

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

In the Matter of)

Request by Southwestern Bell Telephone, L.P.)
d/b/a SBC Texas for Limited Modification of)
LATA Boundaries to Provide Expanded Local)
Calling Service Between Certain Exchanges in the)
State of Texas)

WC Docket No. 05-2

MEMORANDUM OPINION AND ORDER

Adopted: April 25, 2005

Released: April 25, 2005

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. On December 27, 2004, Southwestern Bell Telephone (SBC), pursuant to section 3(25) of the Communications Act of 1934, as amended (the Act),¹ filed a petition (SBC Petition) to provide flat-rate, two-way, non-optional, expanded local calling service (ELCS) between certain exchanges in Texas.² The SBC Petition requests a limited modification of a LATA boundary to provide ELCS between the Luling exchange in the San Antonio LATA and the Bastrop exchange, the Lockhart exchange, and the San Marcos exchange in the Austin LATA, in the state of Texas, as approved by the Public Utilities Commission of Texas (Texas Commission).³ We grant SBC's petition for the reasons stated below.

¹ See 47 U.S.C. § 153(25). Section 3(25) of the Act defines a local access and transport area (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 Southwestern Bell Telephone for Limited Modification of LATA Boundaries to Provide ELCS Between the Luling Exchange and the Bastrop, Lockhart, and San Marcos Exchanges in the State of Texas, WC Docket No. 05-2 (filed Dec. 27, 2004) (SBC Petition). See *Pleading Cycle Established for Comments on SBC Texas' Petition for Limited Modification of LATA Boundary to Provide Extended Area Service Between Certain Exchanges in the State of Texas*, WC Docket No. 05-2, Public Notice, DA No. 05-38 (rel. Jan. 7, 2005). We note that all of the exchanges are in Texas.

³ See SBC Petition at Attachment A; Public Utilities Commission of Texas, Interim Order, In the Matter of Petition for Expanded Local Calling Service from the Luling Exchange to the Exchanges of Bastrop, Lockhart, and San Marcos, Docket No. 30026 (rel. Nov. 8, 2004) (*Texas Order*).

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 The SBC Petition proposes to establish two-way, non-optional ELCS, and is accompanied by an Order issued by the Texas Commission approving the ELCS request.⁸ No party filed comments opposing the SBC Petition.

III. DISCUSSION

3. We conclude that SBC's petition satisfies the Commission's two-part test. Applying the first prong of the test, we find that SBC has shown that a significant public benefit would result from the ELCS because a sufficient community of interest exists among the affected exchanges to justify treatment as a local calling area.⁹ In reaching this finding, we note that SBC proposes to offer traditional, two-way, non-optional local service in the ELCS,¹⁰ which is a type of service that this Commission has determined to be consistent with the public interest.¹¹ The SBC Petition also demonstrates a community of interest between the affected exchanges based on polling results,¹² in addition to the community of

⁴ The SBC Petition notes that the Texas Commission showed evidence of strong community support for the proposed ELCS in its Order. See SBC Petition at 2; *Texas Order* at 3. SBC is the incumbent LEC in the Luling, Bastrop, and Lockhart Exchanges. CenturyTel of San Marcos is the incumbent LEC in San Marcos. See SBC Petition 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.")

⁶ Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding U S WEST Petitions to Consolidate LATAs in Minnesota and Arizona, File No. NSD-L-97-6, Memorandum Opinion and Order, 14 FCC Rcd 14392, 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 See *Texas Order* at 3.

⁹ See Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations, CC Docket 96-159, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10653 (1997) (*July 1997 LATA Order*).

¹⁰ SBC Petition at 1-2.

¹¹ See *July 1997 LATA Order*, 12 FCC Rcd at 10646.

¹² The percentages of Luling customers returning ballots who voted in favor of ELCS were 82.63 percent to Bastrop; (continued....)

interest findings from the Texas Commission.¹³ We agree with the Texas Commission that the petition is based on a significant community of interest, and thus satisfies the first prong of the Commission's two-part test.

4. SBC also satisfies the second prong of the two-part test because it has already opened its market to competition in Texas, and, accordingly, has been granted authority under section 271 to offer interLATA service in that state.¹⁴ Thus, granting the requested modification has no bearing on SBC's incentive to receive such authority. Moreover, we conclude that the LATA boundary modification would have a minimal effect upon competition because modification of the LATA boundary would affect only a small number of access lines.¹⁵ As a result, we believe that granting SBC's petition serves the public interest by permitting a minor LATA modification where such a modification is necessary to meet the needs of local subscribers. Accordingly, we approve SBC's petition for a limited LATA boundary modification.

5. We grant this relief solely for the limited purpose of allowing SBC to provide ELCS between the specific exchanges or geographic areas identified in this request. The LATA boundary is not modified to permit SBC 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.

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87.65 percent to Lockhart; and 86.82 percent to San Marcos. See SBC Petition at 2.

¹³ See *Texas Order* at 2-3. The Bastrop Exchange serves as a business center for Luling, and is the location of a hospital and other medical facilities not available in Bastrop. Moreover, the county seat for the Luling Exchange is located in the Lockhart Exchange, while doctors located in Luling provide medical care for Lockhart residents. The San Marcos Exchange serves as a business center for Luling, and is one of the nearest locations for continuing education for Luling subscribers. Additionally, agriculture and oil industries located in the Luling Exchange have a strong need for contact with government offices and educational facilities located in the San Marcos Exchange. *Id.*

¹⁴ See Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, Memorandum Opinion and Order, 15 FCC Rcd 18354 (SWBT Texas Order).

¹⁵ For purposes of ELCS petitions, we generally consider the number of access lines from customers in the smaller exchange who seek to reach businesses and services in the other exchange. This smaller 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). In assessing the number of lines affected by this request, we note that, because most of the services and facilities used by Luling residents are outside their respective exchanges, the great majority of calls will be made from the Luling exchanges into the Bastrop, Lockhart and San Marcos exchanges. Accordingly, for the purposes of this request, the access lines we consider are the 2,398 lines in the Luling exchange, a number that is well within Commission precedent. See SBC Petition at 2; *April 1998 LATA Order*, 13 FCC Rcd at 11046, para. 8 (granting an Extended Local Calling Service (ELCS) petition affecting over 30,000 access lines). We note that there are 14,571 lines in the Bastrop exchange, 8,336 lines in the Lockhart exchange, and 25,017 lines in the San Marcos exchange.

IV. ORDERING CLAUSE

6. 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 Southwestern Bell Telephone, L.P. for a LATA boundary modification for the limited purpose of providing two-way, traditional, non-optional ELCS between specific locations in Texas, as identified in WC Docket No. 05-2, IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION



Thomas J. Navin
Chief, Competition Policy Division
Wireline Competition Bureau