

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MTS WATS Market Structure)	CC Docket No. 78-72
)	
Amendment of Part 36 of the)	CC Docket No. 80-286
Commission's Rules and Establishment)	
of a Joint Board)	
)	

ORDER

Adopted: May 3, 2001

Released: May 14, 2001

By the Commission:

1. In 1989, American Telephone and Telegraph Company (AT&T), the People of the State California and the Public Utilities Commission of the State of California (California), the American Petroleum Institute (API), Pacific Bell, and Nevada Bell filed petitions for reconsideration of the Commission's *MTS/WATS Decision and Order* in the above-captioned proceeding.¹

2. In the *MTS/WATS Decision and Order*, the Commission adopted the recommendation of the Federal and State Joint Board to amend the Commission's separation rules. Specifically, the Commission amended section 36.154 of the Commission's Rules, 47 C.F.R. § 36.154, to provide new rules for the jurisdictional separation of the costs and revenues of mixed-use special access lines. Under the rules adopted in that order, mixed-use special access lines would be treated as interstate if the customer certifies that more than 10 percent of the traffic on those lines consists of interstate calls. If 10 percent or less of the traffic were interstate, the lines would be considered jurisdictionally intrastate.

3. In its petition for reconsideration, AT&T states that the 10 percent rule should not have been adopted because it is inconsistent with the basic principle, established by Commission and court decisions, that dedicated, flat-rated special access lines are not amenable to usage measurement.² California, on the other hand, believes that allocating the costs of mixed-use

¹ MTS and WATS Market Structure, Decision and Order, CC Docket Nos. 78-72, 80-286, FCC 89-224, 4 FCC Rcd 5660 (1989) (*MTS/WATS Decision and Order*). On December 7, 1999, Pacific Bell and Nevada Bell filed a motion to withdraw their petition for reconsideration. See Motion to Withdraw Petition for Reconsideration, filed Dec. 7, 1999.

² AT&T Petition at 3 – 6.

special access facilities is feasible, reasonable, and consistent with federal policy.³ The API seeks reconsideration of the 10 percent rule in principal part because the Commission has authorized local exchange carriers to require users to conduct traffic measurement studies to prove that mixed-used special access facilities carry the requisite level of interstate traffic.⁴

4. Based upon the record before use, we find no grounds for reconsidering the Commission's decision to adopt the recommendation of the Federal and State Joint Board to amend the Commission's separation rules for the reasons stated in the *MTS/WATS Decision and Order*. The Commission determined that the Joint Board's recommendation was appropriate, and we find no basis in petitioners' arguments for now concluding that this determination was unreasonable or an improper exercise of the Commission's discretion.

5. Accordingly, IT IS ORDERED that the petitions for reconsideration filed by American Telephone and Telegraph Company, the People of the State of California and the Public Utilities Commission of the State of California, and the American Petroleum Institute ARE DENIED and this proceeding IS TERMINATED.

6. IT IS FURTHER ORDERED that the motion filed by Pacific Bell and Nevada Bell to withdraw their petition for reconsideration IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

³ California Petition at 3 – 8.

⁴ API Petition at 3 – 7.