



John B. Coffman
Acting Public Counsel

State of Missouri

Bob Holden
Governor

Office of the Public Counsel
Governor Office Bldg. Suite 650
P. O. Box 7800
Jefferson City, Missouri 65102

Telephone: 573-751-4857
Facsimile: 573-751-5562
Relay Missouri
1-800-735-2966 TDD
1-800-735-2466 Voice

August 8, 2002

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED²

AUG 08 2002

**Missouri Public
Service Commission**

Re: **MCI WorldCom Communications,**
Case No. _____
Tariff No. 200300092

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case, please find the original and 8 copies of the **Office of the Public Counsel's Motion to Suspend Tariff and For Evidentiary and Public Hearings**. I have on this date mailed, faxed, and/or hand-delivered the appropriate number of copies to parties of record. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Very truly yours,

Michael F. Dandino
Senior Public Counsel

MFD:kh

cc: Counsel of Record

Enclosure

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

FILED²
JUN 08 2002
Missouri Public
Service Commission

In Re the matter of MCI WorldCom Communications)	Case No. _____
Inc's proposed tariff to add an in-state access)	
recovery charge and make miscellaneous text)	Tariff No. 200300092
changes)	

**OFFICE OF THE PUBLIC COUNSEL'S MOTION TO SUSPEND
TARIFF AND FOR EVIDENTIARY AND PUBLIC HEARINGS**

COMES NOW the Office of the Public Counsel (Public Counsel) and respectfully moves the Public Service Commission of Missouri to make and enter its order suspending the proposed tariff of MCI WorldCom Communications Inc. introducing and establishing a \$1.95 monthly service charge known as an "In-State Access Recovery " charge for all WorldCom residential customer accounts in Missouri that are presubscribed to MCI WorldCom for long distance toll service where "MCI spending" exceeds one dollar in a month.

Introduction

Once again, another major interexchange long distance carrier has decided to use a special surcharge to confuse the consumer and to hide rate increases and the true cost of the service to customer. Once again, a long distance carrier has decided to double-charge the residential customer for costs already included in its existing rates by adding a surcharge or separate charge to "recover" these same costs. And once again, Missouri residential customers will be subjected to discriminatory treatment since the effective rates they pay for interstate long distance will be higher than the same effective rate paid by customers in other states.

CI WorldCom follows the path blazed first by AT&T and recently by Sprint to add almost \$2.00 per month to their Missouri residential customer bills. Residential customers on a national level account for 40% of the toll revenues. (Federal Communications Commission, *Trends in Telephone Service*, May 22, 2002, (www.fcc.gov/wcb/stats), 10-1). But AT&T, Sprint and now MCI WorldCom have decided to burden these residential customers with 100% of the effort to "recover" the costs of access fees paid for all toll calls. In Missouri, only residential customers of these companies are assessed the special surcharge. No matter how these telecommunications companies spin this special charge, the outcome is the same: the residential consumer pays more each month. The residential customer pays an extra charge not paid by any business MCI customer in the state, including some of the largest businesses in the state, nation, and world. A customer with a low volume of toll pays the same as a high volume user even though a high volume toll user can cause MCI WorldCom to incur significantly more access costs. The impact of this special surcharge is discrimination without justification or reason. MCI WorldCom's access recovery charge, as was AT&T's and Sprint's similar, results in unjust and unreasonable rates that unlawfully discriminates against Missouri residential customers.

Although the long distance market is considered competitive, there is still a high percentage of market concentration. On a national level, AT&T, MCI WorldCom, and Sprint control about 64% of the total toll market based on 2000 toll service revenues, the latest reported year. (FCC, *Trends*, p.10-14). The following table shows the dominance of these three carriers in the residential market nationally considering access lines, toll revenues, and direct-dial minutes as points of comparison. It also shows the dominance of

these three carriers in the Missouri residential market based on direct-dial minutes. The significance of these statistics is that even with competition, these three carriers have over a 70% market share of residential customers in Missouri, making it more difficult for customers to easily find and transfer to a well known competitor to avoid the access cost recover surcharges. The actions by these three companies affect over a million Missouri residential telephone customers. Competition has not protected them from the introduction of this added surcharge. The competitive positions of this big three have served to give them the market power to increase prices and impose the surcharge on the very customers who are less likely to switch carriers or seek alternatives. The marketplace has not protected these customers, so the Public Service Commission must act when the competitive market fails to protect the consumer. See, Section 392.185, RSMo 2000.

	AT&T	WORLDCOM	SPRINT	OTHER
ACCESS LINES	53.3%	18.1%	6.9%	21.8%
TOLL REVENUES	48.4%	22.2%	6.8%	22.6%
DIRECT DIAL MINUTES	44.7%	21.3%	7.3%	26.6%
MISSOURI DIRECT DIAL MINUTES	46.5%	11.2%	12.4%	29.9%

Source: FCC, *Trends in Telephone Service*, May 22, 2002 Tables 10.9, 10.10, 10.11

Argument

Public Counsel suggests that this new charge is a discriminatory rate increase for Missouri residential customers who subscribe to MCI WorldCom long distance services. The effect of the charge is to increase the effective price per minute for a Missouri

residential customer so that the Missouri customer pays more per minute for toll service (interstate) than a MCI WorldCom customer in another state where this access recovery fee is not charged or is charged at a lower rate. This violates Section 254 (g) of the Federal Telecommunications Act of 1996.

Section 254 (g) of the Federal Telecommunications Act of 1996 and FCC Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61 (August 7, 1996) (11 FCC Rcd 9564) requires interexchange carriers such as MCI WorldCom to "provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State . . . to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers." (para.80).

The \$1.95 Missouri surcharge is discriminatory in that this surcharge is not levied on similarly situated customers in other states. MCI has singled out Missouri residential customers for discriminatory treatment so that when the per minute charge for interstate toll is factored with this special Missouri specific access cost recovery surcharge each month, Missouri residential customers pay a higher per minute price for MCI's interstate toll service than residential customers in other states. The FCC ruling and the clear import of Section 254 (g) of the Federal Telecom Act prohibit such discrimination between states.

MCI WorldCom's proposed charge is unjust and unreasonable because it does not bear a reasonable relationship to its stated purpose to recover the access charges MCI

WorldCom pays to the local telephone companies to utilize their local phone lines. The recovery charge makes no distinction based on the amount of toll and, therefore, the access costs incurred. If the customer is presubscribed to MCI WorldCom and makes \$1.10 in MCI toll calls during a month, the customer is charged \$1.95. A customer with \$10,000 in toll calls will be charged \$1.95. Each customer pays the same amount no matter how many toll calls are made and no matter how long the calls are. Customers who make few, if any, long distance and local toll calls are treated as if they are business or industrial giants, such as Hallmark or Boeing, or are customers with a substantial monthly long distance or international calling.

The proposed charge for access recovery is unjust and unreasonable because MCI levies this surcharge only upon residential customers even though business customers also generate access charges for MCI. If the purpose is to recover costs then it should not arbitrarily and unreasonably exclude business customers that generate the same type of access fees and often in a greater amount.

The access recovery charge is unjust and unreasonable because the same \$1.95 fee is applied to each residential account without differentiating between in-state toll calls and interstate toll calls, InterLATA calls and IntraLATA calls, domestic or international calls and the different access rate structure involved for each type of call. Even though Missouri access rates on interstate charges are less than the access rates for intrastate charges, the cost recovery charge is applied on a per account basis without recognition of the difference in these rate structures and without any recognition of whether the customer's toll calling pattern is exclusively or even predominately interstate or intrastate calling. There is often a different access rate charged for intraLATA calls than for

interLATA calls, yet the same \$1.95 fee applies to all accounts without distinction. The surcharge will be applied to a residential customer even if the customer subscribes to a toll saver plan that does not cause MCI to incur access fees. If a presubscribed MCI WorldCom Long Distance customer has MCA service for the local calling scope (to avoid toll charges), MCI WorldCom does not incur access charges on those MCA calls. If a customer subscribes to MCI's resale of SWBT's Local Plus service, SWBT pays the access charges for calls completed under resale of that plan. MCI incurs no access charges for its customers' calls on the resold Local Plus service. MCI WorldCom surcharge plan bills those customers to recover access costs that MCI WorldCom has avoided by the customer paying extra fees for MCA service or resold Local Plus service with SWBT paying the resultant access charges.

MCI WorldCom is following the same course that AT&T and Sprint laid out with the AT&T In-state Connection Fee approved in TT-2001-129 and Sprint's instate access recovery fee recently approved in TT-2002-1136. Public Counsel has appealed the AT&T decision to the Circuit Court; Public Counsel has asked the PSC to rehear the Sprint decision. As Public Counsel feared and predicted, the approval of the AT&T surcharge lit the fire for interexchange carriers to increase their rates by filing separate surcharges for access rate recovery in Missouri. Now that the three largest long distance carriers in Missouri and in the nation have filed for these surcharges and separate charges, there can be little doubt that the rest of the industry will follow their lead. Given the telecommunications market and industry woes, carriers will try to shift as much costs as possible to residential customers. As a result, the consumer will be inhibited and

perhaps effectively blocked from selecting a "competitive choice" that avoids this surcharge.

MCI does not explain the rationale for seeking the recovery of these access costs in a separate \$1.95 charge that only applies to Missouri residential customers. AT&T had based its surcharge for access recovery on its claim that Missouri access charges are "excessive." The Commission should not automatically accept the interexchange carriers' claims without investigating the underlying reasons and rationale. No evidence has been developed in support of the access recovery tariffs to show that this claim had any real substance or validity. Public Counsel suggests that the pending investigation into the cost of access service for CLECs in Missouri promises to explore these and related myths and shed light on Missouri telephone service rates. Public Counsel anticipates that the evidence adduced in TR-2001-65 and the results and the analysis of cost studies in that case will cast serious doubts on claims that Missouri access rates are "excessive."

The tariff violates Section 392.200, RSMo 2000 because it discriminates against Missouri residential customers in that it unreasonably applies a charge designed to recover toll access costs paid by the company on customers that have little toll usage. The same charge is made for all accounts in excess of the minimum of \$1.00 MCI spending. This could include a MCI customer who made no billed toll calls. If the customer has a MCI plan with a minimum payment of over \$1.00, the customer could have no toll calls and, therefore, did not cause MCI to incur access fees, yet still be billed the \$1.95 to recover access charges that were not incurred.

The access recovery charge is discriminatory because it is applied as a flat rate without regard to the type, amount and duration of toll calls and the resultant access charges incurred by the company, if any. The charge results in an unreasonable and prejudicial disadvantage for a class of MCI WorldCom presubscribed customers that have a low amount or no toll calling. Customers with considerable toll calling are given an undue and unreasonable preference and advantage by paying the same amount per month as those customers with low volume.

Section 392.200.3 RSMo provides:

“No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever except that telecommunications messages may be classified into such classes as are just and reasonable, and different rates may be charged for the different classes of messages.”

Section 392.200, RSMo 2000, subsection 2, provides in pertinent part:

“No telecommunications company shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to telecommunications or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to telecommunications under the same or substantially the same circumstances and conditions.”

MCI WorldCom has failed to disclose the justification and basis for singling out these residential customers for discriminatory treatment and extra charges. Public Counsel’s investigation of MCI WorldCom’s website provided no information on the new access recovery charge. MCI has not justified how and in what manner this discriminatory method of assessing a cost recovery charge is reasonable and proper and

in the public interest. MCI should be required to make a showing that this discrimination and the recovery of these costs in this manner is based upon reasonable and fair conditions which equitably and logically justify this tariffed rate. *State ex rel. DePaul Hospital School of Nursing v. PSC*, 464 SW2d 737 (Mo App 1970).

Access charges have a long history and the interexchange carriers have incorporated this cost factor and element into their rates. The competitive marketplace determines to what extent the carrier will seek to recover all or any part of those costs in its rates. By separating this cost element from the normal rate structure, MCI WorldCom distorts the competitive toll rate structure. It also seeks to recover this cost twice and without regard to customer actual usage or costs by charging a separate, additional surcharge to customers for access costs. It also seeks to recover the costs from only one class of customers without any justification for the discrimination in treatment and rates.

Section 392.200. 1, RSMo provides:

Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. **All charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the commission.** Every unjust or unreasonable charge made or demanded for any such service or in connection therewith or in excess of that allowed by law or by order or decision of the commission is prohibited and declared to be unlawful. (emphasis supplied)

Section 392.185, RSMo provides in part:

The provisions of this chapter shall be construed to:

(4) Ensure that customers pay only reasonable charges for telecommunications service;

(6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest[.]

MCI WorldCom's separate and distinct additional charge is in reality a rate increase dressed up in different terminology to disguise its true effect. This flat rate charge unfairly inflates the per minute rate charged by MCI WorldCom and hides the true cost to the consumer in a list of separate charges. The resulting effective rates are unreasonable and unjust.

Commission's jurisdiction for review and suspension

Public Counsel suggests that Sections 392.200, and 392.185, RSMo 2000 provide the statutory basis for the PSC to review and suspend this tariff. In addition, the PSC has broad power to protect consumers even if the telecommunications provider is a competitive company and is providing a competitive service. Section 392.185, RSMo. The Commission's oversight and authority to suspend is an essential power of the PSC to carryout the legislative purpose of Chapters 386 and 392, RSMo.

In Case No. TO-99- 596, *In re Competitive Local Exchange Telecommunication Companies*, June 13, 2000, the Commission set out the scope of its jurisdiction and duty:

"In construing Chapter 392, including Section 392.361.3, the Commission must be mindful of the contents of Section 392.185, RSMo Supp. 1999, which has been set out in part above. In addition to reasonable prices and the protection of ratepayers, that section provides that the purpose of the chapter is to "[p]ermit flexible regulation of competitive telecommunications companies and competitive telecommunications services[.]" Section 392.185(5), RSMo Supp. 1999. Additionally, Section 392.200.4(2), RSMo Supp. 1999, declares that "[i]t is the intent of this act to bring the benefits of competition to all customers[.]"

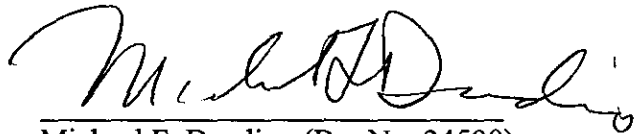
The offer of competitive services does not mean that customers are fair game for unreasonable and unjust rates. Here MCI WorldCom introduces a fee under the guise of a non-usage sensitive surcharge for the recovery of access rates paid by the company on a usage sensitive basis. The surcharge increases the effective rates for MCI WorldCom long distance service on a selective basis. The entire burden of recovering access charges through this tariff is placed on residential customers. The public interest is not served by allowing such surcharges to go into effect without an examination into whether such rates and surcharges are proper, reasonable, and just or are discriminatory.

For the foregoing reasons, Public Counsel asks the PSC to suspend the tariff and set this matter for an evidentiary hearing. In addition, Public Counsel asks the PSC to hold a public hearing on the broad impact this tariff has on so many Missouri toll customers in many parts of the state.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY:



Michael F. Dandino (Bar No. 24590)
Senior Public Counsel
200 Madison Street, Box 7800
Jefferson City, MO 65102
Telephone: (573) 751-5559
Facsimile: (573) 751-5562
E-mail: mdandino@mail.state.mo.us

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed or hand delivered this 8th day of August, 2002 to the attached service list:

General Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Stephen Morris
MCI Telecommunications Corp.
701 Brazos, Suite 600
Austin, TX 78701

Carl J. Lumley
Curtis, Oetting, Heinz, Garrett & Soule
130 S. Berniston, Suite 200
St. Louis, MO 63105

Carmen L. Feliciano
Tariff Administrator
MCI WorldCom Communications, Inc.
205 North Michigan Avenue, Ste. 1100
Chicago, IL 60601

A handwritten signature in cursive script, appearing to read "Carl J. Lumley", is written over a horizontal line.

WORLDCOM

FILE COPY

Midwest Region Public Policy
205 North Michigan Avenue
Suite 1100
Chicago, IL 60601
312 260 3060
Fax 312 470 5571

August 1, 2002

Mr. Dale H. Roberts
Executive Secretary
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, Missouri 65101

RECEIVED

AUG 02 2002

*Records
Public Service Commission*

Dear Mr. Roberts:

Enclosed for filing with the Commission are an original and four(4) copies of revised tariff pages for MCI WORLDCOM Communications, INC. MO P.S.C. Tariff No. 1 MCI WORLDCOM respectfully requests an effective date of September 3, 2002.

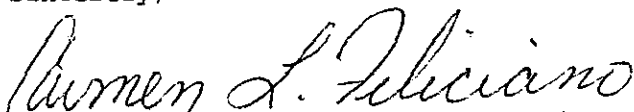
Page No.
40.2

Revision No.
Original

The purpose of this filing is to add new language that adds the Instate Recovery Fee to the Rules and Regulations section of the tariff.

If you have any questions or concerns regarding this filing please contact me at (312) 260-3220.

Sincerely,



Carmen L. Feliciano
Tariff Administrator

Enclosure

200300092

AUG 07 2002

INTEREXCHANGE TELECOMMUNICATIONS SERVICES TARIFF.

SECTION B - RULES AND REGULATIONS (Cont.)

6. USE OF SERVICE (Cont.)

.10 Instate Access Recovery Fee

MCI(R) is charged to originate and terminate its instate long distance calls over other companies networks. MCI will assess a monthly fee to residential customer to recover these charges. Customers will be exempt from this charge during any monthly billing period where their MCI spending is less than \$1.00.

Residential Customers:

An Instate Access Recovery Fee of \$1.95 per account per month will be Applied to invoices of customers of the following residential services under this tariff.

Option A (Dial One/Direct Dial)
Option B (Credit Card) --etc.

ISSUED: August 2, 2002

EFFECTIVE: September 3, 2002

Carmen L. Feliciano
205 N. Michigan
Suite 1100
Chicago, IL 60601