

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

In the Matter of
Request by BellSouth Telecommunications Inc.,
And BellSouth Corporation for Limited
Modification of LATA Boundaries to Provide
Extended Area Service Between Certain Exchanges
in the State of North Carolina
WC Docket No. 04-412

MEMORANDUM OPINION AND ORDER

Adopted: December 21, 2004

Released: December 21, 2004

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. On November 4, 2004, BellSouth Telecommunications, Inc. and BellSouth Corporation ("BellSouth"), pursuant to section 3(25) of the Communications Act of 1934, as amended (the Act),<sup>1</sup> filed a petition (BellSouth Petition) to provide flat-rate, two-way, non-optional, extended area service (EAS) between certain exchanges in North Carolina.<sup>2</sup> The BellSouth Petition requests a limited modification of a LATA boundary to provide EAS between the Kenly exchange in the Rocky Mount LATA and the Raleigh exchange in the Raleigh LATA, and between the Princeton exchange in the Fayetteville LATA and the Raleigh exchange in the Raleigh LATA, in the state of North Carolina, as approved by the North

<sup>1</sup> See 47 U.S.C. § 153(25). Section 3(25) of the Act defines a local access and transport area (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. Id.

<sup>2</sup> See Request by BellSouth Telecommunications and BellSouth Corporation for Limited Modification of LATA Boundaries to Provide Extended Area Service Between Certain Exchanges in the State of North Carolina, WC Docket No. 04-412 (filed Nov. 4, 2004) (BellSouth Petition). See Pleading Cycle Established for Comments on BellSouth's Request for Limited Modification of LATA Boundary to Provide Extended Area Service Between Certain Exchanges in the State of North Carolina, WC Docket No. 04-412, Public Notice, DA No. 04-3573 (rel. Nov. 10, 2004). We note that all of the exchanges are in North Carolina.

Carolina Utilities Commission (North Carolina Commission).<sup>3</sup> We grant BellSouth's petition for the reasons stated below.

## II. BACKGROUND

2. Requests for new EAS routes are generally initiated by local subscribers.<sup>4</sup> Although intraLATA EAS routes can be ordered by a state commission,<sup>5</sup> pursuant to section 3(25)(B) of the Act requests for interLATA EAS routes fall within the Federal Communications Commission's (Commission's) exclusive jurisdiction.<sup>6</sup> Applying a two-part test, the Commission will grant a request for a LATA boundary 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>7</sup> The BellSouth Petition proposes to establish two-way, non-optional EAS, and is accompanied by an Order issued by the North Carolina Commission approving the EAS request.<sup>8</sup> No party filed comments opposing the BellSouth Petition.

## III. DISCUSSION

3. We conclude that BellSouth's petition satisfies the Commission's two-part test. Applying the first prong of the test, we find that BellSouth has shown that a significant public benefit would result from the EAS because a sufficient community of interest exists among the affected exchanges to justify

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<sup>3</sup> See BellSouth Petition at Exhibit A; North Carolina Utilities Commission, Order Approving Extended Area Service In the Matter of Carolina Telephone and Telegraph Company – Kenly and Princeton to Raleigh InterLATA Extended Area Service, Docket No. P-7, Sub 1093 (rel. Oct. 12, 2004) (*North Carolina Order*).

<sup>4</sup> The BellSouth Petition notes that the North Carolina Commission noted evidence of strong community support for the proposed EAS in its Order. See BellSouth Petition at 1; *North Carolina Order* at 2. Carolina Telephone and Telegraph Company is the incumbent LEC in the Kenly and Princeton exchanges; BellSouth Telecommunications, Inc. is the incumbent LEC in the Raleigh exchange. See BellSouth Petition at 2. The Kenly exchange has 5,584 access lines, the Princeton exchange has 1,646 access lines, and the Raleigh exchange has 216,118 access lines. See *id.*

<sup>5</sup> *United States v. Western Electric Company, Inc.*, 569 F. Supp. 990, 995 (D.D.C. 1983). “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.” *Id.*

<sup>6</sup> Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding U S WEST Petitions to Consolidate LATAs in Minnesota and Arizona, File No. NSD-L-97-6, Memorandum Opinion and Order, 14 FCC Rcd 14392, 14392-99 (1999).

<sup>7</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 (2003), paras. 2, 6-8.

<sup>8</sup> BellSouth Petition, Exhibit A at 3.

treatment as a local calling area.<sup>9</sup> In reaching this finding, we note that BellSouth proposes to offer traditional, two-way, non-optional local service in the EAS,<sup>10</sup> which is a type of service that this Commission has determined to be consistent with the public interest.<sup>11</sup> At present, the Kenly and Princeton exchanges have extended area service to each other as well as the other exchanges in Johnston County, however, they are the only remaining exchanges in Johnston County that do not have EAS to the Raleigh exchange.<sup>12</sup> Additionally, because North Carolina's Expanded Local Calling Area plan does not extend across LATA boundaries, subscribers in the Kenly and Princeton exchanges do not have local calling options that are available under the plan and therefore must use toll calling or other means to conduct business.<sup>13</sup> Furthermore, the BellSouth Petition demonstrates a community of interest between the affected exchanges based on resolutions adopted by several County Boards of Commissioners, as well as petitions signed by subscribers.<sup>14</sup> We find, therefore, that the petition is based on a significant community of interest, and thus satisfies the first prong of the Commission's two-part test.

4. BellSouth also satisfies the second prong of the two-part test because it has already opened its market to competition in North Carolina, and, accordingly, has been granted authority under section 271 to offer interLATA service in that state.<sup>15</sup> Thus, granting the requested modification has no bearing on BellSouth's incentive to receive such authority. Moreover, we conclude that the LATA boundary modification would have a minimal effect upon competition because modification of the LATA boundary would affect only a small number of access lines.<sup>16</sup> As a result, we believe that granting BellSouth's

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<sup>9</sup> See Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations, CC Docket 96-159, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10653 (1997) (July 1997 LATA Order).

<sup>10</sup> BellSouth Petition at 2-3.

<sup>11</sup> See July 1997 LATA Order, 12 FCC Rcd at 10646.

<sup>12</sup> North Carolina Order at 1.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> Resolutions in support of the proposed EAS were adopted by the Johnston County Board of Commissioners, the Towns of Princeton, Kenly and Micro (Micro is in the Kenly exchange), and the Triangle J Council of Governments, as well as petitions signed by approximately 450 subscribers from the Kenly exchange. See BellSouth Petition at 2-3. Polling was not conducted as the rate increases are in the range that the North Carolina Commission has deemed to be *de minimis* in prior EAS proposals. See *id.* North Carolina Order at 1-2.

<sup>15</sup> See 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, WC Docket No. 02-150, Memorandum Opinion and Order, 17 FCC Rcd 17595 (2002).

<sup>16</sup> For purposes of EAS petitions, we generally consider the number of access lines from customers in the smaller exchange 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)*, WC Dkt. No. 02-134, Memorandum Opinion and (continued....)

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 BellSouth's petition for a limited LATA boundary modification.

5. We grant this relief solely for the limited purpose of allowing BellSouth to provide EAS between the specific exchanges or geographic areas identified in this request. The LATA boundary is not modified to permit BellSouth to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus, two-way, non-optional EAS between the specified exchanges will be treated as intraLATA service.

#### IV. ORDERING CLAUSE

6. 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 BellSouth Telecommunications, Inc. and BellSouth Corporation for a LATA boundary modification for the limited purpose of providing two-way, traditional, non-optional EAS between specific locations in North Carolina, as identified in WC Docket No. 04-412, IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin  
Chief, Competition Policy Division  
Wireline Competition Bureau

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Order, 17 FCC Rcd 25540 (2002). In assessing the number of lines affected by this request, we note that, because most of the services and facilities used by Kenly and Princeton residents are outside their respective exchanges, the great majority of calls will be made from the Kenly and Princeton exchanges into the Raleigh exchange. Accordingly, for the purposes of this request, the access lines we consider are the 5,484 in the Kenly exchange, and the 1,646 in the Princeton exchange, numbers that are well within Commission precedent for granting LATA boundary modifications. See BellSouth Petition at 3; *April 1998 LATA Order*, 13 FCC Rcd at 11046, para. 8 (granting an Extended Local Calling Service (ELCS) petition affecting over 30,000 access lines).