

The National Regulatory Research Institute

RESOLVING EXTENDED LOCAL CALLING ISSUES IN THE IMPLEMENTATION OF UNIVERSAL SERVICE POLICY

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This paper is one of a series of focused and timely NRRI analyses of high-priority issues in state telecommunications policy that derive from passage of the Telecommunications Act of 1996, which creates both challenges and opportunities for state regulators. The views and opinions expressed herein are those of the author. They are not necessarily those of The National Regulatory Research Institute, the National Association of Regulatory Utility Commissioners (NARUC), or any NARUC-member Commissions.

EXECUTIVE SUMMARY

Responses to an NRRI survey concerning the effects of the Telecommunications Act of 1996 on regulatory decisionmaking indicates that extended local calling issues warrant continuing attention. As regulators have taken actions to hasten the transition to competitive local and intraLATA toll markets, a number of states have concomitantly considered the extent to which their traditional extended local calling policies must be rectified with the requirements of the 1996 Act. This report presents seven case studies of states that have examined the viability of their established extended local calling practices, and identifies a number of issues that have arisen in the course of the inquiries. Is the provision of extended area service (EAS) and other extended local calling services consistent with the 1996 Act? What models are available for regulatory commissions intent on revamping their traditional EAS policies? Should extended local calling service be provided on an optional basis, or should local calling area expansion be imposed on all subscribers? What revenues should be recovered by the local exchange company providing extended local calling? Is extended local calling a stand-alone service, or a "bundled" aspect of local service? Is it a "local" or a "toll" service? Is it a "basic" or a "non-basic" service? Should imputation standards apply to extended local calling services?

Each state commission undertaking a review of its extended local calling practices will need to consider these and other questions from individual perspectives grounded in state law, regulatory precedent, and federal mandates established in the implementation of the 1996 Act. This report asserts that an appropriate locus for such consideration may be in the implementation of state universal service policy, either in the definition of service areas in which eligible telecommunications carriers (ETCs) are required to offer services, by means of requirements imposed on ETCs to offer extended local calling as a condition of obtaining intrastate universal service support, or both. The report suggests that many of the issues encountered in the case studies presented herein could be effectively addressed by considering extended local calling as an aspect of universal service.

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FOREWORD

Some would say that little more could usefully be written about extended local calling areas--all the ground has been trod. This report finds, however, that "community-of-interest" policy and practice are entwined in a number of implementation issues faced by regulators under the Telecommunications Act of 1996. Importantly this includes the relationships of EAS enlargements to the toll market, local exchanges, and their competitiveness.

The report is based in part on results of an NRRI survey of state regulatory commissions on current EAS and innovative alternatives thereto.

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July 1997

Part One: Introduction

As this report is published, state and federal regulatory authorities and the judiciary are striving to implement the Telecommunications Act of 1996 (hereinafter the 1996 Act). The Federal Communications Commission (FCC) has issued rules to implement the local exchange competition provisions of the Act in Order 96-325,¹ as well as rules regarding the provision of universal service and access charge reform.² Most states have adopted procompetitive rules governing the entry and engagement of competitive local exchange companies (CLECs); face the prospect of considering the establishment of intrastate universal service funds conforming with the FCC's universal service mandate; and have reviewed numerous proposed interconnection agreements and conducted complex arbitration proceedings. Meanwhile, the 8th District Court of Appeals has yet to resolve issues surrounding the stay of specific pricing provisions, as well as the "mix and match" provisions of FCC Order 96-325, pursuant to which subsections of approved interconnection agreements are available to other carriers on a "most favored nation" basis. Telecommunications law is in flux, and is likely to remain so for some time as parties seek judicial remedies for administrative actions which they deem unjust.

In the boiling sea of unbundled network elements, separations allocations, access charge reductions, universal service specifications, and electronic operational interfaces, the issue of local calling scope--as reflected in extended area service (EAS)

¹ Federal Communications Commission, *First Report and Order In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (Washington, D.C., August 8, 1996).

² Federal Communications Commission, *Notice of Proposed Rulemaking In the Matter of Access Charge Reform*, CC Docket No. 96-262 (Washington, D.C., December 24, 1996); and Federal-State Joint Board on Universal Service, *Recommended Decision In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (Washington, D.C., November 8, 1996).

and optional extended local calling service offerings³—has been relegated to backwater status. Some would argue that this is as it should be, asserting that the transition to a competitive local exchange environment will render EAS and discounted toll issues moot, as customer demands for expanded local calling scope are met in the

Regulators can anticipate continuing pressure from the public to extend local calling area scopes.

marketplace rather than on the basis of administrative fiat. When this will be the case, and whether in fact the market (even in conjunction with such devices as eligible telecommunications carriers or

prescriptive access charge reform) will resolve all community-of-interest issues remains to be seen. Until the transition to a fully competitive local telephone service marketplace is effectuated, regulators can anticipate continuing pressure from the public and its elected representatives to extend local calling area scopes in order to meet customer expectations of service adequacy.

Despite the seeming relative insignificance of extended local calling issues as compared with the more immediate issues of the day, an examination of its various aspects reveals that “community-of-interest”

Community-of-interest policy and practice are inexorably entangled with many of the issues directly confronting state and federal regulators.

policy and practice are inexorably entangled with many of the issues directly confronting state and federal regulators embroiled in the implementation of the 1996 Act. What constitutes the provision of “adequate” telephone service? Given the provision of the “same” service, how are rates to be set so as to be reasonably comparable with those charged in urban areas? What should state commissions do to assure that the intraLATA toll market becomes truly competitive? How rapidly and ubiquitously should

³ For an overview of local calling area and EAS concepts, see Raymond Lawton and John Borrows, *Factors Affecting the Definition of the Local Calling Area: An Assessment of Trends* (Columbus, OH: The National Regulatory Research Institute, February 1990).

access charge reform be imposed? The resolution of these and other issues will establish the context within which extended local calling area policies and practices are crafted and implemented. Conversely, a thorough examination of the public policy issues surrounding EAS may raise considerations pertinent to the decisions regarding implementation of the 1996 Act.

This report reviews current issues surrounding expanded local calling area policies and practices on a state-specific basis, as reflected in the results of a survey recently administered by the National Regulatory Research Institute. The report focuses in particular on efforts by state regulatory commissions to evaluate the viability of established extended local calling policies and practices in view of the goal of establishing competitive local exchange markets. A number of states have recently designed and implemented programs to supplement or supplant traditional EAS, which generally has been offered on a non-optional basis to customers within an affected exchange area. State regulators have been motivated to do so by frustrated customers who have often seen EAS petitions rejected on the basis of insufficient calling number criteria.

After presenting the results of NRRI's survey on extended calling area policies and practices, the report reviews the objections to extended calling area practices that have been set forth by interexchange carriers. The report then reviews various state inquiries into the viability of established local calling scope policies and practices in view of the mandate of the 1996 Act. Issues encountered in the course of this review are identified as pertinent for consideration in state commissions' assessments of "preexisting agreements" which, pursuant to Section 252 of the 1996 Act, are to be filed with state regulatory commissions for review and approval.⁴ By and large, these agreements previously established interconnection arrangements for the purpose of providing EAS between non-competing, incumbent local exchange carriers (LECs).

⁴ The FCC has interpreted Section 252 in the FCC Interconnection Order, CC Docket No. 96-98, ¶¶ 157-171.

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A subset of these agreements is required to be filed with state regulatory commissions by June 30, 1997, and the FCC has encouraged all carriers to file preexisting agreements with the appropriate state commission by that time.⁵ Some incumbent LECs have sought to renegotiate their preexisting agreements prior to their submission to state commissions for review and approval. The report concludes with a proposal that state regulators consider the intrastate universal service policy arena as a forum for the resolution of the issues encountered in the case studies presented herein: by imposing extended calling scope requirements on eligible telecommunications carriers (ETCs).

⁵ Federal Communications Commission, *Order*, CC Docket No. 96-98, ¶ 171.

Part Two: Responses to NRRI's Survey on Community-of-Interest Issues

Earlier this year, the NRRI administered a survey and collected survey results concerning various effects of the 1996 Act on state regulatory decisions regarding telecommunications. The survey was mailed to all state utility regulatory commissions. By April 1, 1997, 46 of 51 responses had been returned.

Among other questions, the NRRI posed three questions regarding extended area local calling service policies and practices. One question asked, "What criteria has your state commission previously established to evaluate whether extended area local calling service is warranted in a given circumstance?" Respondents were provided the opportunity to indicate which of the following choices applied: "calling rate," "intraLATA call path," "short-haul, high volume interLATA call path," "origination and termination by the same LEC," "community-of-interest factors," and "other." Where "calling rate" was among the criteria selected, the respondent was asked to specify the calling rate. Where "community-of-interest factors" was among the criteria selected, the respondent was asked to identify the docket or case number in which the community-of-interest factors were explicitly articulated, as well as the date of the pertinent commission order. Where "other" was among the criteria selected, the respondent was asked to elaborate. A second question asked, "In view of the advent of local exchange competition and intraLATA (toll) competition premised on equal access, has your state commission undertaken any inquiry regarding the viability of its previously established EAS practices and policies?" In the event the respondent answered "yes," he or she was asked to provide the docket or case number of the inquiry, as well as the date of the pertinent commission order.

The following table summarizes the responses of state commissions to the first question posed. An empty cell indicates that the respondent did not identify the criterion as pertinent. Where "unspecified" appears in a cell, the respondent identified a criterion as pertinent, but did not provide additional information.

A review of the data in Table 1 indicates that, with the exception of smaller jurisdictions where extended local calling issues do not arise, traditional EAS rules and procedures continue to be employed by state regulatory commissions to address route-

Traditional extended area service rules and procedures continue to be employed by state regulatory commissions.

specific requests for extended local calling. Of the 24 jurisdictions indicating that calling rate is a specific criterion considered in the evaluation of extended local calling, 18 reported absolute minimum calling thresholds, generally in terms of number of calls per access line per month

from a given exchange to a target exchange. Minimum calling rates vary considerably, and their variance can be a function of aspects of the route under consideration or of the kind of EAS under consideration (one-way vs. two-way, or measured vs. flat rate). In Florida, for example, an average of three messages per line per month is the minimum calling threshold for the consideration of one-way measured EAS. Montana, on the other hand, requires a minimum average of eight messages per line per month for consideration of flat rate EAS. North Carolina's EAS calling thresholds vary, depending whether the route under review provides local calling to a county seat, to an adjacent county, or to a non-adjacent county. For the most part, commission calling rate review also considers calling distribution, *i.e.* the proportion of customers making a minimum number of calls to the target exchange.

TABLE 1			
CRITERIA FOR EVALUATION OF WHETHER EXTENDED AREA SERVICE IS WARRANTED, BY JURISDICTION			
State	Calling Rate	Articulation of Community of Interest Criteria	Other Evaluation Criteria Specified; Additional Information
AL	2 or above; 50% or more of subscribers make 2 or more toll calls per study period	Case No. U-2682 (7/5/77)	.....
AK	.....	Case by case basis	Costs, cost shifts, stranded investment, cost stimulation
AR	Yes; unspecified	Yes; unspecified	.....
AZ	Yes; unspecified	Decision 58927 (January 1995)	IntraLATA call path
CA	.....	Case No. 94-12-050 (August 2, 1996) Decision D.96-08-039	.....
CO	.....	Yes; unspecified	.....
CT	4 or 10 messages/month, depending on exchange classification	.....	.....
DC	.....	.....	No EAS
DE	.....	.....	No EAS
FL	3 messages/line/month (one-way)	Case No. 880073 (October 5, 1992)	.....
GA	.....	Yes; unspecified	.....
HA	.....	.....	.....
IA	5 or more calls per customer per month; more than 50% of customers make more than 2 calls per month	Iowa Administrative Code 199-22.8	.....

TABLE 1 (Continued)			
CRITERIA FOR EVALUATION OF WHETHER EXTENDED AREA SERVICE IS WARRANTED, BY JURISDICTION			
State	Calling Rate	Articulation of Community of Interest Criteria	Other Evaluation Criteria Specified; Additional Information
ID	No absolute number; based on comparative value	Case No. GNR-T-93-13	.....
IN	Yes; unspecified	Indiana Administrative Code 170 IAC 7-4, et seq.	.....
KS	10 calls/account/month; 51% of accounts spend \$5 or more per month to call target exchange	Case No. 127,140-U (Phase V) (October 27, 1988)	IntraLATA call path
KY	Varies, depending on circumstances	Case No. 91-250 (1992)	Short-haul, high volume interLATA call path
MA	.....	Case No. 89-300 (June 1990)	.....
MD	.....	.....	EAS available on very limited basis
ME	Based on % of customers making over 4 or 6 calls	Yes; specified by rule	.....
MN	At least 50% of subscribers in petitioning exchange make 3 or more calls/month to target exchange	.....	.....
MO	6 calls/line/month; 67% of lines must make 2 or more calls/month to target exchange	.....	.....
MS	.....	.....	Area Calling Plan is available statewide, expanding local calling area to 55 miles; no EAS requests in 7-8 years

TABLE 1 (Continued)			
CRITERIA FOR EVALUATION OF WHETHER EXTENDED AREA SERVICE IS WARRANTED, BY JURISDICTION			
State	Calling Rate	Articulation of Community of Interest Criteria	Other Evaluation Criteria Specified; Additional Information
MT	8 calls/line/month; at least 50% of customers must make at least 2 calls/month to target exchange	Yes; unspecified	.....
NC	1 call/month county seat; 2.5 calls/month inter-county adjacent; 3.0 calls/month inter-county non-adjacent	Case No. P-100, Sub 89 (10/28/87), Orig. Modified 12-16-87, 5/5/92, 3/25/93, 6/14/93)	IntraLATA call path; short-haul, high volume interLATA call path
ND	.....	.....	No criteria established
NE	5 or more calls per customer per month; more than 50% of customers must make at least 2 calls/month to target exchange	Commission Rule and Regulation 002.27	.....
NH	.....	67 NH PUC 475 (1982)	.....
NJ	.....	Yes; unspecified	.....
NV	.....	.....	Case by case basis, generally via negotiated settlements
NY	3 customer calls/month from one exchange to adjacent exchange	Case No. 91-C-0197 (6/17/91)	.....
OH	3 customer calls/month	Case No. 88-1454-TP-COI (10/19/91)	.....
OK	50% of customers make 5 or more calls/month	Oklahoma Admn. Code 165:60 (12/31/91)	.....

TABLE 1 (Continued)			
CRITERIA FOR EVALUATION OF WHETHER EXTENDED AREA SERVICE IS WARRANTED, BY JURISDICTION			
State	Calling Rate	Articulation of Community of Interest Criteria	Other Evaluation Criteria Specified; Additional Information
OR	4 calls/line/month in either direction; over 50% of customers make 2 or more calls to target exchange	Case No. UM-189, Order No. 89-815 (6/19/89), as modified in Order 90-1556 (10/22/90), Order 92-1136 (8/10/92), and Order 92-1271 (9/1/92)	Geographic relationship of exchanges is also considered
PA	IntraLATA routes qualify with 5.5 calls/line/month; 50% of lines in calling exchange must make 1 call/month to target exchange	Docket Nos. C-923867, C-923868, C-923890, C-923900, C-923902 (Order entered 1/10/94)	Amount of toll traffic between exchanges; cost of implementation; potential increase in local service charge; demography and proximity of exchanges; availability of alternatives; economic effect on not extending local calling
RI	.....	.....	Local service not extended in 20 years, with exception of LEC proposals
SC	.....	Yes; unspecified	.....
SD	3 calls/line/month for 2-way; 5 calls/line/month for 1-way; 50% of customers must make 2 or more calls/month to target exchange	.....	.....
TE	.....	.....	Policy of toll-free county wide calling, and toll-free metro wide calling into and out of metro county from contiguous counties

TABLE 1 (Continued)			
CRITERIA FOR EVALUATION OF WHETHER EXTENDED AREA SERVICE IS WARRANTED, BY JURISDICTION			
State	Calling Rate	Articulation of Community of Interest Criteria	Other Evaluation Criteria Specified; Additional Information
TX	Varies, depending on incremental costs	PUC Substantive Rule 23.49	.....
UT	3 calls/line/month; 50% of total lines must make at least 1 call/month to target exchange	Case No. 95-999-03 (8/12/96); resulted in Rule 746-347-5	Origination and termination by same LEC
VT	.....	Docket 5670 Phase 1	Local calling expanded to all contiguous exchanges and those exchanges within 3 miles of closest exchange boundary
WA	.....	Washington Admn. Code 480.120.400-425	.....
WV	.....	.....	"Home exchange" has 2-way local calling with any other intrastate, intraLATA exchange whose rate center is within 22 miles of home exchange rate center; local calling also provided between contiguous intrastate, intraLATA exchanges
WI	5 calls/customer/month; at least 50% of customers make 3 or more calls/month to target exchange	Wisconsin Admn. Code Chapter PSC 167 (8/83)	.....
WY	Case by case assessment	Yes; unspecified	Lost toll revenues, desire for community for EAS

Source: NRR I Survey of Effects of Telecommunications Act on State Regulatory Decisions Regarding Telecommunications.

Table 2 identifies those jurisdictions that responded positively to the second or third questions articulated above, and provides the relevant docket number (or other pertinent information) where it was provided by the respondent or identified independently by the author. The data in Table 2 were collected in order to assess state commission perceptions regarding the effect of the establishment of competitive local exchange and intraLATA toll frameworks on prevailing extended local calling policies and practices. A review of the dockets and documents identified by survey respondents reveals that, irrespective of the emerging competitive environment, optional extended local calling packages continue to be viewed by many state commissions as appropriate vehicles for addressing significant customer dissatisfaction with traditional EAS programs.

Optional extended local calling packages continue to be viewed by many state commissions as appropriate vehicles for addressing significant customer dissatisfaction with traditional extended area service programs.

Customer dissatisfaction with the extent to which traditional EAS has satisfied local calling needs is not a new phenomenon. On the contrary, state commissions have previously approved discounted toll programs to address evolving community-of-interest concerns. The Indiana Utility Regulatory Commission, which had revised its EAS rules in 1986 in order to address the needs of customers who could not call law enforcement authorities, emergency services, or school officials because of boundary incongruities, subsequently introduced the Optional Community Calling Plan (OCCP) in response to state legislators' concerns over community-of-interest calling.⁶ A customer who subscribes to the OCCP can make intrastate/intraLATA calls to adjacent exchanges and to the county seat exchange of the county in which the customer's serving central office is located for a monthly rate of \$1.50 for one-half hour of calling, with additional

⁶ Indiana Utility Regulatory Commission, *Report on Telecommunications Act of 1996, Prepared for the Regulatory Flexibility Committee of the Indiana General Assembly* (Indianapolis, IN, January 20, 1997), 28.

TABLE 2 JURISDICTIONS THAT HAVE UNDERTAKEN OR CONTEMPLATE UNDERTAKING AN INQUIRY REGARDING THE VIABILITY OF PREVIOUSLY ESTABLISHED EXTENDED AREA SERVICE POLICIES AND PRACTICES IN VIEW OF THE ADVENT OF LOCAL EXCHANGE COMPETITION AND INTRALATA TOLL COMPETITION		
State	Docket No.	Date
AZ	EAS Workshop	7/12/95
FL	PSC-96-0057-FOF-TL PSC-96-0620-FOF-TL PSC-96-1033-PCO-TL PSC-96-1335-FOF-TL PSC-96-1369-FOF-TL	4/25/96 5/8/96 8/8/96 11/5/96 11/19/96
HA	7702	Ongoing
IN	Inquiry is anticipated	
MO	TO-96-135 TT-96-398	
NH	DRM-94-001, Order 22107	4/15/96
NY	Inquiry is anticipated	
NC	P-40, Sub 482	10/30/96
OH	Inquiry is anticipated	
OK	PUD-96-139 (NOI)	5/22/96
TX	14686	6/5/96
UT	95-999-03	Rule effective 8/12/96
VT	5670 Phase I 5670 Phase II 5713	Ongoing Ongoing
WA	Inquiry initiated	11/12/96
WI	OS-TI-119, Phase I 1-AC-151 rulemaking	9/30/93

Source: NRRI Survey of Effects of Telecommunications Act on State Regulatory Decisions Regarding Telecommunications.

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minutes billed a \$.05/minute; or a monthly rate of \$5.00 for two hours of calling, with additional minutes billed at \$.04/minute. The Indiana Commission has also approved a second optional discounted toll plan, Enhanced Optional Community Calling (EOCC), for circumstances in which two exchanges share a substantial community-of-interest, but customer balloting has not approved the implementation of traditional flat-rate EAS. For one-half hour of calling, the EOCC rate is \$2.00, with additional minutes up to 10 hours billed at \$.07/minute. For two hours of calling, the EOCC rate is \$8.00, with additional minutes up to 10 hours billed at \$.07/minute. The Indiana Commission has also approved a 12-month trial of the GTE Local Calling Plan, which provides optional local calling between GTE exchanges in the Terre Haute area where traditional EAS is not in place, but where an average of 1.5 messages/customer/month obtains. Three optional calling plans are available under the GTE Local Calling Plan trial.

Alabama and Mississippi are two other examples of jurisdictions having adopted optional discounted toll calling to alleviate EAS problems. In 1991, the Alabama Public Service Commission's investigation of EAS culminated with the issuance of the Commission's opinion that "Area Calling Service (Area Calling Plans) is a desirable alternative to traditional EAS where every subscriber paid for this service regardless of use, thereby creating an inequity for a large number of customers."⁷ Area Calling Service provides subscribers with seven-digit dialing in up to a 40 mile radius of their home exchange at savings of up to 40 percent as compared with toll service. It is offered on a revenue neutral basis from the incumbent LEC's perspective. Originating traffic is not considered in the calculation of revenue due to, or access charges due from, the primary carrier or terminating LEC, and the LEC in whose exchange the traffic originates retains the revenue.

⁷ Alabama Public Service Commission, *Order Superceding Rule T-24 Governing the Implementation of Extended Area Service*, Docket No. 15957 (Montgomery, AL, June 10, 1991).

Interexchange carriers have generally opposed the expansion of local calling areas by state regulatory commissions as anti-competitive.⁸

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Comments submitted by AT&T

Communications to the Minnesota Public

Utilities Commission in a 1994 proceeding are illustrative. Among the themes developed in the comments, foremost is the assertion that the Commission should lower intrastate access charges and thereby render toll services adequate for interexchange calling from the customer's perspective. AT&T argues in its pleading that multiple providers and multiple plans should be accommodated in rules addressing expanded local calling needs and that flat rate EAS offerings must be available for resale. EAS is problematic in the interexchange carrier's view because it has the effect of stifling innovation in the competitive toll market, i.e. the development of new features and new pricing options. In addition, intercustomer equity considerations may be violated with the establishment of flat rate EAS: oftentimes calling distributions are skewed such that relatively few customers place the majority of calls, and low-volume users end up subsidizing high-volume users of the service since each pays the same EAS additive. Unless an EAS route is priced to recover all relevant costs of implementation from the cost-causers, customers who receive no benefit from expansion of the local calling area effectively subsidize the beneficiaries of EAS. In addition, since EAS results in higher costs for local service, it may negatively impact financial aid programs providing assistance to disadvantaged customers.

⁸ See AT&T Communications of the Midwest, Inc., *Comments and Proposal of AT&T Communications of the Midwest, Inc., In the Matter of an Investigation into the Appropriate Local Call Scope, in Accordance with Minnesota Statute Paragraph 237.161* (1994), Docket No. P-999/CI-94-296 (city, state, November 30, 1994); and MCI Telecommunications Corporation, *Comments of MCI Telecommunications Corporation In the Matter of Rules to Govern Requests for Changes to the Local Calling Area; Extended Area Service and Extended Community Calling*, Docket No. 1-AC-151 (city, state, August 4, 1995).

Opponents of the expansion of local calling scope also cite indirect costs which are often not covered in rates authorized for EAS. Reclassification of toll calls as local calls affects jurisdictional separations. With increased local calling volumes, intrastate revenue requirements increase and investment is shifted to the intrastate jurisdiction. Similarly, the reclassification of toll plant as local plant results in a shift of investment to the intrastate jurisdiction. The effect of such shifts is most apparent on companies with small customer bases, and is particularly pronounced on small companies whose percentage of interstate minutes is tripled for cost recovery purposes. Another argument cited by opponents to the expansion of local calling scope is the potential impact on state universal service funds: fewer interexchange minutes results in decreased switched access and toll revenues, increasing USF funding requirements.⁹

On the other hand, interexchange carriers have recognized that legitimate public policy considerations favor the implementation of expanded local calling under certain circumstances. AT&T, for example, has previously proposed local calling scope rules which address shortcomings it perceives with traditional mechanisms for treating local calling scope needs.¹⁰ Its plan called for larger numbers of petitioners favoring expanded local calling to ensure broader-based support; differing treatments for perceived deficiencies in local calling area scope related to "communal calling" on the one hand, and personal/private calling on the other; endorsement via balloting by a majority of customers in the affected exchanges; availability of all ILEC EAS plans for resale; and reduced access charges to permit the offering of competitive interexchange calling plans. For the expansion of local calling scopes to address communal calling

⁹ AT&T, *Costs Attributable to Extended Area Service: AT&T Perspectives and Positions*, handout distributed at the Arizona Corporation Commission Extended Area Service Workshop. See also Idaho Public Utilities Commission, *In the Matter of the Joint Proposal to Implement Extended Area Service Regions in U S West Communications' Southern Idaho Service Area*, Case No. USW-S-96-4, Order No. 26672 (Boise, ID, November 1996).

¹⁰ *Comments and Proposal of AT&T Communications of the Midwest, Inc.*, 5.

needs¹¹, AT&T proposed a threshold of eight calls per month per customer to justify a mandatory flat rate offering; rates would be set to recover all additional costs incurred in provisioning, including lost toll service opportunity costs--access as well as billing and collection charges. Expansion of local calling scopes for "personal pleasure and private gain" should be accommodated in AT&T's view by optional usage-sensitive extended area calling, subject to a threshold of four calls per month per customer. AT&T submitted that such calls be recognized as long distance service, hence subject to the imputation of contribution received from access related services sold to IXCs providing service between the communities subsumed in the expanded calling area.

With the advent of competition in the local exchange market, regulators are discovering that the expansion of local calling scopes to meet customers' perceived needs is raising additional issues.

Now, with the advent of competition in the local exchange market, regulators are discovering that the expansion of local calling scopes to meet customers' perceived needs is raising additional issues. The following section of the paper sets forth these issues in the context of the proceedings in which they arose.

¹¹ Communal calling is analogous to the community-of-interest concept. For a discussion of the community-of-interest criterion, see Lawton and Borrows, *Factors Affecting the Definition of the Local Calling Area*, 39.

Part Three: Assessing the Viability of EAS Policies and Practices: State-Specific Dockets

The seven case studies presented below represent an array of policy issues and resolutions concerning the provision of traditional EAS as well as extended local calling. The cases are not intended to comprise a statistically significant sample. Each case study was selected because the respective state had indicated in its survey response that it had undertaken an inquiry regarding the viability of its previously established EAS policies and practices in view of the advent of local exchange competition and intraLATA competition.

Arizona

In March, 1994, staff issued a *Staff Report on Rural Local Calling Areas*.¹² The report presented staff's proposal to increase the size of local calling areas for most rural customers in Arizona. The report acknowledged that local calling area expansion would result in foregone revenue for the incumbent LEC (intraLATA toll, foreign exchange, and toll revenue), reallocation of the separation of plant and expenses between state and interstate jurisdictions, and the potential for additional plant investment as a result of traffic stimulation. In keeping with the Arizona Commission's directive in a 1991 *U S West Settlement Order*, Decision Number 57462, to "study means of expanding toll-free calling areas in rural areas of the state to correspond to areas of community-of-interest with little or no increase in basic telephone rates for those areas," staff recommended that forgone revenue be accounted for by utilizing a blanket multiplier or

¹² Arizona Corporation Commission Utilities Division, *Staff Report on Rural Local Calling Areas*, Docket No. E-1051093-183 (Phoenix, AZ, May 10, 1994).

no multiplier.¹³ Under the “blanket multiplier” option, basic service charges would be increased for all U S West customers; under the “no multiplier” option, lost revenues would be accounted for in the disposition of the then-pending rate case. Staff recommended that a local multiplier option be employed in future cases to allocate EAS related costs, since it assigns costs to those who cause them. Under the local multiplier option, a factor is calculated for each group of exchanges comprising a local calling area and is applied uniformly within that calling area. The staff also recommended that the Arizona Commission adopt no specific criterion of number of calls per access line between exchanges as a community-of-interest indicator. Rather, the staff recommended that socioeconomic linkages, contiguity, and public input be considered in conjunction with calling volumes in Commission deliberations over local calling area changes. Staff also recommended that an EAS workshop be held within six months of the Commission’s decision in the U S West rate case.

The Arizona Commission adopted staff’s recommendations. Arizona’s *Competitive Services Rulemaking*, Decision Number 59124, was issued June 23, 1995 but did not specifically address EAS.¹⁴ The Commission’s Extended Area Service Workshop was held shortly thereafter, on July 12, 1995, and did address issues bearing upon EAS in a competitive local exchange environment from the perspectives of incumbent LECs (U S West and Citizens Utilities) and IXC’s (AT&T and Sprint).¹⁵

¹³ A multiplier in this context means a factor by which anticipated revenues are multiplied in order to increase anticipated revenues to cover the cost of implementing additional EAS programs.

¹⁴ Arizona Corporation Commission, *In the Matter of the Application of U S West Communications, Inc., A Colorado Corporation, For a Hearing to Determine the Earnings of the Company, the Fair Value of the Company for Rate-making Purposes, to Fix a Just and Reasonable Rate of Return Thereon and to Approve Rate Schedules Designed to Develop such a Return*, Decision No. 58927 (Phoenix, AZ, January 3, 1995).

¹⁵ U S West, *USWC EAS Philosophy*; Citizens Telephone Company, *Impact of EAS on Competition*; AT&T, *Costs Attributable to Extended Area Service*; AT&T, *Perspectives and Positions*; and Sprint Corporation, *EAS and Competition*. Handouts distributed at the Arizona Corporation Commission Extended Area Service Workshop, 12 July, 1995.

U S West argued that any EAS expansions should be revenue neutral to the affected LECs, and that lost toll revenue, lost coin revenue, lost foreign exchange revenue, the net of billing and collections, and required network expenses should be reflected in revenue adjustments. U S West also argued that rate design should be handled on a company by company basis. U S West expressed concern over the EAS arbitrage phenomenon, whereby intraLATA toll revenues are lost when EAS links are used to bridge non-contiguous exchanges.

U S West argued that any extended area service expansions should be revenue neutral to the affected local exchange carriers, and that lost toll revenue, lost coin revenue, lost foreign exchange revenue, the net of billing and collections, and required network expenses should be reflected in revenue adjustments.

U S West represented that EAS expansion should be pursued to meet the expansion of customer local calling needs with community growth and changing demographics. The company suggested that perceived equity in scope of local calling areas, predictability and affordability of local rates, and dialing and billing simplicity are criteria whereby customers evaluate the value and quality of the service provided them. U S West also recommended the adoption of new EAS rules by the Arizona Commission, which would require:

- an average of 8 or more calls per line per month from the petitioning exchange into the petitioned exchange;
- that 50% of the customers in the petitioning exchange make two or more calls per month to the petitioned exchange;
- that EAS-related exchanges be adjacent or contiguous; and
- that potential EAS arbitrage be prohibited.

In the event that an exchange failed to meet these criteria, U S West argued that EAS could still be granted upon demonstration of significant demographic and social needs to the Commission. In addition, U S West suggested that areas around large metropolitan hubs could logically become EAS regions.

Citizens Utilities noted that social pricing policies need to be reviewed in order to promote fair and equitable competition between all providers of local service, including EAS, in a given area. Citizens pointed out that the timing of changes and actions required to ameliorate adverse ratepayer consequences should be considered as EAS issues in a competitive environment are resolved. In Citizens' view, pricing issues should be dealt with through geographical rate deaveraging and the overall rebalancing of rates, as well as the implementation of alternative EAS pricing such as optional EAS calling plans incorporating flat and measured options. Citizens represented that EAS will become market-driven in a competitive environment; that EAS pricing should develop in relationship to cost in order to serve the community-of-interest; that new and different calling scopes and service areas will evolve for different carriers; and that customer education on alternative calling scopes and rate options should be addressed by the industry and the Commission.

Predictably, AT&T and Sprint did not share the incumbent LEC's views on EAS in the emerging competitive environment. AT&T argued that "community-of-interest" calling needs should not be met on a single-supplier basis by the incumbent LEC. It pointed out that the implementation of EAS transfers calls from the competitive toll market to the monopoly local calling market. AT&T noted that the evaluation of EAS requests depends at times on highly skewed calling distributions, with relatively few customers placing the majority of calls. AT&T was critical of the imposition of inter-customer subsidies through EAS decisions that assign only a portion of EAS-related costs to the direct users of an EAS route. AT&T also noted that universal service policies may be negatively impacted by EAS circumstances in which the cost of EAS more than offsets the financial aid received by economically disadvantaged customers.

Furthermore, intrastate USF funding requirements may be increased as a result of decreases in interexchange minutes, switch access revenues and toll revenues that result from the reclassification of certain calls as "local" rather than "toll".

In general, AT&T argued that prevailing EAS policies diminish the potential for toll market competition to result in lower prices, more pricing options, and new services. It pointed out that, absent the availability of EAS for resale at a wholesale rate and with identical dialing parity, EAS restricts local market entry. AT&T recommended that increased switched access charges due to EAS implementation be prohibited, that current access charges be reduced to permit lower cost local toll rates, and that 1+ intraLATA presubscription be implemented. If EAS is to continue to be granted, AT&T argued that it should be optional to subscribers and its price should reflect underlying costs: EAS subscriber rates should include the tariffed rate for all basic network functions essential to its provision, and the rates should be tested and adjusted subsequent to an empirical assessment of stimulation effects.

Sprint represented that a successful transition to a competitive environment will eliminate the need for EAS as the result of increased choice of carriers, reduced toll rates, and the offering of volume discount plans for high short-haul toll use. Sprint asserted that incumbent LECs are motivated to implement EAS for anticompetitive purposes: to protect against 1+ losses, to offset commission requirements for revenue reductions and give backs, and to reduce intraLATA toll usage, thereby diminishing value to customers of alternative carriers. Sprint also argued that ILEC measured, discounted toll plans are not appropriately approved as EAS, since they will benefit an ILEC with a 1+ dialing advantage, often do not pass an imputation test, and effectively preclude price competition by a new entrant.

The Arizona workshop successfully clarified a number of issues that complicate the provision of extended area calling. To the author's knowledge, the Arizona Commission has taken no specific action in response to the positions articulated by the workshop participants.

Florida

In a 1991 decision, the Florida Public Service Commission determined that optional flat-rate county-wide calling should be instituted in the calling area being investigated to address local calling concerns voiced in Docket 911185, and sought to implement the "\$.25 plan," otherwise known as extended calling service (ECS). Under the plan, residential customers would pay \$.25 per call regardless of duration on specific interLATA and intracounty routes. In order to implement its decision, the Commission sought a Modified Final Judgment waiver from Judge Harold H. Greene that would permit Bell operating company provisioning of the flat-rated interLATA service. An issue in the proceeding was whether the plan constituted "optional EAS," the interLATA provision of which was generally prohibited by the Modified Final Judgment (MFJ). Judge Greene denied the request of BellSouth Corporation and the Florida Commission. In doing so, Judge Greene stated that "the court rejected the use of optional extended area arrangements whereby customers would be given the option of paying an additional flat fee to obtain an extended local calling area. In addition to the fact that the underlying principle of the decree was to prohibit the regional companies from providing interexchange service, optional EAS plans provide discounts for calls that would otherwise be carried competitively." Judge Greene pointed out that the Florida Commission had not determined there to be a sufficient community-of-interest to warrant the implementation of non-optional EAS in the calling area under investigation, and also asserted that the Florida Commission's plan was "markedly different from traditional non-optional EAS plans approved in the past."¹⁶

Subsequently, the Commission directed its staff to develop alternative plans that might address the objections of the District Court; but these efforts were undermined in the course of revisions to Chapter 364, *Florida Statutes*. Pursuant to the revisions, all

¹⁶ *Telecommunications Reports*, "Greene Refuses to Grant Waiver for Florida 'EAS' Plan," TR Online, May 24, 1993.

applications for EAS or ECS pending before the Commission on March 1, 1995 or under judicial review on July 1, 1995 were governed by the law as it existed prior to July 1, 1995. The revised law established that all EAS and ECS routes in existence or ordered by the Commission prior to July 1, 1995 were part of "basic local telecommunications service." The revisions also established that, after July 1, 1995, no new EAS or ECS applications based on the old law would be considered for companies that had elected to be price regulated; instead, EAS or ECS requested subsequent to that date were to be treated as non-basic services. This categorization proved problematic as it denied the Florida Commission the opportunity to *require* implementation on EAS or ECS, instead affording a price-regulated LEC the discretion to request implementation of EAS or ECS. This circumstance led, for example, to the Florida Commission's denial of a request for EAS by the Calhoun County Board of Commissioners from Calhoun County to the Tallahassee exchange.¹⁷

In accordance with the revised rules, the Florida staff proposed a modified extended calling service plan (MECS) for interLATA routes involving GTE of Florida and BellSouth for which petitions had been under consideration as of July 1, 1995. This plan remained under review at the time the 1996 Act became effective. On April 25, 1996, the Florida Commission issued Order No. PSC-96-0557-FOF-TL resolving the appropriateness of implementing previously approved interLATA extended calling service routes for GTE Florida.¹⁸ The Order also required BellSouth to begin to seek approval from the FCC to carry the interLATA traffic that had previously been prohibited by the MFJ. Once FCC approval had been obtained, residential customers were to pay

¹⁷ Florida Public Service Commission, *Notice of Proposed Agency Action Order Denying Extended Area Service In Re: Resolution by Calhoun County Commission Requesting Extended Area Service from Calhoun county (Altha, Blountstown, and Wewahitchka) Exchanges to the Tallahassee Exchange*, Order No. PSC-96-1369-FOF-TL (Tallahassee, FL, November 16, 1996).

¹⁸ Florida Public Service Commission, *Notice of Proposed Agency Action Order Regarding Extended Area Service In Re: Request by Pasco County Board of County Commissioners for Extended Area Service Between All Pasco County Exchanges, et al.*, Order No. PSC-96-0557-FOF-TL (Tallahassee, FL, April 25, 1996).

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\$.25 per call regardless of duration, and business calls on the routes were to be rated at \$.10 for the first minute and \$.06 for each additional minute—the same rate structure approved for the interLATA routes involving GTE Florida.

Under the revised law, the Florida Commission may still consider requiring the implementation of EAS or ECS for companies that have not elected price regulation. Accordingly, ECS requests have been approved in those circumstances where traffic studies indicate that calling volumes meet the EAS threshold established under Florida law, i.e. three messages per access line per month, but fail to meet a distribution

The Florida Commission questioned whether it possessed the authority to order a separate and independent affiliate of BellSouth to implement an extended area service or extended calling service plan.

requirement whereby at least 50 percent of the subscribers in the petitioning exchange make two or more calls per month to the larger exchange. However, as reflected in the record of a recent proceeding before the Florida Commission, provisions of Sections 271 and 272 of the 1996 Act have introduced

new issues into the Commission's deliberations.¹⁹ First, BOCs are prohibited from originating interLATA traffic until they meet the conditions of the Section 271 competitive checklist; furthermore, the Florida Commission views their ability to terminate interLATA traffic as "less than clear." Second, under Section 272, a BOC that meets the requirements of Section 271 may only originate interLATA telecommunications services through a separate and independent affiliate. The Florida Commission concluded that an IXC affiliate of BellSouth would be precluded from carrying EAS or ECS traffic by Section 364, *Florida Statutes*, and questioned whether it

¹⁹ Florida Public Service Commission, *Order Requiring Parties to File Legal Briefs In Re: Petition by Subscribers of the Groveland Exchange for Extended Area Service to the Orlando, Winter Garden, and Windermere Exchanges*, Order No. PSC-96-1033-PCO-TL (Tallahassee, FL, August 8, 1996).

possessed the authority to order a separate and independent (CLEC) affiliate of BellSouth to implement an EAS or ECS plan.²⁰

New Hampshire

The New Hampshire Commission recognized the need to restructure its existing EAS practices in 1993, as it considered issues associated with the implementation of intrastate toll competition. The Commission directed its staff to commence an investigation of the current status of EAS and to consider the effects of various changes to prevailing practices. The objectives of the Commission's initiative were: (1) to provide uniform, equitable local calling areas consistently from exchange to exchange; (2) to provide individual customers with a choice of local calling areas in order to meet different calling area requirements; (3) to preserve monthly rates as much as possible for those customers who are satisfied with their local calling area; and (4) to foster competition so that telecommunications options and services grow in New Hampshire. The Commission's analysis of the results of the staff investigation and of the impact of state and federal legislation on its potential conclusions were outlined in an Opinion and Order issued in April, 1996.²¹

Two general approaches to EAS were considered by the staff: a "community-of-interest approach" and a "geographical approach." The former approach, intended to accommodate within EAS the locations of commonly called businesses and services, was reflected in the prevailing New Hampshire EAS guidelines which defined a

²⁰ See also Florida Public Service Commission, *Order Setting Matter for Staff Workshop In Re: Petition by Subscribers of the Groveland Exchange for Extended Area Service to the Orlando, Winter Garden, and Windermere Exchanges, et al.*, Order No. PSC-96-1335-FOF-TL (Tallahassee, FL, November 5, 1996). Additional information to be provided in early April 1997 Commission response to recent staff workshop.

²¹ New Hampshire Public Utilities Commission, *Order Summarizing Investigation and Closing Docket, Commission Staff Preliminary Investigation into Local Calling Areas (Extended Area Service)*, Docket No. DRM 94-001, Order No. 22,107 (Concord, NH, April 15, 1996).

community-of-interest as requiring three or more calls per customer per month, with 40 percent of the customers making at least two calls per month. The geographical approach, on the other hand, assumed that customers' communities of interest would be captured within a selected mileage band or contiguous exchange. Along with the status quo, the staff evaluated a variety of geographical approaches, including:

- (1) mileage band options measuring distance from originating rate center to terminating rate center as well as from originating exchange boundary to terminating exchange boundary;
- (2) current EAS area plus one additional "most frequently called" exchange;
- (3) customer choice of home exchange only, status quo EAS, or home exchange plus a mileage band;
- (4) home exchange plus contiguous exchange options, one excluding and another including non-contiguous exchanges currently designated as EAS;
- (5) a combination of current EAS areas plus either contiguous exchanges or exchanges withing a mileage band; and
- (6) home exchange only.

The Commission pointed out that the staff investigation determined that while a minority of persons within a given local calling area might seek expansion of that area in

The majority of customers often reject local calling area expansion that would result in an increase in basic rates.

order to include a larger metropolitan area or contiguous exchanges, or to obtain non-toll access to emergency services or Internet access, the majority of customers often reject

local calling area expansion that would result in an increase in basic rates. It noted that basic rates could increase with the expansion of EAS for reasons associated with intrastate traffic stimulation, *i.e.* with the allocation of additional switching minutes to the intrastate rather than the interstate jurisdiction. Furthermore, additional infrastructure might be required to be deployed in order to meet increased traffic volumes. The Commission also noted the potential impact of a shift in switching minutes to the intrastate jurisdiction on small telephone companies, for which the relative percentage of interstate minutes is tripled for cost recovery purposes. Accordingly, small telephone companies might suffer a significant erosion in revenues. Finally, the Commission

recognized that any expansion of EAS would decrease competitive pressures in the intrastate toll market, thereby negatively affecting all New Hampshire telephone consumers.

The Commission concluded that none of the plans evaluated was consistent with its objectives. Mileage-based plans were found unacceptable

Mileage-based plans were found unacceptable because they require consumer knowledge of distances.

because they require consumer knowledge of distances between central offices or exchange boundaries, and cannot be equitably applied; nor do they necessarily resolve community-of-interest considerations. Community-of-interest plans were found lacking in not meeting specific customers' community-of-interest expectations; nor could they easily be adapted to changes in consumer demand and economic growth over time. The addition of contiguous exchanges or mileage bands to current EAS was deemed to impose an unjustifiable impact on the access and billing and collection revenues of independent telephone companies, and would not necessarily assure that community-of-interest considerations are adequately addressed. The Commission rejected the Home Exchange Only plan on the grounds that it would "drastically" alter telecommunications markets, stimulating toll competition but immediately decreasing the size of the local exchange market.

In addition to rejecting each of the plans that its staff had investigated, the Commission acknowledged the impact of recent state and federal legislation on its assessment of the regulatory expansion of EAS. "We interpret ...[Section 253]...of the [1996] Act as effectively prohibiting us from imposing requirements that will negatively affect or otherwise manipulate competition unless the requirements act to safeguard the rights of consumers, ensure continued quality of service, protect public safety, or preserve and enhance universal service. Expanding EAS would necessarily inhibit competition in the short run, by reducing the toll market before local competition is viable. Therefore, the [1996] Act appears to preclude the regulatory expansion of EAS,

whether by rulemaking or by consideration of individual petitions under the EAS Guidelines.”

North Carolina

The North Carolina Commission instituted a moratorium on intraLATA EAS requests in May, 1994, in order to test the efficacy of various intraLATA area calling plans that the Commission had already authorized.²² These plans, known as defined-radius plans and defined-area plans (DRPs and DAPs), were proposals of local exchange companies to offer seven-digit dialing and 50 percent discounts from prevailing intraLATA toll rates. DRPs are geographically based: they establish extended local calling within a 40 mile radius from a given exchange. DAPs, on the other hand, comprise an amalgam of specified exchanges.

The Commission established several conditions for its approval of DRPs and DAPs, including: (1) DRPs and DAPs are to be classified as long distance rather than local to avoid confusion and “anomalies”; and (2) LECs are required to impute access charges within DAP/DRP areas to enable competition by IXCs and LECs.²³ The Commission recognized the dialing disparity between IXC- and LEC-carried calls, but in doing so noted that it did not “believe that a perfectly level playing field is required as between IXCs and LECs in this context, only a reasonably level one. This the Commission is providing by allowing the IXCs both a legal and economic opportunity to

²² North Carolina Utilities Commission, *Order Declaring Moratorium on New Extended Area Service Proposals In the Matter of Investigation of the Manner in Which Extended Area Service is Implemented in North Carolina*, Docket No. P-100, Sub 89 (Raleigh, NC, May 17, 1994); *Order Allowing Defined-Radius and Defined-Area Calling Plans Subject to Certain Requirements In the Matter of Investigation into Defined Radius Discount Calling Plans*, Docket No. P-100, Sub 126 (Raleigh, NC, May 17, 1994).

²³ North Carolina Utilities Commission, *Order Allowing Defined-Radius and Defined-Area Calling Plans Subject to Certain Requirements In the Matter of Investigation into Defined Radius Discount Calling Plans*, Docket No. P-100, Sub 126 (Raleigh, NC, May 17, 1994), 22.

compete (original emphasis).²⁴ The Commission's classification of DRPs and DAPs as long distance turned on several policy considerations. In North Carolina, local calling (including EAS) has

The Commission's classification of defined-radius plans and defined-area plans as long distance turned on several policy considerations.

traditionally been offered on a flat-rate basis, and were the Commission to authorize extended area calling as a local service, it would essentially have authorized measured local service—an action it did not countenance. Furthermore, the Commission reasoned that if DRPs and DAPs were classified as local service, competing IXCs would necessarily pay access charges to LECs while LECs would continue to pay “contract” rates to each other for the termination of traffic.

The institution of DRPs and DAPs resolved, by commission action, intraLATA extended area calling issues in North Carolina. The matter of interLATA extended area calling was addressed in a separate docket. The North Carolina Commission explicitly considered the impact of the Act and the FCC's Interconnection Order on the pricing and resale of EAS between Central Telephone Company's Roxboro exchange and GTE's Durham exchange, a route that crosses a LATA boundary.²⁵ In so doing, it invited parties to that proceeding to submit statements of their assessment of the impact of the 1996 Act.

Staff stated that the proposed EAS would not constitute a stand-alone service, but would become an integral part of overall basic service. The Staff also asserted that the FCC Order concluded that Section 251(c)(4) does not impose on ILECs the obligation to disaggregate a retail service into more discrete retail services; hence ILECs would be required to resell at wholesale rates basic local service that includes an EAS component. Staff supported the EAS request and represented that its

²⁴ Ibid.

²⁵ North Carolina Utilities Commission, *Order Authorizing Polling and Instituting InterLATA EAS Moratorium In the Matter of Central Telephone Company - Roxboro to Durham InterLATA Extended Area Service*, Docket No. P-10, Sub 482 (Raleigh, NC, October 30, 1996).

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recommended local rate increase would allow GTE to recover its full costs, including lost access revenues.

Central Telephone asserted that its current EAS rates had been developed in a general rate proceeding fourteen years earlier; at which time EAS was priced residually and without consideration for its actual cost of provision. Accordingly, Central anticipated negative effects associated with EAS provisioning as a result of the Act, including the loss of subsidies that were reflected in EAS tariffs developed in a monopoly environment. Other adverse effects anticipated by Central Telephone included the loss of EAS revenues resulting from EAS rates, terms and conditions not applying to a competitor; and EAS cost increases due to the payment of usage priced interconnection charges for EAS calls terminating to connecting companies. Central also asserted that CLECs may enjoy artificial marketplace advantages if they are not required to offer EAS: under Central Telephone's tariff, EAS charges are mandatory for all LEC customers receiving local service within an exchange where EAS has been authorized. Central Telephone recommended that the "inadequacy" of current EAS rates be addressed with the establishment of a universal service mechanism that would assure continuing economic viability of current EAS rates. It also recommended that, in order for CLECs to be eligible to purchase local service for resale, CLECs providing local service should be required to offer EAS bundled in the local service offering. GTE asserted as a general principle that prices must reflect costs in the competitive market envisioned by the Act, and that rate structures must impose prices on cost causers. It also asserted that it would be inappropriate to apply a wholesale discount to the EAS additive, particularly prior to Commission rulings on appropriate avoided cost discounts. GTE favored a usage-based or optional local calling plan over the EAS proposal under consideration.

The Commission ordered that polling proceed in this particular case, since staff-projected increases in rates were de minimus. But due to "substantial uncertainty" regarding the effects of the Act and the FCC Interconnection Order, as well as other

upcoming implementation proceedings, the Commission placed a moratorium on future interLATA EAS requests.

Texas

In June, 1996, The Texas Public Utility Commission concluded a lengthy proceeding involving applications of seven LECs and their respective affected communities for EAS.²⁶ MCI Telecommunications Corporation and AT&T Communications of the Southwest opposed the applications on anti-competitive grounds, contending that EAS reduced their ability to offer competitively-priced intraLATA service. Although the Commission granted the LEC petitions, Commissioner Robert Gee dissented from the determination, disagreeing with the majority's assertion that the cost of switched access service need not be imputed in calculating the EAS rate charged by the incumbent LECs.

The majority reached their decision on the basis of Texas' Public Utility Regulatory Act of 1995 (PURA95) and the 1996 Act. PURA95 Section 3.262(b) mandates that the Commission apply imputation "to prevent an incumbent local exchange company from selling a service or function to another telecommunications utility at a price that is higher than the rate the incumbent local exchange company implicitly includes in services it provides to retail customers." Furthermore, PURA 95 Section 3.454(e) states that the price of switched access service "shall be imputed to the price of each service for which switched access service is a component until switched access service is competitively available." In granting the EAS petitions, the Commission majority relied upon PURA95 Section 3.454(c)(2), which states that the Commission "may require imputation only of the price of a service that is...necessary for

²⁶ Public Utility Commission of Texas, *Order Approving Interconnection Agreement, Petition of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and Southwestern Bell Telephone Company*, Docket No. 16226 (Austin, TX, December 19, 1996).

the competitor to provide its competing services.” Accordingly, the majority asserted that imputation of the price of switched access is not required for the EAS petitions under consideration. The alternatives enumerated by the Commission included a telecommunications carrier’s purchase of EAS at wholesale rates under Section 251(c)(4) of the federal Act; purchase of EAS for resale by a holder of a Certificate of Operating Authority (COA) pursuant to PURA95 Section 3.2531, which establishes a five percent discount; interconnection, transport and termination arrangements pursuant to Section 251(c)(2) of the Act; or purchase for resale of EAS by a holder of a Service Provider Certificate of Operating Authority (SPCOA) pursuant to PURA95 Section 3.2532, which does not provide for a five percent discount. The majority justifies its Order, among other reasons, by asserting that “consumers gain because they will receive EAS, in a competitive market, without seeing the price of EAS increase as a result of the imputation of switched access.”²⁷

Commissioner Gee’s dissenting opinion is grounded in two issues with which he differs from the majority.²⁸ He asserts that switched access service is in fact “necessary for the competitor to provide its competing service” pursuant to PURA95 Section

An interexchange carrier must pay originating and terminating access to local carriers of approximately \$.12 per minute to carry the call, while the cost of providing such access is approximately \$.0183 per minute.

3.454(c)(2), and that switch access service is “probably” a component of EAS service, pursuant to PURA95 Section 3.454(e). The dissenting opinion establishes the significance of the issue before the Commission by contrasting the billing for calls carried by IXCs

between two points within the Dallas-Fort Worth metro area, as compared to the billing of comparable calls under the Dallas-Fort Worth metro EAS proposal. An IXC must pay

²⁷ Ibid., 11.

²⁸ Public Utility Commission of Texas, *Dissent of Commissioner Robert W. Gee from Order of the Public Utility Commission of Texas*, Docket Number 14686 (Austin, TX, June 17, 1996.)

originating and terminating access to local carriers of approximately \$.12 per minute to carry the call, while the cost of providing such access is approximately \$.0183 per minute. Under the EAS proposal, a residential consumer could make unlimited calls within the Dallas-Fort Worth metro area for an additional \$30 per month (a business customer would pay \$60 for the privilege). A residential customer making such calls who exceeds a 250 minute threshold (and a business customer who exceeds a 500 minute threshold) will pay less than the “wholesale” rate charged IXCs; and that it is this disparity which the majority fails to recognize in approving the EAS proposals. In addition to the rate disparity, the dissenting opinion notes that the majority has “taken two pro-competitive laws [PURA 95 and the 1996 Act] and reached an anti-competitive result.” Thus, while PURA95 Section 3.262(b) prohibits the Commission from diminishing the ability of a political subdivision or affected telephone company from entering into joint agreements for optional EAS, the dissenting opinion observes that communities and companies remain free to enter into such agreements—so long as they are not anti-competitive in nature. In addition, the dissenting opinion cites Section 272(e)(3) of the 1996 Act as requiring BOCs to impute to themselves “an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service.” Regardless of whether the service or functionality required is “called” switched access service, the dissenting opinion asserts that EAS will...”need the same Basic Network Facilities (BNFs) as does access service. The competitive carriers that do not possess their own facilities in an area will be required to use those BNFs. Whatever the price that is charged to them—however it is denominated—should be the price imputed to the local exchange provision of EAS service.”²⁹ Commissioner Gee concludes that, once a wholesale rate for resold EAS is determined, that rate should be imputed to the retail service price.

²⁹ *Ibid.*, 8.

Vermont

The Vermont Public Service Board concluded the first phase of a generic investigation into expanded telephone local calling areas on September 6, 1995.³⁰ The second phase of the investigation is ongoing, and is intended to consider additional means for enhancing local calling in response to community-of-interest considerations. In the first phase, the Board ordered the implementation of the "H+3 proposal", whereby a minimum calling area within which measured local service (MLS) is available consists of the home exchange and all exchanges within three miles of any point in the home exchange, as well as any other exchanges previously deemed part of the existing local calling area.

The goal of the generic proceeding was to establish a minimum standard for local telephone calling areas in Vermont that would "ensure that the overall utility of the telephone network is enhanced for all customers so as to maximize societal benefits."³¹ The Order sets forth a policy framework consistent with the goal of maximizing societal benefits, identifying the following policies: (1) all customers should have equitable and reasonably sized calling areas; (2) local dialtone and usage rates should be just and reasonable; (3) required changes must be technically feasible; and (4) outcomes should not be inconsistent with the Board's goal of enhancing competition.

The Board determined that a policy of equitable and reasonably sized calling areas entails two types of equity: equity among exchanges as well as equity within exchanges. In keeping with a policy of equity among exchanges, local calling areas would be approximately equal in geographical scope and in terms of the number of lines accessible, presuming similar monthly dial tone rates. Within exchanges, equity considerations would require that frequent and infrequent users of the public switched

³⁰ Vermont Public Service Board, *Order in the Board Investigation In Re: Department of Public Service's Petition for a Generic Investigation into Expanded Telephone Local Calling Areas*, Docket No. 5670 (Montpelier, VT, September 6, 1995).

³¹ *Ibid.*, 9.

network not pay significantly more than their share of costs respectively imposed; and that all customers within a home exchange should enjoy similar calling opportunities.

The Board also determined that access to customers' communities of interest at fairly low usage rates is a significant criterion in establishing local calling areas. The Order observes of customer expectations regarding local calling areas that such areas include gateway hubs for information services, in addition to local shopping centers, employment centers, schools, medical facilities and churches. Furthermore, customers should be able to call their neighbors or nearby areas at local rates, necessitating that a local calling area extend "at least a few miles in all directions".³² The Board also asserted that fair and equitable local calling requires a local calling area structure to be understandable to the average customer. This requirement was determined to preclude complex plans with multiple options, and to favor a geographically-based plan over a traffic-driven plan.

The Board determined the second criterion, just and reasonable rates, to be a function of: (1) value of service to the customer; (2) cost of

Prevailing social policy in Vermont has promoted a combination of low dial tone rates and measured usage rates.

service to the local exchange company; and (3) underlying social policy regarding telephone service. Value-based pricing, established without regard to underlying costs, would establish relatively low rates for dial tone as well as for infrequent usage. Cost-based pricing, on the other hand, would result in higher dial tone charges and usage charges less sensitive to frequency of use.³³ Prevailing social policy in Vermont has promoted a combination of low dial tone rates and measured usage rates.

³² Ibid., 12.

³³ For an alternative view of dial tone costing, see George R. Compton and Audrey J. Curtiss, "Interconnection Policy That Reconciles Network Cost Recovery and Universal Service: Part 1--The Correct Costing Paradigm," *NRRI Quarterly Bulletin* 17, No. 3 (1996): 319-325; and "Interconnection Policy That Reconciles Network Cost Recovery and Universal Service: Part 2--Implementing the Correct Costing Paradigm," *NRRI Quarterly Bulletin* 17, No. 4 (1996-7): 453-468.

As for the third criterion, technical feasibility, the Board determined there to be no significant design or cost constraints to mitigate the redesign of local calling areas. In considering remaining criterion, the effect of local calling area expansion on competition, the Board observed that any plan to convert existing toll routes to local effectively re-monopolizes a portion of the competitive intrastate toll market. At the same time, "larger calling areas can create a more favorable environment for eventual local competition, thereby significantly enhancing the probability that all customers of Vermont will be able to obtain the benefits of local competition in the future (original emphasis)."³⁴

Community-of-interest issues were also addressed by the Board in Docket 5713, Phase 1, an investigation of New England Telephone's tariff filing regarding Open Network Architecture. The Board ordered that basic service and other relevant obligations of local exchange companies include the availability of EAS.³⁵

Wisconsin

The Public Service Commission of Wisconsin ordered its staff to investigate the problems associated with local calling area definition in November 1991, in conjunction with its assessment of intraLATA toll market issues.³⁶ The staff suggested that a statewide standard for local service must be established to meet customer calling needs prior to consideration of regulatory changes in the intraLATA toll market. In May 1992, the Commission stated that it would proceed to examine whether to expand local

³⁴ Vermont Public Service Board, *Order*, Docket No. 5670, 79.

³⁵ Vermont Public Service Board, *Order in the Investigation into NET's Tariff Filing Re: Open Network Architecture, Including the Unbundling of NET's Network, Expanded Interconnection, and Intelligent Networks, Phase I*, Docket 5713 (Montpelier, VT, May 29, 1996), 65.

³⁶ Public Service Commission of Wisconsin, *Findings of Fact, Conclusions of Law and Interim Order in the Investigation Into the Extent of Competition in the IntraLATA Toll Telecommunications Market and of the Level of Regulation for IntraLATA Toll Telecommunications Service*, Docket No. 05-TI-119 (Madison, WI, February 9, 1993).

calling to cover existing routes between exchanges then handled on a toll basis; the new service arrangement was called extended community calling (ECC).

ECC was authorized on an interim basis in February, 1993. The Commission explained that it was adopting ECC because its traditional EAS procedures, which considered calling needs on an exchange-wide, aggregate basis, did not satisfy many legitimate customer interests in obtaining a larger calling scope. Various parties offered suggestions for addressing the problem; suggestions ranged from "generally lowering access charges and introducing competition to the intraLATA toll market to extending the local calling area to the boundaries of each LATA and offering a flat rate for calling within that area."³⁷ The Commission ultimately determined that all exchanges adjacent to or within a 15 mile radius of a given

exchange (measured between rate centers) and within the same LATA constitutes an appropriate geographical scope for ECC. It also agreed to consider, on a case-by-case basis, requests for the addition of other

The purpose of extended community calling is not to offer enhanced service but to set a reasonable, common level of basic local calling coverage throughout the state.

exchanges to ECC geographical coverage; such requests might be entertained, for example, for exchanges including a county seat. The Commission rejected a larger local calling scope, stating that "the purpose of ECC is not to offer enhanced service but to set a reasonable, common level of basic local calling coverage throughout the state."³⁸ Accordingly, ECC was determined to be mandatory and part of the calling coverage that customers receive upon subscribing to basic local exchange service.

³⁷ Ibid., 12.

³⁸ Ibid., 23.

Interim rates established for ECC were usage-based: 18 cents for messages of five minutes or less, and 2 cents per minute for additional minutes. Subsequently, the Commission established a permanent ECC rate of 5 cents per minute. The Commission rejected the flat rate provisioning of ECC, noting that a usage component places a fair share of the service cost on users while maintaining the essence of a local service offering.³⁹ LEC provision of ECC was ordered not subject to carrier access charges, although calls made via IXCs continued to be subject to them. LECs were instructed to negotiate compensation arrangements for ECC calls carried over the facilities of LECs neither originating nor terminating the ECC calls. The LEC serving the exchange in which an ECC call originates was authorized to bill and keep the ECC revenues.

The Commission rejected the suggestions of IXC intervenors in the proceeding that LATA-wide reductions in access charges and toll rates would adequately address the local calling area problem, stating that such actions would “not target the areas of need for calling within a relatively narrow geographic area....[C]ompetition does not necessarily mean lower prices for the areas of concern and lower toll prices alone will not meet the needs that customers have expressed for a larger scope of local calling coverage”.⁴⁰ The Commission determined that such matters should be considered in Phase II of the docket, in which the appropriate level of competition in the intraLATA toll market was to be examined. On the other hand, the Commission rejected the ILEC argument that, irrespective of individual circumstances, all LECs should be made whole for any losses of revenue associated with ECC implementation by prior approval of automatic rate increases.

³⁹ *Ibid.*, 27.

⁴⁰ *Ibid.*, 26.

Part Four: Extended Local Calling in the Context of Universal Service Policymaking

This review of recent regulatory dockets, issues, and the NRRI survey reveals several significant issues that have arisen in conjunction with state commission assessments of EAS policies and practices.

In view of the 1996 Act and various state legislative initiatives to foster a competitive local exchange market, what authority do state commissions maintain to order that EAS or other extended local calling services be provided?

The New Hampshire Commission determined that the 1996 Act may preclude the regulatory expansion of EAS, basing its finding on the prohibition in Section 253 against imposing requirements that manipulate competition unless such requirements act to safeguard consumer rights, ensure continued quality of service, protect public safety, or preserve and enhance universal service.

The Florida Commission is precluded under state law from ordering the implementation of extended local calling by companies which have elected price regulation. The Commission's interpretation of Sections 271 and 272 of the 1996 Act and state law⁴¹ raises questions as to the authority of the Commission to order a separate affiliate of the ILEC to implement extended local calling on an interLATA basis. Sections 271 and 272 of the 1996 Act prohibit BOCs from originating interLATA traffic until they meet the requirements of the "competitive

⁴¹ Some of the potential complications arising from state law include the characterization of extended local calling as local or toll service, as well as its characterization as basic or non-basic service. State law may also present implications for the costing of extended local calling services, i.e. imputation requirements or the lack thereof. See the Texas case study, *supra*.

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checklist"; and Section 272 requires that only a separate and independent affiliate of the BOC is permitted to originate interLATA traffic once the checklist conditions are satisfied.

Assuming that state commission authority to order extended local calling is not in question, what models are available for the delineation of the scope of extended local calling areas?

North Carolina, Vermont, and Wisconsin are among the many states that have developed non-traditional extended local calling programs to address situations in which traditional EAS procedures involving the collection of calling statistics have not satisfied legitimate customer interests. As local exchange competition is manifested, it will likely become more difficult to obtain the calling statistics necessary to order the implementation of EAS from competitors.⁴² The alternative to traditional community-of-interest determination by means of the collection of calling statistics is essentially a geographical approach, in which local calling area scopes delineated by mileage bands, or via contiguous exchanges, are assumed to capture relevant communities of interest.

⁴² Conversation with Jacqueline Young of Ameritech Ohio, February 10, 1997. Although Ameritech Ohio has access to intraLATA toll call data between exchanges it serves, Ms. Young indicated that new intraLATA toll providers may be unwilling to provide their calling statistics, as the information is deemed sensitive and proprietary.

What tariff and rate structure is most appropriate in the provision of extended local calling service?

Extended local calling, when provided under the guise of traditional EAS, has been imposed on all subscribers.⁴³ Alternative extended local calling services have generally been provided on an optional basis. In addition to the question of mandatory provisioning, the pricing of extended local calling service is an issue for commission consideration. The Arizona case study, *infra*, illustrates a clear public policy interest in providing extended local calling with little or no increase in basic rates. On the other hand and from a pure cost-causation perspective, a commission may, via pricing, attribute costs associated with the provision of extended local calling to those customers directly benefitting from an increased local calling scope, on a measured or flat rate basis. Additional issues for commission consideration involve the determination of the specific revenues that the local exchange company is entitled to recover. The Arizona case study illustrates that companies may seek to recover lost toll, coin, foreign exchange, and billing and collection revenues. In addition, companies may seek to recover lost access revenues.⁴⁴

⁴³ For this reason, traditional EAS procedures have included balloting of affected subscribers prior to implementation of an EAS route.

⁴⁴ See the North Carolina case study, *supra*, in which the Commission determined that local exchange companies were required to impute access charges in instituting defined-radius and defined-area calling plans.

Part Five: Conclusion

Each state regulatory commission undertaking a review of its extended local calling policies and practices will need to consider these and other questions from individual perspectives grounded in state law, regulatory precedent, and federal public policy mandates established in the implementation of the 1996 Act. There are several potential opportunities for such consideration. One such opportunity is manifested in each state's establishment of permanent rules regarding local exchange competition.⁴⁵ Another is within the context of the review of interconnection agreements or arbitrated arrangements for interconnection.⁴⁶ Some states are anticipating undertaking a review of their established practices regarding extended area calling.⁴⁷ Another venue for the consideration of these and related issues will be in the upcoming review of interconnection agreements between non-competing LECs which pre-dated the Act; those between Class A companies were required to be submitted to state commissions by June 30, 1997.⁴⁸

As state commissions implement their respective intrastate universal service policies and practices, another opportunity will arise for the resolution of these issues. This circumstance presents itself because, pursuant to the 1996 Act, the FCC and the

⁴⁵ For the most part, local competition rules implemented to date by the states deal tangentially (if at all) with these issues.

⁴⁶ For example, see ref. no. 54, p. 11. Language inserted into the AT&T/Southwestern Bell interconnection agreement by the Texas Commission stated: "When cost-based interconnection rates for EAS are established by the PUC, AT&T traffic in SWBT's EAS areas will be subject to the lesser of the cost-based interconnection rates in effect between SWBT and other incumbent LECs for such traffic. AT&T is not precluded from establishing its own local calling areas or prices for retail service offerings."

⁴⁷ Indiana, New York, Ohio and Washington indicated in their responses to the NRRI Survey on Implementation of the Telecommunications Act of 1996 that they anticipated undertaking a review of the viability of established extended local calling practices. Other states including Missouri and Hawaii have initiated such reviews.

⁴⁸ Federal Communications Commission, *Order*, CC Docket No. 96-98, ¶ 171.

states are required to ensure that universal services are affordable;⁴⁹ and affordability has been determined by the FCC to be a function of rate levels as well as non-rate factors including local calling area size.⁵⁰ This finding is consistent with the Joint Board's findings that the scope of a local calling area "directly and significantly impacts affordability", and that the local calling area should reflect the "pertinent community of interest, allowing subscribers to call hospitals, schools, and other essential services without incurring a toll charge."⁵¹ This notion of local calling is in keeping with its traditional conceptual definition, according to which a local calling area is "a geographic area within which a strong community of interest exists."⁵²

State commissions are required to fulfill several significant responsibilities in implementing the universal service provisions of the 1996 Act. The FCC has determined that states, "acting pursuant to sections 254(f) and 253 of the Communications Act, must in the first instance be responsible for identifying implicit universal service support."⁵³ States are required to designate carriers as ETCs, entitled to receive federal and state universal service support, and to designate service areas within which ETCs are required to offer services.⁵⁴ Given these responsibilities, what options are available to state commissions for addressing extended local calling issues within a universal service policy framework?

⁴⁹ Federal Communications Commission, *First Report and Order In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (Washington, D.C., May 7, 1997), ¶ 108.

⁵⁰ *Ibid.*, ¶ 109.

⁵¹ *Ibid.*, ¶ 114.

⁵² AT&T Bell Laboratories, *Engineering and Operations of the Bell System* (Murray Hill, NJ: 1984), 56.

⁵³ *Ibid.*, ¶ 14.

⁵⁴ *Ibid.*, ¶¶ 24, 25, 65, 129, and 132.

There would appear to be two general courses of action. On the one hand, commissions might consider imposing obligations to offer extended local calling services upon eligible

Commissions might consider imposing obligations to offer extended local calling services upon eligible telecommunications carriers.

telecommunications carriers. Neither the FCC nor the states is permitted to adopt criteria additional to those set forth in Section 214(e)(1) of the 1996 Act as prerequisites for designating carriers as ETCs.⁵⁵ But section 214(e) does not preclude states from imposing “requirements on carriers within their jurisdictions, if these requirements are unrelated to a carrier’s eligibility to receive federal universal support and are otherwise consistent with federal statutory requirements.” Nor does Section 214(e) prohibit states from establishing criteria for designating ETCs in connection with the operation of that state’s universal service mechanism.⁵⁶ This course of action would appear appropriate in light of the FCC’s finding that universal service support is “available for access to interexchange service, but not for the interexchange or toll service....although....we find that the extent to which rural consumers must place toll calls to reach essential services should be considered when assessing affordability.”⁵⁷

The other course of action open to state commissions interested in resolving extended local calling issues in the context of implementing their respective universal service policy frameworks involves the designation of service areas. States have the responsibility for designating the service areas of non-rural carriers, and the FCC has recommended that states not designate service areas for non-rural carriers that are

⁵⁵ Ibid., ¶¶ 24 and 61. The “core” services to be supported by federal universal service mechanisms include single-party service, voice grade access to the public switched network, DTMF signaling or its functional equivalent, access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation services for qualifying low-income customers.

⁵⁶ Ibid., ¶ 136.

⁵⁷ Ibid., ¶ 77.

unreasonably large.⁵⁸ The FCC also recommends that state commissions consider designating service areas that require ILECs to serve areas that they have not traditionally served. “We [The FCC] recognize that a service area cannot be tailored to the natural facilities-based service area of each entrant, but note that ILECs, like other

The FCC has recognized that there may be legitimate reasons for altering rural service areas.

carriers, may use resold wholesale service or unbundled network elements to provide service in the portions of a service area where they have not constructed facilities.”⁵⁹ This approach is

complicated by the differential authority afforded state commissions to establish ETC service areas for rural as opposed to non-rural carriers; but the FCC has recognized that there may be legitimate reasons for altering rural service areas, and has established procedures for its joint consideration with the states of altering the definition of a rural carrier’s service area as its study area.⁶⁰

By imposing responsibilities to offer extended local calling on ETCs, designating service areas which take into account extended local calling needs, or a combination of these strategies, state commissions may effectively resolve many of the extended local calling area issues that have plagued them as established extended local calling procedures have become increasingly ineffective to meet the demands of customers. In doing so, of course, state commissions are clarifying that extended local calling is a “core” telecommunications service which the public interest dictates should be supported universally, in a competitively neutral manner. In and of itself, this position helps to clarify an appropriate response to many of the issues encountered in the case studies presented in this report. If extended local calling is such a service, then its

⁵⁸ Ibid., ¶129.

⁵⁹ Ibid., ¶ 185.

⁶⁰ Ibid., ¶¶ 186 to 187.

provision is consistent with the 1996 Act, and concerns that may emerge regarding state commission authority to order the provisioning of extended local calling by ILEC affiliates become moot. Incorporating the consideration of extended local calling areas within the context of the definition of service areas clearly favors a geographical approach to local calling scope definition, as opposed to a calling statistics approach. And many tariff and rate structure issues are resolved: the provisioning of extended local calling on an optional versus a mandated basis becomes a moot issue, since by definition extended local calling becomes universally available; pricing extended local calling on a cost-causation basis is no longer warranted; and revenue recovery issues, reflected in local exchange company requests to capture lost toll, coin, foreign exchange, billing, and access revenue are obviated with the imposition of forward-looking pricing standards. Accordingly, state commissions may wish to consider the establishment of their respective universal service policy frameworks as opportunities for forcefully and novelly addressing extended local calling issues.

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