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Nancy H. Sims
Director - Regulatory Relations

ORIGINAL

October 28, 1999

Ms. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Docket No. 971627-TL Ft. White and Gainesville EAS

Dear Ms. Bayo:

Attached is a copy of the FCC's approval to provide two-way, flat-rated, non-optional expanded local calling service (ELCS) between the Ft. White and Gainesville exchanges. BellSouth and AllTel will work together to implement this plan as soon as possible, but not to exceed twelve months from October 27, 1999.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,

Nancy H. Sims

Nancy H. Sims

AFA
APP
CAF
CMU Barrett
CTR
EAG
LEG 1
MAS 2
OPC
PAI
SEC 1
WAW
OTH

cc: All parties of record
Walter D'Haeseleer
Harriett Eudy
Marshall M. Criser, III
Kip Edenfield
Michael Goggin

CERTIFICATE OF SERVICE
DOCKET NO. 971627-TP (Ft. White-EAS)

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 28th day of October, 1999 to the following:

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Nancy H. Sims

T102799B

Federal Communications Commission DA 99-2321

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

In the Matter of	)	
BellSouth's Petition for Limited Modification of LATA Boundary to Provide Expanded Local Calling Service (ELCS)	)	File No. NSD-L-99-77

MEMORANDUM OPINION AND ORDER

Adopted: October 26, 1999 Released: October 27, 1999

By the Acting Chief, Network Services Division
Common Carrier Bureau

I. INTRODUCTION

1. On August 4, 1999, BellSouth Telecommunications, Inc. and BellSouth Corporation ("BellSouth"), pursuant to Section 3(25) of the Communications Act of 1934, as amended,[1] filed a petition to provide two-way, flat-rated, non-optional expanded local calling service (ELCS) between Florida's Ft. White and Gainesville exchanges.[2] BellSouth's petition requests a limited modification of a local access and transport area (LATA) boundary.[3] The petition was placed on public notice,[4] and one comment was filed. The Florida Public Service Commission (PSC) filed comments in support of BellSouth's petition. For the reasons stated below, we grant BellSouth's request.

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[1] *See* 47 U.S.C. § 153(25).

[2] Ft. White is an ALLTEL Florida exchange. Gainesville is a BellSouth exchange.

[3] Section 3(25) of the Act defines LATAs as those areas established prior to enactment of the 1996 Act by a Bell Operating Company (BOC) such that no exchange area includes points within more than one metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or established or modified by a BOC after such date of enactment and approved by the Commission.

[4] See "Comment Sought on BellSouth's Request For Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service Between the Ft. White Exchange and Gainesville Exchanges in the State of Florida," Public Notice, rel. August 25, 1999 and "Erratum to Public Notice", rel. October 18, 1999.

II. BACKGROUND

2. Requests for new ELCS routes are generally initiated by local subscribers. IntraLATA ELCS routes can be ordered by the state commission.[5] For interLATA routes, prior to the Telecommunications Act of 1996 (1996 Act),[6] the Bell Operating Companies (BOCs) were required to secure state approval and then obtain a waiver from the United States District Court for the District of Columbia (District Court).[7] In the years between the Consent Decree[8] and the 1996 Act, the District Court received more than a hundred requests for Consent Decree waivers to permit new interLATA ELCS routes.[9] Because of the large number of requests involved and because most of the requests were non-controversial, the District Court developed a streamlined process for handling such requests.[10]

3. Under the streamlined process developed by the District Court, the BOC submitted its waiver request to the Department of Justice (Department). The Department reviewed the request and then submitted the request, along with the Department's recommendation, to the District Court. In evaluating ELCS requests, the Department and the District Court considered the number of customers or access lines involved[11] as well as whether a sufficiently strong community of interest between the exchanges justified granting a waiver of the Consent Decree.[12] A community of interest could be demonstrated by such evidence as: (1) poll results showing that customers in the affected exchange were willing to pay higher rates to be included in an

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[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] Pub. L. No. 104-104, 110 Stat. 56 (1996).

[7] *United States v. Western Electric*, 569 F. Supp. at 995.

[8] The Consent Decree required AT&T to divest its ownership of the BOCs. *United States v. American Telephone and Telegraph Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

[9] Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations, *Memorandum Opinion and Order*, 12 FCC 10646, 10648 (1997) (*July 1997 Order*).

[10] *See United States v. Western Electric Company, Inc.*, No. 82-0192 (D.D.C. Feb. 6, 1984); *United States v. Western Electric Company, Inc.*, No. 82-0192 (D.D.C. Mar. 15, 1984).

[11] *See United States v. Western Electric Company, Inc.*, No. 82-0192, slip op. at 3 n.8 (D.D.C. July 19, 1984) (hereinafter *July 1984 Order*).

[12] *See, e.g., United States v. Western Electric Company, Inc.*, No. 82-0192 slip op. at 2, 3 n.3 (D.D.C. Jan. 31, 1985) (hereinafter *Jan. 1985 Order*); *United States v. Western Electric Company, Inc.*, No. 82-0192 (D.D.C. Dec. 3, 1993); *United States v. Western Electric Company, Inc.*, No. 82-0192 (D.D.C. Dec. 17, 1993).

expanded local calling area;[13] (2) usage data demonstrating a high level of calling between the exchanges; and (3) narrative statements describing how the two exchanges were part of one community and how the lack of local calling between the exchanges caused problems for community residents.[14] In addition, the Department and the District Court gave deference to the state's community of interest finding. The District Court also considered the competitive effects of granting a proposed ELCS waiver.[15]

4. Matters previously subject to the Consent Decree are now governed by the Act.[16] Under section 3(25)(B) of the Act, BOCs may modify LATA boundaries, if such modifications are approved by the Commission.[17] On July 15, 1997, the Commission released a decision granting 23 requests for limited boundary modification to permit ELCS.[18] Although calls between the ELCS exchanges would now be treated as intraLATA, each ELCS exchange would remain assigned to the same LATA for purposes of classifying all other calls.[19] The Commission stated that it would grant requests for such limited modifications only where a petitioning BOC showed that the ELCS was a flat-rated, non-optional service, a significant community of interest existed among the affected exchanges, and grant of the requested waiver would not have any

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[13] *See July 1984 Order*, at 2 n.5.

[14] *See Jan. 1985 Order*, at 2-3 & n.3.

[15] *See July 1984 Order* at 3; *Jan. 1985 Order* at 2-3; *United States v. Western Electric Company, Inc.*, No. 82-0192, slip op. at 2 (D.D.C. May 18, 1993) (hereinafter *May 1993 Order*). The District Court granted waivers for more than a hundred flat-rated, non-optional ELCS plans that allow the provision of traditional local telephone service between nearby exchanges. *See, e.g., Western Electric*, 569 F. Supp. at 1002 n.54; *July 1984 Order; Jan. 1985 Order*. Under such plans, subscribers pay no extra charge for calls beyond their established monthly service charge (the plan involves a flat-rated charge), and all subscribers in the exchange are included in the plan (the plan is non-optional). *Id.*

[16] Section 601(a)(1) of the 1996 Act states that "[a]ny conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the AT&T Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and obligations imposed by such Consent Decree." On April 11, 1996, the D.C. District Court issued an order terminating the AT&T Consent Decree and dismissing all pending motions under the Consent Decree as moot, effective February 8, 1996. *See United States v. Western Electric Company, Inc.*, No. 82-0192, 1996 WL 255904 (D.D.C. Apr. 11, 1996).

[17] *See* 47 U.S.C. § 153(25)(B).

[18] *July 1997 Order, supra*, n.9.

[19] If an exchange were assigned to another LATA for all purposes, any existing local calling routes between that exchange and the original LATA would be lost because such traffic would now be interLATA and could no longer be carried by the BOC. Instead, the traffic would generally be carried by an interexchange carrier charging long distance toll rates.

anti competitive effects.[20] The Commission stated further that a carrier would be deemed to have made a prima facie case supporting grant of the proposed modification if the ELCS petition: (1) has been approved by the state commission; (2) proposes only traditional local service (i.e., flat-rated, non-optional ELCS); (3) indicates that the state commission found a sufficient community of interest to warrant such service; (4) documents this community of interest through such evidence as poll results, usage data, and descriptions of the communities involved; and (5) involves a limited number of customers or access lines.[21]

III. DISCUSSION

5. The petition proposes to establish two-way, flat-rated, non-optional ELCS, and is accompanied by: (1) a statement that only traditional local service is proposed; (2) an order issued by the PSC confirming that ELCS should be approved between the various exchanges; (3) poll results;[22] (4) proposed rate increase; (5) a statement of the number of access lines involved;[23] and (6) a finding by the PSC that a community of interest exists between the Ft. White and Gainesville exchanges. The majority of medical facilities, colleges, and commercial opportunities are located in Gainesville. The petition does not provide usage data in the form of an average number of calls per access line per month between the respective exchanges, nor does the petition provide the percentage of subscribers making such calls because BellSouth does not currently carry traffic across LATA boundaries.

6. As we noted in the *July 1997 Order*, granting an ELCS petition removes the proposed route from the competitive interexchange market, and some LATA modifications could reduce the BOCs' incentive to open their own markets to competition pursuant to section 271 of the Act.[24] Given, however, the small number of access lines in the proposed ELCS area in this

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[20] *July 1997 Order*, 12 FCC Rcd at 10649-50.

[21] *Id.* at 10659. The Commission also delegated authority to act on petitions to modify LATA boundaries to the Common Carrier Bureau. *Id.* at 10657-58. On August 6, 1997, the Commission released a decision granting requests to modify LATA boundaries to permit three independent telephone company (ITC) exchanges in Texas to change LATA association for purposes of improving service to subscribers. The Commission stated that a carrier will be deemed to have made a prima facie case supporting grant of a proposed association change if the petition: (1) states that the association change is necessary because of planned upgrades to the ITC's network or service that will require routing traffic through a different BOC LATA; (2) involves a limited number of access lines; and (3) includes a statement from the affected BOC(s) requesting a LATA modification, pursuant to section 3(25) of the Act, to permit the change in association. Petitions for LATA Association Changes by Independent Telephone Companies, *Memorandum Opinion and Order*, 12 FCC Rcd 11769 (1977) (*August 1997 Order*).

[22] 74.53% of Ft. White customers returning ballots favored EAS to Gainesville. There is no proposed change in the rates for Gainesville customers; therefore, no poll was required.

[23] The Ft. White Exchange has 1,886 access lines. The Gainesville Exchange has 137,765 access lines.

[24] *See* 47 U.S.C. § 271(b)(1).

petition, as well as the types of service to be offered (*e.g.*, two-way, flat-rated, non-optional local service), it is highly unlikely that provision of ELCS service would reduce BellSouth's motivation to open its own market to competition. Because of the limited amount of traffic and the type of service involved, the Division finds that the proposed LATA modifications will not have a significant anticompetitive effect on the interexchange market or on BellSouth's incentive to open its own market to competition. We conclude that the information in the petition satisfies the criteria established in the *July 1997 Order*.

IV. CONCLUSION

7. We conclude that, in this request, the community's need for the proposed ELCS route outweighs the risk of potential anticompetitive effects. Granting BellSouth's petition serves the public interest by permitting a minor LATA modification where such modification is necessary to meet the needs of local subscribers and will not have any significant effect on competition. Accordingly, we approve BellSouth's petition for limited LATA modification in order to provide two-way, flat-rated, non-optional ELCS. The LATA is modified solely for the limited purpose of allowing BellSouth to provide two-way, flat-rated, non-optional local calling service between the specific exchanges or geographic areas identified in the requests. The LATA is not modified to permit the BOC to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus, non-optional ELCS between the specified exchanges will be treated as intraLATA, and the provisions of the Act governing intraLATA service will apply.[25] Other types of service between the specified exchanges will remain interLATA, and the provisions of the Act governing interLATA service will apply.

V. ORDERING CLAUSES

8. 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 BellSouth for LATA modification for the limited purpose of providing two-way, flat-rated, non-optional ELCS at specific locations, identified in File No. NSD-L-99-77, IS APPROVED. This LATA boundary is modified solely for the purpose of providing two-way, flat-rated, non-optional ELCS between points in the specific exchanges or geographic areas indicated in the request. The LATA boundary for all other services shall remain unchanged.

[25] The BOC may provide ELCS service without meeting the section 271 requirements, *see* 47 U.S.C. § 271(a), and a separate affiliate is not required, *see* 47 U.S.C. § 272(a)(2)(B).

9. IT IS FURTHER ORDERED that pursuant to section 416(a) of the Act, 47 U.S.C. § 416(a), the Network Services Division SHALL SERVE a copy of this order upon the petitioner, BellSouth.

FEDERAL COMMUNICATIONS COMMISSION

Kurt A. Schroeder
Acting Chief, Network Services Division
Common Carrier Bureau