

L. MCI

MCI Telecommunications Corporation cross-examined witnesses and participated in the hearings, but did not sponsor a witness.

1. Classification

MCI argued that AT&T has a large market share, but that AT&T's market share has substantially declined. MCI argued that granting AT&T's petition with a ban on geographic deaveraging and abandonment would serve to decrease the vestiges of market power. MCI emphasized that AT&T does not provide local franchise monopoly service and does not provide bottleneck service (access). Like US Sprint, MCI believed AT&T's market survey was fundamentally flawed.

2. Waivers

MCI did not take a position on the requested waivers.

III. COMMISSION DISCUSSION AND CONCLUSIONS

The Commission believes AT&T has demonstrated that the services it offers are subject to effective competition, and grants AT&T's petition for competitive classification subject to the conditions enumerated below. The relevant market is the Washington interLATA interexchange telecommunications market. However, the record indicates that "vestiges" or "pockets" of market power remain in certain locations. Therefore, the Commission believes some of the conditions recommended by the parties should be imposed on the company for a period of time, during which we will continue to monitor developments in this market.

The evidence submitted is sufficient to comply with the statutory requirements of RCW 80.36.320. The Washington telecommunications market has changed since divestiture. Thirty registered telecommunications carriers providing substitutable service were identified and the existence of others is known by the Commission staff.

Many telecommunications companies have entered the market, demonstrating the ease of entry. Entry barriers discussed by the various witnesses were not shown to be "significant" barriers to entry. The evidence showed that functionally equivalent or substitutable competitive services from numerous alternative carriers were widely available in the Washington telecommunications market.

AT&T's market share evidence was severely criticized. The Commission believes many of these criticisms are points well taken and accordingly ascribes less weight to the Market Trends results. However, the Commission's 1987 Annual Report and the Commission staff's analysis persuades us that the staff's estimate of AT&T's market share is reasonable. By all measures, AT&T retains great market share, but we agree with the staff that market share is but one factor we must analyze. That analysis should not be a static analysis. AT&T's market share has declined dramatically in recent years, which is significant evidence of a decline in AT&T's market power.

The Commission believes that the absence of a significant captive customer base is a major factor in its analysis of this case. AT&T does not provide "bottleneck" service, i.e. access. Competing carriers do not have to go to AT&T to buy essential local exchange connections. AT&T is not affiliated with a local exchange monopoly company.

The record indicates that as of the beginning of 1987, approximately 70 percent of all access lines had been converted to equal access or "1+" dialing. Although not yet complete, the equal access requirements of the Modification of Final Judgment (MFJ) are being met. Although we do not rely on the rebuttable presumption contained in RCW 80.36.320(3), the Legislature believed that once the technological barriers to competition were removed, regulatory flexibility might follow. PNB has surpassed the MFJ's requirement and expects to be offering equal access in all of its exchanges by 1988.

We find that AT&T's customers have reasonably available alternatives and, thus, within the meaning of the statute, AT&T does not have "a significant captive customer base". (Emphasis added). However, "vestiges" of market power remain, especially in rural areas. The Commission is mindful that in many of the industries which have recently been "deregulated", competition most often served the interest of consumers in metropolitan areas. In order to protect the broader public interest, the Commission therefore imposes the following conditions on AT&T:

- (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, (In applying this restriction, reference should be made to Mr. Cabe's testimony, Exhibit T-40, pages 38-40); and

(4) AT&T shall be restricted from placing prohibitions or surcharges for resale or shared use of any interexchange service or facility.

These conditions shall remain in effect until at least March 1, 1990, and thereafter until AT&T comes before the Commission in a proceeding with notice to interested parties and carries the burden of proving to the Commission that the conditions are no longer necessary to protect the public interest. AT&T shall also be required to cooperate in providing data for the Commission's annual report to the Legislature. The Commission's authority is based upon the Regulatory Flexibility Act. RCW 80.36.320(2) specifically authorizes the Commission to adjust the level of regulation for different companies having determined that "such different treatment is in the public interest".

The Commission rejects all other recommended conditions and rules, such as imposing a rate of return cap, requiring all current rate relationships to remain intact, imposing price boundaries, imposing restrictions on discount plans and imposing a restriction on short-haul toll rates. In our view, the evidence simply did not support these recommendations. Some are contrary to the intent of the Regulatory Flexibility Act because they would impose more, not fewer, regulatory burdens on the company. Some of the conditions are just not workable in a competitive marketplace. Finally, the concerns raised by some of the proponents of these recommended conditions are adequately addressed in the conditions that have been imposed by the Commission.

As provided by Section 4(2) of the Regulatory Flexibility Act [RCW 80.36.320(2)], competitive telecommunications companies are subject to minimal regulation, which includes the filing of price lists instead of tariffs. See WAC 480-120-027 and WAC 480-80-041. The price lists shall be filed for all services, including any intraLATA offerings of AT&T. Price lists are to be designed to effectively communicate to customers and should contain sufficient detail to insure that the Commission and AT&T's customers understand the nature of the service offered and the charges for the service. The price lists shall be effective after ten days' notice to the Commission and customers, with the advance

notice of price changes being made in the billing cycle or by separate mailing.

RCW 80.36.320(2) provides that the Commission may waive other regulatory requirements as a part of the minimal regulation required of competitive telecommunications companies. See also WAC 480-120-024. The Commission determines that competition will serve the same purposes as the following public interest regulations, which the Commission hereby waives:

- budgets RCW 80.04.300, .310, .320, and .330 and WAC chapter 480-140
- excessive earnings to reserve fund RCW 80.04.360
- investigation of accidents RCW 80.04.460
- reports of accidents WAC 480-120-131
- lease of utility facilities RCW 80.04.520
- securities RCW chapter 80.08, WAC 480-120-036 (securities portion only) and WAC chapter 480-146 (securities portion only)
- tariffs WAC chapter 480-80, and WAC 480-120-026
- tariff schedules RCW 80.36.100
- service offered WAC 480-120-046
- contract for service WAC 480-120-066
- form of bills WAC 480-120-106

The following waiver requests are denied:

- discontinuance of service WAC 480-120-081
- annual reports RCW 80.04.080

valuation of public service property	RCW 80.04.250
depreciation and retirement accounts	RCW 80.04.350
transfers of property	RCW chapter 80.12, WAC chapter 480-143, and WAC 480-120-036 (transfers of property portion)
affiliated interests	RCW chapter 80.16, WAC 480-120-036 (affiliated interests portion), and WAC chapter 480-146 (affiliated interests portion)
contracts filed with Commission	RCW 80.36.150

The discontinuance of service regulation serves as guidelines to the company and its customers and the Commission has consistently denied waiver requests of this rule. In this case, the evidence established that AT&T was not able to terminate a customer's AT&T service without also terminating local exchange service and AT&T has not yet developed disconnect rules. AT&T agreed that this issue could better be addressed at some later time. The annual report required is consistent with the type of report already required by the FCC and does not impose an extra burden on AT&T. These rules and regulations provide necessary monitoring information for the Commission and would be especially useful should reregulation become necessary.

The competitive influences of the marketplace, along with the retained regulatory controls and conditions imposed on AT&T by the Commission, should provide adequate safeguards for the public. The opinions expressed by the public in letters received into evidence were appreciated and considered by the Commission in reaching this decision. In our view, additional monitoring of AT&T is not necessary. The Commission retains statutory authority to, at any time, reclassify AT&T and/or revoke any of the granted waivers, if necessary, to protect the public interest. Also, if abuses are discovered, the Commission's complaint procedures (RCW 80.04.110) are available to injured customers. RCW 80.36.360 explicitly subjects competitive telecommunications companies to the state Consumer Protection Act.

FINDINGS OF FACT

Having discussed in detail the oral and documentary evidence and having stated findings and conclusions, the Commission

now makes the following summary of facts. Portions of the preceding detailed findings pertaining to the ultimate facts are incorporated by this reference.

1. The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate rates, rules, regulations, practices, accounts, securities and transfers of public service companies, including telecommunications companies.

2. The Regulatory Flexibility Act became effective July 28, 1985. Under this Act, the Commission is empowered, after notice and hearing, to classify a telecommunications company as competitive if it is found that the services it offers are subject to effective competition. If a company is classified as a competitive telecommunications company, it is subject to minimal regulation.

3. AT&T, the petitioner, is engaged in the business of furnishing telecommunications services within the State of Washington, and, as such, is a public service company subject to regulation by the Washington Utilities and Transportation Commission.

4. On August 29, 1986, AT&T filed with the Commission a petition for classification as a competitive telecommunications company. It further requested waivers of various statutory and regulatory provisions governing: annual reports, valuation of public service property, budgets, depreciation and retirement accounts, excessive earnings to reserve fund, investigation of accidents, reports of accidents, lease of utility facilities, securities, transfers of property, affiliated interests, tariffs, tariff schedules, contracts filed with Commission, service offered, contract for service, discontinuance of service, and form of bills (See Appendix A).

5. Following a prehearing conference and a clarification proceeding, hearings were held on March 11, 1987 and on April 6, 7, and 8, 1987, after due and proper notice to all interested parties.

6. AT&T is a telecommunications company essentially offering long distance service/MTS, WATS, 800 service and channel service/private line. The relevant market is the interLATA interexchange telecommunications market in the State of Washington. A reasonable estimate of AT&T's market share is 75 percent, but AT&T has experienced a significant market share decline in recent years. Ease of entry into the market has been demonstrated.

Functionally equivalent or substitute services are readily available in the marketplace. AT&T's services are subject to effective competition from numerous competing interexchange telecommunications carriers. AT&T's customers have reasonably available alternatives and AT&T does not have a significant captive customer base. AT&T does not provide "bottleneck" service, i.e. access.

7. Due to remaining vestiges of market power in certain locations, AT&T will be subject to certain conditions as listed in Conclusion of Law No. 3.

8. Certain waiver requests are granted as listed in Conclusion of Law No. 4.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and the parties thereto.

2. The Commission concludes that AT&T is a competitive telecommunications company pursuant to Section 4 of the Regulatory Flexibility Act (RCW 80.36.320) in that its services are subject to effective competition. Numerous alternative providers of service are making functionally equivalent or substitute services readily available in the relevant market.

3. The Commission concludes that AT&T's petition for competitive classification shall be granted subject to the following conditions, which are to remain in effect until at least March 1, 1990, as described earlier:

(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.

AT&T shall also be required to cooperate in providing data for the Commission's annual report to the Legislature.

4. The Commission waives the following statutory and regulatory provisions:

- budgets RCW 80.04.300, .310, .320, and .330 and WAC chapter 480-140
- excessive earnings to reserve fund RCW 80.04.360
- investigation of accidents RCW 80.04.460
- reports of accidents WAC 480-120-131
- lease of utility facilities RCW 80.04.520
- securities RCW chapter 80.08, WAC 480-120 036 (securities portion only) and WAC chapter 480-146 (securities portion only)
- tariffs WAC chapter 480-80, and WAC 480-120-026
- tariff schedules RCW 80.36.100
- service offered WAC 480-120-046
- contract for service WAC 480-120-066
- form of bills WAC 480-120-106

The remaining waiver requests are denied, as previously indicated.

5. AT&T shall be required to file price lists, rather than tariffs, which shall be effective after ten days' notice to the Commission and customers.

6. AT&T shall further comply on an annual basis with the minimal reports required of it as a competitive telecommunications company.

O R D E R

WHEREFORE, THE COMMISSION HEREBY ORDERS:

1. The petition of AT&T to be classified as a competitive telecommunications company is granted with the conditions as set forth in Conclusion of Law No. 3.

2. The petitioner shall file price lists rather than tariffs in the form prescribed in this order. Said price lists shall be effective after ten days' notice to the Commission and customers.

3. The waiver requests set forth in Conclusion of Law No. 4 are granted. The remaining requests are denied.

DATED at Olympia, Washington, and effective this 5th day of June, 1987.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sharon L. Nelson

SHARON L. NELSON, Chairman

Robert W. Bratton

ROBERT W. BRATTON, Commissioner

R.D. Casad

RICHARD D. CASAD, Commissioner

APPENDIX A
REQUESTED WAIVERS OF AT&T

RCW 80.04.080	(annual reports)
RCW 80.04.250	(valuation of public service property)
RCW 80.04.300	(budgets)
RCW 80.04.310	
RCW 80.04.320	
RCW 80.04.330	
RCW 80.04.350	(depreciation and retirement accounts)
RCW 80.04.360	(excessive earnings to reserve fund)
RCW 80.04.460	(investigation of accidents)
RCW 80.04.520	(lease of utility facilities)
RCW CHAPTER 80.08	(securities)
RCW CHAPTER 80.12	(transfers of property)
RCW CHAPTER 80.16	(affiliated interests)
RCW 80.36.100	(tariff schedules)
RCW 80.36.150	(contracts filed with Commission)
WAC Chapter 480-80	(tariffs)
WAC 480-120-026	(tariffs)
WAC 480-120-036	(securities, affiliated interests, transfers of property)
WAC 480-120-046	(service offered)

WAC 480-120-066	(contract for service)
WAC 480-120-081	(discontinuance of service)
WAC 480-120-131	(reports of accidents)
WAC 480-120-106	(form of bills)
WAC Chapter 480-140	(budgets)
WAC Chapter 480-143	(transfers of property)
WAC Chapter 480-146	(securities and affiliated interests)