



4 In this matter, the relevant market was the Washington interexchange telecommunications market.<sup>2</sup> In summarizing the U-86-113 Order the Commission concluded that AT&T's services were subject to effective competition but imposed four conditions to remain in effect until at least March 1, 1990. The four conditions have remained in place to date, and they are:

- (1) AT&T was required to charge geographically uniform rates;
- (2) AT&T was required to continue providing service in all areas of the state;
- (3) AT&T was 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 was restricted from placing prohibitions or surcharges for resale or shared use of any interexchange service or facility.<sup>3</sup>

5 Staff estimated AT&T's share of the relevant market was approximately 75 percent in U-86-113.<sup>4</sup> The Commission agreed with the Staff economist, Richard Cabe, that market share was but one factor to be analyzed. U-86-113 was one of the first major competitive classification cases the Commission had received since RCW 80.36.320 was adopted in 1985, and divestiture of the Bell system and increased long distance competition was still in developmental stages. With these considerations in mind, the Commission said that the analysis should not be static, noting significant evidence of a decline in AT&T's market power. However, the Commission agreed with Dr. Cabe that "vestiges" of market power

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<sup>2</sup> *Id.* at 18.

<sup>3</sup> *Id.* at 4.

remained at that time, especially in rural areas. For example, equal access was not yet implemented everywhere in Washington, potentially inhibiting competition by non-dominant carriers. The Commission was mindful that competition most often served the interest of consumers in metropolitan areas, thus, in order to protect the broader public interest, the Commission imposed the described conditions on AT&T's classification as a competitive telecommunications company.<sup>5</sup>

6 In the instant case, AT&T's petition provides evidence that AT&T no longer has any vestiges of market power, that it does not have a significant captive customer base and that there are reasonably available alternatives. Since 1987, AT&T's market share has declined, and equal access has long since been completed.<sup>6</sup>

7 Attached to the petition, the FCC's May 2002 report entitled "Trends in Telephone Service" shows at Table 10.1 that AT&T's share of total national toll service revenues including intrastate, interstate and international toll revenues, was just slightly greater than 60 percent in 1987, and that it had declined to about 34% in 2000. At the state level, the report shows AT&T's market share for toll was estimated to be 43.1 percent in 2000. Dr. Cabe notes that since 1987, Qwest has now been granted the authority to provide in-region long distance services, as have other local exchange companies.

8 The declaration of Richard Cabe, attached to the petition (Dr. Cabe is the Staff member who testified in U-86-113 who is now an independent economics consultant), provides evidence that equal access has now been implemented in what were once considered to be the most unlikely exchanges in Washington to convert to equal access. Dr. Cabe testifies that he checked with Western

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<sup>4</sup> *Id.* at 11.

<sup>5</sup> *Id.* at 19.

<sup>6</sup> Declaration of Richard Cabe, Docket UT-031191, at 4-5.

Wahkiakum Telephone Company and Inland Telephone Company and found that there was a list of long distance carriers able to serve customers via equal access.<sup>7</sup> The WUTC currently registers and competitively classifies new long distance companies as competitive telecommunications companies routinely without conditions such as those imposed upon AT&T.

- 9 There may not have been enough competition in pockets of the state in 1987, and so it appears that the WUTC wanted to proceed cautiously, perhaps because it had not yet developed a consistent set of regulatory waivers to apply in competitive classification. Therefore, AT&T was not granted waiver of Chapter 80.12 RCW (Transfers of property), Chapter 80.16 RCW (Affiliated Interests), Chapter 480-143 WAC (Transfers of property), or Chapter 480-146 WAC (Securities and affiliated interests). Today competition in the toll market in Washington is well established enough to provide market discipline over AT&T. WAC 480-121-063 is used by the Commission to waive the requirements of the affiliated interests, securities and transfer of property statutes and rules, among other regulatory requirements, for competitively classified telecommunications companies. The Commission routinely approves registration and competitive classification of new telecommunications companies operating in the relevant market and grants waiver of these regulations pursuant to WAC 480-121-063. It is appropriate to treat AT&T like any competitively classified telecommunications company. Therefore it is appropriate to waive Chapter 80.12 RCW (Transfers of property), Chapter 80.16 RCW (Affiliated Interests), Chapter 480-143 WAC (Transfers of property), and Chapter 480-146 WAC (Securities and affiliated interests) consistent with WAC 480-121-063.

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<sup>7</sup> Declaration of Richard Cabe, UT-031191, at footnote 2.

## FINDINGS AND CONCLUSIONS

- 10 (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. *RCW 80.01.040; Chapter 80.04 RCW and Chapter 80.36 RCW.*
- 11 (2) AT&T is engaged in the business of providing telecommunications services within the state of Washington and is a public service company subject to the jurisdiction of the Commission under the provisions of Chapter 80.36 RCW.
- 12 (3) AT&T is a competitively classified telecommunications company pursuant to RCW 80.36.320 and Docket No. U-86-113, Fourth Supplemental Order, Commission Order Granting Petition With Conditions and Granting Waivers in Part (June 5, 1987).
- 13 (4) AT&T is subject to effective condition and the four conditions enumerated in the background of this order are no longer necessary to protect the public interest therefore the conditions on classification are removed.
- 14 (5) RCW 80.36.320 and WAC 480-121-063 provide that the Commission may grant waivers for competitively classified telecommunications companies.
- 15 (6) Consistent with WAC 480-121-063, and waivers granted to other competitively classified telecommunications companies, AT&T is granted waivers from the provisions of Chapter 80.12 RCW (Transfers of Property), Chapter 80.16 RCW (Affiliated Interests), Chapter 480-143 WAC (Transfers of property), and Chapter 480-146 WAC (Securities and affiliated interests).

- 16 (7) Pursuant to notice and the opportunity for interested persons to comment, this matter was brought before the Commission at its regularly scheduled meeting on October 22, 2003.
- 17 (8) After review of the petition filed in Docket UT-031191 by AT&T on July 23, 2003, and giving due consideration, the Commission finds that the petition is reasonable and should be granted.

## ORDER

### THE COMMISSION ORDERS:

- 18 (1) After the effective date of this Order, AT&T Communications of the Pacific Northwest, Inc., the Commission grants the petition to remove conditions on competitive classification and exemption from Chapter 80.12 RCW (Transfers of Property), Chapter 80.16 RCW (Affiliated Interests), Chapter 480-143 WAC (Transfers of property), and Chapter 480-146 WAC (Securities and affiliated interests), consistent with WAC 480-121-063.
- 19 (2) The Commission retains jurisdiction over the subject matter and AT&T Communications of the Pacific Northwest, Inc., to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective this 22<sup>nd</sup> day of October, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner