INTER-LATA COMPETITION, INTRA-LATA DIALING ARRANGEMENTS, AND THE PRIMARY TOLL CARRIER PLAN: AN ALTERNATIVE APPROACH TO FURTHERING TELECOMMUNICATIONS COMPETITION

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November, 1993

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I. INTRODUCTION

With the refocusing of the Regional Holding Companies (RHCs) on entering the inter-LATA business, regulators are faced with a dilemma. On the one hand, many parties seem to find unpalatable a broad, quick lifting of the Modification of Final Judgement’s (MFJ) inter-LATA line-of-business restriction. On the other, the RHC’s seem to consider entry into the inter-LATA market a matter of survival as their local exchange markets become increasingly competitive. Adding to their argument is the view that while market power has been used as a reason to economically regulate firms, it has never been used as a basis for barring entities from participating in a market, as is the case with the inter-LATA restriction as they are applied to the RHCs. Striking a balance between these views is the regulators’ dilemma.

Ameritech, the RHC serving the local exchange markets in Illinois, Indiana, Michigan, Ohio, and Wisconsin, has put forward its "Customers First Plan" (the Plan) in which it offers up a set of quid pro quos for the ability to offer inter-LATA services to its customers. While most observers seem to agree that this Plan is innovative and is not without risk to the Company itself, it appears to be mired by regulatory scrutiny because it is subject to review in five jurisdictions with widely disparate telecommunications statutes. While this broad regional approach by Ameritech is perhaps necessitated by their corporate structure, a more narrow model may be workable and allow regulators to push the overall competitive telecommunications envelope forward more quickly. Additionally, this narrower approach is an answer to those who fear re-monopolization and represents an aggressive "go slow" plan.

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2 In the Matter of a Petition for Rulemaking to Determine the Terms and Conditions Under Which Tier 1 LECs Should Be Permitted to Provide InterLATA Telecommunications Services. Petition for Rulemaking filed by Bell Atlantic, BellSouth, NYNEX, Pacific Telesis Group, and Southwestern Bell Corporation (FCC RM-8303, filed July 15, 1993).

3 In the Matter of a Petition for a Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region. (FCC DA93-481; filed March 1, 1993).
(USTPL) as rewritten in 1992. Other states are also faced with their own analogs to these issues and while this article focuses primarily on Illinois, we hope that regulators in other jurisdictions find some policy-value in these thoughts.

II. THE PREMISE

The purpose of this article is to suggest an alternative path under a given legislative and regulatory structure to promote competition in both the inter- and intra-LATA markets. Alternative structures in other jurisdictions may well require modifications to this proposed path. But under any set of circumstances, the basic premise and direction laid out here will hold true and therefore will serve as a beginning point for policy discussions in these other states as they too further engage competitive issues in telecommunication.

As telecommunications markets become more competitive and regulation is forced to change in a fundamental way, individual state experiments should be encouraged to the greatest extent. As Justice Louis D. Brandeis once noted, "[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." Additionally, federal regulators have, at times, encouraged states to undertake regulatory experiments. Such an experiment is proposed here.

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The real heart of this proposed experiment is in eliminating LATA boundaries for \textit{intra}-State telecommunications services, thereby permitting Bell Operating Companies (BOCs) to offer what would now be labeled \textit{inter}-LATA, intra-exchange service in competition with the IXC's. The trade-off is establishing dialing parity for all market participants. Since these thoughts are presented from an Illinois perspective, the "primary toll carrier" principal is implicated in these discussions and it too is included here as an issue for resolution.

III. OVERVIEW OF THE ISSUES

Without downplaying the significance of the myriad of other issues associated with permitting any of the RHCs into the \textit{inter}-LATA market, there are three issues that can and should be addressed by individual states that would facilitate the entry of a Bell Operating Company into the \textit{intra}-State, \textit{inter}-LATA market. These are:

1. Examine the possibility of reconfiguring (and eliminating) the Local Access and Transport Areas (LATAs; also known as Market Service Areas, or MSAs in Illinois) boundaries.

2. Simultaneously resolve the issue of "1+ presubscription" for \textit{intra}-LATA calling.\textsuperscript{7}

3. Couple the examination of the above two points with an inquiry into the Primary Toll Carrier (PTC) concept.\textsuperscript{8}

IV. RECONFIGURING LATA BOUNDARIES

LATAs were drawn pursuant to the MFJ in an attempt to identify the bottleneck facilities controlled by the local exchange companies at the time. Illinois was the only state to draw its own LATAs, while the Department of Justice (DOJ), for all intents and purposes, drew the LATAs for all other states.

\textsuperscript{7} The Illinois Commerce Commission has been authorized to order alternative dialing arrangements for intra-MSA toll calls under Section 13-403 of the Universal Telephone Service Protection Law.

\textsuperscript{8} This concept and arrangement goes by other names in other states, such as Primary Exchange Carrier (PEC) in Michigan.
In ICC Docket 82-0268, the Illinois Commission, for a number of reasons, established LATAs for Illinois which were considerably smaller than those drawn by the DOJ for other states. However, one clear objective of the Illinois Commission when drawing these boundaries, and one that is relevant to current regulatory discussions, was to promote *intra- State, inter-LATA* competition. (Ameritech’s proposal essentially puts the policy question to the Illinois Commission, as well as the other state public utility commissions (PUCs) in the region, as to whether they believe that this previous objective of the ICC is furthered by allowing it into the inter-MSA market.)

In its final order in ICC Docket 82-0268, the Illinois Commission made an important note that ". . . the Commission does not intend the MSA configuration adopted in this order to be 'locked in stone’ . . . " The Illinois statute, interestingly enough, reinforces this point by giving the Illinois Commission authority to adjust the MSA boundaries when it is deemed to be in the public interest. The critical question now focuses on the latitude that the MFJ Court will afford states in reconfiguring LATAs to best serve the public interests of the state. Certainly, we hope, it was not Judge Greene’s intention to have the LATA boundaries solidified forever, unyielding to changing market structures.

But we would suggest now that the public interest would be served not by marginally adjusting the MSAs, but rather by eliminating these boundaries for Illinois, thereby making Illinois a "one MSA state." In determining whether or not the public interest in advanced through regulatory action, we recommend the following standards be used as this debate on this issue moves forward.

1. The promotion of competition;

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* See Section 13-403 of the Universal Telephone Service Protection Law of 1985, as amended. Not only did Illinois draw its own LATAs, but we also chose to call them by another name, "Market Service Areas," subtly suggesting a predilection for market-based solutions to regulatory issues.

* Since divestiture, LATA modifications have been approved only when they were *de minimis* or did not otherwise undermine the structure or purposes of the Consent Decree.
2. Fostering the availability of "affordable telecommunications services;"

3. The promotion of network efficiencies;

4. The promotion of the unbundling criterion provided for in the UTSPPL;

5. The promotion of local measured service.

Undoubtedly, adjusting LATA boundaries is easier said than done since the Illinois Commission will have to approach the Court for waivers to adjust, as the Commission sees fit, the MSA boundaries. The exact procedure for accomplishing this task will be left to later discussions. Alternatively and perhaps more practically, legislative channels could be pursued. Due to the very nature of the debate, Congress could and perhaps should deem it appropriate to vest authority over the entire intra-State telecommunications market with the states. Under either scenario, however, LATA boundary modifications should be coupled with the quid pro quo discussed next.

V. ADJUSTING INTRA-LATA DIALING ARRANGEMENTS

In Illinois, calls placed between exchanges but within an MSA are toll calls handled by the local exchange carrier (on a "1+" basis) designated as the "Primary Toll Carrier" for that MSA. (The Primary Toll Carrier or "PTC" concept is discussed in greater detail below). In order to use a carrier other than a LEC for these toll calls, a subscriber must, for the most part, use an access code (i.e. 10XXX). Essentially then, the LECs maintain a monopoly over 1+ presubscription for intra-MSA toll calls.

In 1990, the Illinois Commission submitted a report to the Illinois General Assembly that recommended delegating regulatory authority over intra-MSA dialing arrangements to the ICC. During the last rewrite of the telecommunications section of the Illinois Public Utilities Act, the General Assembly amended Section 13-403 to vest jurisdiction in the ICC over intra-MSA dialing arrangements.

The interexchange carriers (IXCs) have expressed growing interest in seeing this intra-MSA 1+ monopoly removed so that they too can compete under the same conditions with the LECs for intra-MSA toll calls. The state's largest LEC,
Illinois Bell, however, is unable to carry calls between MSAs due to MFJ restrictions. (This, of course, is one of the primary bases of the Ameritech proposal). By eliminating the 1+ presubscription monopoly, yet maintaining the inter-MSA restriction, regulators would essentially be creating an unlevel playing field by allowing the interexchange carriers to compete with Illinois Bell for Bell’s customers while preventing Bell from competing for the interexchange carriers’ customers. By the same token, lifting the inter-LATA restriction while maintaining dialing restrictions disadvantages other providers (e.g. IXCs). Either course, in isolation appears inequitable and we suggest that it is now time to tackle this issue and, coupled with the other two points of this paper, investigate the public interest aspects of removing the current "1+" presubscription restrictions for intra-MSA toll calls.

By removing the LECs "1+" monopoly and simultaneously reconfiguring Illinois into one MSA, we would be allowing the LECs to compete with the IXCs and visa versa. This solution would balance the interests of the various market participants while promoting competition throughout the state. Additional regulatory tools that the Illinois Commission has at its disposal and that put Illinois in a unique position to pursue this proposal are codified in the USTPL. These provisions, when properly applied, give the Illinois Commission the unique authority to promote a more competitive telecommunications market, while safeguarding the interests of both ratepayers and other providers.

VI. THE PRIMARY TOLL CARRIER (PTC) CONCEPT

The final prong of this process involves revisiting and adjusting the "Primary Toll Carrier" (PTC) mechanism to reflect today’s telecommunication market in Illinois. This mechanism was developed in ICC Docket 83-0142 and designates as the PTC the LEC having the largest toll presence within each MSA. The PTC is responsible for establishing intra-MSA toll rates, coordinating the intra-MSA toll network, and establishing a compensation plan within the MSA. The PTC handles all "1+" intra-MSA toll traffic and receives all revenues derived from such calls. Each of the other LECs operating in the MSA receive revenues in the form of

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12 Sections 13-505.1 - 13-505.6 and Section 13-507 of the Universal Telephone Service Protection Law contain provisions concerning imputation, cross subsidy tests, and unbundling. Additionally, Section 13-508 permits the Illinois Commerce Commission, under specific conditions, to order a telecommunications provider offering both competitive and noncompetitive services to establish a separate subsidiary to provide all or part of the competitive services.
access charges from the PTC as compensation for intra-MSA toll calls originating or terminating in the LEC's service territory.

The PTC structure is tied to the MSA structure and the current "1+" dialing and therefore would most logically be tied with both issues as discussed above.

VII. IDENTIFYING OTHER IMPlicated ISSUES

There are a myriad of issues involved in this proposal and regulators should begin laying them out now. The list below is far from all-inclusive, but it reflects a first stab at identifying some of the major issues that will undoubtedly be brought up during the deliberative process.

1. **Subsidy Funds & Flows and Universal Service:** There are currently a number of "subsidy" funds (e.g. the Universal Service Fund) that various carriers pay into purportedly to fund universal service mandates. This proposal would require us to identify each fund and follow the flow of the subsidies among carriers and areas of the state. Collecting these funds in a competitively neutral manner and developing a targeting mechanism so that only those subscribers truly in need of assistance will be necessary in order to maintain universal service goals.

2. **Effects on Rates:** The issue of rate impacts will undoubtedly be raised during the proceedings. State regulators will have to determine if rates will be affected and which rates (local vs. toll) are most likely to move. Additionally, the issue of further rate deaveraging may be raised in this context.

3. **Network access and interconnection:** Each carrier would have to access to the other carriers' networks. For the most part, this is done, but in the more competitive market envisioned here, carriers have an incentive to discriminate against each other in sharing their networks. Each carrier would have to have access to the others networks on a non-discriminatory basis. This includes reciprocal interconnection arrangements and leased facilities.

4. **Network Unbundling and Imputation:** Unbundling of the LECs
network is implicated in virtually all progressive proposals concerning further competition in all telecommunications markets. Unbundling and imputation appear to go hand-in-glove when we discuss the issue of lifting the inter-LATA ban for the RHCs. In fact, unbundling the LECs network components and then forcing them to impute the costs of providing inter-LATA services will most likely be required as the RHCs are permitted in the inter-LATA market.

5. Billings and Collections: Currently, many IXCs contract with the LECs to perform the billing and collections functions for inter-LATA calls. If IXCs and LECs become competitors for intra-LATA toll calls, there may be the incentive for LECs to discriminate against the IXCs (and other competitors, more generally) when it comes to the billing and collection function. While the billing and collection function is largely out of the purview of state regulators, it would be incumbent upon regulators to establish some procedure to ensure that the new market structure does not give rise to a new "bottleneck" service operated by the LECs.

6. Balloting: As regulators move forward on establishing 1+ parity for intra-MSA toll calls, the balloting question will undoubtedly be raised. Essentially, each carrier, including LECs in Illinois would be able to haul toll calls, if they request the authority to do so. Therefore, some sort of re-balloting process may have to be established for 1+ presubscription.

VIII. PLAN FOR FUTURE REGULATORY (PRO)ACTIONS

Hopefully, this paper helps push the ongoing debate forward by challenging the role state PUCs will play in determining the extent to which inter-LATA, intra-State competition is permitted to flourish through the restructuring of LATA boundaries. We also hope that regulators in other states, facing situations not too dissimilar from what we have described here, will find merit to the points laid out. As regulators begin to mull over the ramifications and solutions of each of these issues, and others that may arise, the process presented here may represent a way for us to move forward.

States need to be "pro-active" on intra-State, inter-LATA issues and the Ameritech Plan is forcing the hands of regulators. The FCC currently has its policy
platter more than full and it would behoove the states to take a lead in may of these issues as an indication to the FCC that state commissions are willing to tackle some of the thornier issues contained and implicated in the current proposals of Ameritech, the five RHCs requesting outright inter-LATA relief, and Rochester Tel.

Illinois should renew its role as a progressive policy state for telecommunications matters. We have presented an argument in favor of regulatory aggressiveness and innovativeness to replace acquiescence and the subservience. By tentatively concluding that the lifting of the inter-LATA restriction for Illinois Bell (and Ameritech more generally) and the elimination of the 1+ intra-LATA monopoly and moving ahead with this type of proposal, the public interest can be furthered, with the proper safeguards attached. Other states, and the FCC, seem to be searching for some sort of model to follow as they navigate the various issues involved in the Ameritech filing. Illinois should serve as that model once again.