

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

In the Matter of
SBC Telecom, Inc. Petition for
Modification of a LATA
Boundary in Ohio
WC Docket No. 04-46

MEMORANDUM OPINION AND ORDER

Adopted: May 19, 2004

Released: May 19, 2004

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. On February 13, 2004, SBC Telecom, Inc. (SBC Telecom), a competitive local exchange carrier (LEC) and wholly-owned subsidiary of SBC Communications, Inc. (SBC), filed a petition pursuant to section 3(25) of the Communications Act of 1934, as amended (Act), seeking modification of a local access and transport area (LATA) boundary in Ohio. SBC Telecom seeks this LATA boundary modification so that it can offer competitive local exchange service in the Lebanon, Ohio market area that is served by a non-SBC incumbent LEC, Sprint, as required by the Public Utilities Commission of Ohio (Ohio Commission) under the Ohio Merger Stipulation. For the reasons stated below, we grant SBC Telecom's petition.

1 We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (1996 Act), as the Communications Act or the Act. 47 U.S.C. § 151 et seq.

2 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).

3 See Petition of SBC Telecom, Inc. for Modification of a LATA Boundary in Ohio, WC Docket No. 04-46, filed February 13, 2004 (SBC Telecom Petition). See also Comments Sought on SBC Telecom Inc.'s Petition for Modification of a LATA Boundary in Ohio, WC Docket No. 04-46, Public Notice, DA 04-603 (rel. Mar. 3, 2004). We note that the Office of the Ohio Consumers' Counsel filed comments in support of the petition.

4 The exchanges in question are the Lebanon and Dayton exchanges presently served by the incumbent LEC, Sprint. See SBC Telecom Petition at 1-2.

5 SBC Telecom Petition at 2-3; see also Public Utilities Commission of Ohio, Joint Application of SBC Communications, Inc., SBC Delaware Inc., Ameritech Corporation and Ameritech Ohio, Case No. 98-1082-TP-AMT, Opinion and Order at 22 (April 8, 1999) (Ohio Merger Stipulation).

## II. BACKGROUND

2. Although requests for LATA boundary modification are generally initiated by local subscribers and filed by a BOC providing service as an incumbent LEC, SBC Telecom has filed the instant petition on its own behalf so that it may provide local exchange service competing with service provided by the incumbent LEC in the affected service area.<sup>6</sup> Pursuant to section 3(25)(B) of the Act,<sup>7</sup> requests for LATA boundary modifications fall within the Federal Communications Commission's (Commission's) exclusive jurisdiction.<sup>8</sup> 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.<sup>9</sup>

3. According to SBC Telecom, it is required to provide basic local exchange service as a condition for approval by the Ohio Commission of the merger between SBC and the Ameritech Corporation.<sup>10</sup> In the *Ohio Merger Stipulation* order, the Ohio Commission required SBC to provide basic local exchange service to both residential and business customers at reasonable rates in markets where Ameritech Ohio was not the incumbent LEC.<sup>11</sup> Subsequently, SBC was ordered to provide, through its affiliate SBC Telecom, competing local service in four Ohio markets: Cincinnati, Lebanon/Mason, Delaware, and Hudson/Twinsburg.<sup>12</sup> To effectuate the *Ohio Merger Stipulation* order, SBC Telecom sought, and the Commission granted, modification of several LATA boundaries in two exchanges in Ohio, Cincinnati and Hudson/Twinsburg/Northfield.<sup>13</sup>

4. SBC Telecom has filed the instant petition in an effort to further comply with the *Ohio Merger Stipulation* order and to provide customers in the affected exchanges in the Lebanon service area with an additional competitive local service option. Although SBC

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<sup>6</sup> SBC Telecom Petition at 1-2. We note that SBC Telecom previously filed, and the Commission granted, a similar petition on September 6, 2001, seeking modification of several other LATA boundaries in Ohio. See Petition of SBC Telecom, Inc. for Modification of Certain LATA Boundaries in Ohio, File No. NSD-L-00-25, filed September 6, 2001; *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 (2003).

<sup>7</sup> 47 U.S.C. § 153(25)(B).

<sup>8</sup> 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*, NSD-L-97-6, Memorandum Opinion and Order, 14 FCC Rcd 14392, 14399 (1999).

<sup>9</sup> 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) (*SBC Telecom Order*).

<sup>10</sup> *Id.* at 2-3.

<sup>11</sup> See *id.* at 2; see also *Ohio Merger Stipulation* at 22.

<sup>12</sup> See Public Utilities Commission of Ohio, *SBC Communications, Inc. and Ameritech Corporation*, Case No. 98-1049-TP-AMT, at 2.

<sup>13</sup> See *SBC Telecom Order*, 18 FCC Rcd at 26398.

Communications, Inc. has authority to provide in-region, interLATA services in Ohio,<sup>14</sup> SBC Telecom continues to seek these LATA modifications because SBC Telecom is not a section 272 affiliate. Pursuant to section 272, a Bell Operating Company (BOC) including any affiliate may not provide in-region, interLATA service unless it provides that service through one or more affiliates that comply with the requirements of section 272.<sup>15</sup> Accordingly, because SBC Telecom is operating within one of SBC's in-region states, SBC Telecom must obtain a LATA modification in order to provide the requested calling service.<sup>16</sup>

5. SBC Telecom contends that for it to be a viable competitor, it must be able to mirror the incumbent LEC's local calling area in order to resell the incumbent LEC's tariffed service to customers.<sup>17</sup> SBC Telecom states that it initially plans to resell the services of the incumbent LEC Sprint in the Lebanon, Ohio service area. Sprint currently offers, and SBC Telecom proposes to provide, flat and measured-rate expanded local calling services in the local calling areas at issue.<sup>18</sup> Given that SBC Telecom seeks to provide service as a competitive LEC in an area where an incumbent LEC is already providing expanded calling, the usage data, polling information, and other information typically provided by an incumbent Bell operating company seeking to provide in-region expanded local calling service (ELCS) was not provided in this application, and is not required for purposes of our determination.

### III. DISCUSSION

6. For the following reasons, we conclude that SBC Telecom's petition satisfies the Commission's two-part test. Applying the first prong, we find that SBC Telecom has shown that a public benefit would result from the expanded local calling options that the LATA boundary modifications would provide. SBC seeks to provide local service in these areas as a competitive LEC. Consequently, granting the petition would not have the effect of removing interexchange lines from competition, but rather would add to the local competition available to consumers in the subject calling areas. We agree with the Office of the Ohio Consumers' Counsel that increased local competition in the Lebanon, Ohio market is in the public interest.<sup>19</sup> Moreover, we note that no party opposes SBC Telecom's petition or disputes that the public would benefit from SBC Telecom's entry into this market. Accordingly, we find that the addition of another competitor in the Lebanon, Ohio local market is consistent with the type of competition envisioned by the Act and would provide a clear public benefit.

7. SBC Telecom also satisfies the second prong of the two-part test because SBC has already opened its market to competition in Ohio and, accordingly, has been granted authority under section 271 to offer interLATA service in that state.<sup>20</sup> Thus, granting the requested

<sup>14</sup> See *Application by SBC Communications, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Illinois, Indiana, Ohio, and Wisconsin*, Memorandum Opinion and Order, 18 FCC Rcd 21543 (2003) (*SBC 271 Order*).

<sup>15</sup> See 47 U.S.C. § 272(a)(1).

<sup>16</sup> See 47 U.S.C. § 271(b)(2).

<sup>17</sup> *Id.* at 3.

<sup>18</sup> SBC Telecom Petition, Attachment.

<sup>19</sup> See SBC Telecom Petition at 2; Office of the Ohio Consumers' Counsel Comments at 2, 4.

<sup>20</sup> See *SBC 271 Order*, 18 FCC Rcd at 21543.

modification has no bearing on SBC's incentive to receive such authority. As a result, we believe that granting SBC Telecom's petition serves the public interest by permitting a minor LATA modification where such a modification is necessary to meet the needs of local subscribers. Accordingly, we approve SBC Telecom's petition for limited LATA boundary modification.

8. We also note that the Ohio Commission required SBC to compete with the incumbent LEC in the local calling areas at issue. We agree with SBC Telecom that if it is to compete with the incumbent LEC, it must be able to provide comparable service offerings, geographically and qualitatively.<sup>21</sup> To do otherwise would undermine SBC Telecom's efforts to compete in the subject areas and would limit SBC's ability to comply with the merger conditions.<sup>22</sup> Accordingly, we grant SBC Telecom's request for a LATA boundary modification for the limited purpose of providing service as a competitive LEC in the Lebanon service area.<sup>23</sup>

9. We grant this relief solely for the limited purpose of allowing SBC Telecom to provide competitive local service between the Dayton and Lebanon exchanges in Ohio identified in the SBC Telecom Petition. The LATAs are not otherwise modified to permit SBC Telecom to offer any other types of service, including calls that terminate outside the specific areas described above. The relief granted by this Order also does not affect any services offered by SBC where it operates as an incumbent LEC in Ohio.

#### IV. ORDERING CLAUSE

10. 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 request of SBC Telecom, Inc. for a LATA modification for the limited purpose of providing ELCS at specific locations in Ohio, identified in WC Docket No. 04-46, IS APPROVED.

#### FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>21</sup> See SBC Telecom Petition at 3 (asserting that SBC Telecom must mirror the incumbent LECs' local calling area to resell the incumbent LEC's tariffed service to its customers).

<sup>22</sup> See *id.* at 3-4; Office of the Ohio Consumers' Counsel Comments at 2.

<sup>23</sup> This grant of SBC Telecom's Petition is consistent with the Commission's previous grant of a LATA modification to SBC Telecom in Ohio. 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 (2003) (approving SBC Telecom's request to modify LATA boundaries in the Cincinnati, Hudson/Twinsburg, and Northfield service areas of Ohio).