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## TELECOMMUNICATIONS LAW UPDATES

### FCC Considering Requests for Targeted InterLATA Relief

Much attention has been paid to the Bell operating companies' struggles on a state-by-state basis to secure FCC approval under section 271 of the Communications Act to provide their customers with long distance, or "interLATA," telecommunications services. But recent efforts by BOCs to obtain more targeted interLATA relief - under a separate, relatively obscure provision of the Act - have evaded many observers' radar screens. On January 15, 1999, U S WEST filed a joint petition with the State of Nebraska seeking permission to carry data traffic from the sparsely populated northeastern corner of Nebraska to the Omaha area, across an existing LATA boundary. And on February 15, 1999, Bell Atlantic, together with non-BOC GTE, asked the FCC to allow the merged entity, pending the FCC's grant of full interLATA relief under section 271, to continue providing what are currently interLATA Internet backbone services available from GTE Internetworking (formerly BBN). How the FCC reacts to these proposals could have a significant impact on rural communities' ability to obtain the kinds of advanced data services to which urban areas already have ready access.

In each of these two proceedings, the petitioning parties are relying on the FCC's authority under section 3(25) of the Communications Act to modify LATA boundaries. This authority is conceptually distinct from the FCC's power to grant full-scale interLATA relief under section 271. When the FCC modifies a LATA boundary under section 3(25), it reclassifies what was once interLATA traffic as local traffic. Thus, rather than lifting or waiving the interLATA prohibition, the FCC renders it inapplicable through a redrawing of the lines. However, the FCC's section 3(25) authority typically has been limited to narrow geographic areas. Moreover, the FCC may grant relief limited to particular services. For example, the FCC may grant a modification for purposes of establishing a new LATA for data services only, while

leaving the old boundaries in place for traditional voice traffic. The FCC ordered such a limited-purpose modification in May 1998 at the request of Southwestern Bell, so that customers in a remote area of Texas could receive ISDN service more economically than the existing LATA boundaries would have permitted. The agency has stated that it will grant similar requests where the need for the boundary modification outweighs the threat of anticompetitive effects.

#### U S WEST/State of Nebraska Petition

Building on the Southwestern Bell example, U S WEST and the State of Nebraska have sought a limited-purpose, customer-specific modification of the boundary separating the rural northeastern corner of the state from the Omaha area. Specifically, the parties have asked for permission for U S WEST to connect frame-relay sites on opposite sides of the current LATA boundary so that the State — and no one else — may upgrade the quality and capacity of its data network. Currently, state agencies are able to provide high-quality, high-speed data services to Nebraskans in most parts of the State, but not in the northeast.

The scarcity and resultant high cost of interLATA links in the northeastern part of the State limit the effectiveness of the data applications that are provided over those links. In northeastern Nebraska, unlike in other parts of the State, the State has been unable to afford the capacity upgrades it needs to provide more robust applications. Videoconferencing for example, is available at 28 sites in Nebraska, and none of those sites is in the northeast region. In addition, rather than purchasing an integrated service, the State currently must turn to multiple carriers for distinct network connections, and some of those carriers fail to offer the network-to-network interfaces that are needed to ensure seamless and reliable data carriage.

The State and U S WEST have asked the FCC to modify the LATA boundary so that U S WEST may carry data traffic between the northeast region and the Omaha area, arguing that U S WEST has committed to offer end-to-end frame relay service at substantially lower prices than those charged by the IXCs in the market. The petition relies not only on section 3(25) of the Communications Act, but also on section 706, which directs the FCC to encourage the deployment of advanced telecommunications capability to *all* Americans on a reasonable and timely basis. Not surprisingly, some IXCs have vigorously opposed this request. They assert that the FCC lacks statutory authority to grant such a modification and that, in any event, there is no need for one in light of the ability of carriers such as AT&T to meet the State's needs. If the FCC approves the joint petition, BOCs are likely to submit similar requests — with or without the participation of governmental entities — for permission to bring advanced services to other specific underserved areas. For while the FCC recently concluded that, taken as a whole, the deployment of advanced services to rural areas has been “reasonable,” there is no doubt that, in some areas, the gulf between technology haves and have-nots is wide, and only getting wider.

### **Bell Atlantic/GTE Request**

While U S WEST seeks to transport data traffic across a single LATA boundary, Bell Atlantic and GTE seek a more ambitious result — to create a single data LATA comprising all areas in which GTE Internetworking now provides interLATA Internet backbone service. GTE Internetworking provides dedicated Internet access service to large business and ISP customers; through its peering relationships with other major backbone providers, GTE Internetworking gives its customers high-speed, high-

capacity connections to points of presence in more than 70 cities across the United States. Perhaps to offset the broad scope of the requested relief, Bell Atlantic and GTE propose that such relief become available only when Bell Atlantic obtains long distance authority covering at least one quarter of its lines in its 14-state region. (It is not clear what would happen to GTE Internetworking's operations if Bell Atlantic were unable to obtain the requisite authority under section 271 by the time the merger closes.) Once triggered, the interim relief would last for up to two years after the closing of the Bell Atlantic-GTE merger, and would permit GTE Internetworking to operate only as a separate affiliate of Bell Atlantic, subject to the strict separation rules of section 272 of the Act.

In support of their request, Bell Atlantic and GTE have argued that GTE Internetworking's continued presence in the increasingly concentrated market for backbone service is critical to the preservation of competition. They rely on the FCC's boundary modification authority under section 3(25), as well as on decisions relating to the AT&T Consent Decree in which the district court established larger LATAs for nontraditional services such as wireless and video than the LATAs applicable to voice telephony.

The Bell Atlantic/GTE request is certain to meet sharp criticism from backbone providers and other IXCs. Ameritech and other BOCs have already drawn the IXCs' ire in other proceedings in proposing creation of “data LATAs.” Aside from the Southwestern Bell proceeding, the FCC thus far has not been receptive to the notion of treating data services any differently from voice services with respect to the interLATA restrictions. If the FCC warms to this prospect, in the context of the Bell Atlantic/GTE request or otherwise, its action should lead to more widespread deployment of advanced services in underserved areas.

**This letter is for general informational purposes only and does not represent our legal advice as to any particular set of facts, nor does this letter represent any undertaking to keep recipients advised as to all relevant legal developments. For further information on these or other telecommunications matters, please contact one of the lawyers listed below:**

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