

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

In the Matter of)

Bell Atlantic and GTE)

Petition for Modification of LATA)

Boundaries)

File No. NSD-L-00-35

MEMORANDUM OPINION AND ORDER

Adopted: June 23, 2000

Released: June 23, 2000

By the Chief, Network Services Division:

I. INTRODUCTION

1. On May 19, 1998, Bell Atlantic-Virginia, Inc. (Bell Atlantic) and GTE South, Inc. (GTE), pursuant to Section 3(25) of the Communications Act of 1934, as amended (the Act),¹ filed a petition requesting that the Commission approve their request that local access and transport area (LATA)² boundaries be modified so that customers in twenty-one exchanges served by GTE may retain their current local calling arrangements should the Commission approve the merger between petitioners. The petition was placed on public notice,³ and only the State Corporation Commission of the Commonwealth of Virginia (VSCC) filed comments.⁴ For the reasons stated below, we grant petitioners' request.

II. BACKGROUND

2. The restriction on carrying interLATA traffic dates back to the break-up of AT&T and applies only to the Bell Operating Companies (BOCs).⁵ Prior to the adoption of the

¹ See 47 U.S.C. § 153(25).

² Section 3(25) of the Act defines LATAs as those areas established prior to enactment of the 1996 Act or established or modified by a Bell Operating Company (BOC) after such date of enactment and approved by the Commission.

³ See Public Notice, "Comment Sought on Bell Atlantic-Virginia, Inc. and GTE South, Inc.'s Request to Approve Certain LATA Boundary Modifications Coincident With its Approval of the Merger Between Bell Atlantic Corporation and GTE Corporation," rel. Mar. 24, 2000.

⁴ In its comments, the State Corporation Commission stated that if the Commission approved the merger it should also approve petitioners' LATA boundary modification request.

⁵ *United States v. Western Electric Company*, 569 F. Supp. 990 (D.D.C. 1983).

Telecommunications Act of 1996 (1996 Act),⁶ BOCs often sought and were granted LATA modification requests for the purpose of providing expanded local calling service (ELCS). ELCS allows certain interLATA calls to be local calls. In seeking an ELCS LATA boundary modification, the BOC was required to secure state approval and then obtain a waiver from the United States District Court for the District of Columbia (District Court).⁷ Requests for new ELCS routes are generally initiated by local subscribers and intraLATA ELCS routes can be ordered by the state commission.⁸ In the years between the Consent Decree⁹ and the 1996 Act, the District Court received more than a hundred requests for Consent Decree waivers to permit new interLATA ELCS routes.¹⁰ 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.¹¹

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 involved¹² as well as whether a sufficiently strong community of interest between the exchanges justified granting a waiver of the Consent Decree.¹³ 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 expanded local calling area;¹⁴ (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

⁶ Pub. L. No. 104-104, 110 Stat. 56 (1996).

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

⁸ *Id.* "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.*

⁹ *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). The Consent Decree required AT&T to divest its ownership of the BOCs.

¹⁰ 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, 10648 (*July 1997 Order*).

¹¹ *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).

¹² *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*).

¹³ *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).

¹⁴ *See July 1984 Order* at 2 n.5.

exchanges caused problems for community residents.¹⁵ The Department and the District Court, generally, gave deference to the state's community of interest finding. The District Court also considered the competitive effects of granting a proposed ELCS waiver.¹⁶

4. Matters previously subject to the Consent Decree are now governed by the Act.¹⁷ Under section 3(25)(B) of the Act, BOCs may modify LATA boundaries, if such modifications are approved by the Commission.¹⁸ On July 15, 1997, the Commission released a decision granting 23 requests for limited boundary modification to permit ELCS.¹⁹ 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.²⁰ 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 LATA boundary modification would not have any anticompetitive effects.²¹ 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

¹⁵ See *Jan. 1985 Order* at 2-3 & n.3.

¹⁶ 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* at 3; *January 1985 Order* at 4. 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).

¹⁷ 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).

¹⁸ See 47 U.S.C. § 153(25)(B).

¹⁹ *July 1997 Order*, 12 FCC Rcd at 10646

²⁰ 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.

²¹ *July 1997 Order*, 12 FCC Rcd at 10649-50.

descriptions of the communities involved; and (5) involves a limited number of customers or access lines.²²

III. DISCUSSION

5. In 1997, as part of a complex rate case involving GTE, the VSCC entered an order authorizing a local calling plan that encompassed a number of exchanges. Twenty-one of these exchanges are the exchanges at issue in this petition and listed in the Appendix. According to the VSCC, the calling plan is designed to “address numerous requests and complaints from customers for alternatives to paying toll charges to call contiguous and other nearby exchanges.”²³ As a result of the VSCC’s order, one-way, optional local calling was instituted from the twenty-one GTE exchanges to Bell Atlantic exchanges.

6. Petitioners propose that the Commission approve LATA modifications involving twenty-one GTE exchanges so that once GTE is an affiliate of Bell Atlantic the customers in the GTE exchanges will continue to receive the same local calling arrangements that they enjoy today. The petition is accompanied by: (1) a statement that no new local calling service plans will result from Commission approval of this request, and that callers will retain their existing plan; (2) an order issued by the VSCC detailing the issues raised in the rate case as well as a finding of sufficient community of interest between the GTE and Bell Atlantic exchanges; (3) and a statement that fewer than 14,000 access lines involved.²⁴

7. 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.²⁵ The present case, however, is unlikely to lessen Bell Atlantic’s incentive to open its markets to competition given the small number of access lines involved. The impact on the interexchange market is de minimis and no interexchange carriers filed comments. Additionally, under these facts, we do not wish to see

²² *Id.* at 10659. The Commission also delegated authority to act on petitions to modify LATA boundaries to the Common Carrier Bureau. *Id.* at para 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*).

²³ VSCC Comments at 2.

²⁴ See Appendix A.

²⁵ See U.S.C. § 271(b)(1).

these GTE customers lose their current service offerings due to the merger between petitioners. Thus, the Division finds that the proposed LATA modifications will not have a significant anticompetitive effect on the interexchange market or on Bell Atlantic'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

8. We conclude that, in this request, the need for the proposed LATA modifications outweighs the risk of potential anticompetitive effects. Granting petitioners' request 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 this petition for limited LATA modifications in order for the GTE customers to continue having their present local calling arrangements. The LATAs are modified solely for this limited purpose and are not modified to permit the BOC to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus, calls from the GTE to Bell Atlantic exchanges listed in the Appendix will be treated as intraLATA, and the provisions of the Act governing intraLATA service will apply.²⁶

V. ORDERING CLAUSES

10. 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 47 C.F.R. §§ 0.91 and 0.291 of the Commission's rules, that the request of Bell Atlantic-Virginia and GTE South for various LATA modifications in Virginia identified in File No. NSD-L-00-35 **IS APPROVED**.

11. IT IS FURTHER ORDERED that pursuant to section 416(a) of the Act, 47 U.S.C. § 416(a), the Secretary SHALL SERVE a copy of this order upon the petitioners, Bell Atlantic and GTE.

FEDERAL COMMUNICATIONS COMMISSION

L. Charles Keller
Chief, Network Services Division
Common Carrier Bureau

²⁶ 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).

APPENDIX**GTE South Incorporated's Bowling Green, Colonial Beach, Ladysmith and Port Royal Exchanges to nearby Bell Atlantic – Virginia Exchanges**

FROM: GTE SOUTH EXCHANGES	TO: BELL ATLANTIC EXCHANGES
Bowling Green, Carrier: GTE South	Fredericksburg
Bowling Green, Carrier: GTE South	Spotsylvania
Colonial Beach, Carrier: GTE South	Fredericksburg
Colonial Beach, Carrier: GTE South	Spotsylvania
Ladysmith, Carrier: GTE South	Brokenburg
Ladysmith, Carrier: GTE South	Fredericksburg
Port Royal, Carrier: GTE South	Spotsylvania

EXCHANGE	NUMBER OF ACCESS LINES
Bowling Green	4,310
Colonial Beach	4,356
Ladysmith	4,572
Port Royal	387
Brokenburg	1,791
Fredericksburg	50,298
Spotsylvania	4,977

GTE South Incorporated's Barnesville, Charlotte Court House, Drakes Branch and Keysville Exchanges to Bell Atlantic – Virginia Clover Exchange

FROM: GTE SOUTH EXCHANGES	TO: BELL ATLANTIC EXCHANGES
Barnesville, Carrier: GTE South	Clover
Charlotte Court House, Carrier: GTE South	Clover
Drakes Branch, Carrier: GTE South	Clover
Keysville, Carrier: GTE South	Clover

EXCHANGE	NUMBER OF ACCESS LINES
Barnesville	804
Charlotte Court House	1,424
Drakes Branch	542
Keysville	2,280
Clover	2,121

GTE South Incorporated's Gloucester and Hayes Exchanges to Bell Atlantic – Virginia Toano and Williamsburg Exchanges

FROM: GTE SOUTH EXCHANGES	TO: BELL ATLANTIC EXCHANGES
Gloucester, Carrier: GTE South	Toano
Gloucester, Carrier: GTE South	Williamsburg
Hayes, Carrier: GTE South	Toano
Hayes, Carrier: GTE South	Williamsburg

EXCHANGE	NUMBER OF ACCESS LINES
Gloucester	9,925
Hayes	7,059
Toano	4,329
Williamsburg	38,362

GTE South Incorporated's Mathews Exchange to Nearby Bell Atlantic – Virginia Exchanges

FROM: GTE SOUTH EXCHANGES	TO: BELL ATLANTIC EXCHANGES
Mathews, Carrier: GTE South	Hampton
Mathews, Carrier: GTE South	Newport News
Mathews, Carrier: GTE South	Peninsula
Mathews, Carrier: GTE South	Poquoson

EXCHANGE	NUMBER OF ACCESS LINES
Mathews	5,367
Hampton	81,887
Newport News	56,511
Peninsula	69,746
Poquoson	6,035

GTE South Incorporated's Raphine Exchange to Nearby Bell Atlantic – Virginia Exchanges

FROM: GTE SOUTH EXCHANGES	TO: BELL ATLANTIC EXCHANGES
Raphine, Carrier: GTE South	Lovingston
Raphine, Carrier: GTE South	Piney River

EXCHANGE	NUMBER OF ACCESS LINES
Raphine	2,227
Lovingston	6,238
Piney River	1,536

GTE South Incorporated's Southwest Virginia Exchanges to Nearby Bell Atlantic – Virginia Exchanges

FROM: GTE SOUTH EXCHANGES	TO: BELL ATLANTIC EXCHANGES
Big Prater, Carrier: GTE South	Clinchco
Big Prater, Carrier: GTE South	Davenport
Big Prater, Carrier: GTE South	Haysi
Big Rock, Carrier: GTE South	Clinchco
Big Rock, Carrier: GTE South	Davenport
Big Rock, Carrier: GTE South	Haysi
Dwight, Carrier: GTE South	Davenport
Grundy, Carrier: GTE South	Davenport
Hurley, Carrier: GTE South	Davenport
Jewell Ridge, Carrier: GTE South	Davenport
Maxie, Carrier: GTE South	Clinchco
Maxie, Carrier: GTE South	Davenport
Maxie, Carrier: GTE South	Haysi
Oakwood, Carrier: GTE South	Davenport

EXCHANGE	NUMBER OF ACCESS LINES
Big Prater	1,564
Big Rock	778
Dwight	914
Grundy	3,676
Hurley	1,672
Jewell Ridge	549
Maxie	785
Oakwood	1,858
Clinchco	2,178
Davenport	1,283
Haysi	1,455

GTE South Incorporated's Surry Exchange to Bell Atlantic – Virginia Waverly Exchange

FROM: GTE SOUTH EXCHANGES	TO: BELL ATLANTIC EXCHANGES
Surry, Carrier: GTE South	Waverly

EXCHANGE	NUMBER OF ACCESS LINES
Surry	1,232
Waverly	2,353