

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

In the Matter of	)	
	)	
Request by Qwest Corporation for Limited	)	
Modification of LATA Boundaries to Provide	)	WC Docket No. 05-315
Extended Area Service Between Several Local	)	
Exchanges Located in Nebraska	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 3, 2006**

**Released: February 3, 2006**

By the Acting Chief, Competition Policy Division:

**I. INTRODUCTION**

1. On October 31, 2005, Qwest Corporation (Qwest), pursuant to section 3(25) of the Communications Act of 1934, as amended (the Act),<sup>1</sup> filed a petition to provide two-way, flat-rated, non-optional, extended area service (EAS) between certain exchanges in Nebraska.<sup>2</sup> Qwest requests a limited modification of the LATA boundary to provide EAS between the Elkhorn, Bennington, and Valley exchanges in Qwest's Elkhorn rate center in the Omaha LATA and the Plattsmouth and Murray exchanges in the Lincoln LATA, which are served by ALLTEL Corporation (ALLTEL).<sup>3</sup> The Nebraska Public Service Commission (Nebraska Commission) has already approved a rate center consolidation request by Qwest that will permit it to provide EAS between these exchanges.<sup>4</sup> We grant Qwest's Petition for the reasons stated below.

<sup>1</sup> See 47 U.S.C. § 153(25). Section 3(25) of the Act defines a Local Access 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 Petition of Qwest Corporation, WC Docket No. 05-315 (filed Oct. 31, 2005) (Qwest Petition). See *Pleading Cycle Established for Comments on Qwest's Request for Limited Modification of the LATA Boundary to Provide Extended Area Service Between Certain Exchanges in the State of Nebraska*, WC Docket No. 05-315, Public Notice, DA 05-2954 (rel. Nov. 10, 2005). We note that all of the exchanges are in Nebraska. EAS (also known as extended area local calling service (ELCS)) allows local telephone service rates to apply to nearby telephone exchanges, thus providing an expanded local calling area.

<sup>3</sup> Qwest's Petition at 1-6. Qwest provides local exchange service in the Elkhorn, Bennington, and Valley exchanges, which have approximately 3,298, 1,034, and 1,684 access lines, respectively. ALLTEL provides local exchange service in the Plattsmouth and Murray exchanges, which have approximately 4,452 and 1,223 access lines, respectively. *Id.* at 3.

<sup>4</sup> See Qwest Petition at Attachment A, Nebraska Public Service Commission, *In the Matter of the Commission on its own motion, to review the Qwest Corporation rate center consolidation plan*, Order Approving Rate Center Consolidation, Application No. C-3447/PI-101 (rel. Aug. 30, 2005) (*Nebraska Order*).

## II. BACKGROUND

2. Requests for new EAS routes are generally initiated by local subscribers.<sup>5</sup> Although intraLATA EAS routes can be ordered by a state commission,<sup>6</sup> requests for interLATA EAS routes fall within the Federal Communications Commission's (Commission's) exclusive jurisdiction pursuant to section 3(25)(B) of the Act.<sup>7</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 of the Act.<sup>8</sup> The Qwest Petition proposes to establish two-way, non-optional EAS, and is accompanied by an Order issued by the Nebraska Commission approving the EAS request.<sup>9</sup> No party filed comments opposing the Qwest Petition.

## III. DISCUSSION

3. We conclude that Qwest's petition satisfies the Commission's two-part test. Applying the first prong of the test, we find that Qwest has shown that a significant public interest benefit would result from the EAS because a sufficient community of interest exists among the affected exchanges to justify treatment as a local calling area.<sup>10</sup> In reaching this finding, we note that Qwest proposes to offer traditional, two-way, non-optional EAS between the exchanges,<sup>11</sup> which is the type of service this Commission has determined to be consistent with the public interest.<sup>12</sup> The Nebraska Commission stated that there has been significant population growth in the immediate areas surrounding Omaha such that there are no longer significant geographical distinctions between the exchanges, and that the existing rate center boundaries wind through cohesive residential neighborhoods and adjacent business districts, are not known to consumers, and are difficult for competitive carriers to discern.<sup>13</sup> The Nebraska Commission therefore concluded that consolidating the rate centers and expanding EAS to subscribers would benefit the public by serving the expectations of customers and assisting in the conservation of numbering resources.<sup>14</sup> We find, accordingly, that the petition is based on a significant community of

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<sup>5</sup> Qwest proposed the rate center consolidation in the exchange areas at issue. As part of that consolidation, Qwest proposed expanding the EAS provided to subscribers. Qwest Petition at 1. The Nebraska Commission found that a community of interest exists between the communities in the affected exchanges. *Nebraska Order* at 2.

<sup>6</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.").

<sup>7</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, 14393-143402, paras. 4-20 (1999).

<sup>8</sup> 47 U.S.C. § 271. 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, 26399-263402, paras. 2, 6-8 (2003).

<sup>9</sup> *Nebraska Commission Order* at 2-4.

<sup>10</sup> See *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, CC Docket No. 96-159, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10653, para. 14 (1997) (*July 1997 LATA Order*).

<sup>11</sup> Qwest Petition at 3.

<sup>12</sup> See *July 1997 LATA Order*, 12 FCC Rcd at 10654-56, paras. 18-19.

<sup>13</sup> *Nebraska Order* at 2.

<sup>14</sup> *Nebraska Order* at 2; Qwest Petition at 4-5. Qwest states that polling of customers to determine if the customers approved of the EAS plan was not conducted because Qwest had proposed increasing the calling areas in its

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interest, and thus satisfies the first prong of the Commission's two-part test.

4. Qwest also satisfies the second prong of the two-part test because it has already opened its market to competition in Nebraska, and the Commission has granted it authority under section 271 to offer interLATA service in that state.<sup>15</sup> Thus, granting the requested modification has no bearing on Qwest'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, granting Qwest'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 Qwest's petition for a limited LATA boundary modification.

5. We grant this relief solely for the limited purpose of allowing Qwest to provide EAS between specific exchanges or geographic areas identified in this request. The LATA boundary is not modified to permit Qwest 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 Qwest Corporation for a LATA boundary modification for the limited purpose of providing two-way, traditional,

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exchanges without increasing rates. Therefore, the State of Nebraska's customer notification and polling requirements did not apply. No party opposed Qwest's plan. Qwest Petition at 4.

<sup>15</sup> *Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Docket No. 02-314, Memorandum Opinion and Order, 17 FCC Rcd 26303 (2002).

<sup>16</sup> As noted above, the Elkhorn exchange has approximately 3,298 access lines, the Bennington exchange has approximately 1,034 access lines, and the Valley exchange has approximately 1,684 access lines. Qwest Petition at 3. We consider Qwest's number of access lines in the Elkhorn, Bennington, and Valley exchanges to be well within Commission precedent. See *Bell Atlantic-Virginia, Inc. Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Services (ELCS) at Various Locations*, File No. NSD-L-97-45, Memorandum Opinion and Order, 13 FCC Rcd 11042, 11045-46, para. 8 (Com. Car. Bur., Network Services Div. 1998) (*April 1998 LATA Order*) (granting an ELCS petition affecting 30,000 access lines).

non-optional EAS between the specific locations in Nebraska, as identified in WC Docket No. 05-315, IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Renee C. Crittendon  
Acting Division Chief  
Competition Policy Division  
Wireline Competition Bureau