

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. 05-321
Extended Area Service Between its Exchanges in)
the Minneapolis/St. Paul Metropolitan Calling)
Area and the Kilkenny, Minnesota Exchange)

MEMORANDUM OPINION AND ORDER

Adopted: March 15, 2006

Released: March 15, 2006

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. On November 14, 2005, Qwest Corporation (Qwest), pursuant to section 3(25) of the Communications Act of 1934, as amended (the Act),¹ filed a petition (Qwest Petition) to provide two-way, flat-rated, non-optional, extended area service (EAS) between certain exchanges in Minnesota.² Qwest requests a limited modification of the LATA boundary to provide EAS between Qwest's exchanges in the Minneapolis/St. Paul Metropolitan Calling Area (MCA) in the Minneapolis LATA and the Kilkenny exchange in the Rochester LATA, which is served by Frontier Communications of Minnesota, Inc. (Frontier).³ The Minnesota Public Utilities Commission (Minnesota Commission) has already approved an expansion of the current EAS serving these exchanges.⁴ We grant Qwest's Petition

1 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.

2 See Petition of Qwest Corporation, WC Docket No. 05-321 (filed Nov. 14, 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 Minnesota, WC Docket No. 05-321, Public Notice, DA 05-2984 (rel. Nov. 17, 2005). We note that all of the exchanges are in Minnesota. 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.

3 Qwest Petition at 1-5. The total number of access lines for Qwest's exchanges in the Minneapolis/St. Paul MCA is 952,494. Id. at Attach. B. Qwest stated in its petition that it did not have information regarding the number of lines provided by Frontier in the Kilkenny exchange. Id. at 3. On January 27, 2006, at the request of Commission staff, Qwest supplemented its petition by providing the number of Frontier access lines in the Kilkenny exchange subject to confidential treatment under the Commission's rules. Letter from Michael B. Adams, Jr., Senior Attorney, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-321 (filed Jan. 27, 2006) (citing 47 C.F.R. §§ 0.457, 0.459)). Qwest states that Frontier considers the number of access lines in Kilkenny to be competitively sensitive information and provides a justification for confidential treatment. Id. at 2 and attached Appendix.

4 See Qwest Petition at 2,4, and Attachment A, Minnesota Public Utilities Commission, In the Matter of a Petition for Extended Area Service from Kilkenny to the Minneapolis/St. Paul Metropolitan Calling Area, Docket No. P-404, (continued...)

for the reasons stated below.

II. BACKGROUND

2. Requests for new EAS routes are generally initiated by local subscribers.⁵ Although intraLATA EAS routes can be ordered by a state commission,⁶ requests for interLATA EAS routes fall within the Federal Communications Commission's (Commission) exclusive jurisdiction pursuant to section 3(25)(B) of the Act.⁷ 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.⁸ The Qwest Petition proposes to establish two-way, non-optional EAS, and is accompanied by an Order issued by the Minnesota Commission approving the EAS request for the Kilkenny exchange and directing Frontier and the incumbent local exchange carriers serving the MCA, including Qwest, to implement the expanded EAS route.⁹ 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.¹⁰ In reaching this finding, we note that Qwest proposes to offer traditional, two-way, non-optional EAS between the exchanges,¹¹ which is the type of service this Commission has determined to be consistent with the public interest.¹² We also find it a persuasive indicator of a community of interest that the Minnesota Commission found that an EAS route between the affected exchanges satisfied all of the state's community of interest criteria, including required traffic volumes between the exchanges and polling data indicating that a majority of customers in the Kilkenny

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407, 520, 405, 413, 421, 426, 427, 430, 573/CP-04-1352, Order Certifying Polling Results and Requiring Installation of Proposed EAS Route (rel. Aug. 26, 2005) (*Minnesota Order*).

⁵ Qwest states that telephone subscribers served by the Kilkenny exchange requested an expansion of the EAS that had previously been established for the Minneapolis/St. Paul MCA, so that the new EAS would include Kilkenny. Qwest Petition at 2.

⁶ *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.").

⁷ *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).

⁸ 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).

⁹ *Minnesota Order* at 2-3. Qwest states that, when the EAS expansion is complete, Qwest will provide two-way, flat-rate, non-optional EAS between its MCA exchanges to Frontier's Kilkenny exchange. Qwest Petition at 2. Qwest provides local exchange service in the majority of exchanges in the MCA. *Id.* at 3.

¹⁰ 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*).

¹¹ Qwest Petition at 2.

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

exchange favor the availability of EAS.¹³ The Minnesota Commission therefore approved the service.¹⁴ We find, accordingly, 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. Qwest also satisfies the second prong of the two-part test because it has already opened its market to competition in Minnesota, and the Commission has thus granted it authority under section 271 to offer long distance service in that state.¹⁵ 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 Qwest's incentives because modification of the LATA boundary would affect only a small number of access lines.¹⁶ As a result, we believe that granting Qwest's petition serves the public interest by permitting a minor LATA modification where such 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,

¹³ *Minnesota Order* at 2; Qwest Petition, Attachment C, Minnesota Public Utilities Commission, *In the Matter of a Petition for Extended Area Service from the Kilkenny Exchange to the Minneapolis/St. Paul Metropolitan Calling Area*, Docket No. P-404, 407, 520, 405, 413, 421, 426, 427, 430, 573/CP-04-1352, Order Setting EAS rate Additives and Requiring Polling (rel. Apr. 27, 2005), at 2. According to Qwest, the Minnesota Commission relied on an analysis of demographic, financial, and other evidence submitted by the local subscribers requesting the EAS in making its determination to approve the EAS plan. Qwest Petition at 4 (*citing Minnesota Order* at 1-2).

¹⁴ *Minnesota Order* at 2-3; Qwest Petition at 4.

¹⁵ *Application by Qwest Communications International Inc., for Authorization to Provide In-Region, InterLATA Services in Minnesota*, WC Docket No. 03-90, Memorandum Opinion and Order, 18 FCC Rcd 13323 (2003).

¹⁶ For the 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 because the smaller exchange, in this case the Kilkenny exchange, usually generates the majority of calls. *Southwestern Bell Petitions for Limited Modifications of LATA Boundaries to Provide Expanded Local Calling Service (ELCS)*, WC Docket No. 02-134, Memorandum Opinion and Order, 17 FCC Rcd 25540 (2002). We have reviewed the confidential information Qwest submitted on the number of Frontier access lines in the Kilkenny exchange and find that the information confirms that the LATA boundary modification would affect only a small number of access lines. *See supra* n.3.

non-optional EAS between the specific locations in Minnesota, as identified in WC Docket No. 05-321,
IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Renee C. Crittendon
Chief, Competition Policy Division
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