

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

In the Matter of)	
)	
Ameritech)	
Petition for Limited Modification of LATA)	
Boundaries to Provide Expanded Local)	File No. NSD-LM-97-30
Calling Service (ELCS))	

MEMORANDUM OPINION AND ORDER

Adopted: December 18, 1997

Released: December 18, 1997

By the Chief, Network Services Division:

I. INTRODUCTION

1. On August 14, 1997, Ameritech, on behalf of The Ohio Bell Telephone Company, which does business as Ameritech Ohio, pursuant to Section 3(25) of the Communications Act of 1934, as amended,¹ filed a petition to provide flat-rated, one-way, non-optional, expanded local calling service (ELCS) between New Philadelphia/Dover exchange and Uhrichsville exchanges. Ameritech requests a limited modification of a local access transport area (LATA) boundary.² The petition was placed on public notice³ and no comments or replies were filed. For the reasons stated below, we grant Ameritech's request.

II. BACKGROUND

2. Requests for new ELCS routes are generally initiated by local subscribers.

¹ See 47 U.S.C. § 153(25).

² Section 3(25) of the Act defines LATAs as certain contiguous geographic areas established prior to enactment of the 1996 Act or established or modified by a BOC after such date of enactment and approved by the Commission.

³ See Public Notice, Requests by Ameritech Request for Limited Modification of LATA Boundaries to provide ELCS Between New Philadelphia/Dover (Ohio) Exchange and Uhrichsville Exchanges, (Net. Ser. Div. rel. Aug. 12, 1997).

IntraLATA ELCS routes can be ordered by the state commission.⁴ For interLATA routes, prior to the Telecommunications Act of 1996 (1996 Act),⁵ the BOCs were required to secure state approval and then obtain a waiver from the United States District Court for the District of Columbia (District Court).⁶ In the years between the Consent Decree⁷ and the 1996 Act, the District Court received more than a hundred requests for Consent Decree waivers to permit new interLATA ELCS routes.⁸ Because of the large number of requests involved and because most of the requests were non-controversial, the District Court developed a streamlined process for handling such requests.⁹

3. Under the streamlined process developed by the District Court, the BOC submitted its waiver request to the Department of Justice (Department). The Department reviewed the request and then submitted the request, along with the Department's recommendation, to the District Court. In evaluating ELCS requests, the Department and the District Court considered the number of customers or access lines involved¹⁰ as well as whether a sufficiently strong community of interest between the exchanges justified granting a waiver of the Consent Decree.¹¹ A community of interest could be demonstrated by such evidence as: (1) poll results showing that customers in the affected exchange were willing to pay higher rates to be included in an expanded local calling area;¹² (2) usage data demonstrating a high level of calling between the exchanges; and (3) narrative statements describing how the two exchanges were part of one community and how the lack of local calling between the exchanges caused problems for

⁴ *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.*

⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁶ *Id.*

⁷ The Consent Decree required AT&T to divest its ownership of the BOCs. *United States v. American Telephone and Telegraph Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

⁸ Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations, *Memorandum Opinion and Order*, CC Docket No. 96-159, FCC 97-244 (rel. July 15, 1997) (*July 1997 Order*) at para. 6.

⁹ See *United States v. Western Electric Company, Inc.*, No. 82-0192 (D.D.C. Feb. 6, 1984); *United States v. Western Electric Company, Inc.*, No. 82-0192 (D.D.C. Mar. 15, 1984).

¹⁰ See *United States v. Western Electric Company, Inc.*, No. 82-0192, slip op. at 3 n.8 (D.D.C. July 19, 1984) (hereinafter *July 1984 Order*).

¹¹ See e.g., *United States v. Western Electric Company, Inc.*, No. 82-0192 slip op. at 2, 3 n.3 (D.D.C. Jan. 31, 1985) (hereinafter *Jan. 1985 Order*); *United States v. Western Electric Company, Inc.*, No. 82-0192 (D.D.C. Dec. 3, 1993); *United States v. Western Electric Company, Inc.*, No. 82-0192 (D.D.C. Dec. 17, 1993).

¹² See *July 1984 Order*, at 2 n.5.

community residents.¹³ In addition, the Department and the District Court gave deference to the state's community of interest finding. The District Court also considered the competitive effects of granting a proposed ELCS waiver.¹⁴

4. Matters previously subject to the Consent Decree are now governed by the Act.¹⁵ Under section 3(25)(B) of the Act, BOCs may modify LATA boundaries, if such modifications are approved by the Commission.¹⁶ On July 15, 1997, the Commission released a decision granting 23 requests for limited boundary modification to permit ELCS.¹⁷ Although calls between the ELCS exchanges would now be treated as intraLATA, each ELCS exchange would remain assigned to the same LATA for purposes of classifying all other calls.¹⁸ The Commission stated that it would grant requests for such limited modifications only where a petitioning BOC showed that the ELCS was a flat-rated, non-optional service, a significant community of interest existed among the affected exchanges, and grant of the requested waiver would not have any anticompetitive effects.¹⁹ The Commission stated further that a carrier would be deemed to have made a prima facie case supporting grant of the proposed modification if the ELCS petition: (1) has been approved by the state commission; (2) proposes only traditional local service (i.e., flat-rated, non-optional ELCS); (3) indicates that the state commission found a sufficient community of interest to warrant such service; (4) documents this community of interest through such evidence as poll results, usage data, and descriptions of the communities involved; and (5)

¹³ See *Jan. 1985 Order*, at 2-3 & n.3.

¹⁴ See *July 1984 Order*; *Jan. 1985 Order*; *United States v. Western Electric Company, Inc.*, No. 82-0192, slip op. at 2 (D.D.C. May 18, 1993) (hereinafter *May 1993 Order*). The District Court granted waivers for more than a hundred flat-rate, non-optional ELCS plans that allow the provision of traditional local telephone service between nearby exchanges. See e.g., *Western Electric*, 569 F. Supp. at 1002 n.54; *July 1984 Order*; *Jan. 1985 Order*. Under such plans, subscribers pay no extra charge for calls beyond their established monthly service charge (the plan involves a flat-rate), and all subscribers in the exchange are included in the plan (the plan is non-optional). *Id.*

¹⁵ Section 601(a)(1) of the 1996 Act states that "[a]ny conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the AT&T Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and obligations imposed by such Consent Decree." On April 11, 1996, the D.C. District Court issued an order terminating the AT&T Consent Decree and dismissing all pending motions under the Consent Decree as moot, effective February 8, 1996. See *United States v. Western Electric Company, Inc.*, No. 82-0192, 1996 WL 255904 (D.D.C. Apr. 11, 1996).

¹⁶ See 47 U.S.C. § 153(25)(B).

¹⁷ July 1997 Order, cited *supra* n. 9.

¹⁸ If an exchange were assigned to another LATA for all purposes, any existing local calling routes between that exchange and the original LATA would be lost because such traffic would now be interLATA and could no longer be carried by the BOC. Instead, the traffic would generally be carried by an interexchange carrier charging long distance rates.

¹⁹ *July 1997 Order* at paras. 16-17.

involves a limited number of customers or access lines.²⁰

III. DISCUSSION

5. In its petition, Ameritech offers two reasons why Commission approval is not required for the institution of flat-rated, one-way, non-optional ELCS from New Philadelphia/Dover to Uhrichsville. First, Ameritech states that one-way ELCS from Uhrichsville to New Philadelphia/Dover has existed since August 1979.²¹ According to Ameritech, "Judge Green's approval did not distinguish one-way service from two-way service," and thus its present petition is merely complementary to the one-way service that has been in existence for 18 years.²² Second, Ameritech contends Section 271(b)(4) of the 1996 Act permits a BOC to terminate incoming traffic,²³ and in this present situation Ameritech would do nothing more than terminate GTE North's incoming traffic.

6. As an alternative, Ameritech has supplied information in accordance with the requirements of the *July 1997 Order* should the Commission decline to accept either of the above arguments.

7. We are able to resolve Ameritech's petition in accordance with the *July 1997 Order* and do not need to address its other arguments. The petition proposes to establish a flat-rated, one-way, non-optional ELCS. The request is accompanied by: (1) an order confirming state approval of the limited LATA modification requested; (2) a statement that only traditional local service is proposed; (3) a community of interest finding by the Public Utilities Commission of Ohio; (4) a community of interest finding; and (5) a statement of the number of access lines involved.²⁴ The petition does not provide usage data in the form of an average number of calls per access line per month from New Philadelphia/Dover to Uhrichsville, nor the percentage of

²⁰ *Id.* at para. 24. The Commission also delegated authority to act on petitions to modify LATA boundaries to the Common Carrier Bureau. *Id.* at para 23. On August 6, 1997, the Commission released a decision granting requests to modify LATA boundaries to permit three independent telephone company (ITC) exchanges in Texas to change LATA association for purposes of improving service to subscribers. The Commission stated that a carrier will be deemed to have made a prima facie case supporting grant of a proposed association change if the petition: (1) states that the association change is necessary because of planned upgrades to the ITC's network or service that will require routing traffic through a different BOC LATA; (2) involves a limited number of access lines; and (3) includes a statement from the affected BOC(s) requesting a LATA modification, pursuant to section 3(25) of the Act, to permit the change in association. Petitions for LATA Association Changes by Independent Telephone Companies, *Memorandum Opinion and Order*, CC Docket No. 96-158, FCC 97-258 (released Aug. 6, 1997) (*August 1997 Order*).

²¹ Ameritech Petition at 2.

²² *Id.* at 2-3.

²³ *Id.* at 3. "Nothing in this section prohibits a Bell operating company or any of its affiliates from providing termination for interLATA services, subject to subsection (j)."

²⁴ New Philadelphia/Dover has 24,905 access lines, and Uhrichsville has 6,662 access lines.

subscribers making such calls. The brief descriptions of the basis for the requested ELCS reveal that many community services (such as hospitals, doctors offices, schools, stores, public transportation facilities, and government offices) are located in a nearby community in the adjacent LATA, and that making interLATA toll calls for such services generates significant expenses for residents.

8. As we stated in the *July 1997 Order*, granting an ELCS petition removes the proposed route from the competitive interexchange market.²⁵ Some LATA modifications could reduce the incentive created by Section 271 of the Act for BOCs to open their local exchange and exchange access markets to competition.²⁶ Given, however, the small number of access lines involved in the proposed ELCS areas in this petition, as well as the type of service to be offered (*i.e.*, flat-rated, non-optional local service), we find that the proposed LATA modification will not have a significant anticompetitive effect on the interexchange market or on Ameritech's incentive to open its local exchange and exchange access markets to competition.

IV. CONCLUSION

9. We conclude that, in the petition, the community's need for the proposed ELCS routes outweighs the risk of potential anticompetitive effects. Granting Ameritech's petition serves the public interest by permitting a minor LATA modification in a case where such modification is necessary to meet the needs of local subscribers and will not have any significant effect on competition. Accordingly, we approve Ameritech's petition for limited LATA modification in order to provide flat-rated, non-optional ELCS. The LATA is modified solely for the limited purpose of allowing one-way, flat-rated, non-optional local calling service between the specific exchanges or geographic areas identified in the requests. The LATA is not modified to permit the BOC to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus, flat-rated, non-optional ELCS between the specified exchanges will be treated as intraLATA, and the provisions of the Act governing intraLATA service will apply.²⁷ Other types of service between the specified exchanges will remain interLATA, and the provisions of the Act governing interLATA service will apply.²⁸

V. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, 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 47 C.F.R. §§ 0.91 and 0.291 of the Commission's rules, that the request of Ameritech for LATA modification for

²⁵ *Id.* at para. 18.

²⁶ *Id.*

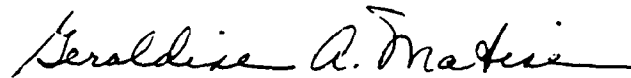
²⁷ The BOC may provide ELCS service without meeting the Section 271 requirements, *see* 47 U.S.C. § 271(a), and a separate affiliate is not required. *See* 47 U.S.C. § 272(a)(2)(B).

²⁸ The BOC may not provide other types of service (such as measured-rate, optional, or toll service) between the specified exchanges without meeting the Section 271 requirements. *See* 47 U.S.C. § 271(a).

the limited purpose of providing flat-rated, non-optional ELCS at specific locations, identified in File No. NSD-LM-97-30, IS APPROVED to the extent described above.

11. IT IS FURTHER ORDERED that, pursuant to section 416(a) of the Act, 47 U.S.C. § 416(a), the Secretary SHALL SERVE a copy of this order upon the petitioner, Ameritech.

FEDERAL COMMUNICATIONS COMMISSION



Geraldine Matise
Chief, Network Services Division