

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

State of Missouri ex rel Acting Public Counsel  
John Coffman,

Relator,

vs.

Public Service Commission of the State of  
Missouri, a state agency, and its members Kelvin  
Simmons, Connie Murray, Sheila Lumpe,  
Steve Gaw, and Bryan Forbis

in their official capacity,

Respondents.

Case No. 02CV325672

Division

MCIWorldCom Communications, Inc,

Intervenor

INITIAL BRIEF OF RELATOR PUBLIC COUNSEL

Introduction

Public Counsel asks the Court to set aside the order of the Public Service Commission that approved the tariff of MCIWorldCom Communications, Inc. establishing a \$1.95 monthly 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.

The PSC denied Public Counsel's request for an evidentiary hearing to consider its claims of discriminatory treatment and unlawful, unjust and unreasonable rates. Essentially, Public Counsel's grounds for relief is that the Commission's decision is

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 allowing MCI to separate this cost element from the normal rate structure, the PSC aids MCI in the distortion of the competitive toll rate structure. It also allows MCI 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.

Whether or not a company is a competitive company, so long as it is a telecommunications company, the PSC has a duty to ensure that all charges for services are "just and reasonable."

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)

The PSC has a specific duty to see that customers on pay reasonable charges and that the public interest is promoted and the ratepayers are protected even under a competitive system.

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;

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