

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

In the Matter of)	
)	
SBC Michigan Requests for)	WC Docket No. 04-27
Limited Modification of LATA)	
Boundaries to Provide Expanded Local)	
Calling Service (ELCS))	

MEMORANDUM OPINION AND ORDER

Adopted: April 16, 2004

Released: April 16, 2004

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. On June 20, 2003, SBC Michigan (SBC), pursuant to section 3(25) of the Communications Act of 1934, as amended (Act),¹ filed nine petitions² to provide flat or message-rated, non-optional expanded local calling service (ELCS) between various exchanges in Michigan.³ SBC's petitions request limited modification of numerous local access and transport areas (LATA) boundaries to provide ELCS between certain exchanges in Michigan, as required by Michigan law.⁴ Because all of SBC's petitions request similar types of service and were initiated under the identical Michigan law, we will consolidate SBC's petitions and treat them as a single petition (SBC Petition). For the reasons stated below, we grant SBC's petition.

¹ See 47 U.S.C. § 153(25).

² See Appendix. The requested ELCS service would be either one-way or two-way depending upon whether the local exchange carrier serving the customer in the originating local exchange met the criteria under Michigan law to be exempted from providing ELCS or whether an exempt carrier voluntarily chose to provide ELCS. See MICH. COMP. LAWS § 484.2304(10) (2000). A local exchange carrier is exempt from the statutory ELCS requirement if (1) it provides basic local exchange service or basic local exchange and toll service to less than 250,000 end users in Michigan; or (2) it offers end users single-party, basic local exchange service, including end user common line services, and dialing parity at a total price of no higher than the amount charges as of May 1, 2000; or (3) it provides dialing parity access to operator, telecommunications relay, and emergency services to all basic local exchange end users. See MICH. COMP. LAWS § 484.2304(10)(2000).

³ See *Comment Sought on SBC Michigan Requests for Limited Modification of LATA Boundaries in Michigan*, WC Docket No. 04-27, Public Notice, DA 04-314 (rel. Feb. 5, 2004).

⁴ See MICH. COMP. LAWS § 484.3304b(11) (2000). Section 3(25) of the Act defines a LATA as a contiguous geographic area (1) established prior to enactment of the 1996 Act by a Bell Operating Company (BOC) such that no exchange area includes points within more than one metropolitan statistical area, consolidated metropolitan statistical area, or state, except as expressly permitted under the AT&T Consent Decree; or (2) established or modified by a BOC after such date of enactment and approved by the Commission. 47 U.S.C. § 153(25).

II. BACKGROUND

2. On May 29, 2001, SBC Michigan⁵ filed 57 petitions⁶ with the Commission to provide ELCS between various exchanges in Michigan as required by Michigan law and the Michigan Public Service Commission (Michigan Commission).⁷ On April 29, 2003, the Commission issued an order consolidating the petitions as a single petition and granting the petition.⁸ Subsequently, SBC Michigan determined that there are nine additional routes that are also between adjacent exchanges and therefore also subject to the Michigan legislation and the Michigan Commission's order.⁹ These routes are the subject of the instant petition.

3. Specifically, the SBC Petition proposes to establish one-way or two-way, non-optional ELCS, and is accompanied by an order issued by the Michigan Commission approving the ELCS requests on the basis that legislation passed by the Michigan legislature mandates the implementation of ELCS, and that sufficient communities of interest exist to warrant such service.¹⁰ The SBC Petition also includes a statement of the location of the affected exchanges and a statement of the number of access lines involved.¹¹ Because the ELCS was ordered pursuant to a legislative mandate, no polls were conducted, and no community of interest statement was attached. The Michigan Commission has filed comments in support of the SBC Petition.¹²

4. Although requests for new ELCS routes are generally initiated by local subscribers, they can, as in this case, be initiated by state action.¹³ Under section 3(25)(B) of the Act, requests

⁵ Then known as "Ameritech Michigan."

⁶ On October 8, 2001, two petitions were withdrawn for two routes that were erroneously included in Ameritech Michigan's applications.

⁷ See Michigan Public Service Commission, *In the Matter, on the Commission's Own Motion, of the Implementation of Amendments to the Michigan Telecommunications Act, Implementation of the Local Calling Area Provisions of the Amended Michigan Telecommunications Act*, Case Nos. U-12515 and U-12528, Opinion and Order (rel. Feb. 5, 2001).

⁸ See *In the Matter of Ameritech Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS)*, File No. NSD-L-01-151, Memorandum Opinion and Order, 18 FCC Rcd 8239 (WCB 2003) (*2003 Ameritech Michigan LATA Order*).

⁹ See SBC Petition at 4.

¹⁰ See MICH. COMP. LAWS § 484.2304(11) (2000), added by 2000 Mich. Pub. Acts 295 (requiring that "[a] call made to a local calling area adjacent to the caller's local calling area shall be considered a local call and billed as a local call.")

¹¹ See SBC Petition; see also Appendix.

¹² Michigan Commission Comments at 3.

¹³ See *Verizon Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS)*, WC Docket No. 02-327, Memorandum Opinion and Order, 18 FCC Rcd 4601 (2003) (*Verizon LATA Order*); *2003 Ameritech Michigan LATA Order*, 18 FCC Rcd at 8240, para. 2.

for interLATA ELCS routes fall within the Federal Communications Commission's (Commission) exclusive jurisdiction over the modification of LATA boundaries.¹⁴ Applying a two-part test, the Commission will grant a request for a LATA modification where: (1) the applicant proves that the requested LATA modification would provide a significant public benefit; and (2) granting the petition would not remove the BOC's incentive to receive authority to provide in-region, interLATA service pursuant to section 271.¹⁵

III. DISCUSSION

5. We conclude that SBC's petition satisfies our two-part test. Applying the first prong of the two-part test, we find that SBC has shown that a public benefit would result from the expanded local calling options that the ELCS would provide. We base our determination on the Michigan legislature's conclusion that a sufficient community of interest existed between adjacent exchanges to justify a requirement that: "A call made to a local calling area adjacent to the caller's local calling area shall be considered a local call and shall be billed as a local call."¹⁶ Accordingly, the Michigan Commission required SBC to file a plan for ELCS among the affected exchanges,¹⁷ and further directed SBC to seek LATA boundary modifications where necessary to implement ELCS.¹⁸ We believe that these actions by the Michigan legislature and the Michigan Commission are persuasive indicators that a sufficient community of interest exists among the affected exchanges to justify the ELCS.¹⁹ Additionally, we note that we received no objections to the grant of SBC's petition.²⁰ Accordingly, we conclude that SBC has satisfied the first part of our two-part test.

¹⁴ See *Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding U S WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, Memorandum Opinion and Order, 14 FCC Rcd 14392, 14399 (1999). IntraLATA ELCS routes can also be ordered by a state commission. *United States v. Western Electric Company, Inc.*, 569 F. Supp. 990, 995 (D.D.C. 1983) (finding "The distance at which a local call becomes a long distance toll call has been, and will continue to be, determined exclusively by the various state regulatory bodies.").

¹⁵ See *SBC Telecom, Inc. Petition for Modification of Certain LATA Boundaries in Ohio*, File No. NSD-L-00-25, Memorandum Opinion and Order, 18 FCC Rcd 26398, paras. 2, 6-8 (2003).

¹⁶ See MICH. COMP. LAWS § 484.2304(11) (2000).

¹⁷ See SBC Petition.

¹⁸ See SBC Petition.

¹⁹ We reach our conclusion that SBC satisfies the first prong of the Commission's two-part test notwithstanding that SBC's application did not include some of the data applicable to our *prima facie* analysis. Although the Michigan Commission did not conduct polls or provide a community of interest statement to document its community of interest finding, the Michigan Commission's order was premised on a community of interest finding by the Michigan legislature. It is consistent with Commission LATA boundary modification precedent for us to base our public interest determination on state action such as this. See *Verizon LATA Order*, 18 FCC Rcd 4601, para. 1; see also *2003 Ameritech Michigan LATA Order*, 18 FCC Rcd at 8240, para. 2. Further, although the Commission has previously stated a preference for flat-rated service as an indicator of a community of interest, the Commission has granted LATA boundary modifications that include measured or message-rated ELCS where, as in the instant case, the types of services offered in the proposed ELCS were identical to those offered prior to the application. See *Bell-Atlantic-Virginia, Inc. Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling service (ELCS) at Various Locations*, Memorandum and Order, 13 FCC Rcd 11042 (1998)

6. We conclude that SBC's petition also satisfies the second prong of the two-part test. On September 17, 2003, the Commission granted SBC authority to provide in region, interLATA service pursuant to section 271 in Michigan.²¹ Thus, granting the requested modification has no bearing on SBC's incentive to receive such authority. We also note that the proposed LATA boundary modifications would only impact a limited number of access lines.²² As a result, we believe that granting SBC's petition serves the public interest by permitting minor LATA modifications where such modifications are necessary to meet the needs of local subscribers. Accordingly, we approve SBC's petition for limited LATA modifications.

7. We grant this relief solely for the limited purpose of allowing SBC to provide ELCS between the specific exchanges or geographic areas identified in these requests. The LATAs are not modified to permit the BOC to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus non-optional ELCS between the specified exchanges will be treated as intraLATA service.

(*April 1998 LATA Order*) (granting ELCS petition where proposed service was the same as that existing prior to the application). SBC's petition proposes to provide customers with the same service that existed prior to ELCS. See SBC Petition at 2. Given the close proximity inherent to adjacent local exchanges, and the efficiencies afforded to customers by expanding the availability of flat-rated calling service plans, we anticipate that the ELCS will encourage customers to migrate from message-rated service to flat-rated service, which is a further indication that a sufficient community of interest exists to justify the ELCS.

²⁰ We note that the Michigan Public Service Commission filed comments in support of grant of the SBC Petition. See Michigan Public Service Commission Comments, WC Docket No. 04-27 (filed Feb. 26, 2004).

²¹ See *Application by SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 18 FCC Rcd 19024 (2002).

²² For the purposes of ELCS petitions, we generally consider the number of access lines of customers in the exchange with the smaller number of access lines who seek to reach businesses and services in the other exchange. This exchange usually generates the majority of calls between the two exchanges. See *Southwestern Bell Petitions for Limited Modifications of LATA Boundaries to Provide Expanded Local Calling Service (ELCS)*, Memorandum Opinion and Order, 17 FCC Rcd 25540 (2002). For example, callers from the Byron exchange (1,079 access lines) seek to reach the businesses and services located in the Fowlerville exchange (4,228 access lines). Similarly, callers from the Birch Run exchange (3,010 access lines) seek to reach the businesses and services located in the Montrose exchange (4,522 access lines). Therefore, for the purposes of reviewing these modifications, we will consider the 1,079 access lines in Byron and the 3,010 access lines in Birch Run. The largest number of access lines affected by any single LATA modification in this application is 3,010 from the Birch Run exchange, a number within Commission precedent. See *April 1998 LATA Order*, 13 FCC Rcd at 11046, para. 8 (granting an ELCS petition affecting over 30,000 access lines). See Appendix for a list of the exchanges that are the subject of this petition and the number of access lines affected.

IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED, pursuant to sections 3(25) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(25), 154(i), and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the requests of SBC for LATA modifications for the limited purpose of providing one and two-way, traditional, non-optional ELCS at specific locations, identified in WC Docket No. 04-27, ARE APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Competition Policy Division
Wireline Competition Bureau

Appendix**Exchanges and Access Lines**

1. SBC's Byron (1,079 access lines) and SBC's Fowlerville (4,228 access lines) Exchanges
2. SBC's Olivet (1,070 access lines) and Springport Telephone Company's Springport (1,883 access lines) Exchanges
3. SBC's Marshall (7,429 access lines) and Springport Telephone Company's Springport (1,883 access lines) Exchanges
4. SBC's Marshall (7,429 access lines) and Verizon's Homer (2,173 access lines) Exchanges
5. SBC's Birch Run (3,010 access lines) and CenturyTel's Montrose (4,522 access lines) Exchanges
6. SBC's Fowlerville (4,228 access lines) and Verizon's Gregory (1,397 access lines) Exchanges
7. SBC's Portland (3,624 access lines) and Verizon's Fowler-Pewamo (1,583 access lines) Exchanges
8. SBC's Farwell (4,553 access lines) and SBC's Marion (1,431 access lines) Exchanges
9. SBC's Fowlerville (4,228 access lines) and Verizon's Bancroft (1,283 access lines) Exchanges