

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of AT&T) DOCKET NO. 870347-TI
COMMUNICATIONS OF THE SOUTHERN) ORDER NO. PSC-92-0572-FOF-TI
STATES, INC. for Commission) ISSUED: 06/25/92
forbearance from earnings)
regulation and waiver of Rule)
25-24.495(1) and)
25-24.480(1)(b), F.A.C., for a)
trial period.)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY

APPEARANCES:

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PRENTICE P. PRUITT, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL 32399-0863, on behalf of the Commissioners.

ORDER DENYING AT&T COMMUNICATIONS OF
THE SOUTHERN STATES, INC.'S PETITION FOR FURTHER
RELAXATION AND ESTABLISHING TERMS OF CONTINUED OVERSIGHT

BY THE COMMISSION:

I. BACKGROUND

As part of divestiture, it was decreed that AT&T Communications of the Southern States, Inc. (ATT-C or the Company) would become a separate entity from the Bell System. Upon certification by the Florida Public Service Commission (Commission), December 17, 1983, the Commission, by Order No. 12788, deemed ATT-C the dominant carrier and determined that ATT-C was to be subjected to rate of return regulation. Because a rate base had not been established for ATT-C, rates were set at the level then in existence for Southern Bell. In addition, ATT-C was subject to the same regulatory rules as the local exchange companies (LECs).

On May 24, 1985, ATT-C filed a request for a waiver of certain tariff requirements that were not being imposed on the other interexchange companies. The Commission, by Order No. 16180, granted a portion of the requests and allowed ATT-C tariff flexibility to change MTS and WATS rates within bands. The caps of the bands were the existing rates and the floors were to be access charges, including the charges for billing and collection.

On July 27, 1988, in response to a petition filed by ATT-C, the Commission granted ATT-C forbearance from traditional rate base regulation for a trial period of two years. This decision, by Order No. 19758, issued August 1988, signaled a major shift in the Commission's regulatory policy toward ATT-C. The Commission in that Order stated: "we are convinced that a truly competitive interexchange market can better achieve many of the Commission's objectives than can traditional alternatives such as rate base regulation..." The Order also specified that ATT-C would continue to be allowed to change MTS and WATS rates between the caps and floors, but that it would be required to follow all tariff filing requirements, to continue to charge uniform statewide rates, and to continue to serve all parts of Florida. In addition, the Order waived Rule 25-24.495, Florida Administrative Code, which

incorporates the rules outlining the procedures for rate cases, and partially waived Rule 25-24.480(1)(b) for the portions relevant to those rules, Rules 25-24.0175 and 25-24.0176, requiring depreciation reports. Finally, Rule 25-4.0245, requiring the filing of surveillance reports on a monthly basis, was partially waived to allow the filing of these reports on a quarterly basis.

On June 8, 1990, just prior to the conclusion of the experiment, set to expire July 11, 1990, ATT-C filed a Petition for Further Relaxation of Regulation of AT&T (Petition) which requested that the Commission lower its regulatory oversight of ATT-C and permanently forbear from rate base regulation of ATT-C. Arguing that the objectives established in Order No. 19758 had been met by the experiment, the Petition asked that ATT-C be treated in the same fashion as all other interexchange carriers (IXCs). Specifically, the Petition requested the waiver of Rules 25-24.475(1)(b), regarding Reporting Requirements for Service; 25-24.480(1)(b), regarding Accounting Requirements (USOA), including the requirement of providing annual reports; 25-24.485(4)(d), Establishment of Caps and Floors; 25-24.485(4)(e), Provision of Cost Support for Tariffs; and 25-24.495(1), Revenue Requirement Rules.

The Petition also requested that any other requirements placed on ATT-C, but not on the other IXCs, should be eliminated. These include the following requirements: carrier of last resort, Rule 25-24.471(4)(b); maintenance of statewide average rates; flow-through of switched access charge reductions to customers; filing of quarterly earnings surveillance reports, Rule 25-4.0245; pricing of services at or below established rate caps and above access rates, Rule 25-24.485(4)(d)(2); providing tariff cost support when available, Rule 25-24.485(4)(d) and (4)(e); tariffs not presumed lawful when filed; special contracts not presumed lawful when filed; meeting Commission's quality of service standards, Rule 25-24.475; following the Uniform System of Accounts, Rule 25-24.480(1)(b).

Realizing that additional time was needed to evaluate the information gathered over the two year trial period, this Commission extended the experiment through December 1991 by Order No. 23186.

By Order No. 23997, issued January 16, 1991, we proposed that the regulatory requirements on ATT-C should be further relaxed, although not to the degree requested by the Company. Both the Office of Public Counsel (OPC) and US Sprint (Sprint) protested Order No. 23997 and requested a hearing. By Order No. 24405, issued April 22, 1991, we set this matter for hearing as a result

of OPC and Sprint's protests. The hearing was held December 4-6, 1991. Besides OPC and Sprint, MCI Telecommunications Corporation (MCI) and the Florida Interexchange Carriers' Association (FIXCA) intervened, although the latter two chose only to file briefs and presented no witnesses. Witnesses were sponsored by ATT-C, Sprint, OPC, and our staff.

II. SUMMARY OF FINDINGS

This proceeding has addressed the appropriateness of granting ATT-C's Petition for further relaxation of regulation. ATT-C's Petition, in effect, has requested that it be treated as a minor IXC and not as the only major IXC. In general, ATT-C's Petition is founded on its position throughout this proceeding that all of the objectives set out in Order No. 19758 have been met during the forbearance trial. In ATT-C's view, this justifies the Commission granting it the further relaxation of regulation it has requested.

Throughout the proceeding, the parties have generally agreed that the fundamental goal of forbearance has been to encourage the development of effective competition in the Florida intrastate interexchange telecommunications market. As we stated in Order No. 19758, it is this Commission's belief that obtaining a level of effective competition will result in the achievement of the various objectives set out in that Order. These objectives are adequate long distance service, uniform statewide average rates, and rates that are fair, just and reasonable. Other objectives were customers having access to new services introduced by the IXCs, and competition being encouraged leading to lower prices, increased efficiency, innovation, lower regulatory costs, and the prevention of monopoly pricing.

Therefore, this proceeding has been structured to address the following four basic issues: whether the various objectives of Order No. 19758 have been met; what criteria are important to review to determine how to regulate ATT-C from now on; whether there remain serious barriers to effective competition in the Florida intrastate interexchange telecommunications market; and how, in fact, based on our determinations on all of these prior issues, should ATT-C be regulated prospectively.

The record in this proceeding has led us to conclude that the objectives we initially set out in Order No. 19758, when we first established the forbearance experiment, have been met during the trial period. We believe there has been adequate long distance service provided to the citizens of Florida, there have been uniform, statewide average rates and the rates charged have been

fair, just and reasonable. We believe customers have had access to new IXC services and that competition among IXCs has been encouraged, which has led to lower prices. Also, the record indicates that there has been an increased level of efficiency and innovation, and that regulatory costs have been decreased.

Based upon the record, we have determined that the appropriate criteria upon which to determine how to regulate ATT-C prospectively include a consideration of market dominance, based on market share and market power. Also, other factors must be considered with market dominance to determine the level of market power, including pricing behavior by IXCs, ease of entry into the IXC market, and the number of competitors comparable to ATT-C. We have also determined that it is appropriate to consider, along with market dominance, the earnings of the IXCs and the financial stability of the competing IXCs, as well as the quality of service they are providing.

We have utilized that criteria to analyze the record to determine the level of market power exercised by ATT-C and other IXCs. We have also reviewed the record to determine if there remain barriers to effective competition in the Florida IXC market today. We have found, generally, that there are still barriers to effective competition in certain sub-markets, including the residential and small business markets, as well as in the 800 services market and the operator services market. However, the larger business market, though still dominated by ATT-C, is sufficiently competitive to justify some further relaxation of our regulatory oversight of the Company. As the dominant carrier in the residential, small business, 800 services, and operator services markets, where barriers to effective competition still exist, ATT-C requires greater regulatory control than is necessary for the larger business market.

Based on the above findings, we find it is not appropriate to grant ATT-C's Petition to be treated as a minor IXC. However, we do find it appropriate to further relax the regulatory requirements on ATT-C. The specific terms of our continued oversight of ATT-C are set out herein, to be revisited no later than January 1, 1996.

III. FORBEARANCE EXPERIMENT HAS MET ITS OBJECTIVES

Below, we discuss our findings regarding each of the objectives set out in Order No. 19758.

A. Adequacy of Service

The record shows that over 96 percent of Florida's access lines have been converted to equal access. This provides most customers with a broader choice of carriers. As of year end 1990, 96.4 percent of Florida's access lines were served by equal access end offices, which shows excellent progress. However, only 14 of the 22 equal access exchange areas (EAEAs) in Florida are fully equal access capable. Of that 14, only seven are completely converted to equal access. Three more EAEAs will become fully equal access in 1992, and three more by 1995. The remaining eight EAEAs do not have a schedule for becoming capable and converted.

The reason for this is that of the 13 local exchange companies (LECs) in Florida, only three are presently fully converted--Southern Bell Telephone and Telegraph Company (Southern Bell), GTE Florida Incorporated (GTEFL), and Central Telephone Company of Florida (Centel). ALLTEL Florida, Inc. (ALLTEL) and Vista-United Telecommunications (Vista-United) are scheduled to convert fully in 1992 and United by 1995. Of the remaining 7 LECs in Florida, five are fully equal access capable and have been so since 1989. These LECs, Gulf Telephone Company (Gulf), Quincy Telephone Company (Quincy), Indiantown Telephone System, Inc. (Indiantown), Southland Telephone Company (Southland), and Northeast Florida Telephone Company, Inc. (Northeast), will convert as soon as a request is received by an IXC. No IXC has yet requested equal access. The remaining LECs, St. Joseph Telephone & Telegraph Company (St. Joe) and Florida Telephone Company (Florida), are both partially equal access capable, but have no plans for further capability or conversion.

There are 120 certificated IXCs, ten of which are facilities-based carriers. However, there are 57 resellers, many of which are reselling ATT-C service, thus providing service at close to the same level, if not the same, as ATT-C. The average number of carriers per central office is 16. However, in some areas there is only one carrier, ATT-C.

Improvements in equipment have occurred, such as the use of fiber optics and the installation of Signaling System 7 (SS7). ATT-C's fiber miles increased 60 percent, with nearly 100 percent of switched traffic being carried over digital facilities.

Based on Commission data, complaint activity for all long distance companies, excluding alternative operator services (AOS) providers, has been declining from 1988 to 1990. The figures for 1988, 1989, and 1990 are 1006, 957, and 858, respectively. For the first six months of 1991, there were 561 complaints against IXCs.

Of these, 314 were service related such as service outages, delayed restoration of service, improper disconnection, and business office problems. Complaint activity for ATT-C decreased from 195 during 1988 to 145 in 1990. The record also indicates that the percent of uncompleted calls for ATT-C has decreased by 23 percent during the forbearance trial. While complaints have been shown to decline, it should be noted that on an annualized basis, the trend to fewer complaints may not continue. This is also true for ATT-C who had 122 complaints for the first six months.

Upon review of the record, based on the percentage of Florida's access lines converted to equal access, the number of IXCs providing services, the level of complaints received by the Commission, and improvements in facilities, we find that intrastate/long distance service is adequate for all Florida customers.

B. Uniform Statewide Rates

This Commission has ordered that ATT-C maintain uniform statewide message toll service (MTS) rates. While ATT-C's Petition requests that this requirement be eliminated, ATT-C's witness Spooner states that ATT-C has no plans of abandoning the practice. We find it appropriate herein to require that ATT-C continue to provide statewide uniform MTS rates.

C. Rates That Are Fair, Just, and Reasonable

During the initial forbearance trial, existing rates for MTS and WATS, adjusted by access charge reductions, were considered the appropriate caps, and the floors for these services were "...aggregate access charges plus billing and collection." The idea behind setting caps and floors is that preventing pricing above the cap would keep rates reasonable and preventing pricing below the floor would defeat attempts to predatorily price.

The terms "fair, just, and reasonable" rates typically refer to rate base regulation with rates set to generate a fair rate of return. This does not apply here since there has never been a traditional rate case for ATT-C in which its rates have been set to generate a fair rate of return.

We have required ATT-C to pass through access charge reductions, a requirement not placed on its competitors. While the majority of ATT-C's rate reductions have been the result of flow-throughs, many of its competitors have followed the Company's rate reductions.

Specific complaints about rates would be expected to come from competitors of ATT-C. One would expect these to be that rates are not too high, but are too low and, thus, predatory. However, such complaints are not in evidence in this record, although Sprint's witness Albery expressed concern that predatory pricing could develop if the requirements that ATT-C price services above costs and provide tariff backup and cost support are removed.

The decline in rates by ATT-C, and the indication that the other carriers track their rates to ATT-C, suggests that Florida customers are receiving service at fair, just, and reasonable rates.

D. Access to New Services

ATT-C's witness Spooner lists many new services or enhancements to existing services introduced during the trial period. These new services include One Line WATS, Accunet Spectrum of Digital Services (ASDS), Multiquest, and Switched 56/64 Service

Enhancements include volume pricing plans for MegaCom WATS, MegaCom 800, and 800 Readyline; a two year rate stability plan for Accunet T1.5; the introduction of a 24 hour plan and 1/2 hour plan for ReachOut Florida; removal of the \$70.00 minimum usage charge for WATS/800; for Software Defined Network (SDN) service, the introduction of Schedule D offering a lower usage rate for calls between specified local access transport areas (LATAs); the introduction of SDN Schedule E allowing end to end digital transmission at 56 and 64 kbps; and for AllProWATS in Florida, the introduction of sub-minute timing of calls.

In addition, according to witness Spooner, ATT-C's fiber miles increased 60 percent with almost 100 percent of switched traffic carried over digital facilities. ATT-C's witness Spooner noted that "[d]igital facilities provide our customers with clearer voice connections and foster more error-free data transmission. This technology allows AT&T to offer the new services and service enhancements for voice, data and video."

We believe that the evidence demonstrates that new services are being offered and available from many carriers. In addition, ATT-C is not always the leader in the introduction of new services. For example, Sprint introduced Dial 1 WATS prior to ATT-C offering One Line WATS.

E. Encouragement of Competition

All parties agreed that the main issue of this proceeding is whether there is effective competition in the Florida intrastate IXC market. The evidence in the record suggests that effective competition is developing. As an example, equal access in the state is approaching 100 percent. Where equal access is in place, customers are not locked into an individual carrier, but are able to make a choice.

Based on his analysis of intrastate revenues as reported to the Commission in Regulatory Assessment Fee reports, ATT-C's witness Mayo states that ATT-C's market share has dropped from 81 percent in 1985 to roughly 63 percent in 1990. Data for 1991 was not submitted into the record with one exception. Sprint's witness Albery did examine ATT-C's market share as compared to MCI's, Sprint's, Microtel, Inc.'s (Microtel's) and Transcall America, Inc., d/b/a as ATC Long Distance (ATC/Transcall) for the period 1986 to 1991. He stated his examination indicates ATT-C's market share is beginning to increase. However, the document containing his results indicated that his examination of market share was not exhaustive.

Based on originating minutes of use data for the period June 1988 to June 1991, submitted by the LECs, ATT-C experienced a decline in intrastate switched access market share between June 1988 and June 1990. The Company lost 15 percentage points, reducing its market share from a high of 77 percent to 62 percent at the end of the two year period. The percentage change for the period from June 1988 to June 1989 was 7 points and for the period June 1989 to June 1990 was 8 points. ATT-C's greatest decline continued to occur in daytime usage, which fell 21 percentage points for the two year period, while its evening and night/weekend usage for the same period declined 11 percent each.

Another indication in the record that demonstrates that the level of competition has increased is the fact that ATT-C's marketing budget increased by 23 percent from 1990 to 1991.

According to Standard and Poor's reports, the net incomes of MCI and ATC/Transcall have increased over the trial period. Sprint is not reported separately but is included in US Telecom, which also had an increase in revenues over the same period.

Both MCI and Sprint indicate that competition is occurring. Sprint has indicated that it was not deterred by the forbearance trial from competing with ATT-C. However, OPC's witness Shepherd

testified that, in his view, only "...some competition has developed in some parts..." of the market.

ATT-C contends it faces substantial competition as manifested by the 120 certificated IXCs. OPC's witness Shepherd does not agree on the basis that only three of these firms offer significant competition and the rest are "insignificant".

We believe that rates or price changes are indicators of competitive behavior in the interexchange market. ATT-C and Sprint provided substantial information on services that have had a rate change, both a decrease or increase. The majority of rate changes for both companies were decreases, although many of ATT-C's were the result of passing through access charge reductions. MCI indicated that the majority of its rate changes were decreases.

ATT-C had several promotions during the trial period, providing lower rates for existing and potential customers. ATT-C instituted pricing plans which provided discounts or sub-minute billing during the trial period.

ATT-C's operating expenses for the years of the trial were \$588,574,000 in 1988, \$515,759,000 in 1989, and \$543,854,000 in 1990. In addition, witness Spooner states that "...telephone plant operations expense per 10,000 conversation minutes has declined over 15 percent". It appears the company has managed to reduce expenses, but whether or not that is due to increased efficiency is not clear. As an example, the extent to which these reductions are due to access charge reductions is unknown. Also, while expenses dropped in 1989, they rose in 1990. Consequently, it is difficult to assess just how much efficiency has occurred, and the extent to which it will continue.

MCI states that competition has inspired the development and introduction of new technologies and this new equipment offers improved transmission quality. Sprint's witness Albery agrees that competition has encouraged the introduction of technological advances. As witness Spooner indicates, these improvements lead to greater efficiency by requiring less maintenance at less cost.

ATT-C, MCI, and Sprint are in agreement that innovation has occurred and that the primary driver has been competition. Sprint offered System Signaling 7 (SS7) as one example. ATT-C listed several examples including, but not limited to, use of fiber, increased transmission speeds due to advanced lightwave systems, Integrated Services Digital Network (ISDN), wideband technology, and photonic switching technology.

ATT-C, Sprint, and MCI were asked what it cost to file the average tariff with the Commission, including tariffs that are approved by the Commissioners at agenda conferences and tariffs that are handled administratively by the staff. ATT-C and MCI stated that they could not quantify the cost. However, Sprint provided estimates of \$1,500 and \$275, respectively. Assuming ATT-C experiences the same expense, this suggests that allowing ATT-C to change rates within caps and floors without needing to be approved at agenda conferences would reduce regulatory costs.

Witness Spooner stated that ATT-C's competitors can install new service offerings without cost justification. MCI indicated that for ATT-C the "...potential for cross subsidies between services or markets exists" through ATT-C's contract service arrangements and bundling practices. This implies that customers of the services providing the subsidies are being charged monopoly prices. Sprint also pointed out the bundling of less competitive services with more competitive services in individual customer contracts by ATT-C. For example, ATT-C has been bundling 800 services in with the other service offerings in its individual customer contracts.

It is possible that monopoly pricing will occur when the market is an oligopoly as opposed to a market having a single firm. Witness Shepherd contends that rather than the market evolving into a competitive one, the market structure is best characterized as an oligopoly. In support of this contention, witness Shepherd notes that following divestiture, price differentials were quite large. The price differentials are now "...in the range of 5, 4, 3, percent...[suggesting] a settling in, a tendency towards prices snuggling together..."

IV. RELEVANT CRITERIA

The parties identified the following as a fundamental issue of this proceeding:

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

Based on the evidence in this record, we find that this Commission should consider market dominance, as based on market

share and market power, as one set of relevant criteria. However, other factors should be considered with market dominance to determine the level of market power. These other factors are pricing behavior, ease of entry, number of comparable competitors, earnings, financial stability of competitors, and the quality of service provided. We discuss each of these criteria below.

A. Relationship Between Market Dominance,
Market Share, Market Power

Examination of market dominance through market share will provide information on the potential of market power. However, market power and market dominance are not by themselves dispositive of the issue of the exercise of market power. Additional criteria must be examined to determine whether market power is being exercised. We find market power and market dominance, as measured by market share, are relevant criteria because the exercise of market power may hinder continued advancement toward meeting the objectives of this experiment.

ATT-C defines market power as the ability of the producer to set prices at supra-competitive levels. Sprint defines it as the ability to control prices. OPC defines market power as the ability to raise prices higher than they would otherwise be..." The parties have defined market dominance in various ways, including a firm having a relatively large market share, and a firm having greater than a 50 percent share of the market.

To clarify our use of the terms, we find the appropriate definition of market power to be ATT-C's witness Mayo's, the ability of the producer to set prices at levels higher than would be found in a competitive environment, or at supra-competitive levels. We find monopoly power and market power to be the same. We find OPC's witness Shepherd's definition of market dominance to be appropriate: a firm with "...a market share of over 40 to 50 percent with no comparable rival." We find market share is best defined by Sprint's witness Albery as the "...percentage of a market controlled by any one firm."

We find market share to be a measure of market dominance which can in turn indicate the potential of exercising market power. A position of market dominance does not necessarily mean that market power is being exercised. Dominance is only a term describing the amount of market share.

The participants in this docket are not proposing that market share should be the sole determinant in evaluating the level of competition.

ATT-C's witness Mayo argues that market share, by itself, is "...neither a sufficient standalone statistic nor the 'primary' statistic." Witness Mayo also contends that market share can yield distorted results in an industry previously heavily regulated. This is because a firm's market share may be the result of the firm's position at the time of regulation.

OPC's witness Shepherd lists several criteria one should use in evaluating market power including market share, number of competitors, characteristics of the competitors, ease of entry, and the leading firms degree of profitability. However, he views market share as the primary determinant in analyzing a market stating that "[t]he Commission needs to fix its attention firmly on these [additional criteria] - particularly market share - and not be distracted by irrelevant or secondary information." Market share, in his view, is a "...primary fact that indicates possible market dominance."

Sprint's witness Albery, in discussing the dominant firm, relies heavily on market share as the measure of dominance. Focusing on ATT-C, he states "...ATT-C controls the vast majority of the market as measured in any meaningful way." In his discussions, when referring to measuring the market, he utilizes market share.

We find market share to be the most significant measure of potential market power.

B. Determination of Sub-Markets

1. Existence of Sub-Markets

The existence of a single market as opposed to a market consisting of several segments was the subject of controversy throughout this docket. ATT-C argues that there is a single interexchange market and that the various services provided by ATT-C and its competitors fall within this market. OPC's witness Shepherd agrees that the market under discussion is the intrastate, interexchange service market. However, he indicates that there are segments of this market. Sprint's witness Albery takes the view that there are separate markets for individual services or service types. When asked if effective competition exists in the Florida interexchange market, witness Albery responded that he believed it did not exist in all markets. He continued to identify such market categories as MTS, 800 services, and dedicated outgoing services such as Megacom. When asked as to whether or not he was referring

to submarkets, witness Albery confirmed that he was referring to separate markets.

Although the concept of a single market may be correct in the academic sense, we find such a distinction of little importance to this proceeding. We find the customer base in these markets must be examined individually. For example, the broad interexchange market can be broken into three segments; residential/small business services, 800 services, and large volume services. These segments can be further separated on the basis of services such as MTS for the residential/small business segment. Whether one refers to this segmentation as submarkets, separate markets, or portions of the market is a matter of semantics. Whatever the term, there are differences in each customer category and services are differentiated to accommodate these categories.

ATT-C's witness Mayo responded positively when asked if residential and business are both part of the same market and that they face the same level of competition. Yet, the Company obviously tracks these individual categories. When asked about what percent of residential and small business customers typically make no calls during a given month, the Company responded with figures of 58 percent to 64 percent. Witness Mayo also specified that "...11 percent of the residential customers generate more than 65 percent of the revenues. Similar statistics point toward a skewed demand for businesses." In addition, ATT-C's marketing information shows marketing efforts for several targeted markets, including residential/small business, multi-location business, and larger volume businesses.

Sprint's witness Albery said that competition had evolved in the large business market more quickly than the residential and small business markets because a small discount influences large volume users more than the residential user. Also, witness Albery points out that large volume customers often make use of telecommunications managers with knowledge of how the system works and are able to change carriers quickly. This suggestion that the large business market faces competition to a greater degree than other markets is also expressed by OPC's witness Shepherd.

2. Measurement of Market Share

All parties agree that no single measure of market share is appropriate but that one should examine a number of measures. However, each party had a distinct idea as to what should be the "primary" measure.

Sprint's witness Albery argues that demand based measures such as "...minutes of use, revenues, and presubscribed lines..." are the appropriate measure. OPC's witness Shepherd contends that revenue is the correct measure of market share. Both OPC and Sprint argue that this is because revenues represent the firm's success in obtaining sales in the market.

ATT-C's witness Mayo does not agree that revenues are the primary measure of market share. However, in doing his analysis of ATT-C's declining market share trend, he used revenues from the Regulatory Assessment Fee reports.

Minutes of use measures have been the subject of some discussion in this docket. Sprint's witness Albery believes that minutes of use will yield comparable results to using revenues. However, OPC's witness Shepherd believes this measure may be biased. For example, he notes that he had "...considered minutes of calling measures, and [found] that because the revenues from traffic differ, at least moderately, those minutes will give AT&T a lower measured market share than will the revenue measures."

During the forbearance period, the LECs were asked to submit a semiannual report documenting ATT-C's intrastate originating switched minutes of use for the period. They also included total intrastate originating switched minutes of use. An analysis of these data indicate that, at least based upon this measure, ATT-C's market share has declined from 77 percent to 62 percent from June 1988 to July 1990.

ATT-C's witness Mayo argues that the correct measure of market share is capacity. This is because "...capacity-based market share figures reveal the ability of existing firms to expand output or service availability in response to an attempted price increase by the firm whose market we are assessing. Consequently, such figures more accurately signal the ability of the market to enforce competitive pricing behavior." Capacity, to witness Mayo, is appropriate in markets that are regulated. This is because "...where the amount of competitors' capacity is large relative to current output, the use of minutes-of-use or revenue-based market shares will generate an upwardly biased indicator of the amount of market power of any incumbent firm."

Witness Albery considers capacity to be questionable because capacity is not useful in an industry where the output is not a storable product. This is because, he states, in a market of storable products, excess capacity of one competitor will be put on the market by the competitor in response to a price increase by its

competition. But in a non-storable product market, competitors cannot create excess capacity to respond to the price increase.

Witness Shepherd considers capacity a biased measure of market share. This is demonstrated, he stated, when it is noted that if one measures ATT-C's market share using minutes of use, revenues, and capacity, capacity is considerably smaller than the first two.

Capacity, while it should not be ignored, can be a misrepresentative measure. This is particularly the case when dealing with digital equipment. As witness Spooner points out, technological gains are being made to dramatically improve both the use of copper and fiber and increase the carrying capacity of the network. Consequently, should no additional transport facilities be installed, the existing facilities' carrying capacity today is substantially different than it will be tomorrow. Also, having capacity and having it filled are two different things. We agree with witness Shepherd in that it reflects the "hope of winning sales" not actual sales achieved.

We find revenue is the best measure of market share because it reflects marketplace success. We also believe that using switched minutes of use to determine market share is a reasonable device for comparison with results using revenues. Unlike revenues which provide a clear link to sales, switched minutes of use act as an indirect measure of sales and thus, can be a reasonableness check for measurement of revenues.

C. Pricing Behavior

The notion of competitive forces on rates is that as competition increases, prices are driven to marginal cost. Therefore, rate changes should signal changes in market conditions. For example, an increase in rates may indicate the exercise of market power while a decrease in rates may indicate increased competitive pressures. However, this action does not always reflect what is actually taking place in the market. Prices can rise due to increased costs and they can fall in an attempt to drive competitors from the market. Additionally, in the case of ATT-C, rate changes can be the result of changes in access charges which, by Commission mandate, are to be passed through on services using switched access.

Witnesses Mayo, Shepherd, and Albery all provide numerous discussions on prices and their relation to the market. In his discussion on the importance of supply in analyzing the market, Witness Mayo notes that supply will "...influence market price." (Emphasis added) Witness Shepherd assesses ATT-C's pricing

strategies as they reflect competition. For example, he notes that ATT-C can use strategic pricing to pick "...the eyes out of the market." Sprint's witness Albery, emphasizing the importance of price, notes price leadership and other firms' reaction to price changes reflect the market's ability to discipline non-competitive pricing behavior.

We find that changes in rates (price) is a reasonable criterion for review in determining the competitive condition of the market, primarily due to the link between prices and sales. However, because changes in rates can occur due to other than changes in the level of competition in the market, other factors must also be examined.

D. Barriers to Entry

ATT-C witness Mayo emphasizes the use of barriers to entry, stating, "...ignoring entry/expansion conditions and, instead, focusing on market share, totally specious conclusions may be reached." He also notes that "...since divestiture, we have had between 20 and 40 firms entering the market every year" and that the Commission has refused only a small number of the 180 plus IXC certification applications it received since divestiture and "this indicates that regulatory barriers to entry are absolutely minimal."

Sprint's witness Albery agrees that ease of entry should be examined but "...given limited weight." He sees as "structural" barriers to effective competition demand characteristics such as customer loyalty, lack of 800 number portability, and ATT-C's advantage in operator services.

OPC's witness Shepherd indicates that entry should be reviewed in conjunction with market share. He says barriers to entry are "...customer loyalties, control over essential facilities, difficulties in raising funds, lags in adjustments, and incomplete information..."

ATT-C's witness Spooner considers the percent of access lines equal access converted to be an indicator of the lack of barriers to entry, pointing out that the state is 96 percent equal access converted and 97 percent capable.

ATT-C's witness Mayo includes number of firms in his criteria of examining the supply capabilities. He believes the number of firms currently in the market indicate that barriers are low. He also notes that 28 firms had entered the market in 1991, and that at the time there were 120 certificated IXCs in Florida.

We believe that the existence of barriers to entry play a major role in curtailing competition. Therefore, we find that the existence of barriers to entry is a criterion that should be considered in determining how to regulate ATT-C.

E. Number of Competitors

OPC's witness Shepherd proposes that "...[e]ffective competition usually requires at least 5 or 6 strong rivals, of comparable resources. Only if there is genuine parity will they apply strong competitive pressures."

Although we find the number of providers of value in establishing the level of competition in a market, that alone is inadequate. Only 10 of the 120 certificated IXCs are facilities based carriers. Resellers require facilities be in place to provide their service. In addition, resellers are customers of and provide revenues to the large carriers. Therefore, we find the number of competitors to be a criterion that should be considered in the determination of the degree of market power exercised by ATT-C.

F. Earnings and Financial Stability

ATT-C believes earnings are an inappropriate criterion for determining effective competition because, in a competitive market, earnings may be either high or low. However, OPC's witness Shepherd states that, in examining a market for effective competition, one should look at the leading firm's degree of profitability.

ATT-C's surveillance reports for the period June 1988 to June 1991, indicate that the Company's return on equity (ROE) has been fairly volatile. For June 1991, ATT-C's ROE was 11.23 percent, close to December 1988's ROE of 11.43, but considerably less than the peaks during the period. In June 1989, the ROE was 10.18. By December 1989, the figure had risen to 26.70 percent. In June 1990, the figure changed little at 25.02 percent and for December 1990 it was still high at 22.25. By June 1991, just prior to the company petitioning for further relaxation, its ROE had dropped to 11.23 percent.

Examining the national ROEs for the four largest IXCs operating in Florida reveals that ATT-C, Sprint, and ATC all had similar earnings. MCI, on the other hand, had demonstrably larger earnings for 1988 and 1989 than any of the other three.

We find return on equity to be an appropriate criterion in assessing the degree of competition. However, a high ROE for a given period cannot by itself be construed as an indication of abuse of market power. In a competitive market, one would expect to see volatile earnings rates. A high ROE sustained over a long period of time, might indicate that an examination of that IXC's pricing and other competitive practices is in order.

According to Standard and Poor's, ATT-C holds the highest rating of the four carriers. ATT-C's is A-, while MCI's and Sprint's are B. ATC is not rated. These ratings are used by lenders in determining the risk in lending funds to firms. Given this, ATT-C does enjoy an advantage in the funding markets.

Should any of the competitors be predatorily pricing, having access to a pool of funds to sustain the practice would provide an advantage. However, we believe this criterion is probably most appropriately used in determining a firm's "staying power" in a market and does not necessarily indicate the exercise of market power.

G. Quality of Service Provided

Section 364.337, Florida Statutes, provides that one criterion the Commission shall consider in investigating the level of competition is the quality of service available from alternative suppliers.

ATT-C's witness Spooner states that ATT-C's competitors' "...product lines as well as their service [have] improved." On the other hand, Sprint witness Albery considers ATT-C's direct connections to end offices, a benefit from pre-divestiture days, an advantage in quality because direct connection allows faster call set up time which may be perceived by the end user as better quality.

Despite Sprint's concern over direct connection of ATT-C to end offices, we believe that the overall quality of service for the larger IXCs is relatively comparable. In this market where there are a number of facilities-based carriers, if the customer does not like the service, he can switch. Yet, if 1991 figures are any indicator of customer behavior in previous years, many of those customers electing to change to a carrier other than ATT-C have been reluctant to return. In addition, for those customers not enjoying an alternative, ATT-C's witness Spooner has noted that ATT-C's service quality has consistently exceeded this Commission's rule requirements.

H. Conclusion

We find that the appropriate criteria are market share based primarily on revenues, secondarily on minutes of use, and thirdly, capacity. However, market share alone is not appropriate to determine effective competition. Other critical criteria are pricing behavior, barriers to entry, the number of competitors, earnings, financial stability of competitors, and quality of service provided.

V. BARRIERS TO EFFECTIVE COMPETITION

A. MTS Service

As a proxy for specific Florida MTS service market share data, we have utilized the IXC switched access minutes-of-use data by time of day submitted into this record. It is generally known that residential and very small business customers are the typical users of MTS service and that the majority of business calls are conducted during the day period, and that the majority of residential calls are placed in the evening and night/weekend periods.

Based on our review of this data, ATT-C still has well over 50 percent of the total Florida market. The statewide market share data by time-of-day, however, shows that between June 1988 and December 1990, ATT-C's daytime market share fell by 20.66 percent, its evening market share fell by only 10.54 percent, and its night/weekend market share fell by only 10.27 percent. We conclude that the minor IXCs have made greater inroads into ATT-C's daytime, or larger business, market share, than they have into the evening/nighttime, or residential market share. This pattern holds true for ATT-C's market share in each LEC territory. Moreover, all other IXCs have a combined market share ranging from a low of about 6 percent in the equal access small LEC territories to a high of about 30 percent in Southern Bell's territory. In order to consider ATT-C non-dominant in the residential market, the minimum minor IXC market share should be about 40 percent in the night/weekend period. ATT-C is thus still dominant (over 40-50 percent market share) in the residential market.

Based on the record, the difficulties that IXCs experience in gaining a significant share of the MTS market stem from small volume user inertia and ignorance, ATT-C's size and long standing presence relative to other IXCs, as well as the fact that there are very few truly vigorous players. Also, the tendencies of minor

IXCs to follow ATT-C MTS prices contributes to their difficulty in gaining a significant share of the MTS market.

Most residential users' toll bills are not a significant enough household expense to take the time and effort to educate themselves about the choices available. The information is too difficult to obtain, and probably too confusing, to make it worthwhile. ATT-C is perceived to be a reliable provider. Moreover, there is so little difference in current MTS prices that for the small user, there is very little to save by going to another carrier.

Sprint argues that IXCs' efforts to gain market share are generally hampered by the expense involved in making customers aware of alternatives and overcoming ATT-C's powerful service quality advertising. This is especially true in the small volume market. As long as ATT-C retains its image of reliability, good service, and high transmission quality, small volume customers will remain satisfied and will not actively seek out alternatives. IXCs must use aggressive marketing techniques to woo them away from a satisfactory carrier, and this is difficult to do cost effectively.

Although Sprint testified vigorously on ATT-C's access advantages and the fact that ATT-C promotes its superior quality of service in heavy advertising, this Commission regularly audits and tests for basic service quality performance for all IXCs. The vast majority of IXCs exceed Commission standards on all performance requirements. We do not view actual quality of service differences as major barriers to effective competition. In our opinion, perceived quality of service, at least in the residential market, has evolved into an image advertising issue.

We believe that participation in the small user market requires a large customer base to be successful. This makes it unattractive to the new or small market entrant. Currently, it appears that only ATT-C, MCI, and recently US Sprint, conduct major national advertising campaigns that target the small or residential customer. Although the four largest IXCs offer basic MTS, only MCI and ATT-C have developed and marketed a broad range of small user services in Florida.

It may be that only national carriers are of sufficient size to provide residential and other small user traffic profitably. If this is the case, Florida may see few other IXCs making real efforts to compete with ATT-C in the MTS and MTS-related services market. Therefore, the best competitive structure that may ever develop in the low volume market is an oligopoly, which would fall far short of an effectively competitive market.

Although we have seen the vast majority of IXCs decrease their MTS prices substantially, ATT-C's pricing behavior in the MTS market has been strictly controlled during the past trial. Since 1984, each reduction in MTS rates by ATT-C has been followed shortly by corresponding reductions on the part of other IXCs.

ATT-C's MTS price reductions were predictable since it is currently required to flow through access charge reductions to seven different services: MTS, Reach Out, PRO WATS, ALL PRO WATS, Megacom, Megacom 800 and 800 Readyline. However, there were two or more "competitive" rate reductions in all flow-through services except MTS. The single MTS "competitive" rate reduction became effective on January 18, 1990, the same year that ATT-C petitioned for reclassification as a minor IXC. Flow-through requirements are, and will continue to be, the major impetus for rate reductions for IXC MTS services.

The implication is that if MTS prices are "decontrolled," the inelastic demand characteristics of this market are such that if ATT-C were to raise prices, it would not lose significant market share. In other words in the MTS market, ATT-C has significant market power. If ATT-C were to raise its prices, other IXCs would very likely follow suit. This has occurred in other submarkets as discussed below.

We conclude from the above that ATT-C has retained its large embedded customer base in the MTS market because its service is reliable. Also, the demand characteristics of the market are such that only a few large carriers attempt to compete, and they do not have the resources, despite their national stature, to attract the low volume customers on a large scale. The evidence indicates the market is still dominated by a single firm, though ATT-C is not exercising market power when defined as monopoly power. This dominance is most important in this market where the customer is unsophisticated in knowledge of his or her options.

B. Business Services

With respect to the larger business services, such as WATS, 800, and digital offerings, the record shows that the majority of IXC tariff filings have been devoted to the development of new offerings, as well as enhancements to existing offerings, and are targeted at medium and large volume business customers. Service enhancements and expansions generally involve price reductions, such as sub-minute billing and volume discounts. Minor IXCs often have a greater number and wider variety of tariff offerings to target a particular type of user relative to ATT-C. IXCs take pains to try to differentiate their service offerings from those of

ATT-C. Technological innovations such as fiber and digital technology have enhanced the quality and range of data services. IXCs make efforts to learn about their competitors' services.

While it is evident that Florida does have a fairly substantial number of fringe competitors, such as resellers, AOS providers, and rebillers, these are not truly effective competitors to ATT-C in all markets. Some IXCs serve small niche markets such as operator services. Some resell ATT-C services and this is important. Although their ability to survive depends on the existence of volume discounts in facilities-based IXC rates, many of these small IXCs target the medium to large business customers. Thus, they do serve as competitive alternatives to ATT-C, currently enabling medium volume customers to obtain large volume discounts. These small resellers do not currently target the residential market. They do, however, have sales forces which provide individual attention and service to medium and large businesses. We believe that resellers and niche market providers contribute to making the larger business market more competitive than the small user market.

Based on the record, we find that ATT-C is dominant, but that it cannot exert significant market power in the large volume business market in Florida. The evidence would suggest that ATT-C is experiencing some competitive pressures. The record suggests that the current downward pricing trends for larger business market services will continue.

C. Operator Services

Sprint witness Albery testified that ATT-C has held substantive advantages in the operator services market. Specifically he cited lack of access by other IXCs to validation data for calling cards, automatic routing of interLATA 0+ calls to ATT-C, and acceptance by LECs of only ATT-C calling cards on interLATA calls. Witness Albery also cited ATT-C's vast embedded base of joint LEC/ATT-C calling cards which gives them an advantage in presubscription for payphones.

Steps are being taken on the federal level to mitigate ATT-C's structural advantages in this market. Nonetheless, ATT-C still has the lion's share of calling cards. Witness Albery believes that for effective competition to become a reality, validation data for calling cards must become widely available, and LECs must transfer interLATA 0- calls to IXCs other than ATT-C, which has already occurred in Southern Bell's territory. Also, he states that billed party preference must be implemented nationally. That is, LEC switches must be able to determine the preselected carrier from the

calling card or billed telephone number in order to bill 0+ calls to the card holder or billed party.

The record shows that IXC operator charges are priced very closely in Florida, and that prices have risen over time. In addition, other IXCs followed suit when ATT-C implemented a new surcharge of \$.75 to be assessed when an operator dials a call upon customer request. Moreover, ATT-C's increased and new charges have been added despite the fact that current charges were already adequately covering operator costs. Based on the record, we conclude that ATT-C can and does sustain prices at supra-competitive levels. Other IXCs do not generally attempt to undercut ATT-C's prices. Instead they follow ATT-C's price increases. Therefore, we find the operator services market in Florida is not, at this time, effectively competitive.

D. 800 Services

Witness Albery testified that "lack of 800 number portability" gives ATT-C a substantial advantage in that market. Lack of 800 number portability means that customers cannot retain their 800 numbers if they change carriers. This is important to those customers whose 800 numbers have specific marketing significance (e.g., 1-800-HOLIDAY). Generally, businesses tend to advertise their 800 numbers. For that reason, according to Albery, advertising and printing expenses as well as the cost of re-educating customers and other users are a deterrent to changing carriers.

The FCC has mandated that LEC networks install the capability of providing 800 number portability by early 1993. This will require development of national data bases. Meantime, the FCC has prohibited bundling of 800 services with other services in individual customer contracts. Because 800 number portability is to become a reality, we shall retain current filing requirements on 800 Services until portability has been effected in Florida.

VI. TERMS OF CONTINUED OVERSIGHT OF ATT-C

ATT-C has requested permanent forbearance not only from rate of return regulation, but also from "all Commission Rules, Regulations, Orders, or other regulatory requirements which do not uniformly apply to all intrastate interexchange carriers." In effect, ATT-C requests reclassification as a minor IXC. Thus, approval of ATT-C's petition would relieve the Company not only of tariff filing support requirements and earnings regulation, but also of all the responsibilities unique to ATT-C that involve

ubiquitous provision of service, emergency preparedness, customer relations, and quality of service standards.

We find some further relaxation of our rules and regulations on the more competitive ATT-C services to be appropriate. For MTS service, and for operator services, directory assistance, and 800 services, the extent of further relaxation requested by ATT-C is not appropriate at this time.

A. Specific Rule Waivers

Chapter 25-24, Florida Administrative Code, contains the rules which apply to minor and major IXCs. Each of these rules at issue here are discussed separately below.

1. Rule 25-24.471(4)(b) - Carrier of Last Resort

We find that Rule 25-24.471(4)(b), the carrier of last resort requirement, should apply to ATT-C as long as there are nonequal access end offices in Florida. There are not many; however, if ATT-C did abandon service in those exchanges, some Florida citizens would be without 1+ toll service.

2. Rule 24-475(1)(b) - Quality of Service

Rule 25-24.475(1)(b) specifies requirements that serve to ensure quality and continuity of service. We find it appropriate to continue to require reports of major outages pursuant to Rule 25-4.023. In addition, requirements concerning emergency procedures and equipment will be retained. Since only ATT-C provides service statewide, these two requirements will remain in place in the event of hurricanes and other disasters. Other requirements, such as plant, equipment, and service specifications that govern day-to-day operations will be waived. ATT-C has testified that it will not lower its quality of service. If it does, the degradation will be perceived by its customers. Customer complaints will be monitored to ascertain whether any deterioration in the quality of service occurs.

3. Rule 25-24.480(1)(b) - Uniform System of Accounts

Rule 25-24.480(1)(b) requires the maintenance of accounts according to the Uniform System of Accounts (USOA), depreciation schedules, as well as the filing of annual reports and surveillance reports. The rules pertaining to depreciation schedules were waived for the current trial and we find it appropriate that they continue to be waived. We find it also appropriate to permit ATT-C

to file earnings surveillance reports on a semi-annual basis, as opposed to the quarterly basis set out in Rule 25-24.480(1)(b).

4. Rule 25-24.485(1)(a) - Prohibiting Individual Contracts with Telephone Companies

Section (1)(a) of Rule 25-24.485 allows only minor IXCs to negotiate individual contracts with other telephone companies. This is a powerful restraint on ATT-C. We are concerned about removing it given ATT-C's overall dominance. The general availability of tariffs and information among carriers are effective deterrents to pricing below costs. Privately negotiated contracts, on the other hand, can be used as a tool for "pin point" pricing. We believe ATT-C should continue to make its services generally available for resale. This would preclude negotiating individual carrier contracts which could effectively shut out other IXCs, particularly resellers, from a market.

5. Rule 25-24.485(4)(d)(e) - Tariff Filings Requirements

Sections (4)(d) specifies tariff filing support requirements and provides for price floors and caps. This information allows us to evaluate ATT-C's new service offerings, enhancements to existing ones, cost recovery levels, impact on customers, and projected demand. It also requires information on the market conditions that prompted the filing, and thus allows us to stay aware of competitive interactions. Section (4)(e) requires cost support for private line and special access tariffs.

We find it appropriate to waive all but one of the tariff support requirements of Sections (4)(d) and (e) on the following existing services: Optional Calling Plans; WATS and WATS-like products; 900 services; Private Lines services; Data services; Virtual Network services; as well as combinations of those services, except those that include 800 services. We will retain the rule requiring a description of the service in the tariff filing. In addition, we find it appropriate to waive the same tariff support requirements for new offerings targeted at medium and large volume customers as well.

We find it appropriate to continue to require that ATT-C provide a description of any new or enhanced offerings. In addition, the Company will also be required to provide the reason for the filing, and the particular market segment that the offering is designed to attract. Tariff filings for these services will be considered presumptively valid, like those of minor IXCs, and will be handled administratively. In summary, for tariff filings involving these services, we will:

1. Eliminate price caps and floors;
2. Eliminate the requirement for supporting data;
3. Allow tariffs to go into effect upon 30 days notice, and to remain in effect pending resolution of any protest;
4. Retain the rule requiring a description of the service; and
5. Add a requirement for an explanation of the purpose of the offering and the type of market segment being targeted.

The tariff support requirements for 800 services and MTS service will be continued, but with the following modifications:

1. Price floors will be eliminated for MTS service (price caps for MTS service, and floor and caps for 800 services will be retained at the current rates until LEC switched access charge rate levels are changed.);
2. All rate changes below the caps for MTS service, and within the caps and floors for 800 services will be handled administratively.

Rule 25-24.485(4)(d) is, therefore, waived for these services to the extent just described.

When 800 number portability is a reality, we will consider any request by ATT-C to reduce the tariff support requirements in Section (4)(d), on all 800 services. Order No. 19758 requires that ATT-C maintain statewide average rates for MTS service. We find it appropriate to continue this requirement.

There will be no modification to the tariff support requirements for Directory Assistance and Operator Services.

6. Rules 25-24.490(2) and 25-24.495(1)

Incorporating LEC rules by reference, Rule 24-24.490(2) spells out requirements for customer deposits, billing, and complaint handling procedures. We find it is appropriate to waive this Rule. We waive Rule 25-24.495(1) relating to rate cases since ATT-C will not be subject to rate base regulation.

B. Access Charge Flow-Through

ATT-C is currently required by Order No. 19758 to flow through reductions in access charges. We find it appropriate to discontinue the requirement prospectively because we find that there is sufficient competition in the intrastate interexchange telecommunications market to assure fair, just and reasonable rates

without this requirement. This does not preclude consideration of such a requirement on a case-by-case basis.

C. Reporting Requirements

In order for this Commission to accurately monitor the development of competition in the various submarkets, certain information is required.

Through the reports described below, we will assess the impact of our decision herein to further relax regulation of ATT-C. At some point in the future, if circumstances indicate, we may decide it is appropriate to modify our regulation of ATT-C.

1. Uniform System of Accounts

As discussed previously, we find it appropriate to require ATT-C to continue to comply with Rule 25-4.017, Uniform System and Classification of Accounts. The Uniform System of Accounts (USOA) is mandated by the Federal Communications Commission (FCC). Our rule requires that the major IXC, which is ATT-C, follow the USOA. Since ATT-C will be required by the FCC to use the USOA, we find it appropriate to continue to require ATT-C to use the Uniform System of Accounts.

2. Rate of Return Reports and Annual Reports

Rule 25-4.0245 requires that a Rate of Return Report be filed. The Rate of Return Report, which is generally referred to as the Earnings Surveillance Report (ESR), is the principal monitoring device of ATT-C's earnings or rate of return.

Rule 25-4.018 requires filing of an Annual Report. This report contains Florida specific information not obtainable in other reports. The Annual Report contains adjustments not contained in the ESR, because the ESR is filed before the Annual Report. The ESR contains the rate base and net operating income for the total company, interstate toll, total intrastate, tariffed, and nontariffed services by dollar amount. The report contains a cost of capital schedule which shows debt, equity and the overall cost of capital. The ESR also shows the rate of return and return on equity on a Florida only Intrastate basis. The Annual Report contains the amount of rate changes by state, the balance sheet and income statements by primary account, statement of cash flows, plant in service along with depreciation, and taxes all on a detailed basis. The expense accounts section show wages, benefits, rents, and other expenses expressed on a total company and intrastate basis. Revenues are also separated by total company and

intrastate; however, the balance sheet accounts are only shown on a total company basis which means that an intrastate rate of return cannot be calculated. The Annual Report contains enough information for the Commission to accomplish these goals. The ESRs are necessary for keeping track of the status of the company's earnings on a continuing basis. We find it appropriate to require ATT-C to continue to file the ESR, but on a semi-annual basis, not quarterly as is currently required. This report will enable this Commission to assess the Company's level of earnings prospectively.

3. Regulatory Assessment Fee Reports

The Regulatory Assessment Fee (RAF) report is the only report that is obtained from all IXCs. The reported information from all IXCs usually contains only four items: Gross Revenues, Intrastate Revenues, Gross Access Charges, and Intrastate Access Charges, which are all reported on a Florida only basis. This report, however, currently requires the reporting of revenues by category of service, e.g., MTS, Private Line, WATS, etc. Only ATT-C currently submits the data in the required format; however, other IXCs simply provide a total revenue amount. All IXCs shall correctly provide the information required. With full and accurate reporting, the revenues can then be examined to estimate market share. For purposes of continued oversight of ATT-C, no changes to the requirements for the Regulatory Assessment Fee Report or the Annual Report shall be made.

4. LEC Minutes-of-Use Reports

The Commission currently requires the LECs to provide a semi-annual report on the originating switched minutes (MOUs) of use for ATT-C and in total. This tool gives some idea of ATT-C's market share and acts as a sanity check on the accuracy of using revenues as a measure of market share. Because a dynamic analysis is the only proper way, this report should be provided semiannually over this period of continued oversight.

D. Duration of Oversight Plan

We hereby declare ATT-C to be subject to continued oversight, subject to the following terms and conditions. The continuation of the limitations on ATT-C will be revisited not later than January 1, 1996. The necessity of continuing those limitations will be determined by an analysis of the performance of the intrastate interexchange market using the data that is required in the Regulatory Assessment Fee reports, the Earnings Surveillance Reports, ATT-C's Annual Report, the LEC Minute-of-Use Reports, IXC presubscription reports, and consumer complaints.

E. Summary List of Rule Waivers and Other Provisions

The following is a summary list of the Rule waivers and other provisions approved for the pendency of the continuation of the oversight of ATT-C:

1. 25-24.475(1)(b), Company Operations - Waived
 - 25-4.069 Maintenance of Plant and Equipment
 - 25-4.070 Customer Trouble Reports
 - 25-4.071 Adequacy of Service
 - 25-4.072 Transmission Requirements
 - 25-4.073 Answering Time
 - 25-4.077 Metering and Recording Equipment

2. 25-24.480(1)(b), Records and Reports - Waived
 - 25-4.0174 Uniform System and Classification of Accounts - Depreciation
 - 25-4.0175 Depreciation
 - 25-4.0176 Recovery Schedules to Promote an Economical and Efficient Telecommunications Network

3. 25-24.485(4)(d) & (4)(e), Tariff Filing Requirements - Waived
 - Section (4)(d) Tariffs (Waive for Optional Calling Plans, WATS and WATS-like products, 900 Services, Private Lines services, Data Services, Virtual Network Services and combinations of those services (except those that include 800 services)
 - Section (4)(e)

4. 25-24.485, Tariff Filing Requirements - Partially Waived
 - Section (4)(d) Tariffs - MTS: retain caps, floors eliminated; 800 & MTS: administrative approval for all rate changes within bands (800) or below cap (MTS)

5. 25-24.490(2), Customer Relations - Waived
 - 25-4.109 Customer Deposits
 - 25-4.110 Customer Billing
 - 25-4.111(2) Customer Complaints & Service Reports

6. 25-24.495(1), Revenue Requirements - Waived
 - 25-4.140 Applicability, Test Year Approval
 - 25-4.141 Contents of a Rate Case Application and Number of Copies
 - 25-4.142 Burden of Proof and Audit Provisions
 - 25-14 Corporate Income Tax

7. Rule 25-24.471 - Carrier of Last Resort - Continued

8. Rule 25-24.475(1)(b) - Company Operations - Continued
 - 25-4.023 Report of Interruptions
 - 25-4.078 Emergency Operations

9. 25-24.485 - Filing Requirements - Continued
 - (1)(a) No Contracts With Other Telephone Companies
 - (4)(d) Description of Offering and Reason for Service

10. Requirements from Previous Orders
 - Flow-through of access charges on MTS - Eliminated
 - Statewide Average Rates - Continued

We shall also require that the targeted market segment be identified with tariff filings.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that AT&T Communications of the Southern States, Inc.'s Petition for Further Relaxation is hereby denied as set forth in the body of this Order. It is further

ORDERED that AT&T Communications of the Southern States, Inc., shall be subject to the terms of continued oversight set forth in Section VI of this Order as described herein. It is further

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ORDERED that the terms of continued oversight of AT&T Communications of the Southern States, Inc., shall be revisited no later than January 1, 1996. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 25th day of June, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

SFS

by: Kay Flynn
Chief, Bureau of Records

Commissioner J. Terry Deason dissents only from that portion of the decision to not require ATT-C to flow-through access charge reductions to end-users.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.