Response)

WC Docket No. _____

**PETITION OF QWEST COMMUNICATIONS INTERNATIONAL INC.
FOR SPECIAL TEMPORARY AUTHORITY AND WAIVER**

Qwest Communications International Inc., on behalf of its affiliates, including Qwest Communications Corporation ("QCC"), Qwest LD Corp. ("QLDC") and Qwest Corporation ("QC"), [hereafter referred to jointly as "Qwest"], hereby files this petition seeking Special Temporary Authority ("STA") and a waiver in accordance with Section 1.3 of the Federal Communications Commission's ("Commission") rules¹ in connection with Qwest's disaster planning and response and states:

I. INTRODUCTION AND SUMMARY

On March 10, 2006, AT&T Inc. ("AT&T") filed a petition seeking STA and a waiver of the Commission's rules in order to engage in certain integrated disaster planning and response without need to observe the requirements of Section 272 of the Act (47 U.S.C. § 272) and the Commission's network disclosure rules (47 C.F.R. §§ 51.325-51.335).² Qwest previously filed comments supporting AT&T's petition.³ The Verizon telephone companies ("Verizon") and

¹ 47 C.F.R. § 1.3.

² Petition of AT&T Inc., WC Docket No. 06-63, filed Mar. 10, 2006.

³ Comments of Qwest Communications International Inc., WC Docket No. 06-63, filed Apr. 3, 2006.

BellSouth Corporation (“BellSouth”) filed similar petitions on April 3 and 4, 2006, respectively.⁴ Verizon, in addition to seeking relief from the requirements of Section 272 and the Commission’s network disclosure rules as set forth above, included in its petition a request for STA and a waiver of “all other Commission rules that could inhibit integrated disaster planning and response” and specified certain other Commission rules not specifically mentioned in the AT&T and BellSouth petitions.⁵ BellSouth defined its requested relief as:

the same that the Commission granted BellSouth in connection with Hurricane Katrina. Specifically, granting BellSouth’s request would enable BellSouth to use all of its facilities (e.g., local, corporate network and interLATA) “without regard to section 272 and the Commission’s rules governing compliance with section 272, and without filing tariffs or contracts (or complying with related requirements) associated with these restoral services that would otherwise apply to interstate telecommunications services provided by BellSouth on an integrated basis. Similarly, to the extent that compliance with section 272 is a condition precedent to BellSouth’s authority to carry in-region interLATA traffic in its nine-state region under section 271 of the Act, this condition is also temporarily waived for this limited special purpose.”⁶

BellSouth also requested relief from the Commission’s network disclosure rules.

Qwest supports the requests of AT&T, Verizon and BellSouth and requests its own STA and waiver consistent with any relief granted to those parties. Qwest requests that its requested STA and waiver be defined as necessary to accomplish the following. First, Qwest should have the ability, notwithstanding Section 272 (including Section 272(b)’s rules regarding the

⁴ See Public Notices, DA 06-811 and DA 06-812, rel. Apr. 11, 2006.

⁵ Verizon petition at 2.

⁶ BellSouth petition at 6-7 (quoting from *In the Matters of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Florida and Tennessee, Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, and Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, Order, 20 FCC Rcd 14657, 14659 ¶ 4 (2005)).

independent operation of Section 272 affiliates and the provisions of Section 272(c) and Section 272(e) requiring non-discrimination with respect to information sharing), to share critical, non-public Bell Operating Company ("BOC") network information with its Section 272 affiliates as necessary to engage in advanced, integrated disaster relief planning. Second, in the event of another disaster, Qwest should have the flexibility to use its corporate network, personnel and facilities, including its affiliates, inside and outside its region without regard to Section 272 and the Commission's rules governing compliance with Section 272.⁷ This aspect of the requested relief should include a waiver of any obligation to file tariffs or contracts or to comply with related requirements in connection with its restoration efforts -- including Section 272(b)(5)'s requirements. Also, Qwest should be granted a waiver of the Commission's network disclosure rules in connection with its disaster response activities. Additionally, to the extent compliance with Section 272 is a condition precedent to Qwest's authority to carry in-region interLATA traffic in its fourteen-state region under Section 271, this condition should also be temporarily waived for this limited special purpose. As Verizon did, Qwest also asks for relief from any additional relevant provisions of the Commission's rules -- *i.e.*, from all other Commission rules that could inhibit integrated disaster planning and response.⁸ Finally, the Commission should

⁷ Including Part 53, Subpart C of the Commission's rules.

⁸ Including, as applicable, those additional provisions listed in Verizon's petition - the Commission's dominant carrier tariffing requirements (citing Part 61 of the rules, 47 C.F.R. §§ 61.28, 61.32, 61.33, 61.38, 61.58 and 61.59) and price cap rules (also citing Part 61 of the rules, 47 C.F.R. §§ 61.41-49), the Commission's Part 32 accounting rules (*see In the Matter of Implementation of the Telecommunications Act of 1996, Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17539 (1996)), the Commission's *Computer III* requirements (*see In the Matters of: Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof; Communications Protocols under Section 64.702 of the Commission's Rules and Regulations*, Report and Order, 104 FCC 2d 958, 1026-27 ¶¶ 127-31 (1986)), and the Commission's Part 63 rules concerning the processes for acquiring lines, discontinuing services,

make clear now that, in the event a catastrophic event occurs without warning, Qwest is entitled to invoke its disaster response plan for a brief period without prior approval by the Commission. As described more fully below, this last aspect of the requested relief should be limited in time, require notice within 24 hours to the Commission and be subject to subsequent Commission review.

II. BACKGROUND

AT&T, Verizon and BellSouth, in their respective petitions, adequately address the scope of the impact of the Hurricane Katrina and Rita disasters, the efforts of those entities to respond to those disasters, the industry-wide efforts since those disasters to review disaster preparedness and response, and industry's endeavor to learn from that experience and implement improved disaster responses in the future. Qwest will not attempt to restate that able demonstration here.

Disaster planning is an imperative for all Regional BOCs. A disaster of the magnitude of Hurricane Katrina or Hurricane Rita could occur in any region of the United States. Qwest is equally at risk, in its fourteen-state region, of the kinds of events described in the other carriers' petitions (*e.g.*, earthquakes, floods or other natural disasters, terrorist attacks, pandemics or other similar events). 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 response are equally critical to Qwest.

Like AT&T, Verizon and BellSouth, Qwest is also presently in the process of reviewing the response to Hurricanes Katrina and Rita⁹ to determine what improvements can be made to

assignments and transfers of control, and acquiring affiliations (citing 47 C.F.R. §§ 63.12(b)(2), 63.19(b)(2), 63.21(c), and 63.71(c)).

⁹ Even though they struck outside of Qwest in-region local territory, Qwest too was deeply involved in disaster response in response to the Katrina and Rita storms. Qwest activated its emergency response teams, deployed temporary facilities, undertook considerable work to re-

Qwest's disaster preparedness and response efforts. Qwest undertakes extensive efforts in disaster planning as a part of its regular course of business. However, Qwest is reviewing its disaster planning to assess the lessons learned in the recent crisis events. Qwest, like the other Regional BOCs, must be able to develop an integrated plan that can be put into effect in a timely manner. In order to do so, 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. This work requires the sharing of information and resources across the enterprise. Like the other Regional BOCs, Qwest's disaster planning and response efforts are currently stifled by the Section 272 and related Commission requirements addressed in the various petitions.

Qwest is also participating in industry-wide efforts to learn from the lessons of Katrina and Rita. This is happening largely through Qwest's participation as an active member in numerous industry organizations including the Network Reliability Steering Committee of the Alliance of Telecommunications Industry Solutions, the National Communications System (a part of the Department of Homeland Security), the Network Reliability and Interoperability Council, the National Security Telecommunications Advisory Committee (an independent advisory committee to the President of the United States) and the National Security and Emergency Preparedness work in connection with services provided to the United States government.

Qwest seeks the relief discussed above and below in order to enable it to engage in integrated disaster planning across all Qwest entities, to have an advance understanding of the route services and engaged in countless other disaster planning and response activities before, during and after the storms.

disaster recovery measures that will be available to it in the event of a disaster and to establish its ability, where the circumstances warrant it, to invoke its disaster recovery plan during a crisis without the need to obtain prior approval from the Commission.

III. DISCUSSION

The relief requested by Qwest is narrowly tailored to allow Qwest to accomplish the important public interest objective of providing adequate disaster response planning and implementation. As demonstrated below, Qwest's petition easily satisfies the Commission's standards for STAs (where the Commission must look at "whether the proposed action will serve the public interest, convenience and necessity")¹⁰ and waivers (Commission Rule 1.3 calls for the Commission to grant a waiver where "good cause [is] shown"¹¹ and "where the particular facts would make strict compliance inconsistent with the public interest").¹²

In order to plan effectively for a disaster, Qwest's local operating company, QC, and its Section 272 affiliates, QCC and QLDC, must be able to share information. Those efforts are currently hindered by, among other things, Section 272(b)'s rules regarding the independent

¹⁰ See *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Order, 20 FCC Rcd 14832, 14834 ¶ 2 (2005); *In the Matters of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Florida and Tennessee*, Order, 20 FCC Rcd 14657, 14658 ¶ 2 (2005); *In the Matter of Accounting Safeguards Under the Telecommunications Act of 1996, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, Order, 16 FCC Rcd 17969, 17970 ¶ 3 (2001).

¹¹ 47 C.F.R. § 1.3.

¹² *Northeastern Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In applying its traditional "good cause" test under Section 1.3, the Commission is required to find that "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Id.* And see *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

operation of Section 272 affiliates and the provisions of Section 272(c) and Section 272(e) requiring non-discrimination with respect to information sharing. In order to effectively plan for disaster response, Qwest should have access to the best possible (and regularly updated) information available regarding the routing of traffic, availability of facilities and other relevant data across its entire enterprise. The above Section 272 provisions restrict such information sharing. Accordingly, Qwest seeks the ability, notwithstanding those Section 272 limitations, to share critical, non-public BOC network information with its Section 272 affiliates as necessary to engage in advanced, integrated disaster relief planning.¹³

In order to effectively respond to disasters once they occur, Qwest must also be able to make use of all of its facilities (*e.g.*, local, corporate network, interLATA, etc.) without being limited by Section 272 and the Commission's rules implementing that section. Those provisions would otherwise prohibit, for example, QC's ability to provide in-region interstate interLATA telecommunications services in such restoration efforts. Qwest must also be freed from having to file tariffs or contracts or to comply with related requirements in connection with its restoration efforts -- including Section 272(b)(5)'s requirements. This relief should apply regardless of whether the services at issue are in-region services or not, are interLATA services or not, etc. Similarly, Qwest requests that, to the extent that compliance with Section 272 is a condition precedent to Qwest's authority to carry in-region interLATA traffic in its fourteen-state region under Section 271, this condition also temporarily be waived for this limited special purpose. Qwest should also have relief from the Commission's network disclosure rules in connection with its restoration activities.

¹³ Qwest is not asking for a blanket waiver of Section 272's restrictions on information sharing but a more limited waiver that would permit Qwest to share all necessary information with employees in its various affiliates involved in disaster planning efforts with a need to know.

Accordingly, Qwest requests that the Commission clarify that, in the event of another disaster, Qwest will be granted the necessary flexibility to use its corporate network, personnel and facilities, including its affiliates, both in and outside its region without regard to Section 272 and the Commission's rules governing compliance with Section 272 and will be granted a waiver of the Commission's network disclosure rules in connection with its disaster response activities. As Verizon did, Qwest also asks for relief from any additional relevant provisions of the Commission's rules -- *i.e.*, from all other Commission rules that could inhibit integrated disaster planning and response.

In order to ensure a rapid and effective response to a disaster, it is essential the Commission establish Qwest's right to this flexibility immediately -- and in any event, in advance of an actual disaster event. Qwest also agrees with BellSouth that the Commission should grant Qwest the ability to invoke this disaster response authority for 45 days upon notice and approval from the Commission. Thereafter, the Commission could extend the authority for an additional time period as appropriate.

Finally, in order to be able to respond immediately to disasters where there is not sufficient advanced warning to allow for consultation with the Commission, Qwest requests STA and a waiver of Commission rules as necessary to make clear now that Qwest is entitled to invoke its disaster response plan for a brief period without prior approval or pending approval by the Commission. In granting this relief, the Commission should clarify that Qwest's ability to initiate its disaster response plan without prior Commission approval would also be limited in time and would require notice within 24 hours to the Commission. Qwest agrees with AT&T that the Commission would retain the authority to determine whether and for how long Qwest could use such flexibility in response to a disaster.

As demonstrated above, the public interest would be served if Qwest had greater latitude both in its disaster planning efforts and in responding to future catastrophic events. This includes having flexibility to design and create effective disaster plans and disaster responses in advance of events and having the ability to take action, in some circumstances, without prior approval from the Commission. Without this relief, Qwest's disaster planning and response efforts are (and would be) hamstrung to the detriment of the public interest.

IV. CONCLUSION

For the reasons discussed above, Qwest asks that the Commission find that there is good cause to grant this petition and give Qwest the relief described above.

Respectfully submitted,

**QWEST COMMUNICATIONS
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April 13, 2006

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused a copy of the foregoing
**PETITION OF QWEST COMMUNICATIONS INTERNATIONAL INC. FOR SPECIAL
TEMPORARY AUTHORITY AND WAIVER** to be hand delivered on April 13, 2006 to the
parties listed below.*

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/s/ Richard Grozier
Richard Grozier

April 12, 2006

* The original Qwest Petition, and the associated filing fee and Form 159, were transmitted via overnight delivery to the Mellon Bank in Pittsburgh on April 12, 2006 for filing with the FCC.