

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

In the Matter of AT&T Communications of the)
Southwest Inc.'s Proposed Tariff to Establish a) **Case No. TT-2002-129**
Monthly Instate Connection Fee and Surcharge)

In the Matter of Sprint Communications Company,)
L.P.'s Proposed Tariff to Introduce an In-State) **Case No. TT-2002-1136**
Access Recovery Charge and Make Miscellaneous)
Text Changes)

In the Matter of MCI WorldCom Communications, Inc.'s)
Proposed Tariff to Add an In-State Access Recovery) **Case No. XT-2003-0047**
Charge and Make Miscellaneous Text Changes)

In the Matter of MCI WorldCom Communications,)
Inc.'s Proposed Tariff to Increase its Intrastate) **Case No. LT-2004-0616**
Connection Fee to Recover Access Costs Charged)
by Local Telephone Companies)

In Re the Matter of Teleconnect Long Distance)
Services and Systems Company, a MCI WorldCom) **Case No. XT-2004-0617**
Company d/b/a TelecomUSA's Proposed Tariff)
to Increase its Intrastate Connection Fee to Recover)
Access Costs Charged by Local Telephone Companies)

SPRINT'S PROPOSAL FOR PROCEEDING

COMES NOW Sprint Communications Company L.P., ("Sprint") and presents its Proposal for Proceeding in the above referenced case in response to the Opinion issued by the Missouri Court of Appeals, Western District on August 10, 2004 in Case No. WD63133 (Consolidated with WD 63134 and WD 63135) (the "WD Appeal"). In support of its Proposal for Proceeding, Sprint states as follows:

1. On January 6, 2005, the Circuit Court of Cole County, Missouri, issued its order remanding this matter to the Commission pursuant to the Mandate of the Missouri Court of Appeals. The Court of Appeals Mandate, issued on December 27, 2004, concluded that "the Commission, in approving the surcharges sought by the Companies,

failed to make sufficient findings of fact and conclusions of law to justify its orders”. (WD Appeal, p. 15).

2. On March 2, 2005, a pre-hearing conference was held at the Commission for the purposes of determining how the Commission should proceed. In the WD Appeal, the Court ruled that “[o]n remand, the Commission may reopen the case and hear additional evidence, if a majority of the Commission desires to do so. Otherwise, it may make the required findings of fact and conclusions of law based on the evidence already presented.” (WD Appeal, p. 15). At the pre-hearing conference, the Carriers, Sprint, MCI and AT&T, favored the option of the Commission simply reformulating the findings of facts and conclusions of law without a hearing whereas OPC sought additional evidence through the submission of affidavits or some other method. Staff urged the Commission to wait until after the impacts of the (a) proposed Line Item Billing rule (4 CSR 240-33.045) becomes effective and (b) the FCC issues its anticipated ruling on truth and billing standards (commonly referred to as the NASUCA Petition) which are anticipated in May. At the conclusion of the pre-hearing conference, the Commission directed the parties to file comments in support of their positions.

3. Given the Court’s ruling in the WD Appeal, Sprint strongly urges the Commission to issue further findings based on the existing record established by the Commission when approving Sprint’s tariff on July, 23 2002. This avenue is available to the Commission and it should be pursued.¹ The Commission may simply reformulate findings based on the existing record on remand. The record in this case supports the Commission’s earlier decision and it should be relied upon to supply adequate findings

¹ The Commission recently took this approach upon remand in TR-2002-251, which was the remand of the proceeding to approve the Sprint 2001 price-cap filing. Findings of fact and conclusions of law were issued based upon the existing record without further submission of evidence.

for the July 23, 2002 Order. The existing record contains facts that will allow the Commission to comply with the guidance from the opinion in the WD Appeal. That the record was developed without a hearing does not make the record deficient. Indeed, the Court of Appeals ruled that a hearing is not required and the sole basis of the Court's remand is that the findings in the Commission's July 23, 2002 Order failed to advise the Court of the grounds upon which its earlier decision was based. The Commission can, and should, respond to the Court's remand by reviewing the record and providing sufficient and adequate findings based on the record that supported its 2002 decision.

4. Adequate findings do not require a hearing. The Commission routinely issues findings of fact without a hearing. Consistent with this practice, the courts have not held that a hearing was necessary to make adequate findings. At this point, the Commission's task is to review the existing record and reformulate the findings to more specifically provide the facts upon which the Commission relied upon in reaching its July 23, 2002 Order.

5. To assist the Commission in developing adequate reformulated findings of facts and conclusions of law, and to demonstrate that the current record does indeed have substantial and sufficient facts for the Commission to satisfy the direction of the Court, Sprint recommends the Commission direct the Carriers to file proposed findings of facts and conclusions of law within forty-five days of its Order. OPC should then be given an opportunity to provide the Commission with its response. If the record does indeed support the Commission's earlier decision, the record should be used and the Commission should simply reformulate its findings and conclusions. If, however, the Commission reviews the proposed findings and conclusions as presented by the Carriers

and determines the Court's mandate cannot be satisfied, the Commission retains the option to reopen the case for additional evidence, such as the submission of affidavits.

6. Given the timing of Sprint's recommendation, Sprint notes that its proposal would be consistent with Staff's suggestion to wait until the impacts of the Commission's Line Item Rule and the NASUCA Petition are known. If the Commission adopts Sprint's recommendation, Carriers would have 45 days to file proposed findings of facts and conclusions of law and the OPC would be entitled to a response. The timing of such filings would coincide with the anticipated release of the FCC's NASUCA decision in May, and after the May 11, hearing date of the Commission's proposed Line Item Rule.

WHEREFORE, based on the above, the Commission should evaluate the record upon which the Commission made its decision in 2002 and from that record reformulate the findings to more specifically provide the findings necessary to support the Commission's earlier decision.

Respectfully submitted,

SPRINT

A handwritten signature in black ink, appearing to read "Brett D. Leopold", written over a horizontal line.

Brett D. Leopold, MO Bar No. 42289
6450 Sprint Parkway
MS: KSOPHN0212-2A353
Overland Park, Kansas 66251
Tele: 913-315-9155
Fax: 913-523-9630
Email: brett.d.leopold@mail.sprint.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of March, 2005, a copy of the above and foregoing was served via U.S. Mail, postage paid and or email/facsimile to each of the following parties:

David Meyer
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Carl J. Lumley
Curtis Oetting Heinz Garrett
130 S. Bemiston Ave., # 200
St. Louis, MO 63105

Michael F. Dandino
Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102-2230

Mark W. Comley
Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537

Paul DeFord
Lathrop & Gage
2345 Grand Boulevard, Suite 2500
Kansas City, MO 64108

Kevin Zarling
AT&T Communications of the
Southwest
919 Congress Street, Suite 900
Austin, TX 78701


