

Bell Atlantic
1300 I Street, NW
Suite 400 West
Washington, DC 20005

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February 2, 2000

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Request for Limited Modification of LATA Boundaries to Provide ELCS
Between Various exchanges in Bell Atlantic-West Virginia's McDowell County; CC
Docket No. 96-159**

Dear Ms. Salas:

Bell Atlantic – West Virginia hereby submits this request for a LATA boundary modification to provide Expanded Local Calling Service (ELCS) between various exchanges in McDowell County, West Virginia.

In its order released July 15, 1997¹ ("Order"), the Commission established an ongoing process for requesting LATA boundary modifications to provide ELCS. This request is filed pursuant to the provisions contained in that order. Attached please find the support documentation required by the Commission to approve the requested modification.

Should you have any questions regarding this material, please do not hesitate to contact me at 202-336-7875.

Sincerely,

A handwritten signature in cursive script that reads "Tracy K. Chaney".

Attachment

cc: C. Keller
D. Harmon
A. Thomas

¹ "In the Matter of Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations", CC Docket No. 96-159, released July 15, 1997.

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DATE

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

**PETITION OF BELL ATLANTIC – WEST VIRGINIA, INC.
FOR LIMITED MODIFICATION OF LATA BOUNDARY
TO PROVIDE EXPANDED LOCAL CALLING SERVICE
BETWEEN VARIOUS EXCHANGES IN
MCDOWELL COUNTY, WEST VIRGINIA**

Pursuant to Section 3(25) of the Communications Act of 1934, as amended,¹ Bell Atlantic – West Virginia, Inc. (“BA-WV”) hereby petitions the Commission for a limited modification of a LATA boundary to provide Expanded Local Calling Service (“ELCS”) between various exchanges in McDowell County, West Virginia.² In support of its petition, BA-WV submits the following information.

(1) Type of Service

Local calling areas in West Virginia include all exchanges that are contiguous to the customer’s home exchange, as well as, generally, all other exchanges whose rate centers fall within a twenty-two (airline) mile radius of the home exchange’s rate center. Customers may subscribe to one of four calling

¹ See 47 U.S.C. §153(25).

² The proposal to establish cross-LATA ELCS in McDowell County was made by the West Virginia Commission's Consumer Advocate Division in a petition that was filed on December 22, 1998 (Attachment A). Notice of the proceeding was published in a newspaper of general circulation in McDowell County and posted on the West Virginia Commission's web page.

The Consumer Advocate also proposed that cross-LATA ELCS be established between the Paw Paw and Berkeley Springs exchanges in Morgan County. The provision of that ELCS will be addressed in a separate petition.

plans, with each offering a progressively larger flat rate calling area. This local calling plan, known as the "Winfield Plan," has been in effect since 1988.³

BA-WV proposes that its Bradshaw and Iaeger exchanges (located in BA-WV's Charleston LATA) be included in the local calling area of Citizens Telecommunications Company's ("Citizens") Welch exchange (located in Citizens' Bluefield Independent Market Area). Bradshaw and Iaeger are only 13 miles from Welch exchange's rate center, and, were it not for the LATA boundary that bisects McDowell County, both would be included in the Welch exchange's local calling area.

Adding BA-WV's Bradshaw and Iaeger exchanges to the Welch local calling area will also provide those customers with local calling to Citizens' Davy, Coalwood, Gary, Anawalt, Kimball, Northfork, and Maybeury exchanges and War Telephone Company's ("War") exchange.

(2) Direction of Service
Two-Way

³ Although the proposed ELCS would be optional with the customer, depending upon the particular local calling service that he or she selected, all four services are already part of BA-WV's existing Winfield local calling plan, and thus falls within the guidelines established by the Commission in its Bell Atlantic-Virginia ELCS order. ["...we will consider such a petition favorably as long as the petition does not introduce non-flat-rated service into the expanded local calling area." (emphasis in original.)] See Memorandum Opinion and Order at ¶6. In the Matter of Bell Atlantic - Virginia Petition for Limited Modification of LATA Boundary to Provide Expanded Local Calling Service, File No. NSD-L-99-47, DA 99-1728 (rel. Aug. 27, 1999).

(3) Exchanges Involved

<u>BA-WV</u>	<u>Citizens</u>	<u>War</u>
laeger	Welch	War
Bradshaw	Coalwood	
	Davy	
	Gary	
	Kimball	
	Northfork	
	Maybeury	
	Anawalt	

(4) Name of Carriers

Bell Atlantic – West Virginia, Inc.
Citizens Telecommunications Company
War Telephone Company

(5) State Commission Approval

The West Virginia Public Service Commission issued a final order on November 30, 1999, finding that there was a community of interest between and among the exchanges involved in this petition, that the granting of the LATA boundary modification requested herein would be in the public interest, and that BA-WV should be authorized to file this petition. A copy of that order is attached.

See Attachment B.

(6) Number of Access Lines

Bradshaw	1,730	Gary	732
laeger	2,385	Kimball	485
Welch	3,028	Northfork	1,468
Coalwood	245	Anawalt	581
Davy	494	Maybeury	230
War	1,545		
			<hr/>
			12,923

(7) Usage Data (Messages per main station per month⁴)

laeger to Welch	2.67	Bradshaw to Coalwood	0.12
Welch to laeger	0.70	Coalwood to Bradshaw	0.62
Bradshaw to Welch	1.79	laeger to War	0.16
Welch to Bradshaw	0.48	War to laeger	0.01
laeger to Davy	0.29	Bradshaw to War	1.77
Davy to laeger	1.32	War to Bradshaw	0.02
Bradshaw to Davy	0.08	laeger to Gary	0.24
Davy to Bradshaw	0.30	Gary to laeger	0.38
laeger to Coalwood	0.09	Bradshaw to Gary	0.14
Coalwood to laeger	0.62	Gary to Bradshaw	0.15

(8) Poll Results

A poll was not conducted since the granting of this petition for a limited LATA modification will not result in an increase in end-user rates.

(9) Community Interest Statement

Education:

⁴ BA-WV has not furnished long distance service between laeger and Bradshaw and the other cross-LATA exchanges involved in this proceeding since 1984, and therefore has no records or other current data concerning the monthly calling volumes between those exchanges. The Commission's Consumer Advocate Division, however, was able to obtain calling volume data from AT&T. Those data only reflect the traffic carrier by AT&T, however, and, because they do not include traffic carried by other IXC's, thus understate actual calling volumes.

West Virginia's school systems are organized on a county basis, thereby creating a county-wide educational community of interest. The LATA boundary, however, divides a number of school districts in McDowell County. Some students who live in Bartley, for example, attend the elementary school in English, which, although only a mile away, is on the Citizens side of the LATA boundary. McDowell Tr. at 34. The county vocational school is located in Welch, as is the county school system's central office. Id. at 29-30; 32; 42. Cross-LATA calls to and from those locations (by students, parents, and school personnel) are all toll calls, thus increasing McDowell Countians' cost of everyday communications.

County Government:

Welch is the county seat of McDowell County. Because most governmental agencies are located in Welch, the LATA boundary serves to separate many McDowell Countians from essential county services. In order to overcome that separation, the Circuit Court, for example, has had to bear the expense of installing an 800 number to accommodate the incoming calls from laeger and Bradshaw. Id. at 28-29. The County Commission, the Board of Education, the County 911 Bureau and other county agencies all incur considerable expense to compensate for the absence of county-wide local calling. Id. 36-38; 40-42;46.

Business:

Trade and commerce are also negatively affected by the absence of county-wide local calling.⁵ A number of businesses in McDowell County have split operations that are located in different LATAs (for example, a coal mining operation with its main office in one LATA and a preparation plant in the other), thus greatly increasing their cost of communications. Id. at 31-32. Other businesses are disadvantaged by virtue of being located in one LATA and having customers or employees who live in the other LATA. Id. at 44-45; 49-50.

(10) Map

A map showing the exchanges involved in this proceeding are attached as Attachment C.

(11) Other Pertinent Information

The public hearing in Welch was well attended by a number of community representatives. Their testimony in support of the proposed cross-LATA ELCS was reinforced by the several petitions bearing hundreds of signatures that were submitted to the West Virginia Commission. West Virginia Order at 7. No opposition to the proposed cross-LATA ELCS was voiced by any party. Id.

The fact that no interexchange carriers intervened in the proceeding or otherwise objected to the proposed cross-LATA ELCS is probative of the

⁵ With the decline of the coal mining industry in southern West Virginia, McDowell County has entered a period of economic decline over the past 10 years. The County's unemployment rate stands at 15.2% -- second highest in the State. While economic considerations are not part of the Commission's community of interest standard, all parties to the state proceeding agree with the West Virginia Commission's conclusion that "[w]hile a limited modification [of the LATA boundary] is not a panacea for McDowell County's economic ills, it certainly removes an impediment to economic development." West Virginia Commission Order at 6.

minimal, anti-competitive effects of the proposed LATA boundary modification. Id.
at 10.

CONCLUSION

For the reasons set forth herein, Bell Atlantic – West Virginia, Inc.
respectfully asks that this petition for a limited LATA boundary modification be
granted.

Respectfully submitted,

Dated: February ____, 2000



CONSUMER ADVOCATE DIVISION
STATE OF WEST VIRGINIA
PUBLIC SERVICE COMMISSION
7th Floor, Union Building
723 Kanawha Boulevard, East
Charleston, West Virginia 25301
(304) 558-0526

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WEST VIRGINIA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

December 22, 1998

Sandra Squire
Executive Secretary
Public Service Commission of West Virginia
201 Brooks Street
Charleston, West Virginia 25301

RE: JOINT PETITION REQUESTING GENERAL INVESTIGATION *98-1531-T-PC*

Dear Ms. Squire:

Enclosed for filing, please find the original and twelve (12) copies of a Petition by the Consumer Advocate Division Requesting the Commission to Initiate a General Investigation Proceeding to Determine Community of Interest to Facilitate Cross-LATA Local Calling in McDowell and Morgan Counties. Copies of the Petition have been served on counsel for Bell Atlantic-West Virginia, Citizens Telecom, Staff, AT&T, MCI and to representatives of War Telephone Company.

Respectfully,

Gene W. Lafitte, Jr.
Counsel for Consumer Advocate

GWL/cs
Enclosures

- cc: Steve Hamula, Esq.
- Richard Tettlebaum, Esq.
- David A. Frost, Esq.
- Mark A. Keffer, Esq.
- James R. Scheltema, Esq.
- Rush Foster

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

IN RE: **GENERAL INVESTIGATION** CASE NO. _____
TO DETERMINE COMMUNITY OF
INTEREST TO FACILITATE
CROSS-LATA LOCAL CALLING

**PETITION OF THE CONSUMER ADVOCATE DIVISION
TO INITIATE A GENERAL INVESTIGATION
INTO WHETHER THERE IS A SUFFICIENT
“COMMUNITY OF INTEREST” TO JUSTIFY
EXPANDED LOCAL CALLING ACROSS LATA
BOUNDARIES IN MCDOWELL AND MORGAN COUNTIES**

NOW COMES the Consumer Advocate Division of the Public Service Commission of West Virginia (hereinafter “CAD”), and respectfully petitions this Commission to initiate a general investigation into whether there exists a sufficient “community of interest” between certain telephone exchanges in McDowell and Morgan counties of West Virginia to justify a limited waiver of interLATA restrictions for expanded local calling pursuant to the “Winfield Plan.” In support of such petition, the CAD would show as follows:

INTRODUCTION

1. This Commission is authorized, pursuant to West Virginia Code § 24-2-2, to investigate rates, methods and practices of all public utilities in West Virginia. The Consumer Advocate Division is required by statute and Commission rule to represent the interests of consumers in utility rate cases and related proceedings. Bell Atlantic-West Virginia, Inc. (“BA-WV”), Citizens Telecom (“Citizens”) and War Telephone Company (“War”) are public utilities engaged in the business of providing telecommunications services within West Virginia. The

names and address of the CAD's attorneys are as follows:

Deborah Y. VanDervort, Esq..
Gene W. Lafitte, Jr., Esq.
Counsel for Consumer Advocate
723 Kanawha Blvd., East
7th Floor, Union Building
Charleston, WV 25301

2. As part of the breakup of the Bell System in 1984, the entire nation was divided into approximately 200 zones, called Local Access and Transport Areas ("LATAs"), which provided general demarcation lines between local and long distance service. Under the scheme originally approved by Judge Greene of the United States District Court of the District of Columbia, West Virginia was divided into two principal LATAs: the Charleston LATA and the Clarksburg LATA. In addition, portions of the eastern panhandle of West Virginia were included in the Hagerstown, Maryland LATA, while the sections of Mercer and McDowell counties served by Citizens Telecom were placed in a special LATA called the "Bluefield Special Market Area" ("SMA").

3. Calls between LATA's are carried by interexchange carriers, such as AT&T and Sprint. Incumbent Bell operating companies, like BAWV, are normally prohibited from carrying telecommunications traffic between LATA's, unless and until the Bell operating company receives authority to provide interLATA telecommunications services pursuant to Section 271 of the Telecommunications Act of 1996.¹ As a result, calls between adjacent exchanges on opposite sides of a LATA boundary are classified as toll calls, rather than local calls, and must be carried by an interexchange carrier.

¹As of the date of the filing of this petition, BAWV has not received authority under Section 271 to provide interLATA service. Non-Bell local companies, such as Citizens and War, are not subject to the same interLATA restrictions as BAWV.

4. Since 1988 this Commission has implemented a policy of expanding the local calling area of every telephone exchange in West Virginia. Under this policy, known as the "Winfield Plan," the local calling area of every exchange includes all exchanges whose wire centers fall within a 22-mile radius of that exchange's wire center.² Although there are a number of exchanges in West Virginia which do not enjoy the full benefit of expanded local calling service ("ELCS") under the Winfield Plan because of the proximity of these exchanges to LATA boundaries, McDowell County and Morgan County are two counties in West Virginia in which LATA boundaries divide the county. As a result, the LATA boundaries have prevented the incumbent local exchange companies from providing two-way ELCS between county residents and the county seat, and vice-versa. As shown on Attachment A, McDowell County in Southern West Virginia is divided between the Charleston LATA and the Bluefield SMA, and as shown on Attachment B, Morgan County in the eastern panhandle, is divided between the Clarksburg LATA and the Hagerstown LATA.

5. Under Sections 3(25)(B) and 4(i) of the Telecommunications Act of 1934, as amended by the Telecommunications Act of 1996, the Federal Communications Commission ("FCC") is vested with the ultimate authority to grant waivers and/or modifications of LATA boundaries. Prior FCC decisions have granted such waivers or modifications based upon a finding by a state commission that a "community of interest" exists between exchanges divided by a LATA boundary. *See In the Matter of Petitions for Limited Modifications of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, FCC Docket No. 96-159, Order dated July 3, 1997. The FCC requires a "community of interest" finding by

²The local calling area also includes exchanges whose boundaries are adjacent to the home exchange even if the wire center of the adjacent exchange lies outside the 22-mile radius.

a state commission as a necessary prerequisite to filing a formal petition for waiver of a LATA boundary. This petition seeks such a finding of community of interest from this Commission.

THE AFFECTED EXCHANGES

6. There are 11 telephone exchanges in McDowell County: the Iaeger and Bradshaw exchanges served by BAWV; the War exchange served by War Telephone Company; and the Davy, Welch, Coalwood, Gary, Kimball, Northfork, Anawalt and Maybeury exchanges served by Citizens. All of McDowell County, except the Iaeger and Bradshaw exchanges served by BAWV, falls within the Bluefield SMA. Iaeger and Bradshaw are situated in the Charleston LATA. As a result, the residents and businesses of the Iaeger and Bradshaw exchanges cannot place local calls to the county seat in Welch - nor to intervening and adjacent exchanges served by Citizens and War Telephone Company - even though the wire center of the Iaeger exchange is only 12.6 miles from the wire center of the Welch exchange.³ But for the cross-LATA nature of the traffic, Welch and other exchanges would fall within the ELCS area of the Iaeger and Bradshaw exchanges pursuant to the "Winfield Plan."⁴ The CAD is seeking to establish two-way ELCS between and among the Iaeger and Bradshaw exchanges of BAWV, the Welch, Davy, Coalwood, Gary, Kimball and Northfork exchanges of Citizens, and the War exchange of War Telephone Company.

7. In Morgan County there are only two exchanges: the Berkeley Springs exchange

³The wire center of the Bradshaw exchange is only 13 miles from the wire center of the Welch exchange.

⁴ Ultimately, expansion of ELCS for the Iaeger and Bradshaw calling areas to include Welch should by necessity also include the intervening and nearby Citizens exchanges of Davy, Coalwood, Gary, Kimball and Northfork, and the War Telephone Company exchange of War. Conversely, the Welch, Davy, Coalwood, Gary, Kimball, Northfork and War exchanges should all add the Iaeger and Bradshaw exchanges within their ELCS areas.

served by BAWV in the Hagerstown LATA, and the Paw Paw exchange served by Citizens in the Clarksburg LATA. BAWV cannot provide ELCS from Berkeley Springs, the county seat, to the Paw Paw exchange pursuant to the "Winfield Plan" because of the LATA boundary.⁵ However, Citizens is already providing one-way local calling from Paw Paw to Berkeley Springs. In 1988, a group of 62 Paw Paw customers of GTE South, Inc. (predecessor-in-interest to Citizens) filed a formal complaint requesting extension of their ELCS from Paw Paw to include Berkeley Springs. The Commission dismissed the complaint without prejudice in an Order dated September 13, 1989, in response to GTE's agreement with the complainants to extend the ELCS in one direction, *i.e.* from Paw to Berkeley Springs.⁶ A subsequent tariff implementing this one-way calling arrangement was approved in Case No. 94-1120-T-T. The CAD is now requesting that the Commission investigate whether there exists a sufficient "community of interest" between these affected exchanges to justify a waiver of LATA restrictions to provide full two-way ELCS between the Berkeley Springs and Paw Paw exchanges.

8. Extension of ELCS between the county seat and all areas in McDowell and Morgan counties will serve an important community of interest between these exchanges. This general investigation will create an evidentiary record in support of that determination. Information to be gathered and considered by the Commission could include usage data, the average number of access lines in the affected exchanges, public and private services which are affected by the existence of the LATA boundaries, and the impact of approval of cross-LATA local calling on existing toll carriers.

⁵The wire center of the Paw Paw exchange is only 14 miles from the wire center of the Berkeley Springs exchange.

⁶ See Commission Order in Storhaug v. AT&T Communications of West Virginia, Case No. 88-850-T-C, dated September 13, 1989.

9. Extending the local calling areas across the LATA boundaries in these limited instances will eliminate toll charges for necessary telecommunication services in rural areas. Many of the people affected by the restrictions imposed by these LATA boundaries are older, retired and on fixed incomes, or generally of limited financial means. Extending the full benefits of ELCS by permitting cross-LATA local calling for these customers far outweighs any potential competitive harm from the granting of a limited LATA modification in this instance.

10. Following published notification, the Commission should hold hearings in each of the affected areas to establish a record on the community of interest between the affected exchanges. Testimony, affidavits and any other probative evidence should be adduced from county officials and/or citizens who would be affected by the proposed LATA boundary modifications, and to consider any objections to a finding that a sufficient community of interest exists. The hearings should be held as soon as practicable to allow for expeditious application to the FCC for final approval.

11. After public hearing, the Commission should review the record, and, if warranted, make a formal determination that a sufficient community of interest exists between and among the affected exchanges. Assuming that a finding of community of interest is made, the Consumer Advocate Division intends to work with BA-WV, Citizens, War and the Commission Staff to petition the FCC requesting a limited modification of LATA boundaries to provide full, two-way ELCS in McDowell and Morgan counties.

CONCLUSION

12. This investigation is necessary to evaluate the community of interest in two counties which do not currently enjoy the full benefits of extended local area service calling under the Winfield Plan. Such relief will serve the important community of interest between and among

these exchanges which requires the free flow of telecommunications at the lowest price for consumers. That important policy outweighs any competitive strictures imposed by federal regulatory policy, which would not be undermined in any event by the limited relief requested in this petition.

WHEREFORE, the Consumer Advocate Division respectfully requests that:

1. The Commission institute a general investigation into whether a community of interest exists between and among:

A. the Jaeger and Bradshaw exchanges of BAWV; the Welch, Davy, Coalwood, Gary, Kimball and Northfork exchanges of Citizens; and the War exchange of War Telephone Company in McDowell County; and

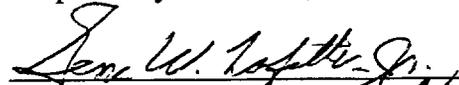
B. the Berkeley Springs exchange of BAWV and the Paw Paw exchange of Citizens in Morgan County.

2. The Commission give notice of such general investigation and hold hearings in the affected areas;

3. The Commission issue a finding that a community of interest exists between and among the affected exchanges; and

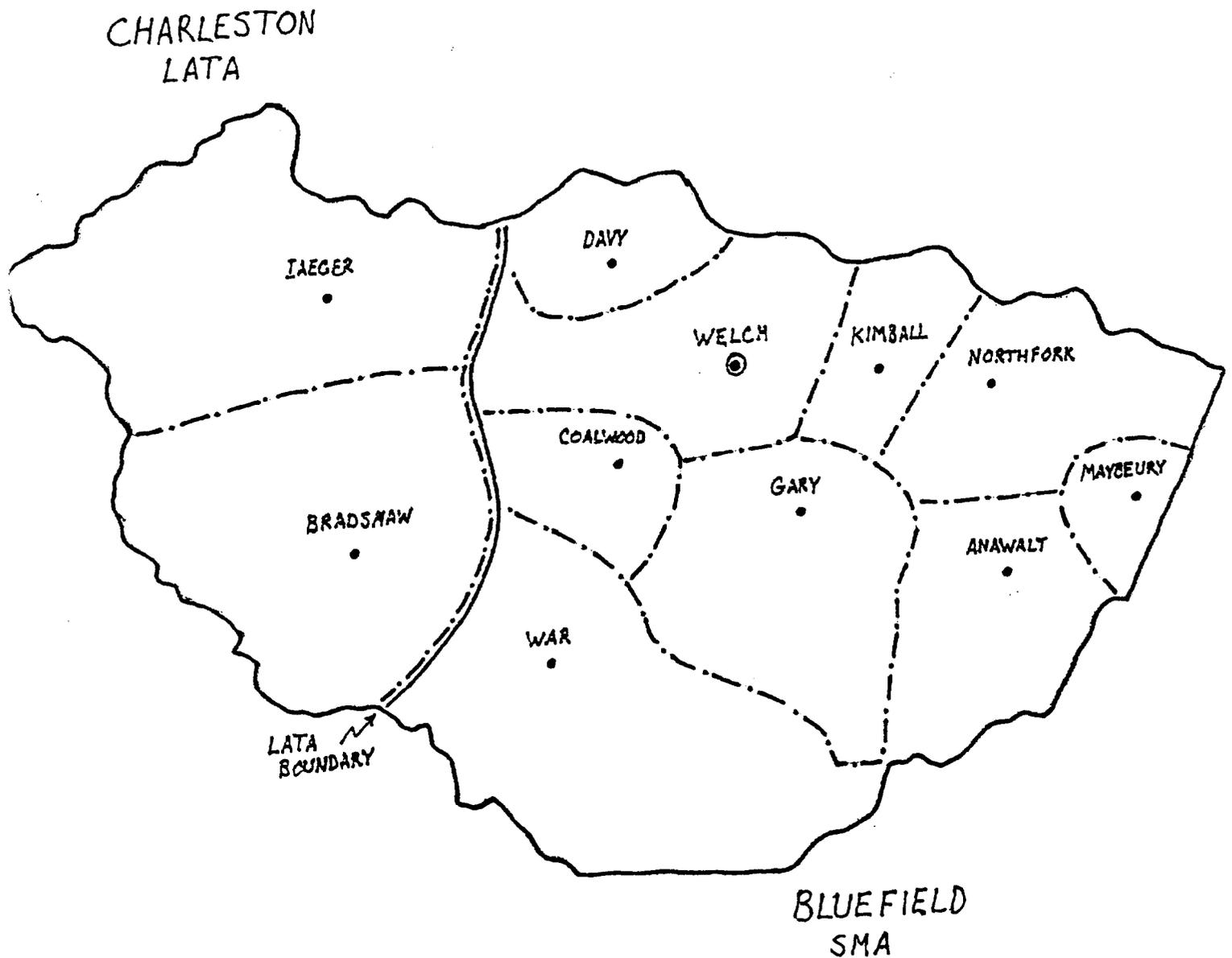
4. The Commission grant such other relief as may appear just and proper.

Respectfully submitted,


Deborah Y. VanDervort, Esq.
Gene W. Lafitte, Jr., Esq.
Counsel for Consumer Advocate
723 Kanawha Blvd., East
7th Floor, Union Building
Charleston, WV 25301

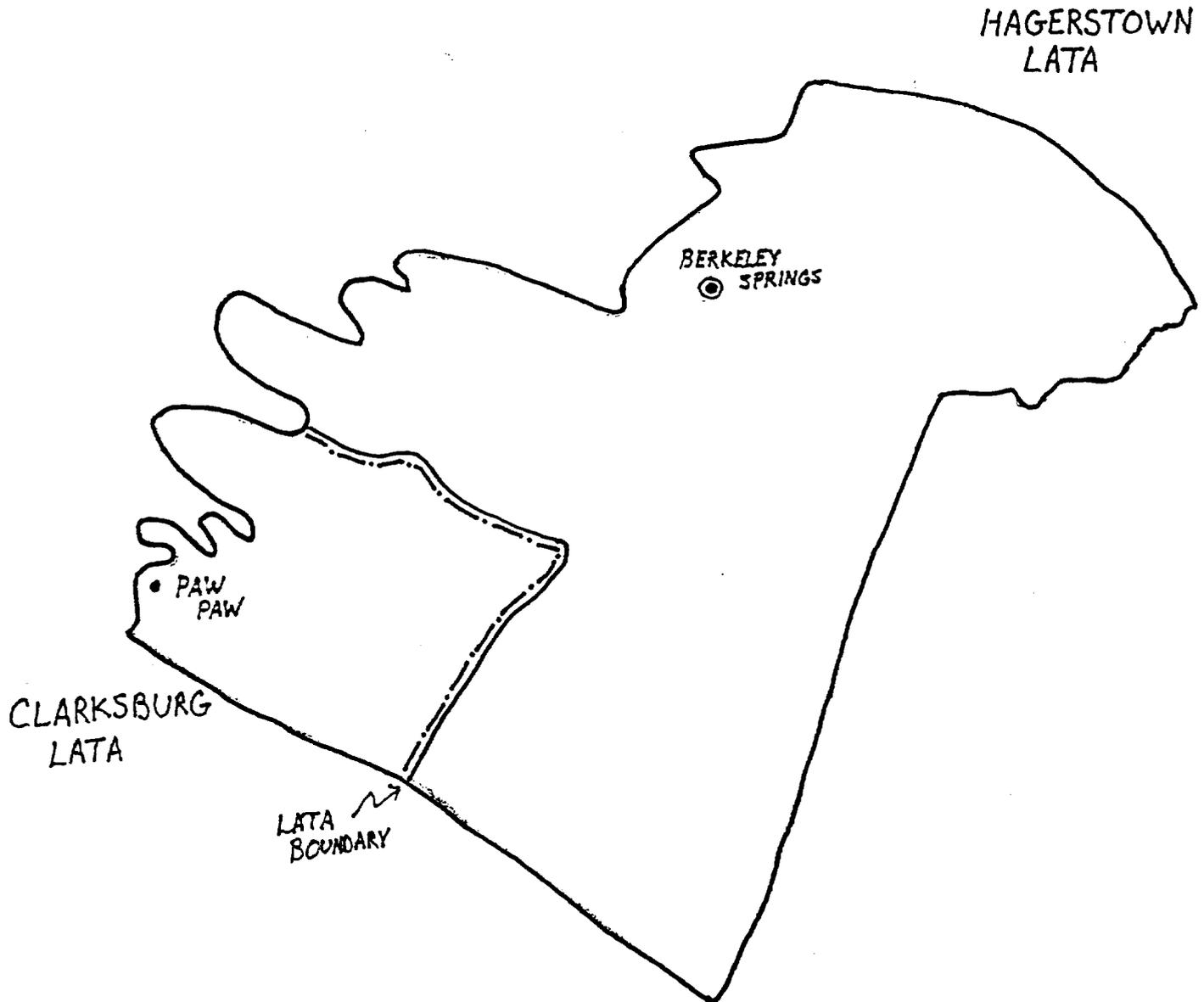
MCDOWELL COUNTY, WEST VIRGINIA

TELEPHONE EXCHANGES
AND
LATA BOUNDARIES



MORGAN COUNTY, WEST VIRGINIA

TELEPHONE EXCHANGES
AND
LATA BOUNDARIES



Public Service Commission
Of West Virginia

ATTACHMENT B

201 Brooks Street, P. O. Box 812
Charleston, West Virginia 25323



Phone: (304) 340-0300
FAX: (304) 340-0325

November 30, 1999

Gene W. Lafitte, Jr., Esq.
Consumer Advocate Division
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David B. Frost, Esq.
Bell Atlantic-West Virginia, Inc.
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John B. Adams, Esq., Senior Attorney
Citizens Communications
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BELL ATLANTIC -
WEST VIRGINIA, INC.
Charleston, W. Va.

RE: CASE NO. 98-1531-T-GI
GENERAL INVESTIGATION

Gentlemen:

Enclosed is a copy of an order issued today by the Commission in the above-styled proceeding.

If you submit any additional documents - in addition to filing an original and 12 copies of all documents with the Commission, you are required to mail a copy to all other parties of record. We invite you to visit our Internet web site address at www.state.wv.us/psc.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Squire".

Sandra Squire
Executive Secretary

SS/s
Encl
cc:

James Easterly, Spokesperson
PO Box 121
Paynesville, WV 24873

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 30th day of November, 1999.

CASE NO. 98-1531-T-PC

GENERAL INVESTIGATION to determine whether a sufficient "community of interest" exists between certain telephone exchanges in McDowell and Morgan Counties, West Virginia, to justify a limited waiver of the interLATA restrictions for expanded local calling.

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BELL ATLANTIC -
WEST VIRGINIA, INC.
Charleston, W. Va.

COMMISSION ORDER

A. Procedural Background.

On December 22, 1998, the Consumer Advocate Division of the Public Service Commission (CAD) filed a petition requesting that the Commission initiate a general investigation to determine whether there exists a sufficient "community of interest" between certain telephone exchanges in McDowell and Morgan counties of West Virginia to justify a limited waiver of the interLATA restrictions for expanded local calling service (ELCS) pursuant to the "Winfield Plan." As grounds therefor, CAD noted that McDowell and Morgan counties are divided by Local Access and Transport Area (LATA) boundaries, and this division has prevented two-way ELCS between the county seats and other areas of each county.

On January 6, 1999, Bell Atlantic-West Virginia, Inc. (BA-WV) filed a response to CAD's petition, indicating that it would cooperate with Commission Staff (Staff), CAD, and other interested parties in attempting to meet the cross-LATA local calling requirements in those areas in which the distance between the exchange rate centers¹ is twenty-two airline miles or less. BA-WV Response, at 1. BA-WV urged the Commission to grant CAD's petition to undertake a general investigation to determine whether the establishment of county-wide, cross-LATA local calling in McDowell and Morgan Counties would be in the public interest. Id.

On April 28, 1999, Commission Staff (Staff) filed an Initial Joint Staff Memorandum recommending that CAD's petition should be granted.

By Order entered July 23, 1999, the Commission granted CAD's petition and initiated this General Investigation to determine whether a sufficient "community of interest" exists to justify limited, cross-LATA relief between and among:

- In McDowell County -- the Iaeger and Bradshaw exchanges served by BA-WV, the Welch, Davy, Coalwood, and Gary exchanges served by Citizens Telecommunications Company of West Virginia (Citizens), and the War exchange served by War Telephone Company (War Tel); and
- In Morgan County -- the Berkeley Springs exchange served by BA-WV and the Paw Paw exchange served by Citizens Mountain State Telephone Company.¹

“Commission Order,” Case No. 98-1531-T-GI (July 23, 1999), at 3. The Commission’s July 23, 1999, order also made the other local carriers parties to this investigation and scheduled the following hearings to be held: McDowell County -- Welch, October 5, 1999; Morgan County -- Berkeley Springs, October 12, 1999; and Kanawha County -- Charleston, October 19, 1999. *Id.* The Commission also identified the types of information that the parties should include in the record. Finally, the Commission caused public notice of the proceeding, and the procedural schedule, to be published in newspapers published, and of general circulation, in the affected counties. Proofs of publication were filed with the Commission on August 2, 16 and 24, 1999.

By Order entered October 1, 1999, the Commission modified its procedural schedule, rescheduling the public hearing in Morgan County from October 12 to October 29, 1999. Notice of this change was provided by publication, proof of which was filed with the Commission on October 15, 1999.

The following parties filed comments or pre-filed testimony and evidence with the Commission: Citizens – initial comments and reply comments, September 16 and October 1, 1999, respectively; CAD – direct testimony and supplemental direct testimony of Billy Jack Gregg, September 17 and October 18, 1999, respectively; BA-WV – initial comments, September 17, 1999. In addition, numerous letters and other papers expressing support for the limited cross-LATA relief were filed with the Commission. In its reply comments, Citizens opined that three additional exchanges in McDowell County -- Anawalt, Kimball and Northfork -- should be considered by the Commission with respect to expanded local service in accordance with the “Winfield Plan.” These exchanges are within twenty-two miles of the rate centers for BA-WV’s Bradshaw and Iaeger exchange. Citizens Reply at 3.

Hearings were held, as scheduled. Approximately twenty residents of McDowell County attended the hearing in Welch, of whom ten submitted oral comments. Twenty-two residents of Morgan County attended the hearing in Berkeley Springs, of whom thirteen submitted oral comments. In addition, four petitions in support of limited cross-LATA relief, representing several hundred residents of both McDowell and Morgan counties, were made a part of the record. The parties to these proceedings -- BA-WV, CAD, Staff, Citizens, and War Tel, also appeared at either or both hearings. At the hearing in Charleston, the following witnesses testified on behalf of the

parties: CAD -- Billy Jack Gregg; BA-WV -- Gale Given; Citizens -- Michael Swatts; and Staff -- Dannie Walker. BA-WV agreed with Citizens' suggestion that the Commission should consider the Anawalt, Kimball and Northfork exchanges in this investigation. BA-WV further suggested that, in order to provide truly county-wide local calling, one additional Citizens exchange -- Maybeury -- should also be considered, even though it is slightly outside the twenty-two mile limit established under the "Winfield Plan." Charleston Tr. at 9.

B. Regulatory Background.

1. FCC Guidelines Regarding LATA Boundary Waivers/Modifications.

When the United States District Court for the District of Columbia required AT&T to divest its ownership of its regional Bell operating companies (BOCs) in 1982, it divided all Bell territory in the United States into geographic areas called LATAs. See "Memorandum Opinion and Order," In the Matter of Petitions for Limited Modifications of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations, CC Docket No. 96-159, File Nos. NSD-LM-97-2 through NSD-LM-97-25 (Rel. July 15, 1997) (ELCS Order), ¶ 3. The BOCs were permitted to provide telephone service within a LATA, both local and long distance (i.e., intraLATA service), but were not permitted to carry traffic across LATA boundaries (so-called interLATA, or cross-LATA service). InterLATA traffic was to be carried by interexchange carriers. Id. The LATAs did not cover territory served by independent telephone companies and these companies were not subject to the restrictions on cross-LATA traffic imposed by the District Court. Id. ¶ 4. The District Court granted waivers of the cross-LATA traffic restrictions applicable to BOCs, from time to time, in order to permit BOCs to carry interLATA traffic to preserve existing, and later to establish new, ELCS routes. Id. ¶ 5. In evaluating these waiver requests, the District Court established certain evidentiary requirements that must be met in order for a waiver to be granted. Id. ¶¶ 7-8.

Passage of the Telecommunications Act of 1996 (TA96) changed this situation. Under sections 3(25)(B) and 4(i) of the Telecommunications Act of 1934, as amended by TA96, the Federal Communications Commission ("FCC"), rather than the District Court, is now vested with the ultimate authority to grant waivers and/or modifications of LATA boundaries. See 47 U.S.C. §§ 153(25) & 154(i). The FCC has previously granted LATA boundary waivers or modifications based upon a finding by a state commission that a "community of interest" exists between exchanges divided by a LATA boundary. See, e.g., ELCS Order.

In the ELCS Order, the FCC identified what evidence it would consider in support of a state commission determination that a sufficient community of interest existed between the exchanges to warrant a LATA boundary modification. The FCC noted that state commissions should document a community of interest through evidence including: (1) poll results showing subscribers were willing to pay higher monthly rates in order to be included in the expanded local area; (2) usage data showing a high level of calling between the potentially affected exchanges; (3) narrative statements explaining why the potentially affected exchanges should be considered part of one

community. ELCS Order, ¶ 18. The FCC also identified evidence that it considered necessary to overcome any anticompetitive impact resulting from a LATA boundary modification. Although LATA boundary modifications would remove certain routes from the competitive interexchange market and would expand the local BOC's monopoly in the local market, the FCC concluded that, where a small number of customers or access lines are involved, the limited amount of traffic and the type of service involved would not have a significant anticompetitive effect on the interexchange market or on the BOCs' incentive to open their markets to competition. Id. Finally, the FCC indicated that LATA boundaries may be modified only for flat-rate, non-optional local service -- measured-rate, optional service generally would not be allowed. Id. ¶ 21.

The FCC recently clarified the ELCS Order by expanding the types of local service that will be allowed in conjunction with a LATA boundary modification, and provided further details regarding what the FCC considers high usage and small numbers of access lines or customers. See "Memorandum Opinion and Order," In the Matter of Bell Atlantic - Virginia Petition for Limited Modification of LATA Boundary to Provide Expanded Local Calling Service, File No. NSD-L-99-47, DA 99-1728 (Rel. Aug. 27, 1999) (BA-VA ELCS Order).² The FCC concluded that, contrary to its ELCS Order, it would allow BOCs to offer classes of local service other than flat-rated service across LATA boundaries, so long as the petition for a LATA boundary modification did not introduce non-flat-rated service into the expanded local calling area. In other words, historic measured-rate classes of service would be allowed. Id. ¶ 6.

2. Commission Policy Regarding Local Calling Areas.

Since 1988 the Commission has implemented a policy of expanding the local calling areas of every telephone exchange in West Virginia. Under this policy, known as the "Winfield Plan," the local calling area of every exchange generally includes all exchanges whose rate centers fall within a twenty-two mile radius of that exchange's rate center, as well as contiguous exchanges. See "Commission Order," C&P Telephone Co. of WV, Case No. 87-542-T-T, et al. (Oct. 28, 1988). Although there are a number of exchanges in West Virginia which do not enjoy the full benefit of ELCS under the "Winfield Plan" because of the proximity of these exchanges to LATA boundaries, McDowell County and Morgan County are two counties in West Virginia in which LATA boundaries divide the county. As a result, the LATA boundaries have prevented BA-WV from providing telecommunications service between the county seat and the areas of each county served by BA-WV.

DISCUSSION

The issue presented in this proceeding is of such importance to the daily lives of those affected in McDowell and Morgan counties that the Commission presided at the public hearings in the communities and during the evidentiary hearing. Seldom has the Commission heard such moving comments as to adverse effects caused solely by artificial barriers beyond the control of the affected parties. Hopefully, the Commission, through this order, can help provide relief to these

citizens and customers.

After reviewing all the evidence and testimony produced in the course of this investigation, as well as relevant FCC orders, and as more fully set forth below, the Commission concludes that a community of interest exists between and among the following exchanges:

- McDowell County – the Iaeger and Bradshaw exchanges served by BA-WV, the Welch, Davy, Coalwood, Gary, Anawalt, Kimball, Northfork and Maybeury exchanges served by Citizens, and the War exchange served by War Tel;
- Morgan County – the Berkeley Springs exchange served by BA-WV and the Paw Paw exchange served by Citizens.

The community of interest among these exchanges supports a limited modification of the applicable LATA boundary to allow BA-WV to provide cross-LATA telecommunications service among the affected exchanges. Accordingly, upon entry of this Order, the Commission authorizes BA-WV to file a petition requesting that the FCC grant a limited modification of the following LATA boundaries: the Clarksburg - Hagerstown, MD LATA boundary in Morgan County; and the Charleston - Bluefield IMA boundary in McDowell County, in order to permit BA-WV to provide cross-LATA telecommunications services between the above exchanges.

A. LATA Boundary Modification -- McDowell County.

1. McDowell County Demographics.

McDowell County is located on the border of West Virginia and Virginia and is almost completely covered by rugged terrain. Transcript of Oct. 19, 1999, Hearing in Charleston (Charleston Tr.), CAD Exh. 1 (Gregg Dir.) at 2. Roads are narrow and wind up steep ridges only to quickly descend into narrow valleys formed by the Tug Fork and Dry Fork rivers and their tributaries. The population of 29,916 is distributed along these narrow valleys. Id. The town of Welch (pop. 3,208), is the county seat. Other towns with sizeable populations include War (pop. 1,081) and Gary (pop. 1,355). West Virginia Bluebook, 719, 765-67 (1998 ed.).

With the decline of the coal mining industry in southern West Virginia, McDowell County entered into a period of economic decline and population loss. Over the past ten years, the county's population has decreased from 35,223. West Virginia County Profiles, 111 (W. Va. Bureau of Employment Programs, Aug. 1999). In 1997, per capita income in McDowell County was \$13,482 -- sixth lowest in the State. Charleston Tr., CAD Exh. 1 (Gregg Dir.) at 2.; WV County Profiles at 111. Unemployment stands at 15.2% -- second highest in the State. Charleston Tr., CAD Exh. 1 (Gregg Dir.), at 2. The rugged terrain of McDowell County limits the availability of sites suitable for business or industrial development, a situation which is evident from the fact that there are no

industrial parks in the entire county. County Profiles at 110. While coal mining still provides a significant number of jobs, the principal employers in the county are now the County school board, Welch Emergency Hospital and the Council of Southern Mountains. Id.

Infrastructure and services are few. There is only one hospital in the county, and only thirty-one doctors and four dentists. In addition, there are but two licensed day care centers in McDowell County. WV County Profiles at 110. There is no bus service, only one U.S. Highway, one airport -- in Welch -- and the nearest navigable river, the Kanawha, is nearly 115 miles away. Id. Communications are scattered. There are two newspapers in the county, three radio stations and no television stations. Id. In sum, McDowell County is geographically isolated, economically distressed and faced with a declining population.

While economic considerations are not part of the FCC's "community of interest" standard, the Commission believes that such considerations are relevant to its conclusion that a community of interest exists among the affected exchanges in McDowell County. While a limited modification is not a panacea for McDowell County's economic ills, it certainly removes an impediment to economic development. As discussed more fully below, the LATA boundary also has adversely affected the lives, the health and public safety of many citizens of McDowell County..

2. Local Calling Areas in McDowell County.

There are eleven local exchange areas in McDowell County. Charleston Tr., CAD Exh. 1 (Gregg Dir.), at 2-3. Nearly all of McDowell County falls within the Bluefield Independent Market Area (IMA). Citizens serves eight of the exchanges in the Bluefield IMA: Welch, Coalwood, Davy, Gary, Kimball, Northfork, Anawalt, and Maybeury. War Tel serves the War exchange, which is the remaining exchange in the Bluefield IMA. The other two local exchanges in McDowell County -- Iaefer and Bradshaw -- are in the Charleston LATA and are served by BA-WV.

The rate centers for all but one of the local exchanges served by Citizens and War Tel are within twenty-two miles of the two exchanges in the county served by BA-WV. The sole exception is the Maybeury exchange.³ Currently, customers served by Citizens and War Tel can call one another locally. Except for the boundary between the Charleston LATA and the Bluefield IMA, local calling to most of the county could have been provided since 1988 pursuant to the Commission's "Winfield Plan." As it stands now, residents in BA-WV's Iaefer and Bradshaw exchanges cannot place local calls to the county seat in Welch, which is only thirteen miles away from either exchange's rate center, or to the nearby community of War, which is only seven miles from Bradshaw's rate center and only thirteen miles from Iaefer's.

3. A Community of Interest Exists Among the Potentially Affected Exchanges in McDowell County.

a. Calling Rates Among the Exchanges Demonstrate a Community of Interest Exists.

In the BA-VA ELCS Order, the FCC noted that the average number of messages between the potentially affected exchanges were 1.24 and 1.36 messages per access line per month. BA-VA ELCS Order, ¶ 6. The record in this proceeding demonstrates that calling rates among the potentially affected exchanges in McDowell County are higher than those considered by the FCC in the BA-VA ELCS Order. Usage data provided by AT&T of West Virginia, Inc. established the following average calling rates, in messages per access line per month, between these exchanges: Iaeger to Welch – 2.67; Bradshaw to Welch – 1.79; Davy to Iaeger – 1.32; and Bradshaw to War – 1.77. Charleston Tr., CAD Exh. 2 (Gregg Supp.), BJJG-4. Moreover, as CAD pointed out during hearings in this proceeding, such usage data was derived from only one of several interexchange carriers serving McDowell County. CAD asserted that the usage data provided by AT&T is a conservative indicator of the actual volume of traffic between the potentially affected exchanges. Charleston Tr., CAD Exh. 2 (Gregg Supp.) at 2. The Commission concludes that this is a reasonable assumption.

b. There is Overwhelming Support for a LATA Boundary Modification Among the Citizens of McDowell County.

Neither BA-WV, Citizens nor War indicated that the proposed LATA boundary modification for McDowell County would require any increase in its customers' monthly phone bills. Accordingly, citizens were not polled regarding their support for the proposed boundary modification. However, a number of petitions supporting the proposed LATA boundary modification were filed with the Commission. The Commission has not attempted to count the total number of signatures collected, but a review shows that hundreds of signatures were collected, primarily in the Bradshaw, Iaeger, War and Welch exchanges.⁴ See Transcript of October 5, 1999, Hearing in Welch (McDowell Tr.), Exhs. 1-3. There was no countervailing evidence of opposition to the proposed LATA boundary modification.

c. Narrative Evidence Further Establishes That A Community of Interest Exists Among the Potentially Affected Exchanges.

Narrative statements during the hearing in Welch strongly supported the conclusion that a community of interest among the potentially affected exchanges exists.

Many residents testified about the problems associated with schools being located across the LATA boundaries from their place of residence. For example, Big Creek High School is located in War. Five miles from War are the communities of Bartley and Raysal, both of which are in the

Bradshaw exchange. Parents of students have to make toll calls to reach the high school, and the school administration likewise has to make toll calls to reach many students' parents. Moreover, students whose friends live in the other LATA, like all teens, spend a considerable amount of time making toll calls to speak to friends after school. McDowell Tr. at 27-28; 34. Another school example cited by residents involved the elementary school located in Bartley. A number of students attending that school reside in the community of English, which is less than a mile from the school. However, since English is in the Bluefield IMA, calls between the school and parents of those children are toll calls. Id. at 34. The same concerns applied to the vocational school located in Welch, which serves the entire county, as well as educational facilities for handicapped students. Id. at 29-30, 37.

Similar problems were cited with respect to businesses located in the different LATAs. One citizen noted that he worked at a coal preparation plant in the Bradshaw exchange. However, the coal company's main office is located in Welch. Communications between the plant and the main office are very costly. McDowell Tr. at 31-32. A resident of Bartley testified that his wife works at a local convenience store in War. Although the store is less than two and one-half miles from their residence, calls to and from the store are toll calls. Id. at 34-35. Similarly, one businesswoman testified that she owns a photography studio in Welch. Many of her customers reside in the Iaeger and Bradshaw area. Calls to and from customers regarding orders are toll calls. She fears that she is losing potential customers due to the fact that calling the store may involve higher charges. McDowell Tr. at 44-45. Another local business person testified that the LATA boundaries made doing business with stores across those boundaries very inconvenient. Id. at 49-50.

CAD noted that county government, health care and school services in McDowell County are centered in Welch. There are eight pharmacies, eight doctors, and four clinics – including the Welch Emergency Hospital – located in and around Welch. Only three pharmacies, three doctors and one clinic are located in the Bradshaw and Iaeger areas. Charleston Tr., CAD Exh. 1 (Gregg Dir.) at 5. The county school board, the Commission on Aging and the county ambulance authority are likewise located in Welch. Id. CAD pointed out that no McDowell county government offices are listed in the local directories for the Bradshaw and Iaeger exchanges, and similarly, listings for schools, businesses and residences in those exchanges are not listed in the Welch directory. Id. at 6.

Local government also appears to be sorely affected by the LATA boundary in McDowell County. A circuit judge for McDowell County, Kendrick King, testified that, on a weekly basis, the Court makes at least fifty calls to residents in the Bradshaw and Iaeger exchanges and a similar number of calls from these exchanges are made to the Court. McDowell Tr. at 28-29. In order to deal with problems posed by the LATA boundaries, the Court instituted an 800 number for jurors to call and determine if they need to report for duty. Judge King estimated that one-third of jurors come from the Bradshaw and Iaeger areas. The 800 number works, the judge stated, but the county has to bear the cost of maintaining the toll-free number. Id. at 51. The President of the McDowell

County Commission, Gordon Lambert, similarly testified that the LATA boundaries force the county to pay thousands of dollars in monthly telephone bills. McDowell Tr. at 36-37. The County Commission supported the LATA boundary modification. Id. at 38. Similarly, the County Board of Education has to incur toll charges to communicate with schools in the Bradshaw and Iaeger areas. The LATA boundary inhibits the school board's ability to implement its "safe school" plan. McDowell Tr. at 42.

Emergency and police services likewise experience problems with the LATA boundary splitting McDowell County. The Director of 911 services for the county, Jimmy Gianato, testified that while 911 calls are free, the call center frequently has to make call backs that are subject to toll rates. Many call backs involve long call times since operators stay on-line until police or other emergency responders arrive. McDowell Tr. at 40-41. The LATA boundaries also make it difficult for the 911 center to put in diverse routing systems to establish a back-up system. Id. at 39-40, 41. Finally, when disasters occur, the 911 center functions as the county emergency operations center. During a major winter storm in 1999, the 911 center incurred several hundreds of dollars in calls to the Iaeger and Bradshaw areas. Id. at 41-42. The Chief of the Welch Police Department similarly testified that the current LATA situation hinders law enforcement's ability to conduct investigations since criminal activity in Welch often involves violators and witnesses who reside in the Bradshaw and Iaeger areas. McDowell Tr. at 46.

4. There Would be Few, If Any, Anticompetitive Effects Associated With the Proposed LATA Boundary Modification.

a. Few Access Lines Would be Involved.

In its orders dealing with petitions for LATA boundary modifications, the FCC has indicated that anticompetitive effects associated with such modifications are minimized when fewer access lines are involved. ELCS Order, ¶ 18; BA-VA ELCS Order, ¶¶ 5, 7. In the BA-VA proceeding, the potentially affected exchanges had a total of 17,545 access lines. BA-VA ELCS Order, ¶ 5 n. 22. Roughly 5,000 fewer access lines are involved in the proposed LATA boundary modification for McDowell County. The total number of access lines in the potentially affected exchanges is as follows:

<u>Exchange</u>	<u>Avg. No. of Access Lines</u>	<u>Exchange</u>	<u>Avg. No. of Access Lines</u>
Bradshaw	1,730	Gary	732
Iaeger	2,385	Kimball	485
War	1,545	Northfork	1,468
Welch	3,028	Anawalt	581
Coalwood	245	Maybeury	230
Davy	494		

BA-WV Initial Comments at 2-3; McDowell Tr. at 25; Citizens Reply at 4; Citizens Supplement at 1. The total number of access lines involved, to provide county-wide local calling to all eleven McDowell County exchanges, is only 12,923. This represents only 1.3% of the 962,208 access lines in West Virginia. West Virginia Telecommunications Association, "Summary West Virginia Telephone Exchange Carriers" (Jan. 1, 1998), at <http://www.wvta.org>. In fact, the number of affected access lines is fewer still, since both Citizens and War Tel could have been providing unilateral local calling to the Bradshaw and Iaeger exchanges for years. Only 4,115 access lines are in BA-WV's two exchanges. This represents approximately 0.4% of all lines in the State.

b. BA-WV Will Not Introduce Any New Local Service Plans as Part of the LATA Boundary Modification.

BA-WV has indicated that it will offer to customers in the Bradshaw and Iaeger exchanges the same four local service plans it provides to its customers throughout the State. McDowell Tr. at 19-20; BA-WV Initial Comments at 5 & Attach. B. These plans allow customers to choose to differently priced plans that vary with the amount of measured local service. BA-WV's "Thrifty Caller" plan, for example, costs \$6 per month and customers pay measured rates for every local call. These measured rates vary with distance and peak or off-peak calling times. BA-WV Initial Comments at 5. BA-WV's "Frequent Caller" plan, on the other hand, costs \$29 per month and customers do not pay any measured rates for local calls within the ELCS area. Id. BA-WV's calling plans have part of the Company's Commission-approved tariff for many years. See BA-WV Local Exchange Service Tariff, P.S.C. W.Va. No. 202, § B.2.C. The FCC will view petitions to modify LATA boundaries that include measured rate plans favorably, so long as those plans are not being introduced as part of the boundary modification. BA-VA ELCS Order, ¶ 6. That is clearly the case here.

c. No Interexchange Carriers Objected to the Proposed LATA Boundary Modification.

No interexchange carriers intervened in this proceeding or otherwise objected to the proposed LATA boundary modification for McDowell County. The Commission considers this fact to be probative of the minimal, anticompetitive impact of the proposed modification.

B. LATA Boundary Modification -- Morgan County.

1. Morgan County Demographics.

Morgan County is located in the eastern panhandle region, between Maryland to the north and Virginia to the south. Charleston Tr., CAD Exh. 1 (Gregg Dir.) at 6. Topographically, the county is characterized by long ridges, such as Cacapon Mountain, and long valleys. Id.

The population of 13,646 is distributed mainly along a central valley, which contains U.S. Route 522, with other communities scattered along the Potomac River in the north. Id. The county seat is Berkeley Springs (pop. 735). The only other community of any size is Paw Paw (pop. 538). WV Bluebook at 700, 747. Morgan County's economy is relatively good. Per capita income is \$17,091, 20th in the State, and unemployment stands at 1.9%, the lowest rate in West Virginia. Id.; West Virginia Economic Outlook 2000 (Bureau of Business and Economic Research, 1999) at 24, Table 7. The principal employers are the Morgan County Board of Education, U.S. Silica Company and Coolfont Recreation, Inc. Charleston Tr., CAD Exh. 1 (Gregg Dir.) at 6.

Although the economic climate in Morgan County is good, infrastructure and services are still scant. There is only one hospital in the county, thirteen doctors and three dentists. County Profiles at 134. There is no bus service in the county and only one airport, which is private. Id. Only one day care center is licensed in Morgan County. There is only one newspaper and no television or radio stations in the county. Id. Moreover, like all the counties of West Virginia's Eastern Panhandle, Morgan County is isolated from the rest of the State. Unlike other counties in Eastern Panhandle, however, half of Morgan County is cutoff from the other half by both a LATA boundary and a mountain that corresponds to the LATA boundary.

As with McDowell County, a LATA boundary modification will not solve all of Morgan County's ills. It will not, for example, remove any mountains. It will, however, remove a man-made barrier to interaction between residents that has suppressed the economy of the western portion of the county for years. As more fully discussed below, the LATA boundary has also adversely affected the lives, health and public safety of many citizens of Morgan County.

2. Local Calling Areas in Morgan County.

There are two local exchanges in Morgan County -- only one of which is affected by the LATA boundary. The Paw Paw exchange, served by Citizens, covers the western half of the county and is located in the Clarksburg LATA. BA-WV serves the Berkeley Springs exchange, which is located in the Hagerstown-MD LATA. Id. at 7. But for the presence of the LATA boundary, both exchanges would be able to make local calls to one another under the Commission's "Winfield Plan."⁵ BA-WV cannot provide local calling from Berkeley Springs, the county seat, to Paw Paw. However, Citizens can provide, and currently is providing, one-way local calling from Paw Paw to Berkeley Springs.⁶

3. A Community of Interest Exists Among the Potentially Affected Exchanges in Morgan County.

a. Calling Rates Among the Exchanges Suggest That a Community of Interest Exists.

When viewed in isolation, the calling rates between Paw Paw and Berkeley Springs do not clearly demonstrate that a community of interest between the exchanges exists. The average number of messages per access line per month from Berkeley Springs to Paw Paw is 0.22. Charleston Tr., CAD Exh. 2 (Gregg Supp.) at 1. This rate is low when compared with the rates considered by the FCC in the BA-VA ELCS Order or when compared to the rates for exchanges in McDowell County.

However, the average number of messages per access line per month from Paw Paw to Berkeley Springs, which is currently a local call, is 16.84. Id. That rate, coupled with narrative evidence set forth below, strongly suggests that a community of interest exists between the two exchanges.

b. There is Overwhelming Support for a LATA Boundary Modification Among the Citizens of Morgan County.

As was the case with the proposed LATA boundary modification for McDowell County, residents were not polled since there will be no increase in rates associated with the LATA boundary modification, if approved. However, the Commission received strong evidence that residents of the potentially affected exchanges are overwhelmingly in favor of the proposed LATA boundary modification. At the October 29, 1999, hearing held in Berkeley Springs, the Commission was presented with a petition, signed by hundreds of residents. Transcript of October 29, 1999, Hearing in Berkeley Springs (Morgan Tr.), CAD Exh. 1. In contrast, there was no evidence of opposition to the proposed LATA boundary modification.

c. Narrative Evidence Further Establishes That A Community of Interest Exists Among the Potentially Affected Exchanges.

Narrative evidence provided during the hearing in Morgan County strongly supports the Commission's conclusion that a community of interest exists between the Paw Paw and Berkeley Springs exchanges, in spite of the low usage rates for calls from Berkeley Springs to Paw Paw. One thing that became clear from testimony at the Morgan County hearing was that residents in the Berkeley Springs exchange have devised ways to get around the LATA boundary. Several witnesses testified that residents in Berkeley Springs will call residents in the Paw Paw exchange, let the phone ring several times, and then hang up. This either serves as a prearranged signal that prompts a local call back from the Paw Paw customer or, with the advent of Caller ID, allows the Paw Paw resident to see who called and make a local call in return. Morgan Tr. at 17, 29.

However, even with such techniques for avoiding toll charges, witnesses testified that the LATA boundary makes communication with their neighbors, schools, county government and local businesses inconvenient and expensive. LuAnn Jamison, who works with Senior Life Services, testified that senior centers are located in Berkeley Springs and in the Paw Paw area. There are five employees at the Paw Paw center, with five in-home personal care aides caring for 11 in-home clients. The centers and aides are in frequent contact with one another by phone. This results in

very high phone bills for the organization. In September 1999, for example, the center in Berkeley Springs placed 130 calls to the Paw Paw center. This does not include evening or weekend calls from staff. Morgan Tr. at 22-23.

Citizens likewise indicated that the LATA boundary made the local calling it made available to Paw Paw residents inconvenient and costly for the company. Citizens noted that, since BA-WV is constrained by the LATA boundary, Citizens must hand off traffic from Paw Paw to Berkeley Springs to an interexchange carrier that then routes the traffic across the boundary and delivers it to BA-WV. Citizens absorbs the toll charges assessed by the interexchange carrier in order to give residents of the Paw Paw exchange local rates consistent with rates charged by Citizens elsewhere. Citizens Comments at 3.

Residents of Morgan County also testified that the LATA boundary adversely impacts schools, students and parents. For example, residents in Great Cacapon, which is in the Berkeley Springs exchange, send their children to school in Paw Paw. They must incur toll charges in order to call the school to speak to administrators and counselors. Id. at 26-27. Charles Trump, the minority leader of the West Virginia House of Delegates, noted that the County School Board is located in Berkeley Springs. There is a high school, middle school and elementary school situated in Paw Paw. Any communication between the central office and these schools is subject to toll charges. Id. at 40.

Testimony also indicated that the LATA boundary stymies economic life in Morgan County. A businessman in the western portion of Morgan County testified that, although he advertised in the local business pages in the Berkeley Springs exchange, he never received a call from anyone located in that exchange. Morgan Tr. at 24-25. Likewise, another business owner testified that he is missing business because potential customers will not make toll calls. Id. at 19. This negative effect on business was echoed by Tommy Swaim, a county commissioner, who testified that the relationship between the western and eastern portions of Morgan County has been "strained" for years. Id. at 20. Mr. Swaim testified that the western part of the county is economically depressed when compared with the eastern area. Id. The Executive Director of the Morgan County Chamber of Commerce, Beth Peters Curtin, echoed Mr. Swaim's testimony regarding the economic effects of the LATA boundary. Ms. Curtin stated that 90% of the businesses that are members of the Chamber favor LATA boundary relief. Many of these businesses, Ms. Curtin testified, have business relationships with the opposite side of the county and have to incur toll charges to transact their business. Morgan Tr. at 27-28.

Further testimony indicated that the LATA boundary has inhibited economic development in the western part of Morgan County. For example, Ms. Curtin testified that there had been no bank in the western part of the county for years. A branch of One Valley Bank has recently opened in Paw Paw, but the main branch in Berkeley Springs must incur toll calls to communicate with the Paw Paw branch. Id. at 28. One Valley Bank's local bank manager, David Dalton, corroborated Ms. Curtin's testimony. Not only are all calls to the Paw Paw branch toll calls, but there also is no

e-mail capability at the Paw Paw branch. Morgan Tr. at 44.

Local government and civic groups are also inconvenienced by the LATA boundary. The director of emergency services in Morgan County testified that the LATA boundary makes it difficult for center personnel to contact emergency personnel in the field. Id. at 32. Phil Maggio, another county commissioner, stated that local government activity needs a seamless communications network to function efficiently. Id. at 36. The LATA boundary prevents this interaction. Similarly, a member of the Morgan County Solid Waste Authority testified that Authority members live in both exchanges and it costs the agency additional money to call members for special meetings, hearings or to organize recycling activities. Morgan Tr. at 30.. The Authority's budget is very limited and cannot easily absorb toll charges to transact its official duties. Id. Similarly, civic groups like the Friends of the Cacapon River and the Shenandoah Valley Area Council of the Boy Scouts of America find contacting members and organizing events made more difficult as a result of the LATA boundary. Morgan Tr. at 25, 43.

4. There Would be Few, If Any, Anticompetitive Effects Associated With the Proposed LATA Boundary Modification.

a. Few Access Lines Would be Involved.

There would be little anticompetitive effect associated with a LATA boundary modification allowing local calling from Berkeley Springs to Paw Paw due to the small number of access lines involved. The average number of access lines in the Berkeley Springs exchange is 6,106. Charleston Tr., CAD Exh. 1 (Gregg Dir.) at 7. This represents only 0.6% of access lines statewide.⁷

b. BA-WV Will Not Introduce Any New Local Service Plans as Part of the LATA Boundary Modification.

BA-WV will offer the same local calling plans it offers throughout the State and which were previously discussed with respect to the proposed LATA boundary modification for McDowell County. These plans are acceptable to the FCC. BA-VA ELCS Order, ¶ 6.

c. No Interexchange Carriers Objected to the Proposed LATA Boundary Modification.

No interexchange carriers intervened in this proceeding or otherwise objected to the proposed LATA boundary modification for Morgan County. The Commission considers this fact to be probative of the minimal anticompetitive impact of the proposed modification.

FINDINGS OF FACT

1. On December 22, 1998, CAD filed a petition requesting that the Commission initiate a general investigation to determine whether there exists a sufficient "community of interest" between certain telephone exchanges in McDowell and Morgan counties of West Virginia to justify a limited waiver of the interLATA restrictions for ELCS pursuant to the "Winfield Plan."

2. By Order entered July 23, 1999, the Commission granted CAD's petition and initiated this General Investigation to determine whether a sufficient "community of interest" exists to justify limited, cross-LATA relief between and among:

- In McDowell County -- the Jaeger and Bradshaw exchanges served by BA-WV, the Welch, Davy, Coalwood, and Gary exchanges served by Citizens, and the War exchange served by War Tel; and
- In Morgan County -- the Berkeley Springs exchange served by BA-WV and the Paw Paw exchange served by Citizens.

"Commission Order," Case No. 98-1531-T-GI (July 23, 1999), at 3.

3. The Commission's July 23, 1999, order also made Citizens and War Tel parties to this investigation and scheduled the following a series of hearings in the affected counties, as well as Charleston.

4. By Order entered October 1, 1999, the Commission modified its procedural schedule by rescheduling the public hearing in Morgan County from October 12, 1999, to October 29, 1999.

5. Citizens, CAD and BA-WV filed comments or pre-filed testimony and evidence with the Commission. In addition, numerous letters and other papers expressing support for the limited cross-LATA relief were filed with the Commission. Furthermore, several petitions in support of limited cross-LATA relief, representing several hundred residents of both McDowell and Morgan counties, were filed with the Commission.

6. Hearings were held, as scheduled, in Welch, Berkeley Springs and Charleston.

7. Under Sections 3(25)(B) and 4(i) of the Telecommunications Act of 1934, as amended by TA96, the FCC is vested with the ultimate authority to grant waivers and/or modifications of LATA boundaries. See 47 U.S.C. §§ 153(25) & 154(i).

8. The FCC has previously granted LATA boundary waivers or modifications based upon a finding by a state commission that a "community of interest" exists between exchanges divided by a LATA boundary. See ELCS Order.

9. In the ELCS Order, the FCC identified what evidence it would consider in support of a state commission determination that a sufficient community of interest existed between the exchanges to warrant a LATA boundary modification. ELCS Order, ¶ 18. The FCC also identified evidence that it considered necessary to overcome any anticompetitive impact resulting from a LATA boundary modification. Id. ¶ 21.

10. The FCC recently clarified the ELCS Order to expand the types of local service that will be allowed in conjunction with the modification, and provided further details regarding what the FCC considers high usage and small numbers of access lines or customers. See BA-VA ELCS Order.

11. Since 1988 the Commission has implemented a policy, known as the "Winfield Plan," of expanding the local calling areas of every telephone exchange in West Virginia to generally include all exchanges whose rate centers fall within a twenty-two mile radius of that exchange's rate center, as well as contiguous exchanges.

12. McDowell County and Morgan County are two counties in West Virginia in which LATA boundaries divide the county. As a result, the LATA boundaries has two-way ELCS between the county seat and other areas of each county.

13. There are eleven local exchange areas in McDowell County. Charleston Tr., CAD Exh. 1 (Gregg Dir.), at 2-3. Nearly all of McDowell County falls within the Bluefield Independent Market Area (IMA).

14. Citizens serves eight of the exchanges in the Bluefield IMA: Welch, Coalwood, Davy, Gary, Kimball, Northfork, Anawalt, and Maybeury. War Tel serves the War exchange, which is the remaining exchange in the Bluefield IMA. The other two local exchanges in McDowell County -- Iaeger and Bradshaw -- are in the Charleston LATA and are served by BA-WV.

15. The rate centers for all but one of the local exchanges served by CTC-WV and War Telephone Co. in McDowell County are within twenty-two miles of the two exchanges served by BA-WV. The sole exception is the Maybeury exchange.

16. The average usage rates among the potentially affected exchanges in McDowell County are as follows: Iaeger to Welch - 2.67; Bradshaw to Welch - 1.79; Davy to Iaeger - 1.32; and Bradshaw to War - 1.77. Charleston Tr., CAD Exh. 2 (Gregg Supp.), BJJG-4.

17. A number of petitions supporting the proposed LATA boundary modification were filed with the Commission which were signed by hundreds of signatures primarily in the Bradshaw, Iaeger, War and Welch exchanges. See McDowell Tr., Exhs. 1-3. There was no countervailing evidence of opposition to the proposed LATA boundary modification.

18. Narrative statements during the hearing in Welch strongly supported the conclusion that a community of interest among the potentially affected exchanges exists.

19. The anticompetitive effects associated with modifying LATA boundaries to allow BOCs to provide local service across those boundaries are minimized when fewer access lines are involved. ELCS Order, ¶ 18; BA-VA ELCS Order, ¶¶ 5, 7.

20. The total number of access lines in the potentially affected exchanges is as follows:

<u>Exchange</u>	<u>Avg. No. of Access Lines</u>	<u>Exchange</u>	<u>Avg. No. of Access Lines</u>
Bradshaw	1,730	Gary	732
Iaeger	2,385	Kimball	485
War	1,545	Northfork	1,468
Welch	3,028	Anawalt	581
Coalwood	245	Maybeury	230
Davy	494		

BA-WV Initial Comments at 2-3; McDowell Tr. at 25; Citizens Reply Comments at 4; Citizens Supplement at 1. The total number of access lines involved represents only 1.3% of the 962,208 access lines in West Virginia. West Virginia Telecommunications Association, "Summary West Virginia Telephone Exchange Carriers" (Jan. 1, 1998), at <http://www.wvta.org>.

21. BA-WV will offer to customers in the Bradshaw and Iaeger exchanges the same four local service plans it provides to its customers throughout the State. McDowell Tr. at 19-20; BA-WV Initial Comments at 5 & Attach. B. These plans allow customers to choose to differently priced plans that vary with the amount of measured local service. These plans are acceptable to the FCC. BA-VA ELCS Order, ¶ 6.

22. BA-WV's local service plans have been part of the Company's Commission-approved tariff for years. See BA-WV Local Exchange Service Tariff, P.S.C. W.Va. No. 202, § B.2.C.

23. No interexchange carriers intervened in this proceeding or otherwise objected to the proposed LATA boundary modification for McDowell County.

24. There are two local exchanges in Morgan County -- only one of which is affected by the LATA boundary. The Paw Paw exchange is located in the Clarksburg LATA and is served by

Citizens. BA-WV serves the Berkeley Springs exchange, which is located in the Hagerstown-MD LATA. But for the presence of the LATA boundary, both exchanges would be able to make local calls to one another under the Commission's "Winfield Plan."

25. Citizens can provide, and currently is providing, one-way local calling from Paw Paw to Berkeley Springs.

26. The average number of messages per access line per month from Berkeley Springs to Paw Paw is 0.22. Charleston Tr., CAD Exh. 2 (Gregg Supp.) at 1. This rate is low when compared with the rates considered by the FCC in the BA-VA ELCS Order or when compared to the rates for exchanges in McDowell County.

27. However, the average number of messages per access line per month from Paw Paw to Berkeley Springs, which is currently a local call, is 16.84. Id. That rate, coupled with narrative evidence strongly suggests that a community of interest exists between the two exchanges.

28. Residents of Morgan County were not polled since there will be no increase in rates associated with the LATA boundary modification, if approved. However, at the October 29, 1999, hearing held in Berkeley Springs, the Commission was presented with a petition, signed by hundreds of residents. Morgan Tr., CAD Exh. 1. In contrast, there was no evidence of opposition to the proposed LATA boundary modification.

29. Narrative evidence provided during the hearing in Morgan County strongly supports the Commission's conclusion that a community of interest exists between the Paw Paw and Berkeley Springs exchanges, in spite of the low usage rates for calls from Berkeley Springs to Paw Paw.

30. There are only a small number of access lines associated with the proposed LATA boundary modification for Morgan County. The average number of access lines in the Berkeley Springs exchange is 6,106. Charleston Tr., CAD Exh. 1 (Gregg Dir.) at 7. This represents only 0.6% of access lines statewide.

31. BA-WV will offer the same local calling plans it offers throughout the State and which were previously discussed with respect to the proposed LATA boundary modification for McDowell County. These plans are acceptable to the FCC. BA-VA ELCS Order, ¶ 6.

32. No interexchange carriers intervened in this proceeding or otherwise objected to the proposed LATA boundary modification for Morgan County.

33. The Commission adopts, as if fully restated, all recitals of fact set forth herein.

CONCLUSIONS OF LAW

1. A community of interest exists between and among the following exchanges to support a limited modification of the applicable LATA boundary:

- McDowell County – the Iaeger and Bradshaw exchanges served by BA-WV, the Welch, Davy, Coalwood, Gary, Anawalt, Kimball, Northfork and Maybeury exchanges served by Citizens and War Tel;
- Morgan County – the Berkeley Springs exchange served by BA-WV and the Paw Paw exchange served by Citizens.

2. There would be few, if any, anticompetitive effects associated with a limited LATA boundary modification for the above-cited exchanges.

3. While economic considerations are not part of the FCC's "community of interest" standard, the Commission believes that such considerations are relevant to its conclusion that a community of interest exists among the affected exchanges in McDowell County and Morgan County. A limited modification of the LATA boundary removes an impediment to economic development in each county. The LATA boundary also has adversely affected the lives, the health and public safety of many citizens of McDowell County and Morgan County.

4. BA-WV will be authorized to file a petition requesting that the FCC grant a limited modification of the following LATA boundaries: the Clarksburg LATA - Hagerstown, MD LATA boundary in Morgan County; and the Charleston LATA - Bluefield IMA boundary in McDowell County.

5. The Commission adopts, as if fully restated, all legal conclusions set forth herein.

ORDER

IT IS, THEREFORE, ORDERED that, upon entry hereof, Bell Atlantic - West Virginia, Inc., should be, and hereby is, authorized to file a petition with the Federal Communications Commission, requesting that the FCC grant a limited modification of the following LATA boundaries: the Clarksburg LATA - Hagerstown, MD LATA boundary in Morgan County; and the Charleston LATA - Bluefield IMA boundary in McDowell County. Such boundary modification would allow full, two-way local calling among the following exchanges:

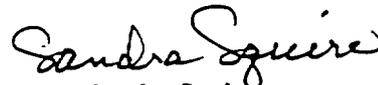
- McDowell County – the Iaeger and Bradshaw exchanges served by BA-WV, the Welch, Davy, Coalwood, Gary, Anawalt, Kimball, Northfork and Maybeury exchanges served by Citizens and War Tel;

- Morgan County – the Berkeley Springs exchange served by BA-WV and the Paw Paw exchange served by Citizens.

IT IS FURTHER ORDERED that, upon entry hereof, this proceeding shall be removed from the Commission's active docket of cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:


Sandra Squire
Executive Secretary

ARC
PWP pwp lfg
981531ch.wpd

ENDNOTES

1. On October 21, 1999, Citizens filed an Erratum to Reply Comments, pointing out that it serves Paw Paw rather than Citizens Mountain State Telephone Company.
2. In the BA-VA proceeding, the FCC considered a petition seeking a limited modification of the LATA boundary separating the Lebanon and Richlands exchanges in Virginia. The FCC noted, among other things: (1) that 57% of customers favored ELCS from Lebanon to Richlands (no comments regarding Richlands to Lebanon were received); (2) that the Lebanon exchange had 8,116 access lines while the Richlands exchange had 9,429 access lines; and (3) that there was an average of 1.24 calls per access line per month from Lebanon to Richlands, and 1.36 calls per access line per month from Richlands to Lebanon. BA-VA ELCS Order, ¶ 5.
3. The mileage from the local exchange rate centers in the Bluefield IMA to the local exchange rate centers in the Charleston LATA are as follows:

<u>Exchange</u>	<u>Miles to:</u>	<u>Bradshaw</u>	<u>laeger</u>
Coalwood		9 miles	11 miles
Davy		12 miles	9 miles
Gary		15 miles	16 miles
Kimball		18 miles	18 miles
Northfork		21 miles	21 miles
Welch		13 miles	13 miles
Anawalt		21 miles	22 miles
Maybeury		24 miles	25 miles
War		7 miles	13 miles

Citizens Reply at 2 n. 1; Charleston Tr., CAD Exh. 2 (Gregg Supp.) at 3.

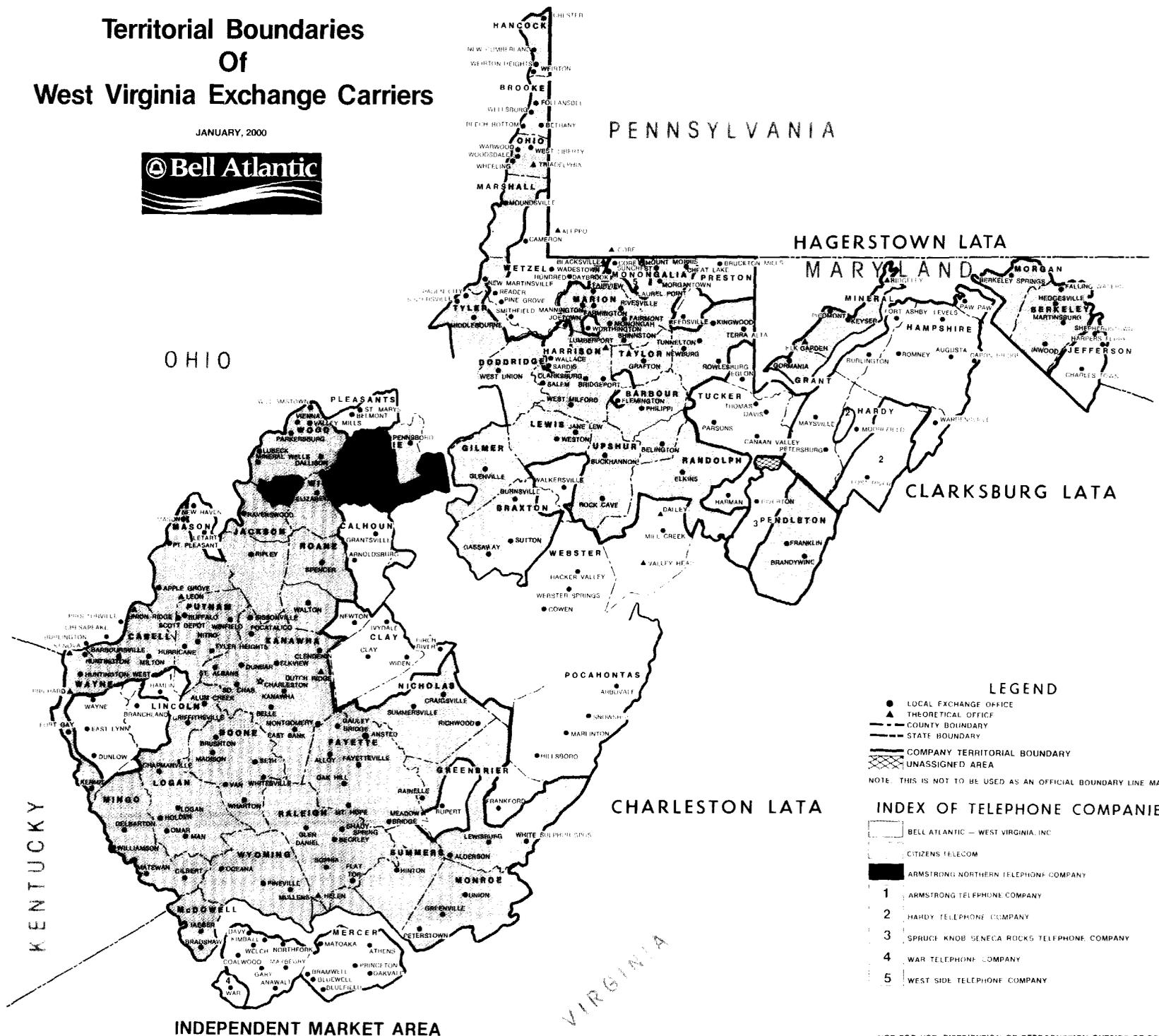
4. It appears that the same person signed one or more petitions on several occasions. However, even discounting redundant signatories, a substantial number of citizens support the proposed LATA boundary modification.
5. The distance between rate centers for the Paw Paw and Berkeley Springs exchanges is fifteen miles. Charleston Tr., CAD Exh. 1 (Gregg Dir.) at 7 n. 2.
6. Citizens' provision of unidirectional local calling stems from GTE South, Inc.'s agreement, settling a 1988 complaint filed by sixty-two Paw Paw customers, to provide expanded local calling to Berkeley Springs. See "Commission Order," Storhaug v. AT&T Communications of West Virginia, Case No. 88-850-T-C (Sept. 13, 1989). A

tariff implementing this one-way calling arrangement was subsequently approved in Case No. 94-1120-T-T.

7. Only the Berkeley Springs exchange would be affected by the proposed LATA modification since Citizens' customers in the Paw Paw exchange can make local calls to Berkeley Springs. The average number of access lines in the Paw Paw exchange is likewise very small – only 1,123 lines. Charleston Tr., CAD Exh. 1 (Gregg Dir.) at 7.

Territorial Boundaries Of West Virginia Exchange Carriers

JANUARY, 2000



LEGEND

- LOCAL EXCHANGE OFFICE
 - ▲ THEORETICAL OFFICE
 - COUNTY BOUNDARY
 - STATE BOUNDARY
 - COMPANY TERRITORIAL BOUNDARY
 - UNASSIGNED AREA
- NOTE: THIS IS NOT TO BE USED AS AN OFFICIAL BOUNDARY LINE MAP

INDEX OF TELEPHONE COMPANIES

- BELL ATLANTIC - WEST VIRGINIA, INC.
- CITIZENS TELECOM
- ARMSTRONG NORTHERN TELEPHONE COMPANY
- 1 ■ ARMSTRONG TELEPHONE COMPANY
- 2 ■ HARDY TELEPHONE COMPANY
- 3 ■ SPRUCE KNOB SENECA ROCKS TELEPHONE COMPANY
- 4 ■ WAR TELEPHONE COMPANY
- 5 ■ WEST SIDE TELEPHONE COMPANY

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