

TAB 2

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

SANDY JUDD, and TARA HERIVEL,

Complainants,

v.

AT&T COMMUNICATION OF THE PACIFIC
NORTHWEST, INC., and T-NETIX, INC.,

Respondents.

Docket No. UT-042022

**AT&T'S RESPONSE TO BENCH
REQUEST NO. 2**

Respondent, AT&T Communication of the Pacific Northwest, Inc. ("AT&T"), hereby submits this Response to Bench Request No. 2.

Bench Request No. 2 seeks:

In paragraph 20 of its Amended Motion, AT&T claims, *inter alia*, that it was certified as a local exchange carrier (LEC) from 1996 to the present. In the Affidavit of Frances M. Gutierrez, sponsored by AT&T, Ms. Gutierrez states that AT&T was certified a LEC by the Commission in January of 1997.

- (a) Please indicate why there is a discrepancy in these two dates, and please provide the exact date of Commission certification.
- (b) Please provide a copy of the LEC certificate issued by the Commission, if the company still possesses it, and if not, please state why not. Please provide the docket number under which the Commission processed the LEC application.
- (c) In addition, please state whether and when that certificate was revoked or surrendered, and the corresponding docket number(s).

AT&T Responds:

- (a) Please indicate why there is a discrepancy in these two dates, and please provide the exact date of Commission certification.

Initially, AT&T was authorized to provide interexchange telecommunications service in Washington. In June of 1987, the Commission granted AT&T classification as a

“competitive” telecommunications company in Cause No. U-86-113. In February 1996, AT&T filed a petition seeking to amend its classification to include the provision of local exchange service, and the Commission granted the petition on January 24, 1997 in Docket No. UT-960248.

In its Amended Motion, it appears that AT&T inadvertently dated its certification back to the 1996 petition date rather than the 1997 order date. Thus, Ms. Gutierrez’s affidavit contains the correct date. AT&T apologizes for any confusion that mistake may have caused.

(b) Please provide a copy of the LEC certificate issued by the Commission, if the company still possesses it, and if not, please state why not. Please provide the docket number under which the Commission processed the LEC application.

A copy of the AT&T LEC certification is attached hereto as **Exhibit A**. The docket number containing that certification is UT-960248.

(b) In addition, please state whether and when that certificate was revoked or surrendered, and the corresponding docket number(s).

AT&T has not surrendered its certification nor has the Commission revoked it.

Respectfully submitted this 15th day of January, 2009.

**AT&T COMMUNICATIONS OF THE PACIFIC
NORTHWEST, INC.**

Letty S.D. Friesen by Doc with permission

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Exhibit A

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RECEIVED

AT&T Corp. Legal - Denver

SERVICE DATE

JAN 24 1997

JAN 27 1997

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

OV-NIT _____	PRO SER _____
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In the Matter of the Petition of

AT&T COMMUNICATIONS OF THE)
PACIFIC NORTHWEST, INC.)

DOCKET NO. UT-960248

to Amend Its Classification as a Competitive)
Telecommunications Company)

ORDER GRANTING PETITION

.....)

SUMMARY

SCOPE OF PROCEEDINGS: On February 29, 1996, AT&T Communications of the Pacific Northwest, Inc. (AT&T) filed with the Commission a petition for amendment of its classification as a competitive telecommunications company to include provision of competitive local exchange services pursuant to price lists. The petition was pursuant to RCW 80.36.320 and WAC 480-09-023.

On May 8, 1996, the Commission served a Notice of Formal Investigation and Fact-Finding (FIFF) upon interested persons, and set a May 30, 1996 deadline for the filing of written petitions to intervene, and for the filing of objections to the use of the FIFF process. Interventions were filed by United Telephone Company of the Northwest (Sprint/United), the Washington Independent Telephone Association (WITA), Toledo Telephone Co., Inc. (Toledo), and U S WEST Communications, Inc. (USWC), on May 1, 20, 20, and 30, 1996, respectively.

In its petition to intervene, USWC objected to the Commission's use of the FIFF process pursuant to WAC 480-09-520, and asked the Commission to conduct a formal adjudicative proceeding. USWC contended that the nature of the issues presented in this particular proceeding, and the dominant nature of AT&T in the industry, make this case much more fact-specific than similar petitions involving new entrants, and contended that the record can only be developed through the direct testimony and cross examination of witnesses. USWC contended that the petition should be denied because competitive classification of any local exchange company (LEC) is inappropriate. USWC identified other issues for consideration and decision, including: whether waivers sought by AT&T raise questions about its willingness to provide service; whether a pricing requirement presently imposed on AT&T should be extended to its provision of local exchange services; and whether AT&T should be required to file a tariff and pass an imputation test. On June 20, 1996, AT&T filed its answer to USWC's objections and requested that the Commission employ a FIFF process. On June 24, 1996, Commission Staff filed a response to AT&T's June 20 request, in which it supported AT&T's position.

ORDER

DOCKET NO. UT-960248

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On July 3, 1996, the Commission entered an Order Instituting Formal Investigation and Fact-Finding and Establishing Schedule (FIFF Order) for considering the AT&T petition to amend its competitive classification. The Commission addressed the legal arguments posited by USWC in its objection to the use of the FIFF process and its application for an adjudicative proceeding, and found that USWC's arguments were not persuasive. In the July 3 order, the Commission established filing dates for the submission of written comments upon the petition.

On July 9, 1996, USWC filed a response to AT&T's June 20, 1996 filing, and on July 15, 1996, USWC petitioned for reconsideration of the Commission's July 3, 1996 Order Instituting Formal Investigation and Fact-Finding. On August 16, 1996, the Commission rejected USWC's July 9 and July 15 filings as pleadings not authorized under WAC 480-09-520.

COMMISSION: The Commission grants the petition of AT&T for amendment of its classification as a competitive telecommunications company, and approves its request for the waivers delineated in Appendix A to this Order.

MEMORANDUM

I. Background

RCW 80.36.320 provides that the Commission shall classify a telecommunications company providing service in a relevant market as a competitive telecommunications company if it finds that the services the companies offer are subject to effective competition. It provides that competitive telecommunications companies shall be subject to minimal regulation. It defines "effective competition," and sets out factors the Commission shall consider in determining whether a company is competitive, as follows:

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.

The Commission classified AT&T as a competitive telecommunications company for its provision of interexchange services in 1987.¹ In the present proceeding, AT&T asks the Commission to amend its competitive classification to include the provision of competitive local exchange services in Washington.

In 1994, the Commission began authorizing competition in the local exchanges in Washington.² The Commission has granted applications for competitive classification of several qualified alternative local exchange companies (ALECs), authorizing them to offer switched intraexchange services in the state.³ AT&T is an ALEC. AT&T's petition in the present proceeding is substantially indistinguishable from the petitions of other ALECs which the Commission has granted, including a similar market analysis and a request for the same regulatory waivers.

The Commission on its own motion determined that on the face of the AT&T petition, no substantial issues of controversy were presented and invoked the provisions of WAC 480-09-520, *Formal investigation and fact-finding*. The interventions of Sprint/United, WITA, Toledo, and USWC were granted. USWC indicated in its petition to intervene that it objected to use of the FIFF process and contended that a formal adjudication was necessary to adequately develop a record. In a subsequent order, the Commission considered USWC's objections to use of the FIFF process, found them unpersuasive, concluded that a full adjudicative proceeding is not necessary to fully develop the facts relevant to disposition of the AT&T petition and the positions of the parties, and ordered that the AT&T petition be conducted using the FIFF process.

¹In re AT&T Communications of the Pacific Northwest, Inc., Cause No. 86-113, Fourth Supplemental Order (June 1987).

²The Commission has interpreted Washington statutes as allowing competition in the provision of local exchange services since 1994, as a result of a legal challenge to previous Commission interpretation. That challenge later resulted in a Supreme Court decision that the Commission does not have the power to grant monopolies or exclusive rights to a telecommunications company in a territory. In re Electric Lightwave, Inc. [In re Consolidated Cases], 123 Wash.2d 530, 869 P.2d 1045 (1994).

³See, e.g., Order Granting Petition, Docket No. UT-940403, January 11, 1995 [ELI]; Order Granting Petition, Docket No. UT-940691, February 1, 1995 [TEL-WEST]; Order Granting Petition, Docket No. UT-941204, June 30, 1995 [TCG SEATTLE]; Order Granting Petition, Docket No. UT-941561, November 5, 1996 [MFS Intelenet of Washington].

WITA, Toledo, Commission Staff and USWC separately filed their comments on the AT&T petition on July 26, 1996. AT&T and Commission Staff filed reply comments on August 16, 1996.

II. AT&T Petition for Competitive Classification

AT&T petitions, pursuant to RCW 80.36.310, that the Commission amend its competitive classification to include AT&T's provision of competitive local exchange services in Washington. The petition states that AT&T currently provides interexchange services and will begin to offer local exchange services once it has negotiated the necessary interconnection, resale, and other co-carrier agreements with USWC, GTE, and other incumbent local exchange companies and once it has completed other necessary arrangements for the provision of high quality local exchange service to Washington customers. The petition states that the relevant geographic market is the state of Washington. It states that AT&T has no market share for dedicated and switched intraexchange services, and that these markets are dominated by USWC, GTE, and other incumbent local exchange companies. It states that AT&T will serve no captive customers, and that any AT&T customer who chooses to cancel service from AT&T will be able to choose to obtain service from existing incumbent local carriers. AT&T lists USWC, GTE, Pacific Telecom, Inc., TCG Seattle, Electric Lightwave, Inc., and Tel-West Communications of Washington, L.L.C., as some of the alternative providers of the services it intends to offer.

In conjunction with its petition for competitive classification, AT&T requests that the Commission grant or extend waivers of the following regulatory requirements:

- RCW 80.04.300 Budgets to be filed by companies
- RCW 80.04.310 Commission's control over expenditures
- RCW 80.04.320 Budget rules
- RCW 80.04.330 Effect of unauthorized expenditures
- RCW 80.04.460 Investigation of accidents
- RCW 80.04.520 Approval of lease of utility facilities
- ch. 80.08 RCW Securities (except RCW 80.08.140)
- ch. 80.12 RCW Transfers of Property
- ch. 80.16 RCW Affiliated Interests
- RCW 80.36.100 Tariff schedules to be filed and open to public
- RCW 80.36.110 Tariff changes
- ch. 480-80 WAC Utilities General -- Tariffs
- WAC 480-120-026 Tariffs
- WAC 480-120-031 Accounting
- WAC 480-120-032 Accounting --Political information and political education activities
- WAC 480-120-036 Finance--Securities, affiliated interests, transfer of property

o	WAC 480-120-046	Service offered
o	WAC 480-120-066	Contract for service
o	WAC 490-120-106	Form of bills
o	WAC 480-120-131	Report of accidents
o	ch. 480-140 WAC	Commission General--Budgets
o	ch. 480-143 WAC	Transfers of Property
o	ch. 480-146 WAC	Securities and Affiliated Interests

As the basis for the request, AT&T states that competition will serve the same purposes as the Commission's regulation of AT&T. The petition states that AT&T will be filing a price list in lieu of tariff, and accordingly also seeks extension of the waiver of tariff-related regulatory requirements for AT&T interexchange services to include its provision of local exchange services.

AT&T submitted four exhibits to its petition which describe the services it proposes to offer, the facilities it will utilize, the prices for its services, and entities affiliated with AT&T and its parent corporation, AT&T Corp.

On May 2, 1996, AT&T prefiled written testimony of Todd Elliott. Mr. Elliott testifies that AT&T currently does not serve any local exchange customers. AT&T plans to provide local exchange service to residential and business customers through resale of incumbent local exchange company services, as well as through lease or resale of unbundled network facilities from other providers. AT&T does not have "bottleneck" facilities to any subscribers, and all of its services are subject to effective competition.

III. Petitions to Intervene

A. Sprint/United

Sprint/United provides services similar or identical to those described in AT&T's petition. Sprint/United's petition states that it will address certain issues that need to be further developed before AT&T can begin providing the requested service, with such issues to be developed at a later time. Sprint/United urges that its participation will not broaden the issues beyond those asserted by the AT&T petition.

B. WITA

WITA is a non-profit association whose members consist of incumbent local exchange telecommunications companies operating in the state of Washington, including Sprint/United and GTE. WITA urges that its participation will not broaden the issues beyond those asserted by the AT&T petition. Further, "WITA has no objection to the classifications of AT&T as a competitive carrier as sought in its petition." WITA's primary reasons for intervention are to urge Commission consideration of two points: (1) WITA's support for extension to other local exchange companies of the waivers granted

AT&T; and (2) Commission reservation unto itself the right to address the extent and manner in which AT&T can begin to provide service in rural markets at the time AT&T seeks to do so.

C. Toledo

Toledo is a small local exchange company serving less than 2,000 access lines in Lewis County, Washington. Toledo urges that its participation will not broaden the issues beyond those asserted by the AT&T petition. Toledo's primary reason for intervention is to urge the Commission to take into consideration that AT&T's existing interexchange facilities provide it with unique competitive opportunities; to urge the Commission to require AT&T to state the area in which it intends to operate initially as a local exchange company; and to urge the Commission to reserve to itself the authority to determine whether or not AT&T's entry into an area served by a rural telephone company should be premised upon conditions established in the federal Telecommunications Act of 1996 ("1996 Telecommunications Act" or "1996 Act").⁴

D. USWC

USWC is an incumbent local exchange company in portions of the state of Washington. Its petition to intervene states that USWC will not broaden the scope of the proceeding by its intervention. USWC objects to use of the FIFF process, arguing that because of the nature of the issues presented in this proceeding and because of the dominant nature of AT&T in the industry and its resultant market power, this case is much more fact-specific than similar petitions involving new entrants, and therefore requires a formal adjudicative proceeding in which the record can be developed through the direct testimony and cross examination of witnesses.

USWC's petition to intervene identifies several issues. USWC contends that it is not appropriate for AT&T to continue to be classified as an effectively competitive telecommunications company if it is going to be a local exchange company. It argues that all local exchange companies have a captive customer base of access customers (interexchange carriers) and of interconnecting local exchange and wireless carriers, and that those access customers have no reasonably available alternatives for access service. It argues that therefore, in accordance with the provisions of RCW 80.36.320, a local exchange company cannot be classified as competitive.

Other issues identified in USWC's petition include: whether AT&T's request for waivers indicate service limitations that are inconsistent with the public interest; whether a requirement that AT&T continue to provide its toll services at statewide averaged prices, imposed in Docket U-86-133 classifying AT&T as

⁴47 U.S.C. Section 151, *et seq.*

competitive, should be extended to AT&T's provision of local exchange services; and whether AT&T should be required to file a tariff and pass an imputation test to assure compliance with RCW 80.36.186, which prohibits a provider of noncompetitive services from granting any undue preference to itself.

IV. Comments of Parties

A. Initial Comments

1. Sprint/United

Sprint/United did not file written comments in response to the Commission's order establishing a procedural schedule.

2. WITA

WITA filed written comments which incorporate the comments in its petition to intervene.

WITA asks the Commission to consider two points. First, WITA supports AT&T's request for waiver of the specified requirements. WITA believes that, for the most part, those requirements are not appropriate subjects for Commission regulation in an increasingly competitive environment. WITA asks that regulatory forbearance granted to AT&T should be considered for other local exchange companies.

Second, WITA asks the Commission to qualify AT&T's competitive classification by virtue of Section 253(f) of the 1996 Telecommunications Act. WITA interprets this section as allowing the Commission to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company, to meet the requirements of Section 214(e)(1) of the 1996 Act for designation as an eligible telecommunications carrier for that area, before being permitted to provide such service. WITA does not presently advocate that this requirement must be met, but recommends that it would be appropriate for the Commission to reserve to itself the right as contained in the 1996 Act to address the extent and manner in which AT&T can begin to provide service in rural markets at the time AT&T seeks to do so.

Additionally, WITA concurs with USWC's position that the Commission should require AT&T to explicitly offer its access services by tariff. WITA argues that as the dominant carrier for long distance services in the state, and given the important nexus between access charges and long distance service, it is more imperative that AT&T provide its access service by tariff than that other new entrants do so.

3. Toledo

Toledo asks the Commission to consider that AT&T is in a different position than other companies that have sought and been granted entrance into the local market as competitive carriers, in that it has facilities built to every exchange in the state. This provides AT&T with a unique opportunity to provide local exchange competition in even the most rural parts of the state, using, at least in part, its interexchange network. The 1996 Act distinguishes between competition in urban areas and rural areas, by, among other things, allowing state commissions to, where appropriate, condition entry of a competitor into a rural area upon that carrier's agreeing to meet certain standards set forth in the Act. Toledo urges that in the case of AT&T, it is appropriate for the Commission to require that AT&T provide a statement of the area in which it intends to operate initially as a local exchange carrier, and for the Commission to reserve to itself the authority to determine, at a later date, whether AT&T's entry into an area served by a rural telephone company should be premised upon the conditions established in the 1996 Act.

Toledo argues that AT&T has been a very aggressive company, and cites AT&T activity in Illinois which Toledo contends indicates that AT&T's entry into rural markets will be to simply obtain the most lucrative customers, leaving the remainder to flounder in an effort to obtain service at reasonable rates. It argues that a rule of thumb in the industry is that 20% of a company's customers produce 80% of its revenue, and that if AT&T comes into a rural exchange and cream-skims the highest revenue-producing customers, the cost of service to the remaining customers in that exchange increases dramatically, which will adversely impact universal service.

4. USWC

In its July 26, 1996 comments filing, USWC asks that its position on issues raised in its petition to intervene, in its July 9, 1996 response to AT&T's request, and in its July 15, 1996 petition for reconsideration of the Commission's July 3 order, be considered as part of its comments. Although the Commission rejected the latter two filings as improper filings, it will consider the comments contained in those filings as part of USWC's comments.

a. Appropriateness of FIFF process

USWC objects to use of the FIFF process in this proceeding. It argues that because of AT&T's dominance in the long distance markets, and its resultant market power, AT&T's provision of local service presents far more significant fact and policy issues than the routine classification of an entirely new entrant that begins with no customers whatsoever. It contends that the proceeding requires a formal adjudicative process in which the record can be developed through discovery and the direct testimony and cross examination of witnesses.

USWC argues that a factual record is necessary to determine whether AT&T is competitive. It argues that in determining whether a company is competitive, the Commission is required to consider "other indicators of market power." Without a factual record upon which to make this assessment, it is impossible to conclude that AT&T does not have significant market power. It argues that AT&T's dominance in the market for interLATA, interexchange services and its brand name advantage give it extensive market power which it could use to leverage itself into a monopoly position in the intraexchange market in short order.

USWC argues that use of the FIFF process is inappropriate as a matter of the Commission's own rule, WAC 480-09-520(3). USWC argues that the rule states that where an intervenor proposes to intervene, the proceeding falls outside the scope of the rule.⁵ It argues that the Commission cannot, except upon agreement of all parties, use a formal investigation and fact finding proceeding in this case. It argues that, while it recognizes that RCW 80.36.145 allows greater latitude in the use of a formal investigation, the Commission in this instance does not act under the broad authority of the statute, but rather only under the rules that it is authorized to promulgate under the statute, and the Commission itself has chosen to narrowly circumscribe the cases in which a formal investigation and fact finding may be used.

b. "Captive customer" issues

USWC repeats here an argument that it has made in other ALEC petitions for competitive classification: so long as the Commission considers access to be a telecommunications service which must be provided under tariff, then no local exchange company can meet the RCW 80.36.320 definition of a "competitive carrier." It argues that the Commission continues to treat access as a tariffed service for incumbent LECs, and that access customers are the same for both incumbents and new entrants. It argues that all local exchange companies have a captive customer base of access customers (interexchange carriers) and of interconnecting local exchange and wireless carriers, who are customers who have no other reasonably available alternatives for access service. It argues that thus, in accordance with the provisions of RCW 80.36.320, AT&T cannot be classified as competitive.

USWC also states that it objects to the continued competitive classification of AT&T if it proposes to furnish local service exclusively or substantially by reselling USWC local exchange facilities and service. "This is because any customer considered captive to USWC when it provides service over its facilities, must be considered captive

⁵ WAC 480-09-520(3) provides, in pertinent part: "Upon the filing of a request to intervene, the commission will take objections, if any, and determine whether the proceeding qualifies for an abbreviated proceeding. A proceeding in which an intervenor proposes to participate through written submissions and data exchanges will be presumed to fall outside the scope of this rule."

to AT&T when it, the largest, most powerful telecommunications Company in the world, provides the same service over the same facilities to the same customers, and has control of those facilities so long as it provides the service."

USWC states that it has no objection to the competitive classification of AT&T's local exchange service offered to end-user customers, if it proposes to provide service via its own facilities, assuming it offers access service under a tariff.

c. Access as a tariffed service

USWC asks the Commission to determine in the context of this proceeding that access is not a service which must be tariffed. It contends that past Commission decisions suggest that the Commission does not consider access a telecommunications service for which tariffs must be filed by new entrants, even though access continues to be a tariffed service as provided by USWC and other incumbent LECs. It contends that an interpretation that access is not a service for which a tariff must be filed is consistent with the Telecommunications Act of 1996, which contemplates carrier-to-carrier agreements rather than tariffs. USWC notes that access charges to inter-exchange companies have been tariffed, but other arrangements between carriers, such as EAS, wireless, and all other Bell system company to independent LEC arrangements have not. Citing the 1996 Act and its ongoing implementation, including interconnection arbitration proceedings and pending decisions on access charge reform and interstate universal service funding, USWC argues that the old monopoly regime of high carrier access charges to subsidize local service is rapidly crumbling, and that "the Commission should declare now, in the context of this classification proceeding, that tariffs are not required for access service or other carrier-to-carrier arrangements."

It argues that this determination would address whether, as a matter of law, access customers and access services should be considered when applying the terms of RCW 80.36.320 to determine whether a company's services are subject to effective competition, and whether the company's customers have reasonably available alternatives. If the Commission were to determine that access is not a service for purposes of the statute, USWC would not then not oppose AT&T's competitive classification on the basis of the argument that no local exchange company can meet the definition of a competitive carrier.

d. Obligation to serve

USWC argues that while AT&T does not specifically request waiver of RCW 80.36.090, *Service to be furnished on demand*, it is clear from AT&T's filing that it seeks to avoid any carrier of last resort obligations in that it states that it will serve only those locations "where customer demand requires, resold services or facilities are available, and/or network facilities permit." USWC argues that the Commission must

address the issue of the extent of AT&T's common carrier obligation to provide service on demand. It argues that RCW 80.36.090 applies to all telecommunications companies equally, that the option to serve where and when it chooses is not open to an incumbent such as USWC, and that AT&T's petition raises equal protection issues to the extent the Commission allows AT&T to avoid the obligation. It asks the Commission to undertake an inquiry in this proceeding to determine whether the service limitations proposed by AT&T are consistent with the public interest and would benefit consumers.

USWC further argues that use of the FIFF process imposes significant limitations on the parties' ability to develop a factual record on the obligation to serve issue.

- e. Whether AT&T should be required to provide local exchange services at statewide averaged prices.

USWC contends that an issue that must be developed is whether a requirement that AT&T continue to provide its toll services at statewide averaged prices, imposed in Docket U-86-133 classifying AT&T as competitive, should be extended to AT&T's provision of local exchange services.

- f. Whether RCW 80.36.186 applies, and whether the Commission should require AT&T to file tariffs for its access services and pass an imputation test

USWC takes the position that there is a question in this proceeding of compliance with RCW 80.36.186, which prohibits a provider of noncompetitive services from granting any undue preference to itself with regard to access to or pricing of those noncompetitive services. It argues that access is a noncompetitive service. It urges the Commission to take steps in this proceeding to ensure that AT&T does not grant itself an undue preference in the provision of access service, including requiring AT&T to file tariffs for its access services and pass an imputation test.

5. Commission Staff

- a. Statutory standards for competitive classification

Commission Staff states that RCW 80.36.320 governs the AT&T petition to amend its classification. The statute provides that the Commission shall approve AT&T's petition if it finds that the services AT&T offers or proposes to offer are subject to effective competition. Staff reviews the criteria set out in the statute for making that determination. Staff argues that AT&T's proposed service meets the requirements of the statute, and that the Commission therefore should grant AT&T's petition.

Commission Staff identifies the relevant product market as intraexchange telecommunications services and the relevant geographic market as intraexchange service in any exchange in Washington. Staff notes that AT&T does not yet provide service to any customers in the relevant product and geographic markets; its market share in the relevant markets is zero. Staff notes the presence in the market of numerous other providers of the services AT&T proposes to offer, as described in AT&T's petition. It identifies numerous alternative providers of functionally equivalent telecommunications services in the relevant market other than AT&T.⁶ Staff argues that AT&T will not possess sufficient market share in the foreseeable future to be deemed anything other than subject to effective competition. There are no regulatory barriers to entry, and entry is occurring. Staff argues that AT&T does not have any captive customers because end users will have a choice of service provider between AT&T, other alternative local exchange companies (ALECs), and the incumbent LEC. Staff argues that AT&T has no market power, which Staff defines as the ability to raise and maintain prices above a competitive level without losing market share, because it does not have affiliations with other providers or corporations. Staff contrasts AT&T's situation with USWC, GTE, MFS, and TCG, which have affiliations with other corporations regarded favorably by capital markets.

Commission Staff argues that AT&T's petition satisfies the requirements set forth in RCW 80.36.320 and WAC 480-120-023, and therefore lays a proper basis for competitive classification. Approval of the petition will promote state policy goals for telecommunications enumerated by RCW 80.36.300.

Commission Staff supports the waivers sought by AT&T. Staff notes that the Commission currently has not been granting waiver of WAC 480-120-066 (contracts for service), although AT&T was granted waiver of that rule when it was initially classified as a competitive telecommunications company. Staff recommends granting that waiver in this instance, because the rule simply requires that typical contract forms be provided to the Commission, and AT&T will be subject to WAC 480-120-027 anyway, which requires filing of contracts with end use customers. In that case, AT&T will be on an equal footing with other competitively classified ALECs, and the Commission will still receive adequate notice of AT&T contracts.

⁶ Staff identifies the following competitors in addition to incumbent local exchange companies and recently registered competitive access providers: resellers of centrex-type services, radio communications companies (cellular providers), private systems, radio systems, and private shared telecommunications service providers.

b. Appropriateness of FIFF process

In its June 24, 1996 Response to AT&T's request for Formal Investigation and Fact-finding, Commission Staff argues that this matter should be conducted as a FIFF. It argues that USWC's petition to intervene presents no substantial issues of controversy that would require a formal adjudicative proceeding pursuant to chapter 34.05 RCW. It argues that USWC's primary reason for its objection to a FIFF is that AT&T's petition presents the issue of whether a company that provides local exchange service can be classified as competitive pursuant to RCW 80.36.320. It argues that this is a legal issue, not a factual issue. It does not require a factual record. The parties can adequately address it in written comments. It argues that there is no reason for lengthy hearings, and that lengthy hearings would not be in the public interest.

c. "Captive customer" issue

Commission Staff addresses USWC's contention that it and other interconnecting customers would be captive customers of AT&T for traffic terminating on AT&T's network. Staff maintains that USWC's reasoning is flawed because it fails to consider end-users' stake in the pricing of access services.

Staff argues that the primary concern in determining whether AT&T is subject to effective competition is the effect on end use customers. With that axiom, it is clear that USWC's concern about being captive in terminating traffic on AT&T's network is misplaced. Since end use customers are not AT&T's captives, AT&T cannot expect to hold USWC or any other connecting carrier captive. Staff asserts that AT&T's business will be to provide interconnecting access to its customers, not to limit interconnecting access.

If AT&T could exercise market power over a captive USWC, it would also be exercising market power over a captive customer base, according to Staff's reasoning. Staff contends that AT&T's end-use customers are not "captive," because there are reasonably available alternative service providers. Staff therefore concludes AT&T cannot hold captive USWC or any other connecting carrier.

Commission Staff argues there are numerous issues preventing effective competition in the local exchange market and that pending their resolution the LEC incumbents' market position is preserved. Staff cites the following prerequisites to effective local exchange competition:

- (1) central office interconnection arrangements;
- (2) connections to unbundled network elements;
- (3) seamless integration into LEC inter-office networks;
- (4) seamless integration into LEC signaling networks;
- (5) equal status in/control of, network databases;

- (6) local number portability;
- (7) reciprocal inter-carrier compensation arrangements;
- (8) equal rights to/control over number resources;
- (9) cooperative practices and procedures;
- (10) economically efficient pricing signals; and
- (11) intra-LATA equal access.

d. Obligation to serve issue

Concerning USWC's contention that the Commission should address whether AT&T seeks to avoid an obligation to serve, Commission Staff argues that RCW 80.36.090, by its terms, applies to every regulated telecommunications company, including AT&T, and that AT&T has not requested waiver of the statute.

- e. Whether AT&T should be required to provide local exchange services at statewide averaged prices.

Concerning USWC's contention that restrictions on AT&T's pricing of interexchange service imposed in Docket U-86-113 classifying AT&T as competitive should be extended to AT&T's provision of local exchange service, Commission Staff argues that the conditions were imposed on AT&T's provision of interexchange service because the Commission found that AT&T had vestiges of market power in 1987 in its provision of those services. In the present proceeding, AT&T does not have any vestiges of market power in the relevant intraexchange market, so there is no rationale for extending the U-86-113 conditions to AT&T's petition for intraexchange competitive classification in 1996. As a competitive carrier with no captive customers, providing service in markets where readily available alternatives exist, AT&T should not be restricted by any conditions on the competitive classification of its intraexchange services. No such restrictions are necessary because AT&T will be subject to effective competition, and the market will discipline AT&T's behavior.

- f. Whether RCW 80.36.186 applies

Commission Staff contends that USWC's (and WITA's) argument that the Commission should require AT&T to file tariffs for its access service and pass an imputation test to ensure that AT&T does not grant itself an undue preference in the provision of access service is unpersuasive, because AT&T is subject to effective competition. This means AT&T cannot price below cost and hope to remain in business in the long run. AT&T cannot charge itself below cost for access because it cannot make up the difference elsewhere. Therefore, there is no need for an imputation test.

g. WITA concerns

Commission Staff addressed the concerns of WITA to the extent they were developed in its petition to intervene. Staff argues that WITA's first recommendation, to classify other LECs as competitive, is not properly conceived. Incumbent LECs have had the opportunity to seek competitive classification under the statute since it became law in 1985. Incumbent LECs have market power at this time, and should not be given competitive classification without first bearing the burden of proving that they are subject to effective competition pursuant to RCW 80.36.320.

Regarding WITA's second recommendation, that the Commission preserve to itself the right under the Telecommunications Act of 1996 to address the extent and manner in which AT&T can begin to provide service in rural markets at the time AT&T seeks to do so, Commission Staff argues that there is no reason to restrict AT&T from offering service in rural areas because AT&T will be subject to effective competition throughout the state, including rural areas.

h. Toledo's concerns

Commission Staff believes its comments regarding WITA's recommendations address Toledo's interests expressed in its petition to intervene. Staff argues that competitive classification of AT&T pursuant to RCW 80.36.320 will not cause the inadvertent waiver of authority to determine at a later date whether or not AT&T's entry into an area served by a rural telephone company should be premised upon the conditions established in the 1996 Telecommunications Act.

B. Reply Comments

1. AT&T

AT&T's comments incorporate by reference AT&T's June 20, 1996 Request for Formal Investigation and Fact Finding, in which it addressed many of USWC's objections to AT&T's petition.

a. Appropriateness of FIFF process

AT&T argues that RCW 80.36.145 specifically authorizes the Commission to use a FIFF for a "competitive classification proceeding under RCW 80.36.320." It argues that the Commission has conducted every petition filed by a company seeking to provide local exchange service in competition with the incumbent local exchange companies as a FIFF. It argues that USWC has failed to identify any legal or factual basis for treating AT&T's petition any differently than the petitions filed by other competing local exchange carriers, all of which were conducted as a FIFF. Accordingly, the Commission should proceed to conduct this docket under WAC 480-09-520.

AT&T argues that there is nothing about AT&T or its petition that makes competitive classification more "fact-specific" for AT&T than for any previous new entrant. It argues that the primary nature of the issues is legal and policy, not factual. AT&T argues that there is no substance to USWC's contention that it must be able to conduct discovery in order to develop an adequate factual record. It argues that the information that USWC claims must be obtained relates to AT&T's long distance services, and is entirely unrelated to AT&T's market share in Washington local exchange markets, which indisputably is zero. It argues that USWC is merely seeking to delay this proceeding.

b. Statutory requirements

AT&T states that it concurs with Commission Staff's analysis of the issues raised in AT&T's petition. It argues that the other commenting parties ignore the requirements in RCW 80.36.320 and misconstrue the Commission's prior decisions in indistinguishable cases. It argues that it is in the same position as every other new entrant in the local exchange market, with no local exchange customers and no market share, facing incumbent LECs that offer the same or similar services at competitive rates, terms, and conditions. It argues that its petition is substantively indistinguishable from the petitions filed by other new entrants which the Commission has classified as competitive for the provision of local exchange services, including a similar market analysis and a request for the same regulatory waivers as those the Commission has granted to other new entrants.⁷ It argues that its provision of local exchange services is subject to effective competition as defined in the statute. The Commission, therefore, should grant AT&T's petition.

c. "Captive customer" issue

AT&T argues that the Commission has neither indicated nor suggested in prior orders that access is not a telecommunications service. Rather, it correctly has found that the term "customers" in RCW 80.36.320 primarily was intended to mean end user customers, not carriers, for all services provided by the petitioning company, including access service. It argues that end users have "reasonably available alternatives" open to them if a new local provider like AT&T were to fail to provide access to their chosen long distance carrier under acceptable rates, terms, and conditions -- they simply will obtain service from USWC or from another local exchange company that offers them their choice of long distance carrier. AT&T adopts Commission Staff's argument that because end use customers are not AT&T's captives, AT&T cannot expect to hold USWC (or any other connecting carrier) captive. AT&T also argues that its customers predominantly will be end-users, not other service providers, and accordingly, carriers alone cannot comprise a "significant captive customer base."

⁷AT&T specifically refers to Order Granting Petition, Docket No. UT-940403, January 11, 1995 [ELI]; and Order Granting Petition, Docket No. UT-941204 June 30, 1995 [TCG SEATTLE].

AT&T argues that the Commission repeatedly has considered and rejected USWC's argument that it is not appropriate as a matter of law to classify a local exchange company as a competitive telecommunications company so long as the Commission considers carrier access, either for toll or local rated service, to be a service that is required to be tariffed. AT&T argues that this legal issue does not require a formal adjudicative proceeding to address.

d. Access as a tariffed service

AT&T responds to USWC's comment that past Commission decisions suggest that the Commission does not consider access a telecommunications service for which tariffs must be filed, and USWC's request that the Commission declare in this proceeding that tariffs are not required of any local exchange company for access service or other carrier-to-carrier arrangements in view of the 1996 Act and its implementation. AT&T contends that USWC fundamentally mischaracterizes the Commission's past decisions and seeks a remedy that is neither appropriate nor available in this proceeding.

Responding to USWC's request that the Commission declare tariffs are not required for access service or other carrier-to-carrier arrangements in view of the 1996 Act, AT&T argues that the effect of the 1996 Act on intercarrier contractual relations is irrelevant to AT&T's competitive classification. At issue in this proceeding is whether AT&T's local exchange services are subject to effective competition, not whether USWC should be required to tariff its access services or other carrier-to-carrier arrangements.

e. Obligation to serve issue

AT&T argues that USWC's obligation-to-serve issue is a phantom issue. It argues that it has not sought waiver of RCW 80.36.090, nor has any other competitively classified local exchange competitor sought such a waiver. It argues that every competitively classified local exchange company has limited its service offerings to available facilities and customer demand because they have no other alternative short of replicating USWC's network overnight. It argues that, moreover, as a practical matter, the 1996 Act's resale and unbundling requirements will enable AT&T to serve virtually every customer in USWC's service territory that wants to obtain local service from AT&T, assuming AT&T's negotiation/arbitration with USWC results in the establishment of reasonable resale rates and prices for unbundled network elements.

f. WITA's and Toledo's concerns

Responding to WITA's comment that AT&T should be required to explicitly offer its access services by tariff, AT&T states that it intends to file a price list or service contracts for access services, and that no further requirements are necessary for AT&T or any other new entrant.

Responding to the WITA/Toledo comment that care should be taken with AT&T's petition in light of the 1996 Act and the effect that AT&T's entry into rural areas may have on universal service, AT&T comments that the Commission and the FCC are already considering universal service issues in separate proceedings, and the protections afforded rural carriers in the 1996 Act are irrelevant to AT&T's petition.

Responding to Toledo's contention that AT&T should be required to provide a statement of the area in which it intends to operate initially as a local exchange carrier, AT&T comments that like other new entrants, it is authorized to provide local exchange service on a statewide basis, and no other new entrant has been required to file such a statement. AT&T argues that the Commission will not waive any authority it has under the 1996 Act by granting AT&T's petition.

2. Commission Staff

Commission Staff responds to the issues raised in the initial comments of USWC, WITA, and Toledo. It reiterates a number of the arguments it made in its initial comments. Staff continues to recommend approval of AT&T's petition.

Responding to USWC's and WITA's comment that AT&T should be required to explicitly offer its access services by tariff in order to avoid potential violation of RCW 80.36.186, Commission Staff argues that the access service pricing by AT&T will be competitive and will be put to the market test and those charges will be disciplined by the market. Staff continues, however, that it would be premature to eliminate all limits on access rates at this point. It argues that because each interstate carrier charges uniform intrastate toll rates, there is no satisfactory competitive check on high access charges. For example, the only check on terminating access charges is the prospect that an interexchange carrier would refuse to terminate calls to customers of a local exchange provider that charges high rates. Staff therefore recommends that the Commission order AT&T to file price lists in accordance with state statutes and at rates for access service no higher than those charged by USWC, as have the other competitive local exchange carriers.

Commission Staff rejects USWC's argument that access service should be detariffed for all LECs. Staff argues that USWC's situation is factually and legally distinct from that of ALECs, in that USWC is not classified as a competitive carrier, has not sought competitive status, is the dominant local exchange carrier in Washington, and has a captive customer base. Staff argues that the FCC's treatment of AT&T in the interstate market provides a good example. AT&T was required to file tariffs because it was the dominant interexchange carrier. Its competitors were allowed to file price lists. Therefore, it follows that USWC should be required to continue to file access tariffs as long as it is the dominant player in the market.

To its previous arguments that USWC's expressed concern about being captive is inappropriate, Commission Staff adds that the Commission is in the process of addressing competitive marketing practices and captive customer issues related to marketing, in Docket No. UT-960942 (Competitive Practices rulemaking).

Commission Staff argues that Toledo's expressed concerns regarding the Commission precluding or prejudging consideration of rural and urban telephone areas are unfounded. It notes that these issues currently are being explored in Commission Docket No. UT-950724.

Finally, Commission Staff recommends that the Commission not grant AT&T's request for waiver of WAC 480-120-106 (Form of Bills). It argues that although the Commission waived this rule in AT&T's initial order for competitive status in U-86-113, the Commission has not waived the requirement for ALECs.

3. USWC

USWC's reply comments primarily address the initial comments of Commission Staff.

USWC argues that Commission Staff's discussion of the issue of captive customers fails to analyze the statutory language itself, and instead presents an analysis based on a public policy view of how Staff would like the statutory scheme to work. It argues that the eleven items which Staff contends are necessary before effective local competition can be said to exist have virtually nothing to do with the analysis required by RCW 80.36.320(1), and thus are not pertinent.

USWC argues that Commission Staff's analysis of captive customers is a static one which fails to address the 1996 Act in any meaningful way, particularly as the Act sets forth extensive requirements for resale of LEC retail services and unbundling of LEC network elements. It argues that the 1996 Act will be implemented in two or three months, and that after that it cannot reasonably be said that USWC has any captive customers if AT&T has no captive customers. It argues that the Commission should decline to grant AT&T's petition until the arbitration process under the Act is completed and a better understanding gained on how AT&T intends to provide local service. It argues that under proposed FCC rules, AT&T could demand complete unbundled elements from USWC at cost, reassemble them into local service, joint market the result with long distance, and simply give away local service, thereby creating immense market power and share. It argues that the Commission has been extremely cautious in granting USWC any meaningful pricing flexibility, and that evenhandedness requires the Commission to exercise the same regulatory caution with AT&T.

USWC comments that Commission Staff fails to address the issue of whether carrier access is a service, as contemplated in Title 80 RCW. It argues that if access is a service, a local exchange carrier would fail to meet the test for a competitive company. If access is not a service, all carriers are free of the requirement of filing access tariffs, and carrier-to-carrier arrangements will be governed by negotiated or arbitrated contracts and Commission rules.

USWC comments that Commission Staff fails to address the question of AT&T's market power. It argues that market share is not the same thing as market power, and that neither measurement is a substitute for the analysis required by RCW 80.36.320(1). It argues that Staff uses static market share as a surrogate for the entire inquiry required by the statute.

USWC comments that it is concerned about a regulatory environment in which current statutory requirements that apply to every telecommunications company in Washington are actually applied in a discriminatory way that deprives USWC of equal protection of the laws. It comments that it "is concerned that the Commission intends to indefinitely and pervasively regulate only U S WEST, requiring only it to invest, serve all customers no other carrier chooses to serve, even with almost unlimited access to U S WEST's assets, and allow powerful carriers like AT&T to avoid any responsibility." It asks the Commission to explain how USWC can expect to be treated fairly and equally with AT&T where USWC is pervasively regulated and AT&T is virtually unregulated. It accuses federal and state regulation of devaluing facilities-based carriers and disincenting investment in facilities, and states that public harm will result as the telecommunications infrastructure in Washington erodes for lack of investment.

V. Commission Discussion and Decision

RCW 80.36.320 governs competitive telecommunications company classification. Pursuant to RCW 80.36.320, the Commission will approve such petitions if it finds the services offered or proposed to be offered are subject to effective competition. Effective competition means the petitioning company's customers have reasonably available alternatives to petitioner, and the petitioning company does not have a significant captive customer base. The statute identifies various indicators of market power which the Commission is to consider in making its determination, set out at pages 2-3 of this order. WAC 480-120-023 establishes both the form and content requirements governing petitions for competitive classification.

Rules involved in this proceeding include WAC 480-09-520, and WAC 480-120-022, WAC 480-120-023, WAC 480-120-024, and WAC 480-120-025. Statutes invoked include RCW 80.36.145 and RCW 80.36.320. The ultimate issues for Commission determination are whether AT&T should be classified as a competitive telecommunications company in its provision of dedicated and switched services, and the extent to which it should be relieved of regulatory requirements to which it would otherwise be subject.

The Commission has considered all of USWC's arguments in this proceeding. We find no basis for denying AT&T's petition, or for deferring a decision on the petition, or for engaging in a full adjudication before reaching a decision.

We find that the issues relevant to AT&T's petition can be fully addressed using the FIFF process. On the substantive questions raised by USWC, we find the interpretation and analysis of both Commission Staff and AT&T to be more relevant to the issues posited by the AT&T petition, and to more closely comport to our view of legislative intent and actual experience to date of the telecommunications industry in this state. We find that AT&T has fully satisfied the requirements of RCW 80.36.320.

We have considered and will address below the concerns expressed by WITA and by Toledo,

a. Use of the FIFF process

The issues relevant to AT&T's petition can be fully addressed using the FIFF process. It is the process the Commission has utilized in all other petitions for competitive classification for new entrant ALECs. We find nothing persuasive in the arguments repeatedly made by USWC against use of the FIFF process when the new entrant is AT&T. We find no basis for treating this petition any differently than those that were filed by other competing local exchange carriers. There is nothing about AT&T or its petition that makes competitive classification more "fact-specific" for AT&T than for any previous new entrant. The disputed issues to be resolved in this petition are legal and policy issues, not factual issues. They do not require a factual record.

RCW 80.36.145 specifically authorizes the Commission to use a FIFF for a "competitive classification proceeding under RCW 80.36.320." The Commission's rule, WAC 480-09-520, does not purport to give an intervenor an absolute right to veto use of a FIFF. The Commission must exercise its judgment in determining whether a full adjudicative hearing is necessary to fully develop the facts relevant to the proceeding and the positions of the parties.

b. Statutory requirements

RCW 80.36.320 provides that the Commission shall approve AT&T's petition if it finds that the services AT&T offers or proposes to offer are subject to effective competition in the relevant market. AT&T has fully satisfied the requirements of RCW 80.36.320. Accordingly, the Commission should approve the petition.

The relevant product market is intraexchange telecommunications services and the relevant geographic market is intraexchange service in any exchange in Washington. See, In re MFS Intelenet of Washington, Inc., Docket No. UT-941561, Order Granting Petition (November 1996).

RCW 80.36.320 provides that 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 the relevant market, USWC, GTE, Pacific Telecom, Inc., and other incumbent LECs, as well as TCG Seattle, ELL, Tel-West, MFS, and other ALECs, offer the same, similar, or comparable local exchange services. There are also numerous providers of functionally equivalent telecommunications services in the relevant market, including radio communications service companies (cellular providers), private systems, radio systems, and private shared telecommunications service providers.

AT&T has no market power in the local exchange market in Washington. Its local exchange market share presently is zero. Entry into the market is occurring, and there are no barriers to entry which might give AT&T market power.⁸

We reject USWC's argument that our inquiry with regard to market power must go beyond the status quo and consider potential market power should the petition be granted. We recognize that AT&T will have an advantage over some competitors, due to its name recognition, technological resources, and internal financial resources. However, it is speculative whether those advantages will result in market power in the near future, or ever. USWC and GTE have the same advantages plus the advantage of incumbency. Several of the ALECs, while lacking name recognition, have substantial financial and technological resources. Furthermore, even if AT&T is able to attract a significant number of customers, it is speculative whether its market share will come principally at the expense of the incumbent LECs or from an expanding market for local exchange services.

There is no basis for declining to grant AT&T's petition until the arbitration process under the 1996 Telecommunications Act is completed and a better understanding gained on how AT&T intends to provide local service in Washington. That AT&T may elect to provide local exchange services by reselling USWC's services or by purchasing and reassembling unbundled elements of USWC's network, rather than by replicating USWC's network, is irrelevant to AT&T's competitive classification. The 1996 Act authorizes new entrants to follow such strategies in order to facilitate competition. Whatever AT&T's strategy, it is its market share and the availability of alternatives that will determine whether it can be deemed to be subject to effective competition. It presently has a zero market share, numerous alternatives are available, and whether and how soon it will succeed in capturing a significant market share are highly speculative questions.

⁸The only legal barriers to entry are set out in RCW 80.36.350. That statute requires that new companies register with the Commission, provide specified information, provide a performance bond if the Commission so requires, possess adequate financial resources, and possess adequate technical competency.

c. "Captive customer" issue

The Commission considered and rejected, in the ELI, TCG Seattle, and MFS Intelenet proceedings,³ USWC's argument that so long as the Commission considers access to be a service for which tariffs must be filed, no local exchange carrier can meet the definition of a competitive carrier, because all local exchange companies have a captive customer base of access customers. Notwithstanding our previous interpretation of the term "captive customers," we have again reviewed the arguments of USWC on this issue. We are not swayed in our reading of the intent of the statute.

The primary concern under RCW 80.36.320 in determining whether AT&T is subject to effective competition is the effect on end use customers. AT&T will not have any "captive customers" because end users will have a choice of service provider between AT&T, the incumbent LEC, and other ALECs. If a new local provider like AT&T were to fail to provide access to the customer's chosen long distance carrier under acceptable rates, terms, and conditions, the customer would have the alternative of obtaining service from another local exchange provider which offers the customer its choice of long distance carrier. As Commission Staff correctly argues, if AT&T were able to exercise market power over other companies purchasing access from AT&T, then AT&T would also be exercising market power over its own end use customers, which it cannot do.

USWC argues that AT&T should not be classified as competitive if it proposes to furnish local service exclusively or substantially by reselling USWC local exchange facilities and service, "because any customer considered captive to USWC when it provides service over its facilities, must be considered captive to AT&T when it . . . provides service over the same facilities to the same customers, and has control of those facilities so long as it provides the service." We reject that argument. USWC's situation is factually and legally distinct from that of ALECs such as AT&T. USWC presently has a significant captive customer base, is the dominant local exchange company in Washington, and has not sought competitive classification. To the extent AT&T furnishes local service by reselling USWC local exchange facilities and service, its local exchange customers will have a readily available alternative provider, USWC.

d. Access as a tariffed service

The Commission finds no merit in USWC's arguments that the Commission should determine that access is not a telecommunications service which must be tariffed, and should deny the AT&T petition on that basis.

³Cited in footnote 3, supra.

The Commission has neither indicated nor suggested in prior orders that access is not a telecommunications service. When applying the terms of RCW 80.36.320 to determine whether a company's services are subject to effective competition, and whether the company's customers have reasonably available alternatives, the Commission considers all services provided by the petitioner.

The Commission rejects USWC's argument that access service should be detariffed for all LECs, regardless of their circumstances. As Commission Staff argues, USWC's situation is factually and legally distinct from that of AT&T and other ALECs. USWC is not classified as a competitive carrier, has not sought competitive classification, is the dominant local exchange carrier in Washington, and has a captive customer base. The FCC's treatment of AT&T in the interstate market provides a good model. The FCC required AT&T to file tariffs because it was the dominant interexchange carrier. Its competitors were allowed to file price lists.

In the MFS proceeding, the Commission rejected USWC's argument that tariffs are not required for access service or other carrier-to-carrier arrangements in view of the 1996 Telecommunications Act. The 1996 Act requires incumbent LECs to negotiate in good faith the terms and conditions of agreements to fulfil their duties under the Act, and establishes procedures for negotiation, arbitration, and state commission approval of agreements when a carrier requests interconnection, services, or network facilities of an incumbent LEC. However, the request procedure is not established as the exclusive means for enforcing obligations of incumbents. There is nothing in the 1996 Act that prevents this Commission from requiring an incumbent LEC to file tariffs for interconnection, services, and network elements, or that prevents an interconnecting carrier from taking under tariff rather than pursuing the request process.¹⁰

e. Obligation to serve

USWC's obligation-to-serve issue is a phantom issue. RCW 80.36.090, by its terms, applies to every regulated telecommunications company. AT&T has not sought waiver of the statute. As a practical matter, new entrants will have to limit their service offerings to available facilities and customer demand until such time as they are able to replicate the incumbent LECs' networks or are able to take advantage of the 1996 Telecommunications Act's resale and unbundling provisions.

¹⁰Our interpretation of the 1996 Act is consistent with that of the Federal Communications Commission in this regard. See, In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, paragraphs 608-611, released August 8, 1996.

f. Pricing restrictions

The Commission will not extend to AT&T's provision of local exchange service, restrictions that it imposed in Docket U-86-113 on AT&T's pricing of interexchange service. In that proceeding, we required that AT&T continue to provide toll services at statewide averaged prices because we found that AT&T had vestiges of market power at that time (1987) in its provision of those services. AT&T has no market power in the intraexchange market. As a competitive carrier with no captive customers, providing service in markets where readily available alternatives exist, AT&T should not be restricted by such conditions on the competitive classification of its intraexchange services. No such restrictions are necessary because AT&T will be subject to effective competition, and the market will discipline AT&T's behavior.

g. RCW 80.36.186

We find unpersuasive USWC's and WITA's argument that the Commission should require AT&T to file tariffs for its access service and pass an imputation test to ensure that AT&T does not grant itself an undue preference in the provision of access service. AT&T is subject to effective competition. AT&T cannot price below cost and hope to remain in business for long. It cannot charge itself below cost for access because it cannot make up the difference anywhere else. Therefore, there is no need for an imputation test.

h. Equal protection

We find no merit in USWC's argument that we are applying current statutory requirements in a discriminatory way that deprives USWC of equal protection of the laws. RCW 80.36.320 sets out the requirements for competitive classification. If AT&T meets those requirements, it should be granted competitive classification. Evenhandedness does not require that we ignore statutory requirements and treat a new entrant that has no market share with the same caution with respect to pricing flexibility as we treat USWC. USWC is not classified as a competitive carrier, has not sought competitive status, is the dominant local exchange carrier in Washington, and has a captive customer base. Until the minimum prerequisites for local exchange competition have been addressed by USWC, it is unlikely that the status of either AT&T or USWC with respect to competitive classification will change.¹¹

¹¹The Commission has invited USWC to address such issues on numerous occasions, including the Notice of Inquiry on a Successor Alternative Form of Regulation, Docket No. UT-931349, December 3, 1993.

I. WITA and Toledo concerns

WITA's recommendation that the Commission classify other LECs as competitive is outside the scope of this proceeding. Incumbent LECs have had the opportunity to seek competitive classification under RCW 80.36.320 since 1985. Incumbent LECs have market power at this time, and should not be granted competitive classification without first demonstrating that they are subject to effective competition pursuant to RCW 80.36.320.

The Commission sees no need to explicitly reserve to itself the right under the 1996 Telecommunications Act to address the extent and manner in which AT&T can begin to provide service in rural markets. There appears to be no reason to restrict AT&T from offering service in rural areas, because AT&T will be subject to effective competition throughout the state. Moreover, the competitive classification of AT&T pursuant to RCW 80.36.320 will not cause the inadvertent waiver of the Commission's authority to determine at a later date whether or not AT&T's entry into an area served by a rural telephone company should be premised upon the conditions established in the 1996 Act. The issues Toledo raises currently are being explored in Commission Docket No. UT-950724, the Commission's "universal service" rulemaking.

Finally, having said that AT&T has fully and independently satisfied the requirements of RCW 80.36.320, we do not, however, approve the full list of waivers requested by AT&T. Specifically, the Commission will not grant a waiver of WAC 480-120-106, *Form of Bills*. Although the Commission waived this rule for AT&T in Docket No. U-86-113, it has not waived the requirement for any ALEC.

Based upon the entire record and the file in this matter, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Petitioner AT&T Communications of the Pacific Northwest, Inc. (AT&T) is registered as a competitive telecommunications company with the Commission, providing dedicated and switched telecommunications services.
2. On February 29, 1996, AT&T filed with the Commission a petition for amendment of its classification as a competitive telecommunications company to include provision of competitive local exchange services pursuant to price lists.
3. The relevant product market is intraexchange telecommunications services and the relevant geographic market is the state of Washington.

4. There are alternative providers of local exchange services to those AT&T proposes to offer. These include U S WEST Communications, Inc., GTE Northwest Incorporated, TCG Seattle, MFS Intelenet of Washington, Electric Lightwave, Inc., and others. All services are fully available from alternative providers in the relevant market.

5. AT&T has no captive customer base in the provision of local exchange services.

6. AT&T has zero market share in the intraexchange services market.

7. There are no regulatory barriers to entry into the relevant market, and entry is occurring.

8. The local exchange services offered by AT&T are subject to effective competition.

CONCLUSIONS OF LAW

1. AT&T's proposed local exchange service meets the requirements of RCW 80.36.320. The Commission should grant AT&T's petition.

2. AT&T should be permitted to provide local exchange services under price list.

3. AT&T requested waivers of certain laws and rules relating to telecommunications services. The laws and rules for which waivers should be granted are listed on Appendix A, attached and by this reference made a part of this Order.

ORDER

THE COMMISSION ORDERS:

1. The petition of AT&T for an order granting amendment to competitive classification is granted.

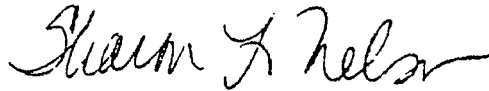
2. Waivers of the laws and rules listed in Appendix A, attached and by this reference made a part of this Order, are granted.

3. AT&T is authorized to offer services under price list, the format of which is subject to prior approval by the Commission, to be effective after 10 days notice to the Commission and to customers. In the event of a price reduction or a change in terms or conditions which do not have rate impact, personal notice to

customers is not required. Although the Commission does not have authority to waive this notice requirement, petitioner does have the option to publish notice of price reductions by a display advertisement in such newspaper or newspapers as are geographically situated so as to be circulated over the company's service area.

DATED at Olympia, Washington, and effective this 24th day of January 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-09-820(1).

APPENDIX A

RCW 80.04.300, Budgets to be filed by companies;
RCW 80.04.310, Commission's control over expenditures;
RCW 80.04.320, Budget rules;
RCW 80.04.330, Effect of unauthorized expenditure;
RCW 80.04.460, Investigation of accidents;
RCW 80.04.520, Approval of lease of utility facilities;
Chapter 80.08 RCW, Securities (except, RCW 80.08.140, State not obligated);
Chapter 80.12 RCW, Transfers of Property;
Chapter 80.16 RCW, Affiliated Interests;
RCW 80.36.100, Tariff schedules to be filed and open to public;
RCW 80.36.110, Tariff changes;
Chapter 480-80 WAC, Utilities General – Tariffs
WAC 480-120-026, Tariffs
WAC 480-120-031, Accounting
WAC 480-120-032, Accounting –Political information and political education activities
WAC 480-120-036, Finance–Securities, affiliated interests, transfer of property
WAC 480-120-046, Service offered
WAC 480-120-066, Contract for service
WAC 480-120-131, Report of accidents
Chapter 480-140 WAC, Commission General–Budgets
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