

DOCKET FILE COPY ORIGINAL

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

MAY 5 8 59 AM '04

In the Matter of)
)
)
 Qwest Request for)
 Limited Modification of LATA)
 Boundaries to Provide Expanded Local)
 Calling Service (ELCS) Between its)
 Exchanges in Minneapolis/St. Paul)
 Metropolitan Calling Area and Qwest's)
 Northfield Exchange in Minnesota)

DISC
WC Docket No. 04-26

MEMORANDUM OPINION AND ORDER

Adopted: April 29, 2004

Released: April 29, 2004

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. On August 28, 2003, Qwest Corporation (Qwest), pursuant to section 3(25) of the Communications Act of 1934, as amended (the Act),¹ filed a petition (Qwest Petition) to provide two-way, non-optional, expanded local calling service (ELCS) between certain exchanges in Minnesota.² Qwest's petition requests limited modification of local access and transport area (LATA) boundaries to provide ELCS between the Northfield exchange and exchanges serving the Minneapolis/St. Paul Metropolitan Calling Area (MCA), as required by the Minnesota Public Utilities Commission (Minnesota Commission).³ We grant Qwest's petition for the reasons stated below.

¹ See 47 U.S.C. § 153(25). Section 3(25) of the Act defines a LATA as a contiguous geographic area (1) established prior to enactment of the 1996 Act by a Bell Operating Company (BOC) such that no exchange area includes points within more than one metropolitan statistical area, consolidated metropolitan statistical area, or state, except as expressly permitted under the AT&T Consent Decree; or (2) established or modified by a BOC after such date of enactment and approved by the Commission. *Id*

² See Request by Qwest Corporation for Limited Modification of LATA Boundaries to Provide ELCS Between the Exchanges in the Minneapolis/St. Paul Metropolitan Calling Area and Qwest Corporation's Northfield Exchange in Minnesota, WC Docket No. 04-26 (filed Aug. 28, 2003) (Qwest Petition). See *Comments Sought on Qwest Corporation Request for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service Between its Exchanges in the Minneapolis/St. Paul Metropolitan Calling Area and the Northfield Exchange in Minnesota*, WC Docket No. 04-26, Public Notice, DA No. 04-315 (rel. Feb. 6, 2004). We note that all of the exchanges are in Minnesota.

³ See Qwest Petition at 1, Exhibit A; Minnesota Public Utilities Commission, *In the Matter of a Petition for Extended Area Service from the Northfield Exchange to the Metropolitan Calling Area*, Docket No. P-404, 407, 520, 405, 413, 421, 426, 427, 430/CP-02-587, Order Certifying Polling Results and Requiring Implementation (July 15, 2003).

II. BACKGROUND

2. Requests for new ELCS routes are generally initiated by local subscribers.⁴ Although intraLATA ELCS routes can be ordered by a state commission,⁵ pursuant to section 3(25)(B) of the Act requests for interLATA ELCS routes fall within the Federal Communications Commission's (Commission's) exclusive jurisdiction.⁶ Applying a two-part test, the Commission will grant a request for a LATA boundary modification where: (1) the applicant proves that the requested LATA modification would provide a significant public benefit; and (2) granting the petition would not remove the BOC's incentive to receive authority to provide in-region, interLATA service pursuant to section 271.⁷

3. The Qwest Petition proposes to establish two-way, non-optional ELCS, and is accompanied by an order issued by the Minnesota Commission approving the ELCS request on the basis that sufficient communities of interest exist to warrant such service;⁸ a statement that only traditional local service is proposed; poll results demonstrating that communities of interest exist between the respective exchanges;⁹ traffic data;¹⁰ and a statement of the number of access lines involved.¹¹ No party filed any opposing comments to the Qwest Petition.

III. DISCUSSION

4. We conclude that Qwest's petition satisfies the Commission's two-part test. Applying the first prong of the test, we find that Qwest has shown that a public benefit would result from the ELCS because a sufficient community of interest exists among the affected exchanges to justify their being treated

⁴ The Qwest Petition was initiated by subscribers of Qwest and HickoryTech. See Qwest Petition at 2. Qwest currently provides local service in a majority of the exchanges serving the MCA. Other local providers provide service in their own exchanges in the MCA. Both Qwest and HickoryTech provide service in the Northfield exchange. *Id.* at 2-3. While the Minnesota Commission order refers to HickoryTech as providing service to customers in the Northfield exchange, HickoryTech's affiliated competitive local exchange carrier, Crystal Communications, actually provides the local exchange service in the Northfield exchange. HickoryTech is an incumbent local exchange carrier in other areas. *Id.* at 1 n.2. Qwest's MCA exchanges are located in the Minneapolis 628 LATA (763/651/612/952 area codes). The Northfield exchange is located in the adjacent Rochester 620 LATA (507 area code). *Id.* at 2.

⁵ *United States v. Western Electric Company, Inc.*, 569 F. Supp. 990, 995 (D.D.C. 1983). "The distance at which a local call becomes a long distance toll call has been, and will continue to be, determined exclusively by the various state regulatory bodies." *Id.*

⁶ See *Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding U.S. WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, NSD-L-97-6, Memorandum Opinion and Order, 14 FCC Rcd 14392-99 (1999).

⁷ See *SBC Telecom, Inc. Petition for Modification of Certain LATA Boundaries in Ohio*, File No. NSD-L-00-25, Memorandum Opinion and Order, 18 FCC Rcd 26398 (2003), paras. 2, 6-8.

⁸ Qwest Petition, Exhibit A.

⁹ The poll results indicate that 71 percent of Northfield exchange subscribers who voted in the poll favored ELCS. *Id.*, Exhibit A at 2.

¹⁰ The Qwest Petition states that over 50 percent of subscribers in the Northfield exchange made three or more calls per month to the Minneapolis/St. Paul area. Qwest Petition at 3-4.

¹¹ The majority of calls are expected to originate from the Northfield exchange, which has approximately 9,300 access lines. *Id.* at 3.

as a local calling area.¹² In reaching this finding, we note that Qwest proposes to offer traditional, two-way, non-optional local service in the ELCS,¹³ which the Commission has determined to be consistent with the public interest.¹⁴ Further, the Minnesota Commission conducted an extensive community of interest analysis prior to approving the ELCS.¹⁵ We find it a persuasive indicator of a community of interest that Qwest's petition satisfies all of the Minnesota Commission's community of interest criteria, including customer polling data demonstrating that over 70 percent of Northfield residents favored ELCS and traffic data indicating that over 50 percent of Northfield residents made three or more calls per month to the Qwest exchanges.¹⁶ We find, therefore, that the petition is based on a significant community of interest, and thus satisfies the first prong of the Commission's two-part test.

5. Qwest also satisfies the second prong of the two-part test because it has already opened its market to competition in Minnesota and, accordingly, has been granted authority under section 271 to offer long distance service in that state.¹⁷ Thus, granting the requested modification has no bearing on Qwest's incentive to receive such authority. Moreover, we conclude that the LATA boundary modifications would have a minimal effect upon Qwest's incentives because modification of any of the individual LATA boundaries would affect only a small number of access lines.¹⁸ As a result, we believe that granting Qwest's petition serves the public interest by permitting minor LATA modifications where such modifications are necessary to meet the needs of local subscribers. Accordingly, we approve Qwest's petition for limited LATA boundary modifications.

¹² See *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 (1997), 10649-50 (public interest is served by communities being able to obtain local calling).

¹³ Qwest Petition at 2

¹⁴ See, e.g., *Bell-Atlantic-Virginia, Inc. Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, File No. NSD-L-97-45, Memorandum Opinion and Order, 13 FCC Rcd 11042 (1998) (*April 1998 LATA Order*); *Bell Atlantic-Virginia Petition for Limited Modification of LATA Boundary to Provide Expanded Local Calling Service (ELCS)*, File No. NSD-L-98-143, Memorandum Opinion and Order, 14 FCC Rcd 4371 (1999) (*1999 Virginia LATA Order*). Although Qwest proposes to offer measured-rate service in addition to flat-rated service, that does not alter our conclusion that a sufficient community of interest exists among the affected exchanges to justify the ELCS. The services that Qwest proposes to offer in the expanded local calling area are identical to the service options (measured or flat-rate) that were available prior to the implementation of ELCS. Qwest Petition at 2. Although the Commission has traditionally favored flat-rated service as the best indicator that a community of interest exists among the affected exchanges, the Commission has granted LATA boundary modifications for measured-rate ELCS where the service offered in the proposed ELCS is identical to that offered prior to the application. See *April 1998 LATA Order*, 13 FCC Rcd at 11045, para. 7; see also *1999 Virginia LATA Order*, 14 FCC Rcd 4374, para. 6.

¹⁵ See Qwest Petition at Exhibit A.

¹⁶ *Id.* at 2.

¹⁷ *Application by Qwest Communications International Inc., for Authorization to Provide In-Region, InterLATA Services in Minnesota*, WC Docket No. 03-90, Memorandum Opinion and Order, 18 FCC Rcd 13323 (2003).

¹⁸ For the purposes of ELCS petitions, we generally consider the number of access lines from customers in the exchange who seek to reach businesses and services in the other exchange. This exchange usually generates the majority of calls between the two exchanges. See *Southwestern Bell Petitions for Limited Modifications of LATA Boundaries to Provide Expanded Local Calling Service (ELCS)*, WC Docket No. 02-134, Memorandum Opinion and Order, 17 FCC Rcd 25540 (2002). The total number of access lines for Qwest exchanges in the Minneapolis/St. Paul MCA is 1,889,781. See Qwest Petition at Exhibit A, p. 3. Therefore, for the purposes of reviewing these modifications, we consider Qwest's 9,300 access lines in the Northfield exchange, a number within Commission precedent. See *April 1998 LATA Order*, 13 FCC Rcd at 11046, para. 8 (granting an ELCS petition affecting over 30,000 access lines). See Qwest Petition at Exhibit D for a complete list of all affected exchanges.

6. We grant this relief solely for the limited purpose of allowing Qwest to provide ELCS between the specific exchanges or geographic areas identified in this request. The LATAs are not modified to permit Qwest to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus, two-way, non-optional ELCS between the specified exchanges will be treated as intraLATA service.¹⁹

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED, pursuant to sections 3(25) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(25), 154(i), and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the request of Qwest for LATA boundary modifications for the limited purpose of providing two-way, traditional, non-optional ELCS at specific locations in Minnesota, identified in WC Docket No. 04-26, IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION



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

¹⁹ Other types of service between the specified exchanges will remain interLATA, and the provisions of the Act governing interLATA service will apply. *See, e.g.*, 47 U.S.C. § 272(f)(1) (stating that a BOC is required to provide interLATA services through a separate affiliate for three years after the date on which it is authorized to provide in-region, interLATA telecommunications services).