

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)	
)	DOCKET NO. UT-
AT&T COMMUNICATIONS OF THE)	
PACIFIC NORTHWEST, INC.,)	PETITION
)	
to Remove Conditions on Its Competitive)	
Classification and Waive Additional)	
Requirements)	
_____)	

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Pursuant to RCW 80.36.320 and the Commission's Fourth Supplemental Order in Docket No. U-86-113, AT&T Communications of the Pacific Northwest, Inc. ("AT&T") petitions the Commission to amend AT&T's competitive classification to remove the unique conditions the Commission imposed in 1987 and to waive additional statute and rule provisions consistent with the waivers granted to other long distance service providers. In support of its Petition, AT&T states as follows:

DISCUSSION

1. AT&T initially petitioned the Commission to classify the company as competitive pursuant to RCW 80.36.320 on August 29, 1986. The Commission granted AT&T's petition, but imposed four 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 charge 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.¹

The Commission provided that "[t]hese 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."²

2. The Commission did not expand on the public interest concerns giving rise to the conditions imposed on AT&T other than to state that while AT&T did "not have 'a significant captive customer base,' . . . 'vestiges' of market power remain, especially in rural areas," and "in many of the industries that have recently been 'deregulated', competition most often served the interest of consumers in metropolitan areas."³ Specifically with respect to the third condition, the Commission referenced the testimony of Richard Cabe on behalf of Commission Staff, who testified that customers using low volumes of toll services would be "captive" customers:

Only in part, and for a limited period. These customers are not captives except of their own failure to seek out information. Alternatives are available to these customers and information which they trust and can act on will come to them in time.⁴

¹ *In re Petition of AT&T for Classification as a Competitive Telecommunications Company*, Docket No. U-86-113, Fourth Supp. Order at 19-20 & 24 (June 5, 1987) ("U-86-113 Order").

² *Id.* at 20.

³ U-86-113 Order at 19 (emphasis added by Commission).

⁴ *In re Petition of AT&T for Classification as a Competitive Telecommunications Company*, Docket No. U-86-113, Exhibit T-40 (Testimony of Richard Cabe).

3. Circumstances have substantially changed since the Commission issued its U-86-113 Order over 15 years ago. Not only has Qwest Corporation (formerly US WEST Communications, Inc.) received Section 271 approval, but the wireless industry has tremendously expanded its reach and competitive posture with respect to interexchange service in the State, among other things.

4. Furthermore, Dr. Cabe has reviewed the current environment in which AT&T provides intrastate toll services. He has concluded that AT&T does not serve any “significant captive customer base,” and that the circumstances that gave rise to the four conditions that the Commission imposed on AT&T no longer exist, nor do current circumstances justify continued imposition of those conditions. Attached to this Petition, as **Exhibit A**, is an affidavit of Richard Cabe that describes his analysis and conclusions.

5. As Dr. Cabe states, the interLATA, intrastate toll market in Washington is fully and effectively competitive for all customers and all carriers, including AT&T. The information gap for low volume consumers regarding intrastate toll alternatives that Dr. Cabe described in his prior testimony no longer exists. Consumers in today’s market are bombarded with information about competitive alternatives from a variety of sources. Both urban and rural consumers have multiple options for obtaining long distance service, and the resulting market constraints, rather than Commission-imposed conditions, ensure that customers have ready access to competitively-priced toll services.

6. The Commission long ago reached the same conclusions in the context of competitive classification for other toll providers and has never imposed the same conditions on other companies as it imposed on AT&T. Almost five years ago, the Commission classified the

intraLATA toll services provided by GTE Northwest Incorporated, n/k/a Verizon Northwest Inc. (“Verizon”), without imposing any conditions other than the conditions specifically referenced in the statute and Commission rules.⁵ Verizon’s affiliate that provides interLATA toll services in Washington – Verizon Long Distance – is classified as a competitive telecommunications company also without any conditions.⁶

7. In early 1999, the Commission classified the intraLATA toll services provided by U S WEST Communications, Inc., n/k/a Qwest Corporation subject only to two conditions:

- (1) U S WEST shall continue charging state-wide, averaged toll rates; and
- (2) U S WEST shall continue providing intraLATA toll service in all exchanges where it currently provides intraLATA toll service and/or serving as a primary toll carrier within the state.⁷

The Commission subsequently relieved U S WEST of the obligation to be the primary toll carrier for the independent incumbent local exchange companies (“ILECs”), requiring only that U S WEST offer intraLATA service to customers who are located within the exchanges where it

⁵ *In re Investigation on the Commission’s Own Motion Whether the IntraLATA Toll Services of GTE NORTHWEST INCORPORATED Should Be Classified as a Competitive Telecommunications Service*, Docket No. UT-970767, First Supp. Order (Sept. 29, 1997).

⁶ *In re Competitive Classification on the Commission’s Own Motion of NYNEX LONG DISTANCE COMPANY*, Docket No. UT-991071, Order (Sept. 1999); see *In re Petition of Verizon Select Services, Inc., f/k/a GTE Communications Corporation d/b/a GTE Long Distance and Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance for Waiver of WAC 480-120-139*, Docket No. UT-010031, Order Granting Limited Waiver of Rules (May 9, 2001) (permitting transfer of interLATA long distances services provided by former GTE affiliate to the former Bell Atlantic affiliate without altering competitive classification status).

⁷ *In re Petition of U S WEST Communications, Inc., for Classification of IntraLATA Toll Services*, Docket No. UT-990021, Order (Jan. 27, 1999).

provides local exchange service.⁸

8. The Commission thus has concluded in the last few years that the public interest in Washington does not require the conditions that the Commission imposed on AT&T in 1987. No company other than AT&T is required to provide service in all areas of the state. Such a condition is inconsistent with a competitive market, as Commission Staff observed in the context of recommending approval of U S WEST's petition to be relieved of its primary toll carrier obligations in independent ILEC exchanges:

Staff believes that, with the implementation of 1-plus dialing parity in the independent company areas, it is no longer appropriate to designate a single toll provider such as U S WEST as the designated carrier. The Commission has found U S WEST's intraLATA toll service to be a competitive service, and one of the hallmarks of a competitive market is ease of entry and exit. Any competing carrier, including U S WEST, should be allowed to exit the market if it so desires and subject to reasonable transition requirements.⁹

9. Similarly, the Commission has not required any company other than AT&T to maintain proportionality between the rates charged to high volume and low volume users. The Commission has implicitly recognized that other than requiring the ILECs to price their competitively classified services above an imputed price floor, restrictions on the prices for services or companies subject to effective competition are fundamentally inconsistent with market-based regulation. Nor has the Commission restricted any competitively classified

⁸ *In re U S WEST's Petition to Modify the Requirements of U-85-23 to Discontinue U S WEST's Designation as the IntraLATA Toll Carrier for Independent Companies*, Docket No. UT-990976, Order Granting Petition in Part and Denying in Part (Sept. 1999).

⁹ *In re U S WEST's Petition to Modify the Requirements of U-85-23 to Discontinue U S WEST's Designation as the IntraLATA Toll Carrier for Independent Companies*, Docket No. UT-990976, Commission Staff Open Meeting Memorandum.

company (other than AT&T) that is a facilities-based provider “from placing prohibitions or surcharges for resale or shared use of any interexchange service or facility.” There is no dearth of long distance facilities in Washington – quite the opposite if recent news stories on the glut of long-haul capacity are accurate. These news stories do not even consider the explosion of wireless competitors and their respective facilities. The market, rather than the Commission, should determine the terms and conditions under which carriers obtain non-bottleneck facilities from competitively classified companies in an effectively competitive market.

10. Finally, Qwest is the only company other than AT&T that is subject to the requirement to charge geographically averaged rates. That condition on Qwest, however, stems from the Commission’s determination in Qwest’s rate case that all of Qwest’s services be priced on a geographically averaged basis.¹⁰ Particularly when Qwest bears no obligation to provide long distance service to customers outside of Qwest’s local service territory, there is no cost justification for varying its toll rates when the “costs” Qwest incurs to provide that service are uniform throughout its service territory. No other carrier – including Verizon and its affiliate – is subject to such a requirement, and no basis exists for imposing it on AT&T.

11. The Commission in its U-86-113 Order also limited the waivers of statutory and Commission rule requirements granted to AT&T. Specifically, the Commission refused to waive the securities, transfers of property, and affiliated interests statutes and rules. The Commission has subsequently adopted WAC 480.121.063 waiving these regulatory requirements for all competitively classified companies. Accordingly, this provision of the U-86-113 Order has been superceded by regulation.

¹⁰ See *WUTC v. US WEST*, Docket No. UT-950200, Fifteenth Supp. Order (April 1996).


PRAYER FOR RELIEF

WHEREFORE, AT&T requests the following relief:

- A. That the Commission issue an order modifying AT&T's classification as a competitive telecommunications company to be consistent with the competitive classifications granted to all other toll providers in Washington, specifically removing the four conditions the Commission imposed on AT&T in 1987 and waiving the same statutes and regulatory rules as the Commission has waived for all other competitively classified providers;
- B. That the Commission acknowledge that the waiver limitations for AT&T on the securities, transfers of property, and affiliated interests statutes and rules have been superceded by WAC 480.121.063; and
- C. Such other relief as the Commission deems fair, just, reasonable, and sufficient.

RESPECTFULLY SUBMITTED this 23rd day of July, 2003.

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