

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of AT&T COMMUNICATIONS )	DOCKET NO. 870347-TI
OF THE SOUTHERN STATES for Commission )	ORDER NO. 25412
forbearance from earnings regulation and )	ISSUED: 11/26/91
waiver of Rule 25-4.495(1) and )	
25-24.480(1)(b), F.A.C., for a trial )	
period. )	
_____ )	

Pursuant to Notice, a Prehearing Conference was held on November 18, 1991, in Tallahassee, Florida, before Commissioner Michael McK. Wilson, as Prehearing Officer. Upon Commissioner Wilson's resignation, Commissioner J. Terry Deason has been assigned Prehearing Officer effective November 26, 1991.

## APPEARANCES:

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On behalf of AT&T Communications of the Southern States, Inc.

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On behalf of US Sprint Communications Company Limited Partnership.

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On behalf of MCI Telecommunications Corporation.

VICKI GORDON KAUFMAN, McWhirter, Grandoff & Reeves, 522 E. Park Avenue, Suite 200, Tallahassee, Florida 32301  
On behalf of Florida Interexchange Carriers Association.

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On behalf of the Citizens of the State of Florida.

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On behalf of the Commission Staff.

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FPSC-RECORDS/REPORTING

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 2

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32399-0862  
On behalf of the Commissioners.

### PREHEARING ORDER

#### I. BACKGROUND

By Order No. 19758, issued August 3, 1988, the Commission granted AT&T Communications of the Southern States, Inc., (ATT-C) forbearance from rate base regulation for a trial period of two years. This decision was in response to a petition filed by ATT-C and represented a major shift in the Commission's regulatory policy toward ATT-C. This two year period ended on July 10, 1990. However, by Order No. 23186 we extended the experiment through December 31, 1990, to enable us to gather a full two years' data on which to evaluate the success of the forbearance experiment. Also, on June 8, 1990, ATT-C filed a Petition for Further Relaxation of Regulation. ATT-C requested in its Petition that we permanently forbear from rate of return regulation in its regard and that we relieve ATT-C from all rules, regulations, orders or other regulatory requirements which do not apply to all other interexchange carriers (IXCs).

The Commission evaluated the success of the forbearance experiment in achieving these goals by examining the Company's market share, earnings, carrier and service alternatives, quality of service, and the extent of competition. Subsequently, the Commission issued proposed agency action Order No. 23997 on January 16, 1991, extending the forbearance experiment with certain conditions.

On February 5, 1991, the Office of Public Counsel (OPC) timely filed a petition protesting Order No. 23997. On February 6, 1991, US Sprint (Sprint) also timely filed a petition protesting Order No. 23997. Subsequently, on February 25, 1991, ATT-C filed an answer to OPC's and Sprint's protests. Upon review of the protests filed by OPC and Sprint, as well as ATT-C's answer, the Commission found that the protests raised numerous disputed issues of fact, law, and policy, and that both OPC and Sprint demonstrated that their substantial interests were affected by the decision in Order

ORDER NO. 25412  
 DOCKET NO. 870347-TI  
 PAGE 3

No. 23997. Therefore, this matter was set for hearing to be held December 4, 5 and 6, 1991, in Tallahassee, Florida.

II. TESTIMONY AND EXHIBITS

Upon insertion of a witness's testimony, exhibits appended thereto may be marked for identification. After opportunity for opposing parties to object and cross-examine, the document may be moved into the record. All other exhibits will be similarly identified and entered at the appropriate time during hearing. Exhibits shall be moved into the record by exhibit number at the conclusion of a witness's testimony.

Witnesses are reminded that on cross-examination, responses to questions calling for a yes or no answer shall be answered yes or no first, after which the witness may explain the answer.

III. ORDER OF WITNESSES

<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>DATE</u>	<u>ISSUES</u>
<u>Direct</u>			
John P. Spooner, Jr.	ATT-C	12/4/91	1, 4, 5, 6, 7
John W. Mayo, Ph.D.	ATT-C	12/4/91	2, 3
Brooks Albery	Sprint	12/5/91	All
William G. Shepherd, Ph.D.	OPC	12/5/91	All
Brenda Buchan	Staff	12/6/91	4, 5
<u>Rebuttal</u>			
John P. Spooner, Jr.	ATT-C	12/6/91	
John W. Mayo, Ph.D.	ATT-C	12/6/91	

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 4

IV. BASIC POSITIONS

ATT-C's BASIC POSITION: AT&T's basic position in this proceeding is that competition in the Florida intrastate interexchange market has produced identifiable and quantifiable benefits to intrastate long distance consumers. The reduced regulatory restrictions implemented by the Commission during the forbearance trial have allowed AT&T to be more responsive to market conditions, and the results of that trial indicate that consumers have been the beneficiaries of such reduced regulation. Moreover, since the implementation of the forbearance trial, the intrastate interexchange market has seen continued entry and expansion of AT&T's competitors. This has increased consumer choice, not only by the presence of a large number of long distance service providers, but also by the variety of services they offer. In short, the facts indicate that it is no longer necessary to regulate AT&T in a manner that is different in any material extent than the manner of regulation imposed upon its competitors. Consequently, the relief requested in AT&T's Petition for Further Relaxation of Regulation should be granted.

If the Commission should determine, after hearing evidence in this case, that granting AT&T's Petition for Further Relaxation of Regulation should be delayed, AT&T submits that, at a minimum, the Commission should adopt a form of regulation consistent with that outlined in the Commission's Notice of Proposed Agency Action set forth in Order No. 23997, dated January 16, 1991.

SPRINT: Sprint holds a certificate of public convenience and necessity from the Florida Public Service Commission ("Commission") to operate as a minor interexchange carrier ("IXC"). AT&T Communications of the Southern States ("AT&T") operates as a major IXC in Florida. This case could have a significant impact upon the way in which AT&T and other IXCs are regulated in Florida.

In Order No. 19758 in this Docket, the Commission outlined the objectives of the AT&T regulatory forbearance experiment as follows:

Preeminent among these objectives is the obligation to ensure that all interexchange customers in the State of Florida have adequate long distance telephone service at uniform, statewide average rates which are fair, just and reasonable, and to have access to new services

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 5

introduced in the interexchange market. Another important concern is the encouragement of effective competition. We are convinced that a truly competitive interexchange market can better achieve many of the Commission's objectives than can traditional regulatory alternatives such as rate base regulation or variations of that method. It is this Commission's belief that effective competition may lead to lower prices, greater efficiency and innovation, lower regulatory costs, and the introduction of more new services. All of these are objectives that we are concerned with in considering the scope of regulation of ATT-C.<sup>1</sup>

Sprint's basic position in this case is that the AT&T regulatory forbearance experiment has in many respects advanced the Commission's objectives for Florida's intrastate interexchange market. Under the present regulatory framework, consumers have enjoyed many new and innovative telecommunications services available at reasonable prices from different providers.

However, the Florida intrastate, interexchange market is not yet fully or effectively competitive. During the forbearance experiment, AT&T has demonstrated its ability to vigorously compete for business, retain market power, and maintain a high market share which exceeds that of all other IXCs combined. Many of the so-called competitors in the interexchange market resell AT&T's services, and therefore depend upon AT&T's services and features. Also, barriers to effective competition remain in the Florida intrastate, interexchange market which have prevented or delayed the transition to a fully competitive market.

In short, consumers should continue to receive the benefits realized during the forbearance experiment of new and innovative services at reasonable prices from alternative providers. The AT&T regulatory forbearance experiment has advanced many of the Commission's objectives for Florida's intrastate interexchange market without limiting AT&T's ability to compete. Indeed, AT&T has continued to dominate the intrastate, interexchange market. AT&T remains a dominant carrier capable of exercising its significant market power to the detriment of its nascent

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<sup>1</sup>Florida Public Service Commission Order No. 19758, Docket No. 870347-TI issued August 3, 1988 at 4.

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 6

competitors. The Commission should continue the current level of regulation applicable to AT&T until it is clearly demonstrated that structural impediments to full, effective and sustainable competition have been eliminated. Further reducing the current level of regulation as requested in AT&T's Petition is inappropriate and premature at this time.

MCI's BASIC POSITION: Order No. 19758 adopted a two-year experiment under which the Commission agreed to forbear from earnings regulation of AT&T. That Order contained certain safeguards designed to protect Florida consumers and to encourage development of "a sustainable competitive environment" in the long distance market. While it may be appropriate to eliminate some of the safeguards established in Order 19758, and to exempt AT&T from application of some additional rules, it is not yet appropriate to abandon all safeguards and effectively reclassify AT&T as a nondominant carrier. Although AT&T's market share may be less today than in 1988, AT&T is still the dominant player in the long distance market and still has the power to harm competition through cross-subsidization and anticompetitive pricing. This potential harm should be addressed through the continuation of some existing safeguards, or the establishment of new ones. In particular:

(i) The safeguard which requires AT&T's rates for MTS and WATS services to exceed an access-charge-based price floor is as appropriate today as it was in 1988.

(ii) Another safeguard (not contained in Order 19758) which should be imposed is a requirement that all products and services offered by AT&T to the public be tariffed, unbundled and available for meaningful resale by other interexchange carriers. This safeguard would minimize the possibility of AT&T cross-subsidizing its regulated services with its deregulated products, or cross-subsidizing from services offered in a market where AT&T retains considerable dominance to services offered in a market which is more competitive.

FIXCA: The Commission's forbearance experiment has advanced the Commission's objectives and should not be abandoned. If the Commission concludes to grant additional relaxation of its rules applicable to AT&T, FIXCA recommends that it continue AT&T's obligation to offer service under tariff, on a non-discriminatory basis, and free of implicit and explicit resale restrictions.

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 7

OPC: The Commission should deny ATT-C's petition which seeks a further relaxation of the regulatory controls: the Commission should continue to regulate ATT-C as it does now. The asymmetric regulation afforded IXC's in Florida of which ATT-C complains is occasioned by the vast asymmetry of the market. ATT-C enjoys market share more than *five times* larger than its nearest rival. In addition, ATT-C's share is larger than all competitors combined. While considerations of supply elasticity relied upon by ATT-C's witness might discount monopolist tendencies in a market where market share disparity is subtle, no such consideration should distract the Commission from the blatant advantage enjoyed by ATT-C in this market.

The Florida Legislature has cautiously authorized the Commission to relax regulation of a company such as ATT-C where the Commission finds that to do so would promote the public interest. Asymmetric regulation is specifically authorized by the Legislature<sup>2</sup>. The Commission's current regulation of ATT-C strikes an appropriate balance between and among competing interests and should not be disturbed.

The current lack of rate base regulation places the ratepaying public at considerable risk that prices charged by ATT-C are higher than they should be. To liberate ATT-C to the point that it may charge whatever prices the market will bear will subject the public to undue risk since the IXC market in Florida cannot not yet function as a free market.

STAFF'S BASIC POSITION: It appears that the forbearance experiment met a significant number of the Commission's goals for that experiment. However, staff is not prepared until the conclusion of this proceeding to recommend any specific decision on the part of the Commission.

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<sup>2</sup>Subsection 364.337(1)(a) provides (The Commission may) "prescribe different requirements for the company than are otherwise prescribed for telephone companies..."

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 8

V. ISSUES AND POSITIONS:

ISSUE 1: Has the ATT-C forbearance experiment advanced the Commission's objectives for Florida's intrastate interexchange market?

ATT-C'S POSITION: Yes. In Order No. 19758, the Commission adopted specific objectives for the regulation of AT&T and for the Florida interexchange market. The objectives included:

1. Adequate long distance service for all IXC customers in Florida;
2. State-wide average rates that are fair, just, and reasonable;
3. Access to new services introduced in the interexchange market;
4. Encouragement of effective competition leading to lower prices, greater efficiency, and innovation; and
5. Prevention of monopoly pricing.

AT&T submits that all of these objectives have been advanced through the reduced regulation implemented in the forbearance experiment. AT&T submits that these objectives can be further advanced by granting AT&T's Petition for Further Relaxation of Regulation.

SPRINT'S POSITION: The Commission's forbearance experiment has generally been successful in achieving its objectives. Equal access has helped to increase the availability of alternative providers of long distance service, new services and declining prices. Also, the Commission's oversight over AT&T during the forbearance experiment provided a valuable check on AT&T's dominance and market power, while providing an incentive for AT&T to avoid monopoly pricing and anti-competitive behavior in the Florida long distance market. Maintaining the existing regulatory structure for AT&T is necessary to foster the development of a fully competitive marketplace while barriers to effective competition remain and while AT&T remains a dominant carrier with market power.

MCI'S POSITION: No position at this time.

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 9

FIXCA'S POSITION: Yes.

OPC'S POSITION: Yes. However, "the Commission's Objectives" are not frozen from another time. It is the responsibility of the present Commission to give effect to present objectives. The current level of regulation has served the public interest well; a continuation of that level will do likewise. (Shepherd)

STAFF'S POSITION: The forbearance experiment appears to have been successful in achieving the Commission's objectives in those markets characterized by customers having considerable telecommunications expertise (primarily large organizations). In those markets where there is little expertise, the residential and small business markets, the experiment's degree of success is unclear.

ISSUE 2: What are the relevant criteria the Commission should consider in deciding whether and how to regulate ATT-C and other IXCs? For example, should the Commission consider market dominance, market power, earnings, rates, rates' effect on the level of intrastate interexchange competition, etc.?

ATT-C'S POSITION: The decisions of whether and how to regulate ATT-C should turn on whether the interexchange market in Florida is (and will be) effectively competitive. That is, if the interexchange market in Florida is characterized by significant monopoly power (either natural or contrived), then direct economic regulation is warranted. Alternatively, if the market is effectively competitive, then regulation is, at best, redundant, and in all likelihood is harmful to the public interest. The methodology to make such a determination is provided in the testimony of Dr. Mayo. Moreover, his empirical analysis, along with Mr. Spooner's, unequivocally demonstrates that the interexchange market in Florida is subject to effective competition and should therefore be subjected to de minimus and symmetric regulation by the Florida Public Service Commission.

As detailed in Dr. Mayo's testimony, the monopoly (or market) power issue is central to the determination of the appropriate degree of regulation. Accordingly, it is appropriate for the Commission to determine whether AT&T possesses significant monopoly power. If the concept of "market dominance" is taken to be the same as "monopoly power," then it is similarly appropriate (though redundant) to examine the "dominance" of AT&T. If, however, the

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 10

Commission takes market dominance to equate to absolute or relative firm size (e.g. revenue-based market shares), then it is wholly inappropriate to base regulatory policy on "dominance." The reason is that it is not possible to examine absolute and relative firm size measures by themselves to draw inferences about the monopoly power held by a firm. Similarly, because accounting-based profits may be high or low for any particular firm operating in effectively competitive markets, it is inappropriate to attempt to infer monopoly power from, or base regulatory policy upon, the level of firm earnings. Finally, because competitive markets often have firms with any array of lower to higher prices, it is not possible to determine anything about the monopoly power of any one competitor by the relationship of its price to that of its competitors.

SPRINT'S POSITION: In addition to the criteria included in Section 364.337, Florida Statutes, for determining the appropriate level of regulation of intrastate, interexchange telecommunications providers, the Commission should consider both the degree of market power that AT&T possesses and the likely effects of proposed regulation on AT&T, its competitors, and consumers. Market dominance, earnings, market share, comparative rate levels, the potential for predatory pricing, access disadvantages for AT&T's competitors which affect service quality, other barriers to effective competition, and whether AT&T's performance has been hindered by existing regulation are all relevant factors to consider in deciding whether and how to regulate AT&T and other IXCs.

MCI'S POSITION: MCI has no position at this time.

FIXCA'S POSITION: No position at this time.

OPC'S POSITION: The Commission's prime concern must be ATT-C's market share. ATT-C's share of this market is larger than all of its competitors combined. The Commission should view with extreme skepticism any interpretation which holds that ATT-C does not hold overwhelming dominance over this market. Esoteric discussions of market power, entry barriers, supply elasticity, supply-side substitutability, are best left to the Halls of academia where they enjoy an articulated market and, presumably, some constituents.

Here, the Commission should ponder the consequences of releasing from regulatory restraint a firm which is more than five times larger than its closest rival.

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 11

STAFF'S POSITION: The relevant criteria the Commission should consider in making its decision on how to regulate ATT-C are the existence of market dominance and market power, importance of market dominance and market power, number of alternative competitors, number of new services offered, geographic availability of alternative carriers' services, quality of service available from alternative carriers, and the effect on customers and other companies of telephone service rates charged by ATT-C and the alternative carriers.

ISSUE 3: Do any barriers to effective competition exist in the intrastate interexchange telecommunications market today? If so, what are these barriers and what are the implications for the way in which IXCs are regulated in Florida today?

ATT-C'S POSITION: An examination of the relevant economic criteria indicates that, absent direct and asymmetric regulation, the Florida interexchange telecommunications market is capable of supporting effective competition. That is, the plethora of firms in the Florida market, the demonstrated ease of entry, the ability of new and incumbent firms to expand output, the wide availability of the inputs necessary to serve the market, the vigorous nature of the interfirm rivalry, and so on, ensure that there are no non-governmental barriers to effective competition in the Florida interexchange (interEAEA) telecommunications market. The experience in Florida with the Forbearance Experiment and in other states with substantially relaxed regulatory policies underscore this conclusion that intrastate long distance markets are subject to effective competition. Because of this fundamental absence of barriers to effective competition, the most economically laudable policy is one of minimal and symmetric regulation toward all interexchange carriers.

SPRINT'S POSITION: As explained in detail in Mr. Albery's Direct Testimony, in addition to the competitive advantages that AT&T enjoys because of its sheer size and market presence, there are four major structural barriers to the development of full and effective competition. These are: 1) demand characteristics within the long distance industry; 2) lack of 800 number portability; 3) operator services advantages which AT&T enjoys; and 4) access advantages enjoyed by AT&T.

Because consumers are directly connected to their primary carrier, they must take affirmative steps to change carriers, which

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 12

creates a structural impediment to the development of competition in the long distance market, creates demand inertia and further entrenches AT&T's embedded customer base. When a customer switches long distance carriers, customers must pay a PIC change charge. Also, high non-recurring charges in LECs' access tariffs add considerable expense to consumers who wish to change carriers and have calling patterns which demand special access-based products. Finally, the time that consumers must spend in researching how to switch carriers and managing the change over to the new carrier is a burden of changing carriers.

Currently if an AT&T customer with one or several 800 lines wishes to change carriers, that customer is forced to change their 800 numbers as well. Many 800 numbers are "mnemonically significant" (e.g., 1-800-HOLIDAY) and therefore have considerable value to the customer. Customers are unwilling to forfeit this value upon changing their 800 service provider, or to incur the costs of changing 800 numbers on stationary, signs, trucks, advertisements, etc. The FCC has tentatively concluded that the lack of number portability substantially precludes effective competition in the 800 market,<sup>3</sup> announced its decision to mandate number portability capability in the LECs' networks by early 1993,<sup>4</sup> and ruled that 800 services cannot be bundled with other services in individual customer contractual agreements. Until 800 number portability is implemented, full and effective competition in the 800 service market will not be possible due to the difficulty to compete for AT&T's large embedded base of existing 800 customers.

AT&T's advantages in the operator services industry include its inheritance from the BOCs of a vast embedded base of joint AT&T/LEC calling cardholders, whom AT&T is in the process of converting to a proprietary calling card format which other IXCs cannot validate, and automatic routing to AT&T by the LECs of all interLATA calls dialed on a 0+ basis in non-equal access areas.

Finally, AT&T derives advantages from direct end office connections which provide faster call setup, thereby reducing AT&T's access expenses relative to its competitors and giving AT&T an advantage in service quality. Also, due to AT&T's large embedded customer base, AT&T does not face the substantial

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<sup>3</sup>Notice of Proposed Rulemaking, CC Docket No. 90-132 at 71.

<sup>4</sup>Open meeting of the FCC, August 1, 1991.

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 13

nonrecurring charges incurred by its competitors for obtaining private line access for customers. Finally, significant discounts on special access (DS3 service) facilities disproportionately favor AT&T over its competitors due to AT&T's larger size and traffic volumes.

It is premature to further reduce the level of regulation for AT&T until existing barriers to effective, sustainable competition are eliminated.

MCI'S POSITION: MCI has no position at this time.

FIXCA'S POSITION: No position at this time.

OPC'S POSITION: Yes, the principal barrier is the potential monopolistic behavior of ATT-C. Other barriers are identified by U.S. Sprint. (The question before the Commission in this docket is whether it should grant or deny ATT-C's petition to further relax regulation over ATT-C. Any consideration of how it is to regulate other carriers must comply with APA notice requirements.)

STAFF'S POSITION: Yes, barriers to effective competition do exist today such as nonubiquitous equal access, customer inertia, and lack of 800 number portability. However, the impermeability of these barriers and/or the need to exercise regulatory solutions is not known at this time.

ISSUE 4: Should ATT-C's petition for further relaxation of regulation be granted? If not, what is the appropriate form of regulation for ATT-C?

ATT-C'S POSITION: Yes. As indicated in AT&T's position on Issue 1, the results of the forbearance experiment indicate that relaxation of regulation of AT&T has produced identifiable and quantifiable benefits to Florida intrastate interexchange customers, thereby advancing the Commission's objectives for the Florida intrastate interexchange market. However, AT&T's efforts to be fully competitive in this market continue to be hampered by asymmetric regulation resulting from regulatory restrictions which are imposed upon AT&T, but not on its competitors. The removal of these inequitable restrictions is warranted, not only by the proven benefits that have resulted from the forbearance experiment, but by consideration of the factors enumerated by the Florida Legislature in Section 364.337(2), Florida Statutes, including:

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 14

1. The number of firms providing the service;
2. The geographic availability of service from other firms;
3. The quality of service available from other suppliers; and
4. The effect of telecommunications service rates charged to customers of other companies.

Removal of asymmetric regulatory restrictions on AT&T is further warranted by the economic analysis performed by Dr. Mayo. Consequently, AT&T's Petition for Further Relaxation of Regulation, which seeks nothing more than equal treatment for AT&T, should be granted.

AT&T submits that, should the Commission elect to retain certain safeguards for an additional period of time, it should, at the very least, adopt a form of regulation for AT&T that is consistent with the form set forth in Order No. 23997. Basically, that form of regulation would allow AT&T to be regulated more like its competitors by eliminating cost justification requirements for AT&T's services, by eliminating the requirement for caps and floors on AT&T's tariffs, by permitting AT&T's tariffs to be considered presumptively valid, by eliminating quarterly surveillance reports, and by waiving various Commission rules which pertain only to the "Major Interexchange Company." On the other hand, that form of regulation implements certain safeguards that the Commission may feel are necessary as a transitional mechanism. Specifically, it would require AT&T to maintain state-wide average rates for MTS services, would require AT&T to flow-through access reductions on a minutes-of-use basis, would require AT&T to follow the Uniform System of Accounts, would require AT&T to continue to serve all existing service locations unless it seeks authority from the Commission to do otherwise, would provide a mechanism for Commission review of future access-reduction flow-throughs, and would require AT&T to continue to file the Annual Report set forth in the Commission's Rule 25-4.018(2).

SPRINT'S POSITION: AT&T's petition for further relaxation of regulation is premature and should be rejected at this time. The existing form of regulation under the Commission's Forbearance experiment has helped to limit abuses of AT&T's significant market

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 15

power, without unduly constraining AT&T's ability to compete or offer new and innovative services.

At a minimum, AT&T should be required to price services above access costs and provide tariff backup and cost support, while its tariffs and special contracts should not be presumed lawful when filed. These requirements have helped, and will continue to help, limit AT&T from abusing its considerable power in providing and pricing services in a market which is not yet effectively competitive and includes barriers to entry.

MCI'S POSITION: MCI has no position at this time.

FIXCA'S POSITION: No position at this time.

OPC'S POSITION: No. The relief sought in the petition should be denied. The Commission should continue its current level of regulation.

STAFF'S POSITION: It is ATT-C's burden to present evidence establishing the appropriateness of its petition for further relaxation from regulation. Staff does not have a position at this time as to whether ATT-C has supported its request.

ISSUE 5: In light of the Commission's decision on the regulation of ATT-C, should the Commission consider any modification of the rules for other IXCs? If so, what modifications would be appropriate?

ATT-C'S POSITION: AT&T does not seek modification of the Commission's rules with respect to other IXCs. Rather, AT&T seeks to be regulated exactly like its competitors, pursuant to existing Commission rules which apply to its competitors. However, should the Commission choose to maintain existing regulatory restrictions on AT&T, AT&T submits that the Commission's rules should be modified to impose the same restrictions on all IXCs. In short, asymmetric regulation of AT&T should be eliminated.

Consistent with the above-stated position, AT&T submits that the proposals submitted by Staff Witness Buchan should not be considered only for AT&T in this docket. While AT&T submits that Staff's proposals are unnecessary and unreasonable in a competitive marketplace, if they are ultimately deemed to be appropriate by the Commission, then they should be considered in a rulemaking

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 16

proceeding applicable to all IXCs - not just AT&T - and, if found to be necessary and reasonable, should be imposed on all IXCs simultaneously.

SPRINT'S POSITION: No, the Commission should not consider modifying the rules for other IXCs in this proceeding. AT&T is regulated as a major IXC in Florida; other IXCs are regulated as minor IXCs. In its Petition, AT&T requested modification of the regulatory requirements as applied to AT&T as a major IXC. Sprint and other minor IXCs lack market power and the ability to harm competition in the Florida long distance market. Moreover, the Commission has the necessary authority and regulations in place to effectively monitor and regulate the actions of minor IXCs in the market.

MCI'S POSITION: MCI has no position at this time.

FIXCA'S POSITION: No, no modification of the rules applicable to other IXCs is appropriate at this time. As a matter of law, any modification of the rules affecting other IXCs must occur in a duly noticed, separate rulemaking docket. Further, as a matter of law and policy, any change in the regulation of AT&T should be made with the realization that such change will asymmetrically apply only to AT&T and that policy which will affect IXCs other than AT&T may not be developed in this docket.

OPC'S POSITION: The Commission should alter its regulations in this regard only to the extent suggested by Staff Witness Buchan. IXC's should be required to provide customer information as Witness Buchan advocates.

STAFF'S POSITION: The Commission should initiate rulemaking to require all IXCs to notify their presubscribed customers when they intend to increase their rates and charges.

ISSUE 6: What are the appropriate actions and implementation date(s) of the Commission's decisions?

ATT-C'S POSITION: AT&T submits that the appropriate action is for the Commission to grant AT&T's Petition for Further Relaxation of Regulation, thereby relieving AT&T of the asymmetric restrictions set forth in JPS Exhibit 1 attached to the Direct Testimony of John P. Spooner, Jr., and to implement such actions immediately.

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 17

SPRINT'S POSITION: The Commission should reject AT&T's Petition and retain the existing level of regulation for AT&T. As noted above, the AT&T regulatory forbearance experiment has generally been successful in regulating the market without unduly constraining AT&T.

MCI'S POSITION: MCI has no position at this time.

FIXCA'S POSITION: No position at this time.

OPC'S POSITION: The Commission should continue its present level of regulation/forbearance.

STAFF'S POSITION: The Commission should initiate rulemaking to codify its decision pertaining to the IXC billing requirements and any other decisions affecting the current regulation of IXCs.

ISSUE 7: Should there be a continued assessment of the status of intrastate interexchange competition in Florida? If yes, how?

ATT-C'S POSITION: AT&T submits that, should the Commission approve AT&T's Petition for Further Relaxation of Regulation, no further assessment of the status of intrastate interexchange competition in Florida is necessary. While granting that petition will result in AT&T being regulated like its competitors, the Commission will continue to have jurisdiction over AT&T's activities pursuant to Chapter 364, Florida Statutes, and AT&T's customers and competitors will continue to have the right to file complaints, if necessary, and seek Commission adjudication of such complaints.

On the other hand, if the Commission chooses, as an alternative, to adopt a scheme of regulation consistent with that set forth in Order No. 23997, AT&T submits that the asymmetric restrictions remaining in that plan should expire at the end of a two-year period, at which time AT&T should become subject to the same form of regulation that is imposed on its competitors.

SPRINT'S POSITION: Sprint generally supports periodic review of the status of intrastate interexchange competition in Florida and the structural conditions within the industry. However, until such time as AT&T is able to meet its burden of proving that a different form of regulation is appropriate and in the public interest, the current level of regulation for AT&T should remain unchanged.

ORDER NO. 25412  
 DOCKET NO. 870347-TI  
 PAGE 18

MCI'S POSITION: MCI has no position at this time.

FIXCA'S POSITION: Yes. Changes in federal regulatory policy regarding the regulation of AT&T, and the potential restructuring of interstate access charges in a manner which could disproportionately benefit AT&T (such as the expiration of the "equal charge per unit of traffic rule"), are likely to effect degree of competition in the interexchange market. These impacts will not be isolated to the interstate arena, however, and the Florida Commission should continue to monitor that segment of the interexchange market that is under its jurisdiction.

OPC'S POSITION: The Commission should continue its present regulatory oversight of ATT-C until such time as it determines that the IXC market in Florida behaves as a free market.

STAFF'S POSITION: Yes.

VI. EXHIBIT LIST

<u>WITNESS</u>	<u>PROFERRING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
John P. Spooner, Jr.	ATT-C	JPS-1	Listing of regulatory restrictions which are imposed on AT&T, but not on its competitors

ORDER NO. 25412  
 DOCKET NO. 870347-TI  
 PAGE 19

<u>WITNESS</u>	<u>PROFERRING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
John P. Spooner, Jr.	Staff	JPS-2	Responses to: Staff's 1st Interrogatories to AT&T: 1-7,9,12,15, 17-20; Staff's 2nd Set to AT&T: 25; US Sprint's 1st Interrogatories to AT&T: 1,4,5; US Sprint's 2nd Interrogatories to AT&T: 5,8,9,11; US Sprint's 3rd Interrogatories to AT&T: 2; US Sprint's 4th Interrogatories to AT&T: 1-6; OPC's 1st Interrogatories to AT&T: 1-3,5- 10,13, 21,23-25,28,29
" "	Staff	JPS-3	AT&T's Response to Staff Data Request dated July 23, 1991
" "	Staff	JPS-4	Deposition Transcript Pages: 8,11-16,19,20,26, 28,30-41,43-47, 51-72
" "	Staff	JPS-5	Late Filed Deposition Exhibits: 1-13
" "	Staff	JPS-6	FPSE Earnings Surveillance reports for ATT;6/1988 - 6/1991

ORDER NO. 25412  
 DOCKET NO. 870347-TI  
 PAGE 20

<u>WITNESS</u>	<u>PROFERRING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
John W. Mayo, Ph.D.	ATT-C	JWM-1	VITA of John Winston Mayo
" "	Staff	JWM-2	Responses to: Staff's 1st Interrogatories to AT&T: 8,10,11,13, 14,22-24; Staff's 2nd Interrogatories to AT&T: 26-30,32, 33; US Sprint's 4th Interrogatories to AT&T: 4-6; OPC's 1st Interrogatories to AT&T: 3,5,6,9, 10,12,21,28
" "	Staff	JWM-3	Deposition Transcript Pages: 7-25,27,30-49, 51-61,63,64,67, 68,70-77,79,83, 84,87,89-95,98, 101-104,114-115
" "	Staff	JWM-4	Late Filed Deposition Exhibits 1-4
Brooks Albery	Sprint	BBA-1	Exhibits BBA-1 and BBA-2 which are attached to the Direct Testimony

ORDER NO. 25412  
 DOCKET NO. 870347-TI  
 PAGE 21

<u>WITNESS</u>	<u>PROFERRING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
Brooks Albery	Staff	BBA-2	Responses to: Staff's 1st Interrogatories to US Sprint: 1-24; AT&T's 1st Interrogatories to US Sprint: 4-11,13, 17,18
" "	Sprint	BBA-3	Deposition Transcript Pages: 6-18,21-35,40,41, 44-46,48-54,61-67, 74-83,85-90,96-100, 110-126,128-131, 134-136,138,139, 142-147,151,152, 154-158,160-170, 172-175
" "	Sprint	BBA-4	Late Filed Deposition Exhibits: 1-7,9
William G. Shepherd, Ph.D.	OPC	WGS-1	Curriculum vitae
" "	OPC	WGS-2	Graph designed to show market shares of various participants in IXC market in Florida
" "	OPC	WGS-3	Listing of common causes of entry barriers
" "	Staff	WGS-4	Deposition Transcript Pages: 8-39,41,42,46, 47,50-69

ORDER NO. 25412  
 DOCKET NO. 870347-TI  
 PAGE 22

<u>WITNESS</u>	<u>PROFERRING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
William G. Shepherd, Ph.D.	Staff	WGS-5	Late Filed Deposition Exhibit 1
Brenda Buchan	Staff	BB-1	Report on Complaint activity in telecommunications 1988-1990
" "	Staff	BB-2	Most recent data from Consumer Affairs on IXC complaint activity

\*\*The following items Staff intends to stipulate into the record:

1. Report on Effective Competition, Barry N. Huddleston, FPSE, 8/1990.
2. LEC reports on originating minutes of use 6/1988 - 6/1991. These include ATT-C's minutes of use and the LECs' total minutes of use.
3. Standard NYSE Stock Reports - compiled by Standard and Poor's Corp.: AT&T Vol. 58/No. 38/Sec. 26 - April 3, 1991; ATC Tele. Vol. \_\_\_\_\_ - April 3, 1991.
4. Standard OTC Stock Reports - compiled by Standard and Poor's Corp.: MCI Comm. Vol. 57/No. 38/Sec. 26 - April 3, 1991; ATC Tele. Vol. \_\_\_\_\_, - April 3, 1991.
5. MCI's Responses to Staff's First Set of Interrogatories.
6. MCI's Response to Staff's Data Request dated July 23, 1991.

(See also Pending Motions.)

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 23

VII. STIPULATIONS:

Staff is not aware of any issues that have been stipulated at this time.

VIII. PENDING MOTIONS:

There are several pending discovery motions at this time that the parties have indicated they will be able to work out.

US Sprint has filed a Motion for Official Recognition by the Commission of the following items:

1. Effective Competition, by Barry N. Huddleston, Economic Analyst, Division of Research, Florida Public Service Commission, August 1990.
2. Status of Competition in the Telecommunications Industry, Florida Public Service Commission, December 1, 1989.
3. Competition in Telecommunications in Florida: A Report to the Florida Legislature, September 26, 1989.
4. Notice of Proposed Rulemaking, Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, released on May 14, 1991.
5. Report and Order, Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, released September 16, 1991.
6. Order and Further Notice of Proposed Rulemaking, MTS and WATS Market Structure Transport Rate Structure and Pricing, CC Docket Nos. 78-72 and 91-213, August 1, 1991.
7. Comments of the Florida Public Service Commission, MTS and WATS Market Structure, CC Docket No. 78-72, May 22, 1991.

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 24

8. Order, Petition of AT&T Communications of New England, Inc. Request for Approval to be Reclassified as a "Nondominant" Telecommunications Carrier in the InterLATA and IntraLATA Telecommunications Markets in Massachusetts, Docket No. 90-133, Massachusetts Department of Public Utilities, January 2, 1991.
9. Long Distance Market Shares: Second Quarter, 1991, Industry Analysis Division, Federal Communications Commission, September 24, 1991.

IX. RULINGS:

There have been no rulings at this time.

X. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION:

In the event it becomes necessary to handle confidential information, the following procedure will be followed:

1. The Party utilizing the confidential material during cross examination shall provide copies to the Commissioners and the Court Reporter in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material shall be provided a copy in the same fashion as provided to the Commissioners subject to execution of any appropriate protective agreement with the owner of the material.
2. Counsel and witnesses should state when a question or answer contains confidential information.
3. Counsel and witnesses should make a reasonable attempt to avoid verbalizing confidential information and, if possible, should make only indirect reference to the confidential information.
4. Confidential information should be presented by written exhibit when reasonably convenient to do so.
5. At the conclusion of that portion of the hearing that involves confidential information, all copies of

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 25

confidential exhibits shall be returned to the owner of the information. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

If it is necessary to discuss confidential information during the hearing the following procedure shall be utilized.

After a ruling has been made assigning confidential status to material to be used or admitted into evidence, it is suggested that the presiding Commissioner read into the record a statement such as the following:

The testimony and evidence we are about to receive is proprietary confidential business information and shall be kept confidential pursuant to Section 364.183, Florida Statutes. The testimony and evidence shall be received by the Commissioners in executive session with only the following persons present:

- a) The Commissioners
- b) The Counsel for the Commissioners
- c) The Public Service Commission staff and staff counsel
- d) Representatives from the office of public counsel and the court reporter
- e) Counsel for the parties
- f) The necessary witnesses for the parties
- g) Counsel for all intervenors and all necessary witnesses for the intervenors.

All other persons must leave the hearing room at this time. I will be cutting off the telephone ties to the testimony presented in this room. The doors to this chamber are to be locked to the outside. No one is to enter or leave this room without the consent of the chairman.

The transcript of this portion of the hearing and the discussion related thereto shall be prepared and filed under seal, to be opened only by order of this Commission. The transcript is and shall be non-public record exempt from Section 119.07(1), Florida Statutes. Only the attorneys for the participating parties, Public Counsel, the Commission staff and the Commissioners shall receive a copy of the sealed transcript.

ORDER NO. 25412  
DOCKET NO. 870347-TI  
PAGE 26

(AFTER THE ROOM HAS BEEN CLOSED)

Everyone remaining in this room is instructed that the testimony and evidence that is about to be received is proprietary confidential business information, which shall be kept confidential. No one is to reveal the contents or substance of this testimony or evidence to anyone not present in this room at this time. The court reporter shall now record the names and affiliations of all persons present in the hearing room at this time.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 26th day of NOVEMBER, 1991.

  
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J. Terry Deason, Commissioner  
and Prehearing Officer

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