

Dated: July 21, 1997.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

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FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96-159; FCC 97-244]

Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this Memorandum Opinion and Order adopted July 3, 1997 and released July 15, 1997, the Commission grants 23 requests for limited modification of local access and transport area (LATA) boundaries to permit certain Bell Operating Companies (BOCs) to provide expanded local calling service (ELCS) in various communities. The order also sets forth guidelines for future LATA modification requests. The order will allow the BOCs to provide ELCS in communities whose borders extend across existing LATA boundaries.

FOR FURTHER INFORMATION CONTACT: Pamela Gerr, (202) 418-2357, or Robin Smolen, (202) 418-2353, both of the Network Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, (FCC 97-244) adopted on July 3, 1997 and released on July 15, 1997. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW, Washington, DC 20554. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street NW, Washington, DC 20036.

Paperwork Reduction Act

OMB Control No.: 3060-0782.

Expiration Date: 01/31/98.

Title: Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 20 respondents; 8 hours per response (avg).

×5 responses annually; 800 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: On occasion.

Needs and Uses: The Commission has provided voluntary guidelines for filing expanded local calling service requests. These guidelines will allow the Commission to conduct smooth and continuous processing of these requests. The collection of information will enable the Commission to determine if there is a public need for expanded local calling service in each area subject to the request. Your response is voluntary.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Synopsis of Memorandum Opinion and Order

I. Introduction

1. Five Bell Operating Companies (BOCs) have filed petitions¹ with the Commission requesting relief from the effects of certain local access and transport area (LATA) boundaries.² The petitions were filed pursuant to section 3(25) of the Communications Act of 1934, as amended, which permits modification of LATA boundaries by Bell Operating Companies (BOCs), if such modifications are approved by the Commission.³ The petitions request LATA relief in order to provide

¹ Petitions were filed by Ameritech, Bell Atlantic, BellSouth Telecommunications, Inc. (BellSouth), Southwestern Bell Telephone Company (SWBT), and US West Communications, Inc. (US West). These petitions and the associated LATA modification requests are listed in Appendix A. A LATA modification (LM) file number has been assigned to each request. See Appendix A.

² LATAs define the geographic areas within which a BOC may provide service. See *infra* paras. 3, 9. A LATA is defined as "a contiguous geographic area (A) established before the date of enactment of the Telecommunications Act of 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a Bell operating company after such date of enactment and approved by the Commission." Section 3(25) of the Communications Act of 1934, as amended, 47 U.S.C. 153(25).

³ See 47 U.S.C. 153(25).

expanded local calling service (ELCS)⁴ between communities that lie on different sides of existing LATA boundaries (ELCS requests).⁵ The petitions were placed on public notice⁶ and comments and replies were filed.⁷

2. There are 24 ELCS requests before the Commission.⁸ For the reasons discussed below, we grant 23 of the ELCS requests and order amendment of one request.⁹ We also provide guidelines for future ELCS requests.

II. Background

A. ELCS Requests Under the Consent Decree

3. On August 24, 1982, the United States District Court for the District of Columbia (Court) entered an order (Consent Decree) that required AT&T to divest its ownership of the BOCs.¹⁰ The

⁴ A local calling area consists of one or more telephone exchanges and is an area within which subscribers can place calls without incurring any additional charge over their regular monthly service charge. See *United States v. Western Electric*, 569 F. Supp. 990, 1003 n.59 (D.D.C. 1983) (hereinafter *Western Electric*). Local calling areas are established by state regulatory commissions. See *id.* at 990, 1002 n.54. ELCS (also known as extended area service or EAS) allows local telephone service rates to apply to nearby telephone exchanges, thus providing an expanded local calling area. See *id.*

⁵ These LATA modification requests are summarized in Appendix B.

⁶ See Public Notice, "Commission Seeks Comment on Petitions for Waiver of LATA Boundaries to Provide Expanded Local Calling Service in Texas and North Carolina," DA 96-1190, released July 26, 1996 (First Public Notice); Public Notice, "Comment Requested on Petitions for Limited Modification of LATA Boundaries to Provide: (1) Expanded Local Calling Service (ELCS) in Nebraska, North Carolina, Ohio, Oregon, Pennsylvania, Texas, and Virginia, and Between Ohio and West Virginia, and Virginia and West Virginia; and (2) Integrated Services Digital Network (ISDN) in Hearne, Texas," DA 97-109, released January 15, 1997 (Second Public Notice).

⁷ Comments were filed by AT&T Corp. (AT&T), Intelcom Group (U.S.A.), Inc. (Intelcom), the North Carolina Utilities Commission and the Public Staff-North Carolina Utilities Commission (North Carolina PUC), the Public Utilities Commission of Ohio (Ohio PUC), the Virginia State Corporation Commission (Virginia Commission), and Western Reserve Telephone Company (Western Reserve). Reply comments were filed by BellSouth, the North Carolina PUC, and Southwestern Bell. Numerous informal comments were also filed by individuals, businesses, and local government entities in support of individual LATA modification requests.

⁸ SWBT's petition for LATA relief in order to provide integrated services digital network (ISDN) in the Hearne, Texas LATA, see *supra* note 6, and Ameritech's request to provide ELCS from the Aurora, Northfield and Twinsburg, Ohio exchanges to the Akron, Ohio exchange, see *id.*; see also Public Notice, "Commission Requests Comment on Whether Section 271 of the Communications Act Authorizes Ameritech to Carry Certain ELCS Traffic Across a LATA Boundary," released June 27, 1997, will be addressed in separate orders.

⁹ See US West's Scio/Albany request, NSD-LM-97-25, Appendix A.

¹⁰ *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).

Court divided all Bell territory in the continental United States into geographic areas called LATAs.¹¹ Under the Consent Decree, the BOCs were permitted to provide telephone service within a LATA (intraLATA service), but were not permitted to carry traffic across LATA boundaries (interLATA service).¹² InterLATA traffic was to be carried by interexchange carriers.¹³

4. The LATAs did not cover territory served by independent telephone companies (ITCs).¹⁴ The Court, however, did classify some independent exchanges as "associated" with a particular LATA.¹⁵ Traffic between a LATA and an associated exchange was treated as intraLATA, and could be carried by the BOC, while traffic between a LATA and an unassociated exchange was treated as interLATA, and could not be carried by the BOC.¹⁶ The ITCs were not subject to the restrictions imposed by the Consent Decree, and could carry traffic regardless of whether that traffic crossed LATA boundaries.¹⁷

5. In establishing the LATAs, the Court recognized that there were existing local calling areas¹⁸ that would cross the newly created LATA boundaries.¹⁹ The Court stated that the LATAs were not intended to interfere with local calling areas that had been established by state regulators.²⁰ Accordingly, the Court granted "exceptions" to permit BOCs to carry interLATA traffic if necessary to preserve existing ELCS arrangements.²¹ The Court found that such exceptions were consistent with the purposes of the Consent Decree because (1) they were limited in scope, (2) they would avoid additional charges being imposed on ratepayers, and (3) it was unlikely that toll traffic potentially subject to competition would be affected.²²

6. The Court subsequently received more than a hundred requests for waivers of the Consent Decree to permit new interLATA ELCS routes. The requests for new ELCS routes were generally initiated by local subscribers who asked their state commission to approve an expanded local calling area.

If the proposed ELCS route was intraLATA it could be ordered by the state commission; if the route was interLATA, the BOC would also have to obtain a waiver from the Court. The Court developed a streamlined process for handling such requests both because of the large number of requests involved and because most of the requests were non-controversial. Under this process, the BOC would submit its waiver request to the Department of Justice (DOJ). DOJ would review the request and then submit the request to the Court along with DOJ's recommendation.

7. In evaluating such requests, DOJ and the Court considered the number of customers or access lines involved.²³ They also considered whether there was a sufficiently strong community of interest between the exchanges to justify granting a waiver of the Consent Decree to allow local calling.²⁴ In particular, they considered the state commission's community of interest finding and any additional evidence supporting this finding. A community of interest could be demonstrated by such evidence as: (1) Poll results indicating that customers in the affected exchange were willing to pay higher rates to be included in an expanded local calling area;²⁵ (2) usage data indicating 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.²⁶ The Court was willing to grant waivers when the competitive effects were minimal and a sufficient community of interest across LATA boundaries was shown.²⁷ The Court frequently granted waivers to permit interLATA ELCS.

8. The Court granted waivers for more than a hundred flat-rate, non-optional ELCS plans²⁸ that allow the provision of traditional local telephone service between nearby exchanges. Under such plans, subscribers pay no extra charge for calls beyond their established

monthly service charge (the plan involves a flat-rate), and all subscribers in the exchange are included in the plan (the plan is non-optional).²⁹ The Court refused, however, to grant waivers for optional or measured-rate ELCS plans.³⁰ Under optional plans, subscribers may chose to pay an additional monthly charge for an expanded local calling area,³¹ while under measured-rate plans, subscribers pay measured-rates based on such factors as duration, distance, and time of day.³² The Court found that granting waivers for such ELCS arrangements could have an anticompetitive effect because these services were similar to the toll service normally provided by interexchange carriers, and that these arrangements were basically discounted toll service for calls that would otherwise be carried competitively.³³ The Court was especially concerned that the discount appeared to result from the fact that BOCs, unlike interexchange carriers, did not have to pay access charges on such calls.³⁴ The Court also noted that, in the case of optional or measured-rate plans, the state commission had not found a sufficient community of interest between the exchanges to justify traditional local service, (i.e., flat-rate, non-optional ELCS).³⁵ Finally, the Court expressed concern that allowing new exceptions for measured-rate or optional plans could lead to a "piecemeal dismantling" of the prohibition on the BOCs' provision of interLATA service.³⁶

B. ELCS Requests Under the Telecommunications Act of 1996

9. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act) became law, amending the Communications Act of 1934 (Act).³⁷ Pursuant to the 1996 Act, matters previously subject to the Consent Decree are now governed by the Act.³⁸ Section

²⁹ *Id.*

³⁰ See e.g., *Western Electric*, 569 F. Supp. at 1002 n.54 (optional ELCS plans denied); *May 1993 Order* (optional ELCS plan denied); *Dec. 3, 1993 Order* (measured-rate ELCS plan denied); *Dec. 17, 1993 Order* (measured-rate, optional ELCS plan denied).

³¹ *Id.*

³² See *Dec. 3, 1993 Order*.

³³ See *Western Electric*, 569 F. Supp. at 1001, 1002 n.54; *Dec. 17, 1993 Order* at 3-4; *Dec. 3, 1993 Order*.

³⁴ *Dec. 17, 1993 Order* at 5.

³⁵ See *id.* at 4; See also *May 1993 Order*, at 4.

³⁶ See *May 18, 1993 Order* at 4.

³⁷ Pub. L. 104-104, 110 Stat. 56 (1996).

³⁸ 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

¹¹ See *Western Electric*, 569 F. Supp. at 993, 994.

¹² *Id.* at 994.

¹³ *Id.*

¹⁴ See *id.* at 1008 n.85.

¹⁵ See *United States v. Western Electric Co., Inc.*, 569 F. Supp. 1057, 1110-13 & n.234 (D.D.C. 1983).

¹⁶ See *id.*; *Western Electric*, 569 F. Supp. at 1008-09.

¹⁷ *Western Electric*, 569 F. Supp. at 1008, 1010, 1113.

¹⁸ See *supra* note 4.

¹⁹ *Western Electric*, 569 F. Supp. at 995, 1002 n.54.

²⁰ *Id.* at 995.

²¹ *Id.* at 1002 n.54.

²² *Id.*

²³ 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*).

²⁴ 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) (hereinafter *Dec. 3, 1993 Order*); *United States v. Western Electric Company, Inc.*, No. 82-0192 (D.D.C. Dec. 17, 1993) (hereinafter *Dec. 17, 1993 Order*).

²⁵ See *July 1984 Order*, at 2 n.5.

²⁶ See *Jan. 1985 Order*, at 2-3 & n.3.

²⁷ See *July 1984 Order*; *Jan. 1985 Order*; *United States v. Western Electric Company, Inc.*, No. 82-0192, slip op. at 2 (D.D.C. May 18, 1993) (hereinafter *May 1993 Order*).

²⁸ See e.g., *Western Electric*, 569 F. Supp. at 1002 n.54; *July 1984 Order*; *Jan. 1985 Order*.

271(b)(1) of the Act prohibits a BOC from providing "interLATA services originating in any of its "in-region" States" ³⁹ until the BOC takes certain steps to open its own market to competition and the Commission approves the BOC's application to provide such service.⁴⁰ In addition, while the Commission may forbear from applying certain provisions of the Act under certain circumstances,⁴¹ the Commission may not forbear from section 271.⁴² Section 3(25)(B) of the Act provides that BOCs may modify LATA boundaries, if such modifications are approved by the Commission.⁴³

10. Since passage of the 1996 Act, the Commission has received six petitions requesting LATA relief in order that ELCS can be offered. On July 26, 1996 the Commission issued a public notice requesting comment on petitions filed by BellSouth and SWBT for a "waiver" of LATA boundaries.⁴⁴ On January 15, 1997 the Commission issued a Second Public Notice requesting comment on petitions filed by Ameritech, Bell Atlantic, and US West, and allowing additional comment on the petitions previously filed by BellSouth and SWBT.⁴⁵ The Second Public Notice stated that, although several of the petitions describe the relief requested as a "waiver" of LATA boundaries, all of the petitions cited section 3(25) as the basis of the Commission's jurisdiction to act upon these requests. Accordingly, the Commission stated that it would treat all of these petitions as requests for modification of LATA boundaries for

the limited purpose of providing the specific service indicated in the request. The Commission further stated that the LATA boundaries would remain unchanged for all other purposes.

III. Comments

11. In response to the First Public Notice, formal comments or reply comments were filed by AT&T, BellSouth, Intelcom,⁴⁶ the North Carolina PUC, and SWBT. AT&T states that the Commission lacks authority to waive LATA boundaries and that the petitions can only be properly characterized as LATA modification requests if they propose to move a LATA boundary so that certain calls previously classified as intraLATA are now interLATA, and other calls previously classified as interLATA are now intraLATA.⁴⁷ AT&T further contends that such LATA modification requests raise serious competitive issues because, if granted, they will completely displace the interexchange carrier currently providing that service.⁴⁸ AT&T also states that granting such requests could allow a BOC to "chip away" at the prohibition against its provision of in-region interLATA service prior to meeting the requirements of Section 271, thus reducing the BOCs' incentive to open its own local market to competition.⁴⁹ Accordingly, AT&T concludes that LATA modifications should be granted "sparingly, if at all."⁵⁰ Like AT&T, Intelcom also has expressed concern about possible anticompetitive effects⁵¹ and states that the Commission should approach these and future LATA modification requests with caution.⁵² Intelcom, however, takes no position on the current petitions and states that the proposed modifications would appear to have no more than a *de minimis* effect on competition.⁵³ BellSouth, the North Carolina PUC, and SWBT all strongly support the grant of particular ELCS requests.

12. In response to the Second Public Notice, comments were filed by the Ohio PUC, the Virginia Commission and Western Reserve. These petitions all support granting particular ELCS requests. The Virginia Commission, in its comments, also requests approval for

a LATA boundary modification to permit ELCS between the Waverly and Wakefield exchanges in Virginia (Virginia Commission's Waverly/Wakefield request).⁵⁴ This request was not included in any of the LATA modification petitions previously filed with the Commission.⁵⁵

IV. Discussion

A. General Considerations

13. Section 3(25) of the Act defines LATA as those areas established prior to enactment of the 1996 Act or established or modified by a BOC after such date of enactment and approved by the Commission. Section 271 of the Act prohibits a BOC from providing interLATA services until such time as certain enumerated conditions are satisfied. Section 10(d) prohibits the Commission from forbearing from applying the requirements of section 271. Thus, for a BOC to provide service on a new ELCS route that crosses existing LATA boundaries, the statute appears to require that BOC either to modify the LATA so that the route no longer crosses a LATA boundary and obtain Commission approval therefor, or satisfy the requirements of section 271.

14. The state commissions have determined that certain communities have an immediate need for traditional local telephone service.⁵⁶ None of the BOCs, however, have yet met the section 271 requirements and there is no time limit by which they must do so. Thus, requiring the BOCs to meet the section 271 requirements would not be the most expeditious way to ensure that local telephone service can be provided to these communities in a timely manner. Furthermore, the section 271 requirements were intended to ensure that BOCs do not prematurely enter into the interexchange market. Given the small number of access lines involved for each of the proposed ELCS areas in the petitions before the Commission, as well as the type of service to be offered (i.e., traditional local service), it is highly unlikely that provision of ELCS service would reduce a BOC's motivation to open its own market to competition. Similarly, the small volume of traffic would seem inconsequential to any interexchange carrier. Thus, requiring the BOCs to meet the section 271 requirements prior to offering this service would not further Congress's intent to guard against competitive abuses.

15. While it appears that LATA modification is the preferable means by

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 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).

³⁹ Section 271(i)(1) of the Act defines "in-region State" as a state in which a Bell operating company or any of its affiliates was authorized to provide wireline telephone exchange service pursuant to the reorganization plan approved under the Consent Decree, as in effect on the day before the date of enactment of the Telecommunications Act of 1996. 47 U.S.C. 271(i)(1). Section 3(21) of the Act defines "interLATA service" as "telecommunications between a point located in a local access and transport area and a point located outside such area." 47 U.S.C. 153(21).

⁴⁰ 47 U.S.C. 271(b)(1). Section 271(f), however, provides that BOCs are not prohibited from engaging in an activity to the extent that such activity was previously authorized by the Court. See 47 U.S.C. 271(f). Thus, BOCs may continue to serve previously authorized interLATA ELCS routes. *Id.*

⁴¹ See 47 U.S.C. § 160(a).

⁴² See 47 U.S.C. § 160(d).

⁴³ See 47 U.S.C. § 153(25)(B).

⁴⁴ See *supra* note 6.

⁴⁵ *Id.*

⁴⁶ Intelcom states that it is a provider of competitive local access services and that it operates networks in numerous parts of the country including some of the LATAs affected by the petitions in this proceeding. Intelcom Comments at 2-3.

⁴⁷ AT&T Comments at 2-3.

⁴⁸ *Id.* at 4.

⁴⁹ *Id.*

⁵⁰ *Id.* at 5.

⁵¹ Intelcom Comments at 3-4.

⁵² *Id.* at 4.

⁵³ *Id.*

⁵⁴ See Virginia Commission Comments at 1-2.

⁵⁵ See *supra* para. 10.

⁵⁶ See *infra* para. 18.

which the BOCs can achieve the goal of providing ELCS service, a modification of the boundary for all purposes in order to accommodate the ELCS routes could be counterproductive. If an exchange were moved 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 rates. Consequently, such action could merely shift the same problem from one community to another.

16. Thus, we believe that LATA modifications for a "limited purpose" that would authorize BOCs to provide only flat-rate, non-optional local calling service between specific exchanges, would best achieve the desired goals discussed in paragraph 14. Modification of the LATA for the limited purpose of providing the ELCS routes would avoid the anomalous situations described above. In addition, limited modifications would reduce the potential for anticompetitive effects to a greater degree than general LATA modifications because the former limit the amount of additional traffic that the BOC may carry whereas the latter would permit the BOC to offer any type of service, including toll service, between the new exchange and any other point in its LATA.

17. LATA modification for a limited purpose is both consistent with the statute and serves the public interest. Nothing in the statute or legislative history indicates that a LATA cannot be modified for a limited purpose. As explained above, LATA waiver requests to permit precisely the type of ELCS traffic at issue here were regularly and routinely granted by the Court under the terms of the AT&T Consent Decree. Although Congress did not include corresponding authority when it amended the Communications Act, Congress did acknowledge the possible need for changes to the LATA boundaries by enacting section 3(25). Nothing in either the statute or the legislative history suggests a decision by Congress intentionally to eliminate the ability of a locality, with a demonstrated community of interest that happens to straddle a LATA boundary, to obtain reasonably priced telephone service. Thus a broad reading of the term "modify" in section 3(25) is reasonable. Moreover, we will consider each individual request carefully, weighing the community need for the modification against the potential harm from BOC anticompetitive activity. We

find that this weighing can best be accomplished by considering those factors previously considered by the Court.⁵⁷

B. ELCS Requests

1. Flat-rate, Non-optional ELCS

18. Twenty-three of the pending requests seek limited modifications of LATA boundaries in order to provide flat-rate, non-optional ELCS (i.e., traditional local service).⁵⁸ We find that these twenty-three requests demonstrate a strong community need for the proposed ELCS routes. We note that each of the proposed ELCS routes, in the twenty-three requests, was approved by a state commission. Furthermore, each request includes a demonstration of need for the proposed modification.⁵⁹ In particular, each request indicates that the ELCS route was approved after the state commission found there was a sufficient community of interest between the exchanges to justify such service. Each request also documented this community of interest through additional evidence including: (1) Poll results showing that subscribers were willing to pay higher monthly rates in order to be included in the expanded local calling area; (2) usage data showing a high level of calling between the potentially affected exchanges; and (3) narrative statements explaining why the exchanges to be part of the ELCS area should be considered part of one community. These statements indicated that many community services (such as hospitals, doctors offices, schools, stores, public transportation facilities, and government offices) were located in a nearby community in the adjacent LATA, and that the need to make interLATA toll calls for such services caused significant expenses for residents. We note that granting ELCS petitions removes the proposed routes from the competitive interexchange market and that some LATA modifications could reduce the BOCs' incentive to open their own markets to competition pursuant to section 271. The LATA modifications proposed here, however, would expand the petitioning BOCs' provision of local service to limited areas and each request involves only a small number of customers or access lines.⁶⁰ Given the limited amount

of traffic and the type of service involved, we find that the proposed modifications will not have a significant anticompetitive effect on the interexchange market or on the BOCs' incentive to open their own markets to competition. Finally, we note that several commenters strongly urge the Commission to grant particular ELCS requests,⁶¹ and that no commenter has argued that any one of these 23 requests should be denied.

19. We conclude that, in each of the twenty-three requests, the need for the proposed ELCS routes outweighs the risk of potential anticompetitive effects. Furthermore, we are approving these modifications solely for the limited purpose of allowing the BOC to provide a particular type of service, namely, flat-rate, non-optional local calling service, between specific exchanges or geographic areas.⁶² In each case, the LATA is not modified to permit the BOC to offer any other type of service, or calls that originate or terminate outside the specified areas. Thus, flat-rate, non-optional ELCS between the specified exchanges will be deemed intraLATA, and the provisions of the Act governing intraLATA service will apply.⁶³ Other types of service between the specified exchanges will be deemed interLATA, and the provisions of the Act governing interLATA service will apply.⁶⁴

2. Measured-Rate, Optional ELCS

20. US West requests a LATA modification in order to provide measured-rate, optional ELCS from its Albany exchange in the Eugene, Oregon LATA to the Scio Mutual Telephone Association's Scio exchange.⁶⁵ US West states that the Oregon state commission requires carriers to offer both flat-and measured-rate options for all ELCS routes in the state.⁶⁶ Accordingly, US West's plan would offer subscribers the

exchange. *Id.* (summary of Bell Atlantic's Gloucester requests).

⁶¹ See Comments of BellSouth, the North Carolina PUC, the Ohio PUC, SWBT, the Virginia Commission and Western Reserve. There were also numerous informal comments from local residents, businesses and local government entities supporting various ELCS requests.

⁶² See Appendix A.

⁶³ The BOC can provide the 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).

⁶⁴ The BOC cannot provide other types of service (such as measured-rate, optional, or toll service) between the specified exchanges without meeting the section 271 requirements, see 47 U.S.C. 271(a).

⁶⁵ See US West's Scio/Albany request, Appendices A and B.

⁶⁶ This policy is intended to "avoid the potential inequity created by flat-rate (ELCS) whereby low-volume users support the high volume (ELCS) users." See US West Petition, Appendix A at 8.

⁵⁷ See *supra* paras. 7-8 (describing factors considered by the Court).

⁵⁸ These 23 requests are summarized in Appendix B.

⁵⁹ See *id.*

⁶⁰ The number of customers in these exchanges ranged from 724 in the Claremont exchange, see Appendix B (summary of Bell Atlantic's Claremont/Waverly request), to 7,495 in the Gloucester

following options: (1) Unlimited calling for a flat monthly charge; (2) a "usage only" option in which calls are charged at a set rate per minute; and (3) a three or six hour "measured usage" package.⁶⁷ US West argues that the proposed ELCS plan is not the type of "optional" plan previously rejected by the Court because subscribers would have to select one of the ELCS plans, and could not choose between the ELCS plan and the service offered by an interexchange carrier.⁶⁸ US West also states that the Scio exchange has approximately 1600 access lines,⁶⁹ and that the state commission found there was a "community of interest" between the exchanges and that the ELCS route was necessary to meet the "critical needs" of Scio exchange customers.⁷⁰

21. We do not approve this proposed LATA modification. US West's request is related to a measured-rate optional ELCS plan. Furthermore, although the state commission found that there was a "community of interest" between the exchanges, it did not make a specific finding that there was a sufficient community of interest to warrant traditional local service (*i.e.*, flat-rate, non-optional ELCS). Subscribers generally can be expected to prefer, and to benefit from, reduced rate service to nearby areas but ELCS plans with optional or measured-rate elements are similar to the toll services traditionally offered by interexchange carriers. We find that modifying a LATA boundary in order to permit a BOC to provide measured-rate service would allow the BOC to provide what would otherwise be interLATA toll service without first meeting the requirements of section 271. Allowing LATA modifications for such ELCS plans might well lead to substantial expansion of BOC service, without the BOC satisfying the section 271 requirements.⁷¹ The potential anticompetitive effect of optional and measured-rate plans, and the lack of any showing of a need for traditional local telephone service (*i.e.*, flat-rate, non-optional ELCS) between the Albany and Scio exchanges, leads us to deny US West's request. While we recognize the state commission's interest in providing additional choices to consumers, we will not approve such optional or

measured-rate plans for the reasons discussed above.

22. We note, however, that the Scio/Albany request was placed on public notice and that no objections were filed. Moreover, because of its general policy requiring both flat-and measured-rate options on all ELCS routes, the state commission apparently never considered whether a sufficient community of interest existed between the Albany and Scio exchanges to justify flat-rate, non-optional ELCS. Under these circumstances, we find that the public interest will best be served by our giving US West an opportunity to seek further clarification from the state commission. Accordingly, we direct US West to amend its request within 60 days of the release date of this order to state whether it has obtained a further ruling from the state commission that addresses whether there is a sufficient community of interest to warrant flat-rate, non-optional ELCS between the Albany and Scio exchanges and states whether such service has been approved.⁷² If no amendment is filed within the 60 day period, the request will be dismissed without prejudice pursuant to Section 1.748 of the Commission's rules.⁷³

V. Future LATA Modification Requests

23. The Common Carrier Bureau has authority to act on petitions to modify LATA boundaries, consistent with the principles established in this order, pursuant to the delegation of authority contained in §§ 0.91 and 0.291 of the Commission's rules.⁷⁴ We conclude that the following set of guidelines will assist the BOCs in filing those LATA modification petitions that involve ELCS and the Bureau in acting on those petitions.⁷⁵ First, we request that each ELCS petition be filed by the BOC⁷⁶ pursuant to the application filing requirements set forth in §§ 1.742 and 1.743 of the Commission's rules.⁷⁷

⁷² We note that even if US West does not file such an amendment at this time, our ruling here does not preclude relief to residents of the Albany and Scio exchanges. First, the request may be resubmitted at any time if the state commission determines that the required community of interest exists. This service could also be offered by an alternative provider, if available, and US West will be able to offer interLATA service if it meets the requirements of section 271.

⁷³ 47 CFR 1.748(a). Section 1.748(a) provides that an application may be dismissed without prejudice if the applicant fails to comply with a request for additional information.

⁷⁴ 47 CFR 0.91, 0.291.

⁷⁵ These guidelines have been approved by the Office of Management and Budget (OMB) under OMB control number 3060-0782. See Paperwork Reduction Act of 1995, Pub. L. 104-13.

⁷⁶ See section 25(3) (LATAs may be "modified by a Bell operating company").

⁷⁷ 47 CFR 1.742-43.

Second, we ask that each individual ELCS LATA modification request be the subject of a separate petition.⁷⁸ Third, we request that each petition be labeled "Request for Limited Modification of LATA Boundaries to Provide ELCS Between the (exchange name) and the (exchange name)." Finally, we request that each ELCS petition include the following information, under separately numbered and labeled categories, as indicated below:

(1) *Type of service* (*e.g.*, flat-rate, non-optional ELCS);

(2) *Direction of service* (one-way, two-way; if one-way, indicate direction of service);

(3) *Exchanges involved* (identity name of each exchange, the LATA and state in which each exchange is located; if an exchange is located in independent territory, indicate the LATA, if any, with which the exchange is associated);⁷⁹

(4) *Name of carriers* (name of carrier providing local service in each exchange);

(5) *State commission approval* (include a copy of that approval);

(6) *Number of access lines or customers* (for each exchange);

(7) *Usage data* (*e.g.*, average number of calls per access line per month from exchange A to exchange B, from exchange B to exchange A, and, if available, percent of subscribers making such calls each month);

(8) *Poll results* (for each exchange in which a poll was required by applicable state procedures and conducted in accordance with those procedures. Indicate the amount of proposed rate increase in those exchanges);

(9) *Community of interest statement* (a statement explaining why the two exchanges should be considered part of a single community and why community residents need the ELCS);

(10) *Map* (showing the exchanges and LATA boundary involved and including a scale showing distance); and

(11) *Other pertinent information* (*e.g.*, copies of state commission reports, summary of hearing testimony).

24. If any of the above information is unavailable or inapplicable to a particular ELCS petition (for example, if polling is not required by state procedures), the petition should so indicate. A carrier will 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

⁷⁸ See the 24 individual requests listed in Appendix A.

⁷⁹ See *supra* para. 4.

⁶⁷ See Letter from John L. Traylor, Senior Attorney, US West, Inc., to Common Carrier Bureau, Federal Communications Commission (Feb. 14, 1997). These options and rates are for residential subscribers. There are different rates and options offered to business subscribers. *Id.*

⁶⁸ *Id.*

⁶⁹ See US West Petition at 4.

⁷⁰ *Id.*

⁷¹ *Cf.* May 1993 Order at 4.

traditional local service (*i.e.*, flat-rate, 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.⁸⁰

25. We request that ELCS requests filed with the Commission, but not addressed in this order (including the Virginia Commission's Waverly/Wakefield request),⁸¹ be re-filed so that they comply with these guidelines. Each petition will be assigned a LATA modification (LM) file number and placed on public notice.

VI. Conclusion

26. For the reasons set forth above, we approve the 23 requests for LATA relief in order to provide flat-rate, non-optional ELCS. These LATAs are modified solely for the limited purposes indicated in the requests, and shall remain unchanged for all other purposes. In addition, we allow US West an additional 60 days in which to amend its Scio/Albany request. Finally, we establish guidelines to direct the filing of future ELCS requests. These actions serve the public interest by permitting minor LATA modifications when such modifications are necessary to meet the needs of local subscribers and will not have any significant effect on competition.

VII. Ordering Clauses

27. 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), that the requests of Ameritech, Bell Atlantic, BellSouth Telecommunications, Inc. (BellSouth), Southwestern Bell Telephone Company (SWBT), and US West Communications, Inc. (US West), for LATA modifications for the limited purpose of providing flat-rate, non-optional ELCS at specific locations, identified in File Nos. NSD-LM-97-2 through NSD-LM-97-24, are approved. These LATA boundaries are modified solely for the purpose of providing flat-rate, non-optional ELCS between points in the specific exchanges or geographic areas indicated in the requests. The LATA boundary for all other services shall remain unchanged.

28. It is further 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), that

the Virginia State Corporation Commission's request for a LATA modification to permit ELCS between the Waverly and Wakefield exchanges is dismissed without prejudice.

29. It is further 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), that US West Communications, Inc. (US West) shall amend its request for approval of a LATA modification to provide ELCS from the Albany exchange in the Eugene, Oregon LATA to the Scio Mutual Telephone Association's Scio exchange, File No. NSD-LM-97-25, as indicated herein, within 60 days of the release date of this order. If no amendment is filed, US West's LATA modification request will be dismissed without prejudice.

30. 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 listed in Attachment A.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Attachment A—List of Petitions and LATA Modification Requests

Ameritech's November 12, 1996 Petition

1. Request to provide one-way, flat-rate, non-optional ELCS from Ameritech's Duffy exchange in the Columbus, Ohio LATA to Bell Atlantic's New Martinsville exchange in the Clarksburg, West Virginia LATA (Ameritech's Duffy/New Martinsville request)—File No. NSD-LM-97-2.

Bell Atlantic's January 14, 1997 Petition

2. Request to provide two-way, flat-rate, non-optional ELCS between Bell Atlantic's Waverly exchange in the Norfolk, Virginia LATA and GTE's Claremont exchange (Bell Atlantic's Claremont/Waverly request)—File No. NSD-LM-97-3.

3. Request to provide two-way, flat-rate, non-optional ELCS between Bell Atlantic's Hampton zone of the Metropolitan exchange area in the Norfolk, Virginia LATA and GTE's Gloucester exchange (Bell Atlantic's Gloucester/Hampton zone request)—File No. NSD-LM-97-4.

4. Request to provide two-way, flat-rate, non-optional ELCS between Bell Atlantic's Newport News zone of the Metropolitan exchange area in the Norfolk, Virginia LATA and GTE's Gloucester exchange (Bell Atlantic's Gloucester/Newport News zone request)—File No. NSD-LM-97-5.

5. Request to provide two-way, flat-rate, non-optional ELCS between Bell Atlantic's Peninsula zone of the Metropolitan exchange area in the Norfolk, Virginia LATA and GTE's Gloucester exchange (Bell Atlantic's Gloucester/Peninsula zone request)—File No. NSD-LM-97-6.

6. Request to provide two-way, flat-rate, non-optional ELCS between Bell Atlantic's Poquoson zone of the Metropolitan exchange

area in the Norfolk, Virginia LATA and GTE's Gloucester exchange (Bell Atlantic's Gloucester/Poquoson zone request)—File No. NSD-LM-97-7.

7. Request to provide two-way, flat-rate, non-optional ELCS between Bell Atlantic's Hampton zone of the Metropolitan exchange area in the Norfolk, Virginia LATA and GTE's Hayes exchange in the Richmond, Virginia LATA (Bell Atlantic's Hayes/Hampton zone request)—File No. NSD-LM-97-8.

8. Request to provide two-way, flat-rate, non-optional ELCS between Bell Atlantic's Newport News zone of the Metropolitan exchange area in the Norfolk, Virginia LATA and GTE's Hayes exchange in the Richmond, Virginia LATA (Bell Atlantic's Hayes/Newport News zone request)—File No. NSD-LM-97-9.

9. Request to provide two-way, flat-rate, non-optional ELCS between Bell Atlantic's Peninsula zone of the Metropolitan exchange area in the Norfolk, Virginia LATA and GTE's Hayes exchange (Bell Atlantic's Hayes/Peninsula zone request)—File No. NSD-LM-97-10.

10. Request to provide two-way, flat-rate, non-optional ELCS between Bell Atlantic's Poquoson zone of the Metropolitan exchange area in the Norfolk, Virginia LATA and GTE's Hayes exchange (Bell Atlantic's Hayes/Poquoson zone request)—File No. NSD-LM-97-11.

11. Request to provide two-way, flat-rate, non-optional ELCS between Bell Atlantic's Honaker exchange in the Roanoke, Virginia LATA and GTE's Richlands exchange in the Bluefield, West Virginia Independent Market Area (Bell Atlantic's Honaker/Richlands request)—File No. NSD-LM-97-12.

12. Request to provide one-way, flat-rate, non-optional ELCS from Bell Atlantic's Mason exchange in the Charleston, West Virginia LATA to the Pomeroy and Middleport exchanges in Ohio (Bell Atlantic's Mason/Pomeroy-Middleport request)—File No. NSD-LM-97-13.

13. Request to provide one-way, flat-rate, non-optional ELCS from Bell Atlantic's New Florence exchange in the Pittsburgh, Pennsylvania LATA to GTE's Johnstown exchange (Bell Atlantic's New Florence/Johnstown request)—File No. NSD-LM-97-14.

14. Request to provide two-way, flat-rate, non-optional ELCS between Bell Atlantic's Stone Mountain exchange in the Roanoke, Virginia LATA and the Lynchburg exchange in the Lynchburg, Virginia LATA (Bell Atlantic's Stone Mountain/Lynchburg request)—File No. NSD-LM-97-15.

BellSouth Telecommunications' (BellSouth) July 2, 1996 Petition

15. Request to provide two-way, flat-rate, non-optional ELCS between BellSouth's Raleigh exchange in the Raleigh, North Carolina LATA and Carolina Telephone and Telegraph Company's (Carolina Telephone) Franklinton and Louisburg exchanges (BellSouth's Franklinton-Louisburg/Raleigh request)—File No. NSD-LM-97-16.

16. Request to provide two-way, flat-rate, non-optional ELCS between BellSouth's Zebulon exchange in the Raleigh, North Carolina LATA and Carolina Telephone's

⁸⁰ See *supra* para. 18 and note 60.

⁸¹ See *supra* para. 12.

Louisburg exchange (BellSouth's Louisburg/Zebulon request)—File No. NSD-LM-97-17.

17. Request to provide two-way, flat-rate, non-optional ELCS between BellSouth's Apex, Cary, and Raleigh exchanges in the Raleigh, North Carolina LATA and Carolina Telephone's Pittsboro exchange (BellSouth's Pittsboro/Apex-Cary-Raleigh request)—File No. NSD-LM-97-18.

18. Request to provide two-way, flat-rate, non-optional ELCS between BellSouth's Chapel Hill exchange in the Raleigh, North Carolina LATA and the Saxapahaw exchange in the Greensboro, North Carolina LATA (BellSouth's Saxapahaw/Chapel Hill request)—File No. NSD-LM-97-19.

19. Request to provide two-way, flat-rate, non-optional ELCS between BellSouth's Wilmington exchange and that portion of the Scotts Hill exchange served by the 270 prefix in the Wilmington, North Carolina LATA, and Carolina Telephone's Holly Ridge exchange (BellSouth's Scotts Hill-Holly Ridge/Wilmington request)—File No. NSD-LM-97-20.

Southwestern Bell Telephone Company's (SWBT) June 25, 1996 Petition

20. Request to provide two-way, flat-rate, non-optional ELCS between SWBT's Albany exchange in the Abilene, Texas LATA and SWBT's Breckenridge exchange in the Dallas, Texas LATA (SWBT's Albany/Breckenridge request)—File No. NSD-LM-97-21.

21. Request to provide two-way, flat-rate, non-optional ELCS between United/Centel's Pawnee exchange and SWBT's Kenedy and Karnes/Fall City exchanges in the San Antonio, Texas LATA (SWBT's Pawnee/Kenedy-Karnes-Fall City request)—File No. NSD-LM-97-22.

US West Communications' (US West) November 4, 1996 Petition

22. Request to provide flat-rate, non-optional ELCS from US West's Omaha common service area in the Omaha, Nebraska LATA to Lincoln Telephone & Telegraph Company's (LT&T's) 234 exchange (serving the communities of Cedar Creek, Louisville, and Manley, Nebraska) (US West's 234/Omaha request)—File No. NSD-LM-97-23.

23. Request to provide flat-rate, non-optional ELCS from US West's Omaha common service area in the Omaha, Nebraska LATA to LT&T's Murray exchange (US West's Murray/Omaha request)—File No. NSD-LM-97-24.

US West Communications' (US West) November 4, 1996 Petition

24. Request to provide measured-rate, optional ELCS from US West's Albany exchange in the Eugene, Oregon LATA to the Scio Mutual Telephone Association's Scio exchange (US West's Scio/Albany request)—File No. NSD-LM-97-25.

[FR Doc. 97-19776 Filed 7-25-97; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Application for Consent to Exercise Trust Powers."

DATES: Comments must be submitted on or before September 26, 1997.

ADDRESSES: Interested parties are invited to submit written comments to Steven F. Hanft, FDIC Clearance Officer, (202) 898-3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number (202) 898-3838; Internet address: comments@fdic.gov). All comments should refer to "Application for Consent to Exercise Trust Powers."

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Application for Consent to Exercise Trust Powers.

OMB Number: 3064-0025.

Frequency of Response: Occasional.

Estimated Total Annual Responses: 50.

Estimated Time per Response: 16 hours.

Estimated Total Annual Burden: 800 hours.

General Description of the Collection: Section 333.2 of FDIC's regulation 12 CFR 333 prohibits any insured state nonmember bank from changing the

general character of its business without the prior written consent of the FDIC. The exercise of trust powers by a bank is usually considered to be a change in the general character of a bank's business if the bank did not exercise those powers previously because trust powers create a new fiduciary relationship. Therefore, unless a bank is currently exercising trust powers, it must file a formal application to obtain the FDIC's written consent to exercise trust powers. Each application submitted by a bank is evaluated by the FDIC to verify the qualifications of bank management to administer a trust department to ensure that the bank's financial condition will not be jeopardized as a result of trust operations.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 23rd day of July 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

[FR Doc. 97-19807 Filed 7-25-97; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:28 a.m. on Tuesday, July 22, 1997, the Board of Directors of the Federal