

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

DA 03-1379

In the Matter of)
)
)
Ameritech Petitions for) NSD-L-01-151
Limited Modification of LATA)
Boundaries to Provide Expanded Local)
Calling Service (ELCS))

MEMORANDUM OPINION AND ORDER

Adopted: April 29, 2003

Released: April 29, 2003

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. On May 29, 2001, Ameritech Michigan (Ameritech), pursuant to section 3(25) of the Communications Act of 1934, as amended (Act),¹ filed 57 petitions² to provide flat or message-rated, non-optional expanded local calling service (ELCS) between various exchanges in Michigan.³ Ameritech's petitions request limited modifications of numerous local access and transport areas (LATA) boundaries to provide ECLS between certain exchanges in Michigan, as required by Michigan law.⁴ Because all of Ameritech's petitions request similar types of service and were initiated under the identical Michigan law, we will consolidate Ameritech's petitions and treat them as a single petition (Ameritech Petition). For the reasons stated below, we grant Ameritech's petition.

¹ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 153(25) (B). 47 U.S.C. § 153(25).

² See *Comment Sought on Ameritech Requests for Limited Modifications of LATA Boundaries to Provide Expanded Local Calling Service Between Certain Exchanges in Michigan*, Public Notice, NSD-L-01-151 (rel. Sept. 27, 2001).

³ See Appendix. The requested ELCS service would be either one-way or two-way depending upon whether the carrier serving the customer in the originating local exchange met the criteria, under Michigan law, to be exempted from providing ELCS; or whether an exempt carrier voluntarily chose to provide ELCS. We note that on October 8, 2001, Ameritech withdrew two petitions: (1) Mackinaw Island and Cheybogon; and (2) Mackinaw Island and Mackinaw City. *Id.*

⁴ See Michigan Telecommunications Act, MCL 484.3304b(1). Section 3(25) of the Act defines LATAs as those 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).

II. BACKGROUND

2. Although requests for new ELCS routes are generally initiated by local subscribers, they can, as in this case, be initiated by state legislation.⁵ Under section 3(25)(B) of the Act, requests for interLATA ELCS routes fall within the Federal Communications Commission's (Commission) exclusive jurisdiction over the modification of LATA boundaries.⁶ Applying a two-part test, the Commission will grant a request for an ELCS LATA modification (1) where a petitioning BOC shows that the proposed modification would provide the significant public benefit of expanded local service (by showing that there is a significant community of interest among the affected exchanges), and (2) provided that it will not have a negative effect on a BOC's incentive to fulfill its section 271 obligations.⁷

3. The Ameritech Petition proposes to establish one-way or two-way, non-optional ELCS, and is accompanied by an order issued by the Michigan Public Service Commission (Michigan Commission) approving the ELCS requests on the basis that legislation passed by the Michigan legislature mandates the implementation of ELCS, and that sufficient communities of interest exist to warrant such service.⁸ The Ameritech Petition also includes a statement of the location of the affected exchanges and a statement of the number of access lines involved.⁹ Because the ELCS was ordered pursuant to a legislative mandate, no polls were conducted and no community of interest statement was attached.

III. DISCUSSION

⁵ See *Verizon Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS)*, WC Docket No. 02-237, Memorandum Opinion and Order, DA 03-790 (rel. Mar. 14, 2003) (*Verizon LATA Order*).

⁶ See *Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding US WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, Memorandum Opinion and Order, 14 FCC Rcd.14392, 14399 (1999). IntraLATA ELCS routes can also be ordered by a state commission. *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 See *Application for Review of Petition for Modification of LATA Boundary*, FCC 02-233, Order on Review, 17 FCC Rcd 16952, 16958 (2002); see also *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10649-50 (1997). In this order, the Commission also delegated authority to the Common Carrier Bureau (now the Wireline Competition Bureau) to act on petitions to modify LATA boundaries. *Id.* at 10657-58. A BOC is deemed to have made a *prima facie* case supporting grant of the ELCS petition if it: (1) has been approved by the state commission; (2) proposes only traditional local service; (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) involves a limited number of customers or access lines. See *Application for Review of Petition for Modification of LATA Boundary*, FCC 02-233, Order on Review, 17 FCC Rcd 16952, 16958 (2002); see also *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10649-50 (1997).

⁸ § 304(11) MCL 484.2304(11), added by 2000 PA 295 (requiring that "A call made to a local calling area adjacent to the caller's local calling area shall be considered a local call and billed as a local call.")

⁹ See Ameritech Petition; see also Appendix.

4. We conclude that Ameritech's petition satisfies our two-part test. Applying the first part of the two-part test, we find that Ameritech has shown that a public benefit would result from the expanded local calling options that the ELCS would provide. We base our determination on the Michigan legislature's conclusion that a sufficient community of interest existed between adjacent exchanges to justify a requirement that: "A call made to a local calling area adjacent to the caller's local calling area shall be considered a local call and shall be billed as a local call."¹⁰ Accordingly, the Michigan Commission required Ameritech to file a plan for ELCS among the affected exchanges,¹¹ and further directed Ameritech to seek LATA boundary modifications where necessary to implement ELCS.¹² We believe that these actions by the Michigan legislature and the Michigan Commission are persuasive indicators that a sufficient community of interest exists among the affected exchanges to justify the ELCS.¹³ Additionally, we note that we received no objections to the grant of Ameritech's petition. Accordingly, we conclude that Ameritech has satisfied the first part of our two-part test.

5. Applying the second part of the two-part test, we find that granting the Ameritech Petition would have a minimal effect upon competition because modification of the vast majority of the individual LATA boundaries would affect only a small number of access lines.¹⁴ As a result, we

¹⁰ See Michigan Telecommunications Act, MCL 484.3304b(1).

¹¹ See Ameritech Petition.

¹² See Ameritech Petition.

¹³ We reach our conclusion that Ameritech satisfies the first prong of the Commission's two-part test notwithstanding that Ameritech's application did not include some of the data we look for in our *prima facie* analysis. Although the Michigan Commission did not conduct polls or provide a community of interest statement to document its community of interest finding, the Michigan Commission's order was premised on a community of interest finding by the Michigan legislature. It is consistent with Commission LATA boundary modification precedent for us to base our public interest determination on a decision by a state legislature. See *Verizon LATA Order supra* n.5. Further, although the Commission has previously stated a preference for flat-rated service as an indicator of a community of interest, the Commission has granted LATA boundary modifications that include measured or message rated ELCS where, as in the instant case, the types of services offered in the proposed ELCS were identical to those offered prior to the application. See *Bell-Atlantic-Virginia, Inc. Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling service (ELCS) at Various Locations*, Memorandum and Order, 13 FCC Rcd 11042 (1998) (*April 1998 LATA Order*) (granting ELCS petition where proposed service was the same as that existing prior to the application). Ameritech's petition proposes to provide customers with the same service that existed prior to ELCS. See Ameritech Petition at 2; see also Letter from Toni Acton, Associate Director, Federal Regulatory, Ameritech Telecommunications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, NSD-L-01-151 at 2 (Nov. 19, 2002). Given the close proximity inherent to adjacent local exchanges, and the efficiencies afforded to customers by expanding the availability of flat-rated calling service plans, we anticipate that the ELCS will encourage customers to migrate from message rated service to flat-rated service, and is a further indication that a sufficient community of interest exists to justify the ELCS.

¹⁴ For the purposes of ELCS petitions, we generally consider the access lines from customers in the exchange with the smaller number of access lines who seek to reach businesses, services, etc. 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)*, Memorandum Opinion and Order, 17 FCC Rcd 25540 (2002). For example, callers from the Fenwick exchange (398 access lines) seek to reach the businesses and services, etc. located in the Greenville exchange (11,895 access lines). Similarly, callers from the Byron exchange (1,706 access lines) seek to reach the businesses and services, etc. located in Durand (4,995 access lines). Therefore, for the purposes of reviewing these modifications, we will consider the 398 access lines in Fenwick and the 1,706 access lines in Byron. The largest number of access lines affected by any single LATA modification in this application is 9,982 from the Cheboygan exchange, a number within Commission precedent. See *April 1998 LATA Order, supra* n. 10 (granting an ELCS petition affecting over 30,000 access lines).

believe that granting Ameritech's petition serves the public interest by permitting minor LATA modifications where such modifications are necessary to meet the needs of local subscribers. Accordingly, we approve Ameritech's petition for limited LATA modifications.

6. We grant this relief solely for the limited purpose of allowing Ameritech to provide ELCS between the specific exchanges or geographic areas identified in these requests. The LATAs are not modified to permit the BOC to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus non-optional ELCS between the specified exchanges will be treated as intraLATA service.

IV. ORDERING CLAUSE

7. 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 requests of Ameritech for LATA modifications for the limited purpose of providing one and two-way, traditional, non-optional ELCS at specific locations, identified in NSD-L-01-151, ARE APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Competition Policy Division
Wireline Competition Division

Appendix

Exchanges and Access Lines

1. Ameritech's Albion (7,324 access lines) and Ameritech's Marshall (10,262 access lines) Exchanges
2. Ameritech's Belding (4,762 access lines) and Verizon's Fenwick (398 access lines) Exchanges
3. Ameritech's Byron (1,706 access lines) and Verizon's Bancroft (1,308 access lines) Exchanges

See Appendix for the exchanges originating the majority of interLATA traffic.

4. Ameritech's Byron (1,706 access lines) and Verizon's Durand (4,995 access lines) Exchanges
5. Ameritech's Byron (1,706 access lines) and Verizon's Gaines (1,299 access lines) Exchanges
6. Ameritech's Cheboygan (9,982 access lines) and Verizon's Onaway (3,587 access lines) Exchanges
7. Ameritech's Cheboygan (9,982 access lines) and Upper Peninsula Tel Co.'s Grace Harbor (140 access lines) Exchanges
8. Ameritech's Chelsea (9,839 access lines) and Verizon's Grass Lake (3,615 access lines) Exchanges
9. Ameritech's Chelsea (9,839 access lines) and Verizon's Munith (1,332 access lines) Exchanges
10. Ameritech's Chelsea (9,839 access lines) and Verizon's Stockbridge (2,952 access lines) Exchanges
11. Ameritech's Clio (18,078 access lines) and Ameritech's Birch Run (4,154 access lines) Exchanges
12. Ameritech's Clio (18,078 access lines) and Wolverine Tel Co.'s Millington (4,573 access lines) Exchanges
13. Ameritech's Coral (450 access lines) and Verizon's Lakeview (2,620 access lines) Exchanges
14. Ameritech's Ewart (4,284 access lines) and Verizon's Barryton (1,679 access lines) Exchanges
15. Ameritech's Ewart (4,284 access lines) and Ameritech's Harrison (8,292 access lines) Exchanges
16. Ameritech's Farwell (6,391 access lines) and Ameritech's Ewart (4,284 access lines) Exchanges
17. Ameritech's Greenville (11,895 access lines) and Verizon's Fenwick (398 access lines) Exchanges
18. Ameritech's Greenville (11,895 access lines) and Verizon's Sheridan (1,168 access lines) Exchanges
19. Ameritech's Greenville (11,895 access lines) and Verizon's Stanton (2,862 access lines) Exchanges
20. Ameritech's Harrison (8,292 access lines) and Ameritech's Marion (1,963 access lines) Exchanges
21. Ameritech's Harrison (8,292 access lines) and Century of Michigan's Merritt (636 access lines) Exchanges
22. Ameritech's Harrison (8,292 access lines) and Ameritech's McBain (1,655 access lines) Exchanges
23. Ameritech's Harrison (8,292 access lines) and Century's Falmouth (707 access lines) Exchanges
24. Ameritech's Howell (29,207 access lines) and Verizon's Bancroft (1,308 access lines) Exchanges
25. Ameritech's Indian River (4,567 access lines) and Verizon's Onaway (3,587 access lines) Exchanges
26. Ameritech's Kalkaska (6,367 access lines) and Upper Peninsula Tel Co.'s Manistee River (6,738 access lines) Exchanges
27. Ameritech's Lake Odessa (2,971 access lines) and Century-Midwest's Sunfield (1,222 access lines) Exchanges
28. Ameritech's Mancelona (3,821 lines) and Upper Peninsula Tel Co.'s Manistee River (61 access lines) Exchanges
29. Ameritech's Manchester (4,046 access lines) and Ameritech's Napoleon (2,757 access lines) Exchanges
30. Ameritech's Manchester (4,046 access lines) and Verizon's Grass Lake (3,615) Exchanges
31. Ameritech's Manchester (4,046 access lines) and Frontier's Brooklyn (5,541 access lines) Exchanges
32. Ameritech's Mayville (2,241 access lines) and Verizon's North Branch (3,047 access lines) Exchanges
33. Ameritech's Morley (1,367 access lines) and Verizon's Lakeview (2,620) Exchanges
34. Ameritech's Nashville (2,338 access lines) and Bellevue (2,259) Exchanges

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35. Ameritech's Nashville (2,338 access lines) and Barry County Tel's Lacey (870 access lines) Exchanges
 36. Ameritech's Nashville (2,338 access lines) and Verizon's Woodland (911 access lines) Exchanges
 37. Ameritech's Pinckney (8,159 access lines) and Ameritech's Fowlerville (6,067 access lines) Exchanges
 38. Ameritech's Portland (4,876 access lines) and Ameritech's Ionia (9,096 access lines) Exchanges
 39. Ameritech's Portland (4,876 access lines) and Ameritech's Lake Odessa (2,971 access lines) Exchanges
 40. Ameritech's Portland (4,876 access lines) and Verizon's Muir (1,294 access lines) Exchanges
 41. Ameritech's Portland (4,876 access lines) and Westphalia Tel Co (1,006 access lines) Exchanges
 42. Ameritech's Saginaw (94,480 access lines) and Century's Montrose (4,559 access lines) Exchanges
 43. Ameritech's Sandusky (4,096 access lines) and Century of Michigan's Marlette (3,364 access lines) Exchanges
 44. Ameritech's Snover (875 access lines) and Century of Michigan's Marlette (3,364 access lines) Exchanges
 45. Ameritech's Snover (875 access lines) and Verizon's Cass City (9,225 access lines) Exchanges
 46. Ameritech's Snover (875 access lines) and Ameritech's Ubly (1,666 access lines) Exchanges
 47. Ameritech's Snover (875 access lines) and Verizon's Minden City (1,163 access lines) Exchanges
 48. Ameritech's St. Ignace (3,737 access lines) and Mackinaw City (1,855 access lines) Exchanges
 49. Ameritech's Trufant (2,215 access lines) and Verizon's Stanton (2,862 access lines) Exchanges
 50. Ameritech's Trufant (2,215 access lines) and Verizon's Lakeview (2,620 access lines) Exchanges
 51. Ameritech's Ubly (1,666 access lines) and Verizon's Deckerville (2,177 access lines) Exchanges
 52. Ameritech's Vermontville (1,310 access lines) and Belleveu (2,259 access lines) Exchanges
 53. Ameritech's Vermontville (1,310 access lines) and Verizon's Woodland (911 access lines) Exchanges
 54. Ameritech's Wolverine (1,398 access lines) and Verizon's Vanderbilt (958 access lines) Exchanges
 55. Ameritech's Wolverine (1,398 access lines) and Verizon's Onaway (3,587 access lines) Exchanges