

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

In the Matter of
SBC Telecom, Inc. Petition for
Modification of Certain LATA
Boundaries in Ohio
File No. NSD-L-00-25

MEMORANDUM OPINION AND ORDER

Adopted: December 2, 2003

Released: December 16, 2003

By the Commission:

I. INTRODUCTION

1. On September 6, 2001, 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 modifications to several local access and transport area (LATA) boundaries in Ohio. SBC Telecom seeks these LATA boundary modifications so that it may offer competitive local exchange service in two market areas of Ohio that are served by non-SBC incumbent LECs, as

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 LATAs as those contiguous geographical areas 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 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 Certain LATA Boundaries in Ohio, NSD-L-00-25, filed September 6, 2001 (SBC Telecom Petition). See also Comment Sought on SBC Telecom Petition Requesting Approval of Certain LATA Boundary Adjustments to Offer Competitive Local Exchange Service in Ohio, NSD-L-00-25, Public Notice (2001). The Ohio Commission and SBC Telecom filed comments in support of the petition. ALLTEL Ohio, Inc. and The Western Reserve Telephone Companies (collectively ALLTEL) filed comments in opposition. On February 19, 2002, SBC Telecom filed an addendum to clarify its petition. See Addendum to SBC Telecom, Inc. Petition for Modification of Certain LATA Boundaries in Ohio, NSD-L-00-25, filed Feb. 19, 2002 (SBC Telecom Addendum). See also Addendum to SBC Telecom Petition Requesting Approval of Certain LATA Boundary Adjustments to Offer Competitive Local Exchange Service in Ohio, NSD-L-00-25, Public Notice (2002). The SBC Telecom Addendum clarified that LATA boundary modifications were required in only two (Cincinnati and Hudson/Twinsburg/Northfield) of the four exchanges where SBC Telecom provides service as a competitive LEC. See SBC Telecom Addendum at 1-2.

4 The carriers and exchanges in question are: Cincinnati Bell for the Cincinnati exchange and ALLTEL for the Hudson, Twinsburg, and Northfield exchanges south of Cleveland. We note that, at the time of filing, SBC Telecom (continued....)

required by the Public Utilities Commission of Ohio (Ohio Commission) under the *Ohio Merger Stipulation*.⁵ For the reasons stated below, we grant SBC Telecom's petition.⁶

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 that provided by the incumbent LECs in the affected service areas.⁷ Under section 3(25)(B) of the Act,⁸ requests for LATA boundary modifications fall within the Federal Communications Commission's (Commission's) exclusive jurisdiction.⁹ 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 271.¹⁰

3. SBC Telecom states that it initially plans to resell the services of incumbent LECs Cincinnati Bell and ALLTEL in their respective service areas. SBC Telecom notes that these incumbent LECs provide not only flat-rated service, but also provide local calling plans that include message and measured rated services in the local calling areas at issue.¹¹ SBC Telecom contends that for it to be a viable competitor, it must be able to mirror the services offered by the incumbent LECs, and thus should be allowed to provide local telephone service that may include

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also provided service as a competitive LEC in the Delaware and Cheshire Center exchanges north of Columbus where GTE is the incumbent LEC and in the Lebanon and Mason exchanges where United/Sprint is the incumbent LEC. SBC Telecom Addendum at 1-2.

⁵ SBC Telecom Petition at 1-2; *see also* Public Utilities Commission of Ohio, SBC Communications, Inc. and Ameritech Corporation, Case No. 98-1049-TP-AMT.

⁶ SBC Telecom also requests that a streamlined process be used for the approval of future LATA modifications it might need in Ohio to serve these and other local calling areas that the Ohio Commission may create. SBC Telecom Petition at 7. We will address this request in a separate order.

⁷ SBC Telecom Petition at 1-2.

⁸ 47 U.S.C. § 153(25).

⁹ *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).

¹⁰ *See Deployment of Wireline Services Offering Advanced Telecommunications Capability, Request by Bell Atlantic-West Virginia for Interim Relief Under Section 706, or, in the Alternative, a LATA Boundary Modification*, CC Docket No. 98-147, Fourth Report & Order & Memorandum Opinion & Order, 15 FCC Rcd 3089, 3096-98 (2000) (*Advanced Services LATA Order*) (denying Verizon's request to transport high-speed data from Morgantown, West Virginia LATA to the Pittsburgh, Pennsylvania LATA). *See also 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) (*1997 LATA Order*) (granting 23 ELCS petitions). Expanded local calling service (ELCS) allows a BOC to transport local telephone calls across a LATA boundary for a community whose exchanges cross that LATA boundary. *Id.* at 10646-47 n.4.

¹¹ SBC Telecom Petition at 6.

flat, measured, or message-rated service in those markets as well.¹² The Ohio Commission has granted SBC Telecom authority to provide these services in the local calling areas at issue in this petition.¹³ Given the Ohio Commission's approval and the fact that SBC Telecom seeks to provide service as a competitive LEC in an area where the incumbent LECs are already providing expanded calling, the usage data, polling information and other information typically provided by an incumbent BOC seeking to provide in-region ELCS was not warranted in this application.

4. 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. In the *Ohio Merger Stipulations*, 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.¹⁴ Subsequently, SBC agreed to provide, through its affiliate SBC Telecom, competing local service in four Ohio markets: Delaware, Cincinnati, Lebanon Mason, and Hudson/Twinsburg/Northfield.¹⁵ SBC Telecom has filed the instant petition in an effort to comply with that order and to provide customers in the exchanges at issue with an additional competitive local service option.

5. Section 272 of the Act addresses the BOCs' provision of interLATA services originating in states in which they provide local exchange and exchange access services.¹⁶ Pursuant to section 272, a 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 272.¹⁷ Although SBC Communications, Inc. (SBC) was authorized to provide in-region, interLATA services in Ohio on October 15, 2003,¹⁸ SBC Telecom is not a section 272 affiliate of SBC.¹⁹ 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 expanded calling service.

III. DISCUSSION

6. Because SBC Telecom's petition concerns the novel issue of a BOC affiliate seeking to offer competing local service in a service area outside of its incumbent LEC service

¹² *Id.* at 4-6.

¹³ See Application of Ameritech Communications Services, Inc. for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Service In the State of Ohio, Case No. 99-1451-TP-ACE.

¹⁴ See SBC Telecom Petition at 2; see also *Ohio Merger Stipulations* at 22.

¹⁵ See *supra* n.4 for a list of the incumbent LECs operating in these areas.

¹⁶ 47 U.S.C. § 272. See also 47 U.S.C. § 271(i) (defining "in-region state").

¹⁷ 47 U.S.C. § 272.

¹⁸ See *Application by SBC Communications, Inc. for Authorization to Provide In-Region, InterLATA Services in the State of Illinois, Indiana, Ohio, and Wisconsin*, WC Docket No. 03-167, Memorandum Opinion and Order, FCC 03-243 (rel. Oct. 15, 2003).

¹⁹ See Letter from Toni R. Acton, SBC Telecommunications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, NSD-L-00-25 at 1 (filed Sept. 26, 2002).

territory, it is appropriately dealt with at the Commission level.²⁰ For the following reasons we conclude that SBC Telecom's petition satisfies our 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 Telecom seeks to provide local service in these areas as a competitive LEC. Consequently, granting the petition would not remove interexchange lines from competition, but rather would add to the local competition available to consumers in the subject calling areas. We agree with the Ohio Commission that increased local competition in the four Ohio markets is in the public interest.²¹ Moreover, we note that no party disputes that the public would benefit from SBC Telecom's entry into the four markets.²² ALLTEL, which opposes the petition on other grounds, acknowledges that the increased local competition would benefit the public and stresses that its opposition is "in no way intended to defer the advent of the competition."²³ Accordingly, we find that the addition of another competitor in the local markets is consistent with the type of competition envisioned by the Act and would provide a clear public benefit.

7. We similarly conclude that the petition satisfies the second prong. Granting the requested modification would have no impact on SBC's incentives to fulfill its section 271 obligations in Ohio because the areas in which SBC Telecom seeks to provide service are not areas in which SBC provides service as an incumbent LEC. In any event, we note that because SBC has opened its market to competition in Ohio, on October 15, 2003, it was granted authority to offer long distance service in that state.²⁴

8. We reject ALLTEL's argument that SBC Telecom's petition fails the second prong of the test because SBC Telecom seeks to provide measured or message-rated service in addition to flat-rated service.²⁵ Specifically, ALLTEL submits that the Commission should only grant a waiver of the LATA boundary restriction to provide flat-rated service.²⁶ We note, however, that the Commission has allowed BOCs to provide measured and message-rated services, in addition to flat-rated service, where such service had been previously provided or when required by state law or regulation.²⁷ In this case, the incumbents operating in Ohio have been authorized to

²⁰ See 47 C.F.R. § 0.29(A)(2).

²¹ SBC Telecom Petition at 1-2.

²² According to the Ohio Commission, the petition should be granted because SBC Telecom would bring competition to four markets that have "even less competition than [exists] in Ameritech Ohio territory." Ohio Commission Comments at 5.

²³ ALLTEL Reply Comments at 2. See *infra* para. 7 for discussion of ALLTEL's opposition to the petition.

²⁴ See *supra* n.18.

²⁵ ALLTEL Comments at 2-4.

²⁶ *Id.* In addition, ALLTEL argues that SBC Telecom should seek a waiver of the LATA boundaries rather than a modification. ALLTEL, however, incorrectly interprets the relief sought by SBC Telecom as a request to physically move LATA boundaries. In the *1997 LATA Order*, the Commission stated that it lacked the authority to waive LATA boundaries, but has the authority to modify them for the limited purpose of providing ELCS routes. *1997 LATA Order*, 12 FCC Rcd at 10653, paras. 13-17. Thus, SBC Telecom's petition appropriately requests a modification of LATA boundaries to provide ELCS.

²⁷ See *Ameritech Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS)*, Memorandum Opinion and Order, 18 FCC Rcd 8239 (WCB 2003); *Verizon Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS)*, WC Docket No. 02-237, Memorandum Opinion and Order, 18 FCC Rcd 4601 (WCB 2003); *Bell Atlantic-Virginia Petition for Limited*

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provide both flat-rated and usage sensitive services by the Ohio Commission. Accordingly, granting SBC Telecom's request for a limited LATA boundary modification would not remove interexchange lines from competition. We also note that the Ohio Commission required SBC to compete with the incumbent LECs in the local calling areas at issue. We agree with SBC Telecom that if it is to compete with the incumbent LECs it must be able to provide comparable service offerings, geographically and qualitatively.²⁸ 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.²⁹ 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 Cincinnati, Hudson/Twinsburg and Northfield service areas.

9. We grant this relief solely for the limited purpose of allowing SBC Telecom to provide competitive local service between the specified exchanges or geographic areas 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), that SBC Telecom's request to modify certain LATA boundaries so that SBC Telecom, Inc. can provide competitive local service in the exchanges identified in this order IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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Modification of LATA Boundary to Provide Expanded Local Calling Service, File No. NSD-L-99-47, Memorandum Opinion and Order, 15 FCC Rcd 6701, n.24 (1999) (citing District Court grant of petitions where Bell Atlantic offered flat-rate, measured rate, message rate services, among others, in each exchange for which a LATA modification was sought).

²⁸ See SBC Telecom Petition at 6 ("SBC Telecom seeks LATA modifications for the limited purpose of permitting it to mirror the local calling areas of the independent ILECs in whose exchanges it proposes to operate.").

²⁹ Ohio Commission Reply Comments at 3; SBC Telecom Reply Comments at 3.