

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

In the Matter of )  
 )  
Application for Review of ) File No. NSD-L-98-116  
Petition for Modification of LATA )  
Boundary )

ORDER ON REVIEW

Adopted: August 13, 2002

Released: August 23, 2002

By the Commission:

I. INTRODUCTION

1. On March 16, 2000, the Common Carrier Bureau (now the Wireline Competition Bureau or Bureau) of the Federal Communications Commission (Commission) released an order that denied a petition filed by Bell Atlantic-Massachusetts, Inc. (now Verizon)<sup>1</sup> requesting that the Commission approve Verizon's plan to modify a local access and transport area (LATA)<sup>2</sup> boundary so that the town of Erving, Massachusetts could be included within a single LATA. On April 14, 2000, the Massachusetts Department of Telecommunications and Energy (MDTE) filed an Application for Review of the Bureau's decision.<sup>3</sup> For the reasons stated below, the Commission grants MDTE's petition, reverses the decision of the Bureau, and approves Verizon's LATA boundary modification request.

II. BACKGROUND

<sup>1</sup> *Verizon Petition for Modification of LATA Boundaries*, Memorandum Opinion and Order, 15 FCC Rcd 5072 (2000) (*Erving Order*).

<sup>2</sup> Section 3(25) of the Act defines LATAs as those areas established prior to enactment of the 1996 Act or established or modified by a Bell Operating Company (BOC) after such date of enactment and approved by the Commission. 47 U.S.C. §153(25).

<sup>3</sup> Commonwealth of Massachusetts Department of Telecommunications and Energy's Application for Review, File No. NSD-L-98-116 (filed April 28, 2000) (MDTE Application for Review). On May 4, 2000, the Commission released public notice of the Application for Review. *See Public Notice*, "Request of Massachusetts Department of Telecommunications and Energy for Review of Common Carrier Bureau's Denial of Bell Atlantic's Request for LATA Boundary Modification for Erving, Massachusetts," NSD-L-98-116 (May 4, 2000) (*Erving Public Notice*).

2. Under section 3(25)(B) of the Communications Act of 1934, as amended (the Act),<sup>4</sup> requests for LATA boundary modifications fall within the Commission's exclusive jurisdiction.<sup>5</sup> The Commission first reviewed applications for LATA boundary modifications in an order resolving certain petitions for expanded local calling service (ELCS) filed after the adoption of the 1996 amendments to the Act.<sup>6</sup> In the *July 1997 Order*, the Commission adapted the approach initiated by Judge Greene under the MFJ, wherein the court would first determine whether the LATA boundary modification would bring the benefit of reasonably priced, flat rate local telephone service to a community that happened to straddle a LATA boundary, and then would determine whether the proposed LATA modification could be granted with minimal anticompetitive impact.<sup>7</sup> The Court determined that, where the petition satisfied these criteria, the Commission could modify the LATA boundary for the limited purpose of creating an expanded local calling area.<sup>8</sup> The Commission also delegated authority to the Bureau to act on any petitions to modify LATA boundaries consistent with the principles set forth in the ELCS Order.<sup>9</sup>

3. Subsequently, in the *Advanced Services LATA Order*,<sup>10</sup> the Commission refined the ELCS test for application outside the ELCS context, specifically, where a petitioner seeks a

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<sup>4</sup> 47 U.S.C. §153(25).

<sup>5</sup> *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. 14,392, 14,399 (1999) (Arizona LATA Order).

<sup>6</sup> *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) (*July 1997 Order*). ELCS, sometimes known as expanded area service, allows a BOC to transport certain local telephone calls across a LATA boundary for a community whose exchanges cross that LATA boundary. *See also, Southwestern Bell Telephone Company Petition for Limited Modification of LATA Boundaries to Provide Integrated Services Digital Network (ISDN) at Hearne, Texas*, Memorandum Opinion and Order, 13 FCC Rcd 13166 (Com. Car. Bur. 1998) (Hearne) (approving a petition filed by Southwestern Bell (SBC) to provide ISDN service across a LATA boundary in Hearne, Texas).

<sup>7</sup> *July 1997 Order*, 12 FCC Rcd at 10657-58. The Commission set forth five factors that a BOC would have to show to make a *prima facie* case supporting grant of the proposed LATA boundary modification. The BOC would have to show that the proposed ELCS : (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) involves a limited number of customers or access lines. *Id.* at 10659.

<sup>8</sup> *Id.*, 12 FCC Rcd at 10654

<sup>9</sup> *Id.*, 12 FCC Rcd at 10661

<sup>10</sup> *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*, Fourth Report & Order & Memorandum Opinion & Order, 15 FCC Rcd. 3089 (2000) (*Advanced Services LATA Order*).

LATA boundary modification to provide advanced services. Under this iteration of the test, a petitioning BOC first must show that the proposed modification provides a public benefit, and then must show that the grant of the requested waiver would not remove the BOC's incentive to apply for authority to provide in-region interLATA service pursuant to section 271 of the Act.<sup>11</sup> The Commission has applied this test to establish a process for granting requests for LATA boundary modifications to encourage the deployment of advanced services,<sup>12</sup> and to move a LATA boundary so that customers from a LATA in one state could be served in their home state's LATA.<sup>13</sup> Accordingly, we apply this test today in our review of the Bureau's order.

4. Verizon filed a LATA boundary petition on September 1, 1998. This petition asked the Bureau to modify a LATA boundary so that the town of Erving, Massachusetts could be included in a single LATA. The town of Erving is currently divided by a LATA boundary created as part of the AT&T divestiture and based on the configuration of AT&T's network at that time. Because the LATA boundary was drawn to follow the original numbering plan area (NPA) code boundary,<sup>14</sup> the town is served by two area codes that fall on either side of the LATA boundary. Thus, the eastern portion of Erving is in the state's eastern LATA and has a 978 NPA, and the other portion of Erving is in the state's western LATA and has a 413 NPA. Erving residents attribute various problems -- misdirected emergency calls; misdirected mail; inaccurate maps showing all of Erving being served by the 413 area code; and directory assistance difficulties -- to the multiple area

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<sup>11</sup> *Id.*, 15 FCC Rcd at 3097-98. See also *Verizon and Ameritech Joint Petition for Modification of LATA Boundaries*, Memorandum Opinion and Order, 15 FCC Rcd 7151 (1999) (*East Palestine LATA Order*) (applying two-part test to move customers from the Youngstown, Ohio to the Pittsburgh, Pennsylvania LATA). In the *East Palestine LATA Order*, the Commission also associated the five factors that the Commission used to determine whether a BOC had made a *prima facie* case in an ELCS Petition. See note 7, *supra*. According to the Commission, factors one through four went to the public interest analysis, and factor five went to the competition analysis. *Id.*, 15 FCC Rcd at 7155, n.24.

<sup>12</sup> *Advanced Services LATA Order*, 15 FCC Rcd. 3089, 3097. In this case, the public benefit was the requirement under section 706 of the Act that the Commission encourage the deployment of advanced services on a reasonable and timely basis. 47 U.S.C. § 157(nt). The Commission stated that it would grant such LATA modification petitions when the modification is necessary to encourage the deployment of advanced services on a reasonable and timely basis and when the modification would not materially affect the BOC's incentive to seek authority to provide interLATA service pursuant to section 271 of the Act. 15 FCC Rcd. 3089 at 3100. No such applications have been filed with the Commission.

<sup>13</sup> *East Palestine LATA Order*, 15 FCC Rcd 7151, 7154.-55.

<sup>14</sup> The North American Numbering Plan was established in the early 1940s, when American Telephone and Telegraph (AT&T) realized that there was a need to ensure that the expansion of long distance calling would be guided by principles consistent with the ultimate incorporation of all public switched telephone networks into an integrated nation-wide network. Under the plan, the United States and Canada were divided into eighty-three "zones," each of them identified by three digits. Within each zone, a central office was represented by another three-digit code. The original zones are now referred to as Numbering Plan Areas (NPAs), and the three digits representing those areas are referred to either as Numbering Plan Area codes or area codes.

codes and the placement of the LATA boundary line. As a result, Erving residents suggested to the MDTE that their problems could be alleviated by placing the town under a single area code, a unique local exchange code, and a single LATA.<sup>15</sup> Subsequently, as ordered by the MDTE, Verizon, pursuant to section 3(25) of the Act, filed a petition with the Commission to modify the LATA boundary in a manner that would unify the town of Erving within a single LATA.<sup>16</sup>

5. In its petition for a LATA boundary modification, Verizon presented various options that it had considered to accommodate the concerns of Erving's residents. Under one option, Verizon had proposed to the MDTE that it move Erving customers served by the Orange exchange in the 978 area code to the Millers Falls exchange in the 413 area code.<sup>17</sup> Under this proposal, there would be no change in LATA or exchange boundaries; instead, the 413 area code would be assigned in both the eastern and western Massachusetts LATAs for "the limited purpose of serving these approximately 300-400 Erving customers."<sup>18</sup> Additionally, Verizon stated that it would request a second 413 NXX code to serve Erving customers in the Millers Falls exchange if the customers agreed to change their telephone numbers. Verizon did not favor this option, however, because Verizon was "extremely concerned that [this] unique serving arrangement for Erving would directly affect [its] ability to effectively and efficiently maintain the network on an ongoing basis";<sup>19</sup> specifically, Verizon stated that absent geographic number portability beyond a LATA, "a single 413 code in the eastern Massachusetts LATA will need to be maintained as an exception to the logic of the way the network is configured and will be counter-intuitive for anyone whose job it is to analyze and fix troubles as well as those who make ongoing programming changes to the network."<sup>20</sup>

6. Verizon presented a second option to unify Erving under one LATA, the 413 area code, and a unique exchange number.<sup>21</sup> Under this option, Verizon had proposed to the MDTE that it petition the Commission to move the LATA boundary. This approach would allow all Erving

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<sup>15</sup> *Erving Order*, 15 FCC Rcd at 5073. Erving also is served by two exchanges within the respective two area codes: the majority of Erving's residents are in the Millers Falls exchange with the balance being served by the Orange exchange. Millers Falls is in the 413 area code and LATA 126 (western LATA). Millers Falls has 854 telephone exchange lines. Orange is in the 978 area code and LATA 128 (eastern LATA). Approximately 650 of Oranges's 4,804 telephone exchange lines serve Erving customers; this amounts to approximately 400 customers. *Id.* at n.6.

<sup>16</sup> *See* Initial Bell Atlantic-Massachusetts petition, MDTE Attachment.

<sup>17</sup> *Id.* at 5073.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 5074.

<sup>21</sup> *Id.*

customers to be in the 413 area code and in the western LATA. The exchange boundary between the Millers Falls and Orange exchanges would be realigned so that all Erving customers would reside in Millers Falls exchange.

7. Verizon stated that there were two ways to unify Erving under one LATA. Under “option 2A” (as it is numbered in the record), Verizon would build new facilities so that Erving customers in the Orange exchange would be served from the Millers Falls switch instead of the Orange switch. Under this option, a new NXX code would be opened in the Millers Falls exchange to serve either the Erving customers from the Orange exchange or all Erving customers. Under “option 2B,” Verizon would open a new 413 NXX code to serve the approximately 300 to 400 Erving/Orange customers; the new NXX code, however, would be assigned to the Millers Falls rate center. Verizon stated that for the remaining Erving customers (approximately 900) whose service is provided by Millers Falls, another NXX code could be opened in the Millers Falls switch, but those customers would have to agree to a number change. Verizon favored option 2B over the other options because that option avoided the network exception that Verizon asserted would be created by the first option and avoided the need for the construction of new facilities required by option 2A.<sup>22</sup>

8. In denying the Verizon petition, the Bureau found it should modify LATA boundaries only where the problems experienced by the petitioners could actually be resolved by the modification. The Bureau observed that the Erving petition was not a standard limited purpose ELCS request, but rather asked the Commission to change the geographic location of the LATA boundary.<sup>23</sup> The Bureau concluded that, notwithstanding that the Erving residents had exhibited a community of interest, none of the difficulties experienced by the Erving residents arose because of the placement of the LATA boundary, and that, as a result, the Erving residents had failed to show that the proposed moving of the LATA boundary modification would produce a public benefit.<sup>24</sup> Further, the Bureau was concerned that an all-purposes LATA modification (as opposed to the type of limited, expanded local calling service LATA modification generally approved by the Bureau)<sup>25</sup> would be seen as a corrective tool for problems not fully related to the placement of a particular LATA boundary. The Bureau concluded that granting Verizon’s petition would invite numerous other communities to file petitions to seek “LATA relief” from problems that were neither created by nor could be solved by changes to a LATA boundary.<sup>26</sup> Because the Bureau concluded that the

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<sup>22</sup> Option 2B had an estimated cost of \$520,000. Option 1 had an estimated cost of \$560,000. Option 2A had an estimated cost of between \$900,000 and \$1.15 million. *Id.* at 5074, n. 15.

<sup>23</sup> *Id.* at 5075.

<sup>24</sup> Specifically, the Bureau found that the problems raised by Erving residents arose from the existence of two distinct NXX and area codes because parties outside of Erving erroneously assumed that only “413” telephone numbers are associated with Erving residents. *Erving Order*, 15 FCC Rcd at 5075-77.

<sup>25</sup> *See July 1997 Order*, 12 FCC Rcd at 10654.

<sup>26</sup> *Erving Order*, 15 FCC Rcd at 5076-77.

proposed LATA boundary modification would provide no public benefit, the Bureau did not address its competitive impact.

### III. DISCUSSION

9. We find that the Verizon's LATA boundary modification request satisfies the Commission's two-part test for granting ELCS and other LATA boundary modification requests, and, consequently, we reverse the Bureau's March 2000 decision.<sup>27</sup> The first prong of the two-part test requires the applicant to prove that the requested LATA modification would provide a significant public benefit. The second prong requires that the public benefit be balanced against any negative effect that granting the petition would have on a BOC's incentives to fulfill its section 271 obligations. In reaching our conclusion to grant Verizon's LATA boundary modification request, we also are persuaded by two changes of circumstances that obviate any possible harm that could result from granting the petition. First, this Commission has granted Verizon the authority to offer long distance service in Massachusetts, and second, the MDTE has implemented thousands-block number pooling, substantially reducing the impact of granting Verizon's request on numbering resources.

10. We first conclude that the proposed LATA boundary modification provides a clear public benefit to the residents of Erving, thereby satisfying the first prong of the LATA boundary modification test. Erving residents in the eastern LATA/978 area code would benefit from a LATA modification that would allow them to call other Erving residents without having to dial eleven digits and would provide them with access to the same calling plans currently available to Erving residents in the western LATA/413 area code. One of the principal concerns of Erving residents in the eastern LATA is that they, like their fellow residents in the western LATA, be able to identify themselves as a western LATA community. The Erving residents offer their omission from maps, directory assistance problems, and loss of potential grants as evidence of their need for an identification with the western LATA. In its application for review, the MDTE noted that the Bureau did not dispute that this public benefit would result from the LATA boundary modification, but rather acknowledged that a community of interest existed among Erving's eastern and western residents.<sup>28</sup> The MDTE argued that, notwithstanding the Bureau's concern, granting the requested all-purposes LATA boundary modification would not invite unnecessary and overbroad LATA modification petitions, but was consistent with Commission policy, and, in the absence of any demonstrated harm that would result from the granting of the LATA boundary modification, should have been granted.<sup>29</sup> We agree with the MDTE that there is a community of interest among

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<sup>27</sup> The Commission is unable to reach a majority on whether the Bureau exceeded its delegated authority in this matter.

<sup>28</sup> MDTE Application for Review at 4.

<sup>29</sup> *Id.*

Erving's eastern and western residents and find that unifying Erving within the same LATA would provide significant benefits. The LATA configuration that divides Erving is the result of an anomalous network configuration at the time of divestiture. Correcting this configuration will allow all of Erving's local subscribers to have a unified local calling area where a community of interest exists. Thus, we conclude that the first part of the two-part test is satisfied.

11. We similarly conclude that the proposed LATA boundary modification request satisfies the second prong of the two-part test, because the public benefit of granting the request far outweighs any negative effect it would have on Verizon's incentives to fulfill its section 271 obligations. Granting the requested modification would have a minimal effect on competition given the small number of access lines and the small volume of traffic involved for the proposed ELCS areas in this petition. Additionally, changed circumstances further support our conclusion that no harm to competition will result from granting this application.<sup>30</sup> Most significantly, Verizon has opened its market to competition in Massachusetts, and accordingly has been granted authority to offer long distance service in that state.<sup>31</sup> The proposed LATA modification thus will have no impact on Verizon's incentive to satisfy its section 271 obligations in Massachusetts. Further, in August, 2002, the MDTE implemented thousands-block number pooling in the western part of the state,<sup>32</sup> a change that will allow a far more efficient use of the numbering resources necessary to implement the LATA modification. Verizon's request needs only 1,400 lines, which, prior to number pooling, would have caused almost 90 percent of the 20,000 telephone numbers in the proposed two additional NXXs to be stranded.<sup>33</sup> However, with pooling, numbers in the 413 NPA can now be assigned in blocks of one thousand line numbers instead of full exchange codes of 10,000.<sup>34</sup> As a result, Verizon will be able to implement the LATA boundary modification in a

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<sup>30</sup> See Letter from MDTE to Magalie Roman Salas, Secretary, Federal Communications Commission (January 23, 2002) (*January 23, 2002 Ex Parte*).

<sup>31</sup> *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Massachusetts*, Memorandum Opinion and Order, 16 FCC Rcd 8988 (2001) (*Verizon Massachusetts Order*).

<sup>32</sup> Thousands-block number pooling enables carriers to receive numbering resources in blocks of 1,000. It involves breaking up the 10,000 numbers in a NXX into ten sequential blocks of 1,000 numbers each, and allocating each thousands-block to a different service provider, and possibly a different switch, within the same rate center. "NXX" refers to the second 3 digits of a 10-digit telephone number in the form of a NPA-NXX-XXXX where "N" represents any one of the numbers between 2 and 9 and "X" represents any one of the numbers between 0 and 9. See *Numbering Resource Optimization*, Report and Order & Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7622, n.4 (2000) (*NRO Order and FNPRM*).

<sup>33</sup> Prior to thousands-block numbering, two blocks of 10,000 numbers would need to be allocated to serve the town of Erving, resulting in the abandonment of over 8,000 numbers. After the implementation of thousands block numbering, however two numbering blocks of 1,000 numbers can now be assigned to this area, resulting in a far more efficient allocation of numbering resources.

<sup>34</sup> *Id.* at 1-2.

manner that conserves most of the numbers in the two additional NXXs. We therefore conclude that the second prong of the two-part test is satisfied.<sup>35</sup>

#### IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, respectively, that the Application for Review filed by the Massachusetts Department of Telecommunications and Energy IS GRANTED.

13. IT IS FURTHER 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 the request of Verizon for LATA modification to unify the town of Erving, Massachusetts identified in File No. NSD-L-98-116 IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>35</sup> In reaching our conclusion today, we also note that no comments were filed opposing the MDTE's Application for Review.