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April 18, 1996

APR 19 1996

FCC MAIL ROOM

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Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: In the Matter of Policy and Rules Concerning the Interstate,
Interexchange Marketplace
FCC 96-123; CC Docket No. 96-61

Dear Secretary:

Pursuant to FCC Rules, Sections 1.415 and 1.419, enclosed is the original and 13 copies of Comments of the Washington Utilities and Transportation Commission (including two copies marked "Extra Public Copy") regarding the above referenced matter.

Very truly yours,


GREGORY J. TRAUTMAN
Assistant Attorney General

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Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FCC 96-123

In the Matter of)
)
Policy and Rules Concerning the) CC Docket No. 96-61
Interstate, Interexchange Marketplace)
)
Implementations of Section 254(g) of)
the Communications Act of 1934,)
as amended)

COMMENTS OF
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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I. INTRODUCTION

The Washington Utilities and Transportation Commission (Washington UTC) submits the following comments in response to the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking of March 25, 1996. The Washington UTC has chosen to file these initial comments on selected issues in Sections V and VI. Our comments focus on the two main issues: first, whether the FCC should modify or eliminate the separation requirements for non-dominant treatment of independent LECs' (ILECs) and BOCs' provision of out-of-region interstate, interexchange services; second, the FCC's proposal to implement Section 254(g) of the Telecommunications Act by adopting a rule requiring that the rates charged by all providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas.

II. COMMENTS

1. Separation Requirements

The separation requirements imposed on independent LECs were established by the FCC in the Competitive Carrier proceeding. The requirements state that the affiliate providing interstate, interexchange services must: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with its affiliated exchange telephone company; and (3) acquire any services from its affiliated exchange telephone company at tariffed rates,

terms and conditions. In a recent NPRM, the FCC tentatively concluded that these separation requirements should apply to BOCs' provision of out-of-region interstate, interexchange services on an interim basis. FCC No. 96-59, CC Docket 96-21. In this notice, the FCC seeks comment on whether to modify or eliminate these separation requirements for ILECs and potentially for BOCs.

There are two major points the Washington UTC would like to make in commenting on this proposal. First, to eliminate the separation requirements prematurely could lead to anti-competitive and discriminatory pricing in the market. Second, if any modifications are made, they should be designed to maintain competitive safeguards to prevent cross-subsidy, track cost allocation, and encourage effective competition.

The Washington UTC believes that fair, just and reasonable rates are critical in the development of competition. We would have serious concerns about the elimination of the separation requirements in the near term. In particular, we believe that requirement number (3), which requires that affiliates of BOCs providing interstate, interexchange services must acquire any services from its affiliated exchange telephone company at tariffed rates, terms and conditions, is necessary in order to ensure that the ILECs and BOCs do not favor their affiliates by offering services at a lower price than their tariffed rates.

With respect to requirements number (1) and (2), if the intent is to modify the current requirements, then the modifications should require companies to

maintain complete and accurate records that will allow the costs used in developing rates, including cost allocation methods, to be easily determined and easily auditable. The modifications should also contain competitive safeguards to ensure a "level playing field", and to require reasonable and non-discriminatory prices.

This issue has a potential impact on the states in that elimination of separation requirements and safeguards may make it difficult or impossible for state commissions to prevent any cross subsidy. The Washington UTC recommends that mechanisms be kept in place to prevent and detect any cross subsidy which may occur when ILECs and BOCs use the revenues gained from their in-region captive customers to finance their out-of-region ventures. We believe that the existing separation requirements advance this goal. Any modifications to be made should maintain competitive safeguards.

2. Geographic Rate Averaging Requirements of the 1996 Telecommunications Act

Long-standing pricing policy in Washington is consistent with the requirement in Section 254(g) of the Act that the rates charged by all providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. The Washington legislature has expressly authorized the Commission to require statewide average toll rates.

RCW 80-36-183 states:

Notwithstanding any other provision of this chapter, no telecommunications company shall offer a discounted message toll service based on volume that prohibits aggregation of volumes across all territory with respect to which that company functions as an interexchange carrier. The commission shall continue to have the authority to require statewide, averaged toll rates to be made available by any telecommunications company subject to its jurisdiction.

In accordance with this provision, the Washington UTC has routinely required carriers' intrastate, interexchange rates to be geographically averaged. For example, in our order on AT&T's petition for classification as a competitive telecommunications provider in Washington, we required the carrier to continue charging geographically uniform rates and to continue providing service in all areas of the state. In re Petition of AT&T Communications of Pacific Northwest, Cause No. U-86-113, Fourth Supplemental Order (Jun. 5, 1987). (A copy of the order is attached as Appendix A.)

III. CONCLUSION

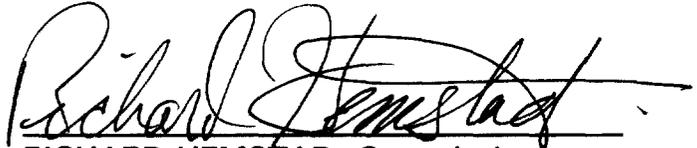
The Washington UTC urges the FCC not to eliminate the current separation requirements for ILECs and BOCs until a more fully competitive marketplace exists. If any modifications to the requirements are adopted, they should maintain competitive safeguards and prohibit unfair and discriminatory prices.

The Washington UTC will file further comments on these matters before the
FCC as appropriate.

DATED this 18th day of April, 1996, at Olympia, Washington.



SHARON NELSON, Chairman
Washington Utilities and Transportation
Commission



RICHARD HEMSTAD, Commissioner
Washington Utilities and Transportation
Commission



WILLIAM R. GILLIS, Commissioner
Washington Utilities and Transportation
Commission

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition)	
of)	
)	
AT&T COMMUNICATIONS OF THE)	CAUSE NO. U-86-113
PACIFIC NORTHWEST, INC.,)	
)	
for Classification as a)	FOURTH SUPPLEMENTAL ORDER
Competitive Telecommunications)	
Company.)	COMMISSION ORDER GRANTING
)	PETITION WITH CONDITIONS
)	AND GRANTING WAIVERS
)	IN PART
.)	

NATURE OF PROCEEDINGS: On August 29, 1986, AT&T Communications of the Pacific Northwest, Inc., hereinafter referred to as AT&T, petitioner or company, filed with the Commission under Cause No. U-86-113, a petition pursuant to RCW 80.36.310 and 80.36.320 and WAC 480-120-022 and 480-120-023 for classification as a competitive telecommunications company and, pursuant to WAC 480-120-024, for waivers of various statutes and rules governing regulated telecommunications companies. Petitioner provides interexchange telecommunications service in Washington State and alleges in its petition that its services are subject to vigorous competition from numerous other interexchange carriers, local exchange companies and customer provided networks.

HEARINGS: A prehearing conference in the above-entitled matter was held on December 1, 1986, which was followed by a clarification proceeding on January 6 and 7, 1987. Hearings were held on March 11, 1987 and on April 6, 7, and 8, 1987, before Chairman Sharon L. Nelson, Commissioner Robert W. Bratton and Commissioner Richard D. Casad. Elmer E. Canfield was the presiding Administrative Law Judge. All proceedings took place in Olympia, Washington.

APPEARANCES: The following parties participated in the hearings.

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CAUSE NO. U-86-113

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SUMMARY OF COMMISSION ORDER: The Commission concludes that AT&T's services are subject to effective competition and that its petition for classification as a competitive telecommunications company should be granted subject to four conditions to remain in effect until at least March 1, 1990. These conditions are: (1) AT&T shall continue charging geographically uniform rates; (2) AT&T shall continue providing service in all areas of the state; (3) AT&T shall be restricted in its ability to change prices charged to customers using one hour of long distance service per month relative to the prices charged to customers using ten hours of long distance service per month; and (4) AT&T shall be restricted from placing prohibitions or surcharges for resale or shared use of any interexchange service or facility.

The Commission grants waivers of statutes and rules relating to budgets, excessive earnings to reserve fund, investigation of accidents, reports of accidents, lease of utility facilities, securities, tariffs, tariff schedules, service offered, contract for service and form of bills; the remaining waiver requests are denied.

As a competitive telecommunications company, AT&T is allowed to file price lists with the Commission instead of tariffs.

Pursuant to statute, the Commission may at any time reclassify AT&T and/or revoke any of the granted waivers if it deems such action necessary to protect the public interest.

MEMORANDUM

I. BACKGROUND

With the breakup of American Telephone & Telegraph Company and emerging competition in the telecommunications industry, the Washington State Legislature passed the Regulatory Flexibility Act to govern the transition from a monopolistic to a more competitive telecommunications environment. The Act went into effect on July 28, 1985. In Section 1 of the Act (RCW 80.36.300), the

policy of the Legislature is declared to be, among other things, to preserve affordable universal telecommunications service, to maintain and advance the efficiency and availability of telecommunications service, to promote diversity in the supply of telecommunications and products in telecommunications markets throughout the state and to permit flexible regulation of competitive telecommunications companies and services. Section 3 (RCW 80.36.310) authorizes telecommunications companies to petition to be classified as competitive telecommunications companies under Section 4 (RCW 80.36.320) or to have services classified as competitive telecommunications services under Section 5 (RCW 80.36.330).

Section 4 of the Act (RCW 80.36.320) states, in part:

The commission shall classify a telecommunications company providing service in a relevant market as a competitive telecommunications company if it finds, after notice and hearing, that the telecommunications company has demonstrated that the services it offers are subject to effective competition. Effective competition means that the company's customers have reasonably available alternatives and that the company does not have a significant captive customer base. In determining whether a company is competitive, factors the commission shall consider include but are not limited to:

- (a) The number and sizes of alternative providers of service;
- (b) The extent to which services are available from alternative providers in the relevant market;
- (c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
- (d) Other indicators of market power which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

Subsection (2) provides, in part:

Competitive telecommunications companies shall be subject to minimal regulation. Minimal regulation means that competitive telecommunications companies may file, instead of tariffs, price lists which shall be effective after ten days' notice to the commission and customers. The commission shall prescribe the form of notice. The commission may also waive other regulatory requirements under this title for competitive telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may waive different regulatory requirements for different companies if such different treatment is in the public interest.

Subsection (4) authorizes the Commission to revoke any waivers it grants and to reclassify any competitive telecommunications company if required to protect the public interest.

II. POSITIONS OF THE PARTIES

A. AT&T

In support of its petition for classification as a competitive telecommunications company, and for waivers of various statutes and rules, the company presented evidence and testimony from Dr. David L. Kaserman, an economist; John F. Sumpter, AT&T District Manager; Douglas M. Dunn, Vice President of External Affairs; and George M. Reed, a market researcher. In general, the company's witnesses testified that AT&T faces extensive competition in the Washington interexchange telecommunications market and that its services are subject to effective competition. AT&T's witnesses testified that the company should be classified as competitive and that it should be granted the requested waivers as set forth in Appendix A.

1. Classification

The relevant market to be examined in this competitive classification proceeding was defined by Dr. Kaserman to include all interLATA interexchange telecommunications services encompassing at least the State of Washington. It is necessary to define the relevant market in order to assess whether a firm has market power, which was defined by Dr. Kaserman as the "ability of a firm to raise and successfully maintain the market price of a

good or service above the competitive level for a significant period of time." (Exhibit T-1, page 5). The evidence showed that more than thirty vendors of telecommunications services were operating in the State of Washington and that at least ten of these companies are based in Washington. Six of the interexchange carriers operating in Washington were estimated to have gross earnings of over \$5 million per year in the Washington market. Some of the largest companies in the world are operating in the Washington telecommunications market, such as IBM, GE, United and GTE. Extracts from 1985 annual reports of MCI (IBM), GTE (US Sprint) and ALC (Allnet, Lexitel) listed annual revenues of over \$2.5 billion, \$15.7 billion and \$300 million, respectively. (Exhibit T-5, page 5). As evidence of the ability of competitors to enter the telecommunications market in Washington, Mr. Sumpter pointed out that the number of vendors has grown at a rate of about six per year since 1982. Dr. Kaserman also concluded that there were no significant barriers in the interexchange market.

Mr. Sumpter testified that the competing vendors of telecommunications services ". . . provide alternatives to all the services provided by AT&T, for every service category and in every geographical area of Washington." (Exhibit T-5, pages 3 and 4). The services provided by the competing interexchange carriers were described as being substitutable, although not identical. Listed as representative samples of Washington intrastate competitive service offerings were: long distance, including discounts for time-of-day and volume; WATS; 800; directory assistance; credit card/travel service; long distance operator; and private line, analog and digital. (Exhibit 8). The quality of service available to customers was shown to be comparable. According to Dr. Kaserman, the responsiveness of the supply of other firms indicated that alternative providers were able to make functionally equivalent services readily available at competitive rates, terms and conditions.

Mr. Sumpter testified that nearly all areas of Washington had competing suppliers of telecommunications service available and that by the end of 1987, about 81 percent of the Washington population will have access to competing interexchange carriers on an "equal access" basis.¹ Pointing to the decline in AT&T's

1. The Modification of Final Judgment (MFJ) mandated that "by September 1, 1986 the Operating Companies must provide access services to interexchange carriers and information service providers which are 'equal in type, quality, and price' to the access services provided to AT&T and its affiliates." See U.S. v. AT&T, 552 F. Supp. 131 (1982) and supplemental orders. Section 4(3) of the Regulatory Flexibility Act [RCW 80.36.320(3)] provides

estimated market share measured in revenue from over 90 percent in 1984 to 70 percent of the MTS market in 1986, Mr. Sumpter concluded that AT&T's customers have alternatives available and are taking advantage of them. He further argued that AT&T has lost up to 50 percent of the market share in the most lucrative markets. Citing the scope of service offerings of its competitors, the availability of services across the state, the ability of customers to choose alternatives, and the degree to which they have done so, the company concluded that it does not have a significant captive customer base.

A market research study was conducted by Market Trends, Inc., which is a market research company headquartered in Bellevue, Washington. George Reed, a principal and co-founder of Market Trends, provided testimony on the status and trends of competition in the Washington telecommunications market. As a significant finding, he testified that AT&T's market penetration for intrastate interLATA message toll service (MTS) had declined from 79 percent of all business customers and 93 percent of all residential customers in 1985 to 63 percent of business and 87 percent of residential markets in 1986. The MTS revenue market share had declined from 78 percent of the combined business and residential markets in 1985 to about 69 percent in 1986, according to his survey. Mr. Reed found AT&T's market penetration and revenue market share to be even lower in areas where equal access conversion had been completed prior to the survey. A significant percentage of customers (48 percent of business and 50 percent of residential) indicated they were likely to switch to a different provider of long distance service if faced with a 10 percent rate increase from their present carrier, assuming all other carriers' rates remained the same. So, it was concluded that customers are quite sensitive to rate increases. It was also found in the study that a large percentage of customers subscribing to other common carriers (OCCs) had subscribed within the past six months. Mr. Reed further concluded that AT&T's market penetration and revenue market share would continue to erode in the near term. According to Mr. Dunn, AT&T has not made a profit in its Washington intrastate operations since divestiture.

Dr. Kaserman cautioned against giving too much weight to overall market share figures, as such, when a firm has been subjected to rate-of-return regulation and pointed out that the regulation rather than market power might be indicated. For instance, because AT&T is charging geographically uniform rates across the

that when the equal access requirements have been met, there is a rebuttable presumption of effective competition in the interLATA interexchange telecommunications market.

state, including the areas with different costs of providing service, Dr. Kaserman argued that losses necessarily result in the relatively high cost rural areas. Such areas are not attractive targets for OCC entry and the result is a large market share for AT&T in unprofitable areas.

Other common carriers are rapidly expanding and new competitors are entering the market; Dr. Kaserman concluded that no significant entry barriers exist. He further testified that AT&T's customers are being offered reasonably available alternatives and that they do not represent a significant captive customer base. Dr. Kaserman concluded that AT&T does not have market power and that it faces effective competition.

The concerns of predatory pricing, universal service, rural service pricing and premature lessening of regulation were discussed and Dr. Kaserman argued that they did not constitute a legitimate basis to delay relaxed regulation. He deemed the feared consequences as extremely unlikely and, as an interim transition policy of reduced regulation, AT&T offered a commitment to charge geographically uniform rates and to continue providing service in all areas of the state through March 1, 1990. AT&T further offered that it would not thereafter discontinue such practices unless the Commission approved. Mr. Dunn testified that proper notice to other interested parties would be given when, and if, the matter was brought before the Commission.

2. Waivers

In view of the extensive competition faced by AT&T, Mr. Dunn argued that AT&T should be granted competitive company status and further requested that specific Commission rules be waived. The waivers requested are listed in Appendix A. Among others, the requested waivers relate to annual reports, budgets, contracts, valuation of public service property, depreciation and retirement accounts, securities, transfers of property, affiliated interests, tariffs, discontinuance of service and form of bills. The company argued that in the current competitive telecommunications environment, the rules were no longer necessary to protect the consumer and that the requested waivers would relieve AT&T of the burdensome reporting and oversight obligations. The company stated that the waivers were consistent with regulatory flexibility granted in other states. At the conclusion of the hearing, the company did acknowledge that the discontinuance of service issue might better be addressed at a later time.

B. Commission Staff

The Commission staff presented testimony and exhibits from Mr. Richard Cabe, WUTC Telecommunications Regulatory Flexibility Manager.

1. Classification

Mr. Cabe concluded that AT&T's services are subject to effective competition and recommended that its petition for competitive classification should be granted with two restrictions he recommends due to certain "vestiges of market power". Staff's recommended restrictions are: (1) AT&T should be required to continue its current practice of charging rates which do not vary between routes, and (2) AT&T should be restricted in its ability to change prices faced by customers using one hour of long distance service per month relative to the prices faced by customers using ten hours of long distance service per month. The ratio of the two prices is to stay the same, the effect of which is to give the benefits of competition to the one-hour-per-month users. It was recommended that this provision remain in force until January 1, 1989.

In analyzing AT&T's competitive classification petition, Mr. Cabe analyzed each of AT&T's services described as long distance service, which he also referred to as MTS (measured toll service), WATS, 800 service, and channel service, which he also referred to as private line service. He explained that the relevant product market for MTS must include WATS, 800 service and private line service due to the ease of substitution of these services. Likewise, the relevant market for WATS must also include MTS, 800 service and private line. He concluded the relevant market for AT&T's 800 service must include MTS, WATS and private line. The private line relevant market he used included the facilities-based portions of WATS, 800 and MTS.

After identifying the relevant product markets for AT&T's services, he determined the relevant geographic markets. He defined the geographic dimension of the private line relevant market as all routes between each pair of LATAs (local access transport areas) in the state. He then examined other markets in a statewide context. Mr. Cabe explained that a prohibition of geographic deaveraging rendered the question of geographic market definition moot.

Mr. Cabe testified that there were thirty registered telecommunications carriers in Washington, and he acknowledged the existence of additional alternative carriers who have not registered. AT&T, serving approximately 70 to 80 percent of the

market, was clearly the largest, with the next largest firm described as serving less than 10 percent of the market. After identifying several measures of AT&T's market share, Mr. Cabe estimated AT&T's share at approximately 75 percent. He pointed out that a high market share alone is insufficient to establish market power; further analysis is required, particularly in the areas of growth of market share and ease of entry. Mr. Cabe stated that, "Market power is the ability to raise price without suffering significant losses in market share. If a firm is losing market share it probably does not have significant amounts of market power" (Exhibit T-40, page 27). Analyzing the present structure of the industry together with the evidence of declining market share suggests to Mr. Cabe that market power no longer exists, or is at least dissipating.

While acknowledging that some barriers to entry exist, Mr. Cabe concluded that they are not preventing entry into the interexchange industry and thus were not "significant" barriers to entry. He characterized the entry and expansion in the telecommunications industry as occurring at a rapid rate. According to Mr. Cabe, functionally equivalent or substitute services at competitive prices from numerous alternative providers were widely available in the relevant market. Upon applying the statutory tests to the above-mentioned circumstances, staff's witness concluded that AT&T meets the statutory definition of a firm subject to effective competition.

The staff also addressed concerns raised by other parties. Although staff did not believe a prohibition on route abandonment was needed, it did not oppose this condition. Staff believed that a prohibition against AT&T's placing restrictions or surcharges on services purchased for resale was not necessary in view of the increased number of alternative providers available. Commission staff opposed placing a cap on AT&T's rate of return and opposed keeping all rate relationships intact; staff considered this tantamount to full ratemaking which would not give the intended flexibility to a company found to be competitive under the Act. Mr. Cabe also pointed out that the Commission was free to reconsider AT&T's classification at any time. Staff saw no merit in WITA's request to impose a restriction on short-haul interLATA toll rates. Staff characterized the problem cited by WITA as a very limited condition which could be handled by the independent companies putting in trunk groups to serve the customers involved.

2. Waivers

Staff pointed out that AT&T is seeking waivers of statutes and rules similar to waivers granted to other competitive

telecommunications companies, with minor variations. These include statutes and rules relating to securities (chapter 80.08 RCW, WAC 480-120-036); transfers of property (chapter 80.12 RCW, WAC 480-120-036); affiliated interests (chapter 80.16 RCW, WAC 480-120-036); tariffs (RCW 80.36.100, chapter 480-80 WAC, WAC 480-120-026 and 046); contracts (RCW 80.36.150, WAC 480-120-066); and accident reporting (WAC 480-120-131). Commission staff agrees that such waivers should also be granted to AT&T. Of AT&T's waiver requests that have not been requested by other competitive telecommunications companies, staff recommends waiving budget requirements (RCW 80.04.300-330); excessive earnings to reserve fund (RCW 80.04.360); investigation of accidents (RCW 80.04.460); and leasing of utility facilities (RCW 80.04.520).

In recommending that certain waiver requests of AT&T be denied, the Commission staff pointed out that requests of other competitive companies for waiver of the disconnect rule (WAC 480-120-081) have consistently been denied by the Commission and staff recommended against granting it to AT&T. Commission staff also recommended against granting waiver requests of annual report filing (RCW 80.04.080); the valuation statute (RCW 80.04.250); and depreciation schedules (RCW 80.04.350); it was argued that these are needed in order that sufficient records be kept especially should re-regulation be necessary. Staff also recommended that AT&T be required to cooperate in providing data for the Commission's annual report to the Legislature.

C. Public Counsel

Public counsel presented testimony and exhibits from Dr. Mark N. Cooper, president of Citizens Research, a consulting firm.

1. Classification

Public counsel's witness testified that effective competition does not exist and recommended that AT&T should not be classified as a competitive company. However, in the event that AT&T is classified as competitive, public counsel recommended: (1) imposing a rate of return cap as a safeguard against excessive profits; (2) requiring that current rate relationships between services and across mileage bands be preserved; and (3) monitoring AT&T's costs, prices, demand and capacity.

In assessing the competitiveness of the telecommunications market, Dr. Cooper's testimony stressed the importance of market share and points out that market concentration is a focal point of analysis. He cited Oligopoly Theory by James W. Friedman on market concentration. He likewise made use of two measures of concentration frequently used in antitrust analysis,

the Hirschman/Herfindahl Index and the measure of the largest four firms' percentage of sales. He also used Department of Justice merger guidelines in his assessment of the Washington telecommunications market.

As a result of his analysis, Dr. Cooper concluded that AT&T remains an overwhelmingly dominant firm in a highly concentrated market. He believed the exercise of market power and price discrimination by AT&T were distinct possibilities. He testified that AT&T still has adequate market power to set prices above cost. He therefore recommended against granting the petition, but offered the above safeguards in the event that competitive classification is granted. Public counsel saw no reason for a restriction on short-haul toll rates or a restriction on "prepayment plans".

2. Waivers

Public Counsel concurred with the Commission staff's recommendations on the waiver requests.

D. US SPRINT

US Sprint presented testimony from Dr. Nina W. Cornell, an economist.

1. Classification

Dr. Cornell recommended that AT&T be classified as a competitive company subject to price boundaries and market rules in addition to the minimal requirements set forth in the Regulatory Flexibility Act. She noted that the telecommunications market had changed greatly in the last few years, but that it was still in transition from a monopolistic to a fully competitive market.

Dr. Cornell described AT&T as still being the dominant firm in the interLATA market. She concluded that AT&T retained significant market power in view of a continuing need for competitors to lease facilities or services from AT&T and a continuing existence of unequal access for some users and service offerings. Even though she felt that market power was significant, she noted its uneven "pocket" nature and deemed that it was no longer universal market power.

Dr. Cornell pointed out that the Market Trends survey was "flawed" in several respects. For example, she noted that Mr. Reed estimated AT&T's revenue market share for long distance service based only on MTS revenues. There was no attempt by Mr. Reed to estimate AT&T's revenue market share for the intrastate

WATS market. Dr. Cornell also pointed out that the 69 percent estimate of AT&T's revenue market share excluded private line and 800 service revenues. In arriving at his estimate on the likelihood of customers changing carriers, Mr. Reed included the responses of those customers who were only somewhat likely to change carriers. Confusion on the part of business respondents as to what constituted a private line service billing caused Mr. Reed to be unable to accurately determine the overall subscription to private line service. Even though many survey questions asked for very detailed information, the survey made no attempt to verify the information supplied by respondents who were relying on their memories. In view of these deficiencies, US Sprint argued that the Market Trends Survey results were unreliable. Dr. Cornell stated that the information and estimates contained in the Commission's 1987 Annual Report on the Status of the Washington Telecommunications Industry were more reliable. Market Trends estimated AT&T's revenue market share in Washington to be 69 percent, whereas the 1987 Annual Report estimated AT&T's Washington intrastate, interLATA MTS/WATS market based on minutes of use to be 82 percent. In short, US Sprint argued that AT&T still has considerable market power over certain types of customers.

As mentioned above, US Sprint recommended price boundaries and market rules be imposed on AT&T if it is granted competitive status. For each rate element, US Sprint recommended a price floor based on costs, including AT&T's own costs of providing service, current access charges and any billing charges paid to local exchange companies. Dr. Cornell argued that this would help limit price discrimination. A price ceiling could also be set to provide additional protection. She recommended the following market rules:

1. Price lists must be filed for all services.
2. Tariffs and price lists may contain no prohibitions or surcharges for resale or shared use of any interexchange service or facility.
3. Rates for the basic dial-up calling service (MTS) may not differ based on the location of the origination or termination of calls.
4. Any discounts or reduced rates offered for a service must be applied for all use or to all customers who qualify based on volume of service, type of service, time of day of use, or length of haul of call, without requiring advanced payment or a monthly fixed fee in order to be eligible for participation in a special rate plan and without setting any charges not based directly on cost for terminating or changing a service or pricing plan

they use. Any current plans that violate this rule must be eliminated within a year.

US Sprint concurred with the Commission staff's recommendation that AT&T's pricing flexibility be limited so that customers with low volumes of usage receive the same benefit of competition as high volume customers. - It also agreed with public counsel's recommendations on pricing and market rules.

2. Waivers

US Sprint expressed some concerns with several of AT&T's waiver requests, specifically: discontinuance of service (WAC 480-120-081); annual report filing (RCW 80.04.080); valuation statute (RCW 80.04.250); depreciation statute (RCW 80.04.350); budget requirements (RCW 80.04.300, .310, .320, .330 and chapter 480-140 WAC) and form of bills (WAC 480-120-106). US Sprint pointed out that its waiver request on discontinuance of service was denied by the Commission. US Sprint recommended denial of the above-mentioned waiver requests and proposed that if the waivers are granted, they should be granted also to US Sprint and other competitive telecommunications companies.

E. PNB

Pacific Northwest Bell cross-examined witnesses and participated in the hearings, but did not present any witnesses of its own. At the conclusion of the proceeding, PNB did not take a position on either the classification issue or on the issue of waivers.

F. WITA

The Washington Independent Telephone Association presented testimony and evidence from James P. Cerveney, Jr., president and general manager of Lewis River Telephone Company, Inc.

1. Classification

Mr. Cerveney testified that WITA is an association of 23 independent telecommunications companies which provide local exchange services in Washington and also participate in providing long distance service. The centers of most WITA exchanges are small towns located in rural areas. Mr. Cerveney testified that alternative providers of interexchange service having the ability to provide interLATA long distance service at competitive rates, terms and conditions do not exist in the territories served by most WITA member companies, whose customers depend on AT&T for such long distance service. WITA testified that AT&T retains, in essence, a captive customer base in these areas.

WITA argued that if the Commission finds that AT&T is subject to effective competition, three conditions should be imposed on the company: (1) that AT&T not geographically deaverage rates at least until March 1, 1990, and thereafter until the Commission decides otherwise after proper notice to interested parties and a hearing; (2) that AT&T continue providing service in all areas of the state at least until March 1, 1990, and thereafter until the Commission decides otherwise after proper notice and hearing; and (3) that AT&T not change its rates for short-haul (22 miles or less) interLATA toll calls.

2. Waivers

WITA expressed a concern over the requested waiver dealing with transfers of property, fearing that AT&T could transfer property in such a manner as to circumvent the recommended conditions.

G. Telephone Utilities of Washington and Inter-Island Telephone Company

Telephone Utilities of Washington and Inter-Island Telephone Company presented testimony from Robert A. Smith, manager of access charges and toll settlements for Pacific Telecom, Inc., which is the parent company of Telephone Utilities of Washington and Inter-Island.

1. Classification

The customers of Telephone Utilities of Washington and Inter-Island are located in rural service areas. The switches providing local exchange service have not yet been converted to equal access. Mr. Smith was fearful that AT&T will abandon service to rural areas or geographically deaverage its rates. Telephone Utilities of Washington and Inter-Island did not oppose AT&T's application if it is subject to the two basic conditions that AT&T not deaverage its rates or abandon service at least through March 1, 1990 and then only after approval of the Commission after notice and hearing. Mr. Smith argued that in such a proceeding, the independent companies should not be required to carry the burden of proof.

2. Waivers

Telephone Utilities of Washington and Inter-Island Telephone did not take positions on waiver issues, except to second WITA's position on transfers of property.

H. TRACER

TRACER cross-examined witnesses and participated in the hearings, but did not present any witnesses. At the conclusion of the hearing, TRACER did not take a position on either the classification issue or on the issue of waivers.

I. AmNet

American Network, Inc., cross-examined witnesses and participated in the hearings, but did not present a witness. AmNet did not take a position on the issues of classification or waivers.

J. United

United Telephone Company did not sponsor evidence of its own, but did cross-examine witnesses and participate in the hearings.

1. Classification

United did not oppose the petition in view of AT&T's assurances regarding abandonment of service and the geographic deaveraging of rates.

2. Waivers

United took no position on waivers.

K. CONTEL

Continental Telephone Company did not sponsor any witnesses in this proceeding but did participate in cross-examination of others' witnesses.

1. Classification

Contel also requested that AT&T be prohibited from abandoning service or deaveraging rates.

2. Waivers

Contel expressed no position on the issue of waivers.