

March 11, 2004

Cheryl Walker
Administrative Hearings Division
Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97301-2551

Dear Ms. Walker:

Enclosed for filing please find a facsimile copy of AT&T's Petition to Remove the Conditions Placed on AT&T's Certificate of Authority. The original and five (5) copies are being sent by overnight mail today. Due to AT&T's entry plans into the local market in Oregon, AT&T requests expedited treatment of this petition.

I can be reached at (303) 298-6957 if you have any questions.

Sincerely,

Steven H. Weigler

Enclosures

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM _____

In the Matter of the Petition of AT&T)	
Communications of the Pacific	)	AT&T'S PETITION TO
Northwest, Inc. to Remove Conditions	)	REMOVE THE CONDITIONS
Placed on AT&T's Certificate of Authority	)	PLACED ON AT&T'S
to Provide Telecommunication Services in	)	CERTIFICATE OF
Oregon as a Competitive Provider	)	AUTHORITY

AT&T Communications of the Pacific Northwest, Inc. ("AT&T") petitions the Public Utility Commission of Oregon ("Commission") to remove the conditions placed on AT&T's certificate of authority in Order No. 90-182, Docket UM-348, ("UM 348 Order") issued December 14, 1990. In support of its Petition, AT&T states as follows:

DISCUSSION

1. In Docket No. UM 348, AT&T filed an application for authority to provide telecommunications services in Oregon as a competitive provider. In doing so, AT&T applied to provide the same services it was then currently offering as an interexchange utility. In part because no parties protested AT&T's application, the Commission granted it on December 14, 1990, subject to the following seven conditions which the staff had recommended:
 - a. AT&T shall continue to provide basic message toll services at statewide averaged rates;
 - b. AT&T shall retain ubiquitous serving arrangements for basic message toll services with all Oregon central offices;
 - c. AT&T shall provide service at or below the P.01 standard – i.e., one blocked call per 100 calls;

- d. AT&T shall continue to provide to the Commission pricing schedules for its services;
 - e. AT&T shall notify all customers that it is no longer regulated by the Public Utility Commission of Oregon and has been reclassified as a competitive provider;
 - f. AT&T shall provide information to be used by staff in a follow-up review report which will evaluate the impact on the public interest of the granting of this application; and
 - g. AT&T shall provide appropriate notification of price increases to customers.¹
2. In its Order granting AT&T's application, the Commission found that AT&T's services were subject to competition from about 50 competitive providers in Oregon and that AT&T held 19 percent market share of the intrastate toll market and 50 percent of the interstate toll market in Oregon.² The Commission further found that if AT&T's application were granted, AT&T's classification with the Commission would change from that of an interexchange utility to that of a competitive provider. As such, AT&T would no longer be required to price list its maximum rates for services and it would have the same regulatory status in Oregon as other certified competitive providers.³
3. In its Order, the Commission also concluded that AT&T's customers "have available to them alternatives to all the telecommunication services applicant seeks authority to provide and that the services are functionally equivalent or substitutable at comparable rates, terms and conditions. Applicant therefore

¹ *In re Application of AT&T Communications of the Pacific Northwest for a certificate of authority to provide telecommunications services in Oregon as a competitive provider*, Docket No. UM 348, Order at 3-4 (December 14, 1990) ("UM 348 Order").

² *Id.* at 2.

³ *Id.* at 2.

qualifies as a competitive telecommunication services provider and its application should be granted.”⁴

4. Also, the Commission “conclude[d] that the public interest would be served by the imposition of the conditions staff has recommended.”⁵ The Commission did not expand on the public interest concerns giving rise to the conditions placed upon AT&T’s reclassification as a competitive provider. However, in Appendix “A” of the Order (the staff report), staff noted that AT&T had submitted a letter to the Oregon Attorney General pledging to continue to provide message toll services at statewide averaged rates and that AT&T would not abandon service to customers served through equal access central offices as long as a customer’s local exchange company provides switched access at averaged rates.⁶
5. Competitive activity in the interexchange market has increased substantially since AT&T was granted competitive carrier status in 1990. According to the Commission’s report, *The Status of Competition and Regulation in the Telecommunications Industry* (“Commission Report”), issued in January 2004, there are 424 carriers authorized to provide competitive interexchange services and the Commission grants about 90-100 new applications for interexchange authority per year.⁷ The state’s largest telecommunications provider by far, Qwest, began offering in-region interexchange service to

⁴ *Id.* at 3.

⁵ *Id.* at 3.

⁶ *Id.* at Appendix “A”, at 3.

⁷ *The Status of Competition and Regulation in the Telecommunications Industry*, January 2004, Oregon Public Utility Commission, p. 2-1 (“Commission Report”).

Oregon customers in May 2003. Additionally, wireless carriers have expanded their customer bases and offered significant competition to both local and long distance carriers. Noting the historical trends and the effect local number portability will have on customers who wish to switch their landline number to a wireless account, the Commission Report states, “[C]ompetition for customers between wireline and wireless carriers is expected to increase as wireless service becomes a more attractive service option for a segment of the telecom market.”⁸

6. Pursuant to the authority granted it under the federal Telecommunications Act of 1996, AT&T has made three applications to the Commission for authority to provide switched intraexchange (local exchange) telecommunications services and non-switched private line (dedicated exchange) service as a competitive provider. Each application asked for authority to serve certain geographic areas that coincided with the serving areas of incumbent carriers. AT&T’s applications were granted and AT&T is now authorized to provide intraexchange services in all of Oregon.⁹
7. There were 200 competitive local service providers in Oregon at the end of 2003, according to the Commission Report.¹⁰ In the intraexchange market, AT&T currently serves fewer than 50,000 customer lines and per the

⁸ *Id* at Executive Summary.

⁹ *See*: Order No. 96-248 in Docket CP 138; Order No. 96-340 in Docket CP 139; Order No. 00-127 in Docket CP 687.

¹⁰ *Commission Report* at 2-1.

Commission Report, competitive carriers in total serve only “about three percent of the residential market and 26.3 percent of the business market.”¹¹

8. AT&T is not aware of any Commission rule or statute which requires competitive carriers to file price lists or meet any of the other conditions placed on AT&T in Order No. 90-1820; however, pursuant to ORS 759.020(5), in certifying a competitive carrier for a certificate to serve, the “Commission may attach reasonable conditions to such classification and may amend or revoke any such order as provided in ORS 756.568.” The Commission Report states, “[C]ompetitive carriers do not file tariffs.” AT&T understands from conversations with the OPUC staff that AT&T is the only competitive carrier in Oregon that has the obligation to file price lists for its interexchange and intraexchange services.
9. The public interest will not be harmed if the Commission grants AT&T’s petition to remove the seven conditions placed upon AT&T’s certificate in Order No. 90-1820 fourteen years ago. This is because consumers and businesses have a multitude of service provider options in the interexchange market and because of AT&T’s minimal share of the intraexchange market. In addition, the public interest is protected by the conditions placed on all competitive carriers in Commission Rules OAR 860-032-0007 and OAR 860-032-0012 which, among other things, address abandonment of service and service quality standards.

¹¹ *Commission Report* at Executive Summary.

10. On October 23, 2003, the Washington State Utilities and Transportation Commission relieved AT&T of similar conditions that were placed on its certification as a competitive provider in 1987.¹² Two of those conditions were obligations to charge “geographically uniform rates” and to “continue providing service in all areas of the state.”¹³ The granting Order is attached to this Petition as **Exhibit A**.

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 carrier to be consistent with the competitive classifications granted to all other competitive carriers in Oregon, specifically removing the seven conditions the Commission imposed on AT&T in 1990.
- B. Such other relief as the Commission deems fair, just, reasonable and sufficient.

¹² *In re Petition of AT&T Communications of the Pacific Northwest, Inc. to Remove Conditions in Its Competitive Classification and Waive Additional Requirements*, Docket No. UT-031191, Order No. 01, Commission Order Granting Petition to Remove Conditions on Competitive Classification and Waiving Securities, Transfers of Property and Affiliated Interests Statutes and Rules Superseded by WAS 480-121-063 (October 22, 2003).

¹³ *Id* at 3.

Respectfully submitted this 11th day of March, 2004.

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

By: _____

Mary B. Tribby
Steven H. Weigler
1875 Lawrence Street, Suite 1504
Denver, Colorado 80202
303-298-6957
303-298-6301 (fax)
Weigler@att.com

RECEIVED

AT&T Corp. Legal - Denver

WA2718

OCT 28 2003

SERVICE DATE

OCT 22 2003

EXHIBIT	PRO SER	J
MAIL	REG MAIL	
INSTR	FAX	
OTHER	INITIALS	

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET NO. UT-031191
)	
	)	ORDER NO. 01
)	
AT&T COMMUNICATIONS OF	)	ORDER GRANTING PETITION
THE PACIFIC NORTHWEST,	)	TO REMOVE CONDITIONS
INC.,	)	ON COMPETITIVE
	)	CLASSIFICATION AND
	)	WAIVING SECURITIES,
Petitioner,	)	TRANSFERS OF PROPERTY
	)	AND AFFILIATED INTERESTS
To Remove Conditions in Its	)	STATUTES AND RULES
Competitive Classification and	)	SUPERSEDED BY
Waive Additional Requirements	)	WAC 480-121-063.
.....)	

BACKGROUND

- 1 On July 23, 2003, AT&T Communications of the Pacific Northwest, Inc., (AT&T or the Company) filed a petition requesting that the Commission remove conditions on the competitive classification of AT&T and to grant waivers of securities, transfers of property, and affiliated interests statutes and regulatory rules superseded by WAC 480-121-063.

- 2 On October 9, 2003, the Commission issued a notice that the Petition would be considered at the Commission's October 22, 2003, Open Meeting, and that interested persons could comment at the meeting.

- 3 AT&T was classified as a competitive telecommunications company pursuant to RCW 80.36.320 in 1987.¹

¹ *In re* Petition of AT&T for Classification as a Competitive Telecommunications Company. Docket No. U-86-113, Fourth Supp. Order, Commission Order Granting Petition With Conditions and Granting Waivers in Part (June 5, 1987) ("U-86-113 Order").

4 In this matter, the relevant market was the Washington interexchange telecommunications market.² 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.³

5 Staff estimated AT&T's share of the relevant market was approximately 75 percent in U-86-113.⁴ 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

² *Id.* at 18.

³ *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.⁵

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.⁶

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

⁴ *Id.* at 11.

⁵ *Id.* at 19.

⁶ 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.⁷ 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.

⁷ 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.

O R D E R

THE COMMISSION ORDERS:

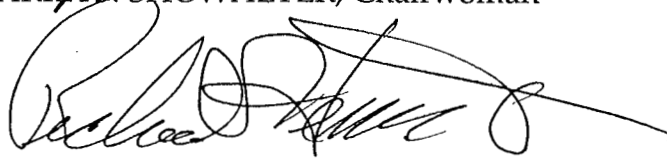
- 18 (1) After the effective date of this Order, AT&T Communications of the Pacific Northwest, Inc., the Commission grants the petition to remove conditions on competitive classification and exemption from Chapter 80.12 RCW (Transfers of Property), Chapter 80.16 RCW (Affiliated Interests), Chapter 480-143 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 22nd day of October, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



MARILYN SHOWALTER, Chairwoman



RICHARD HEMSTAD, Commissioner



PATRICK J. OSHIE, Commissioner

