BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In Re the Matter of MCI WorldCom Communications, Inc. Proposed Tariff to Increase it Intrastate Connection Fee to Recover Access Costs Charged by Local Telephone Companies.	)))))	Case No. LT-2004-0616 Tariff File No. JL-2004-1424

MCI WORLDCOM COMMUNICATIONS, INC.'S RESPONSE TO PUBLIC COUNSEL'S MOTION TO REJECT OR SUSPEND

COMES NOW MCI WorldCom Communications, Inc.'s (MCI), pursuant to Commission Order dated June 30, 2004, and for its Response to Public Counsel's Motion to Reject or Suspend states as follows:

INTRODUCTION

As Public Counsel admits in its Motion, MCI's proposed tariff is similar to tariffs filed previously by MCI, AT&T and Sprint. Public Counsel also admits in its Motion that those prior tariffs have already been approved by the Commission and the Commission's decisions have been affirmed by the Cole County Circuit Court. Those consolidated cases are currently under submission before the Missouri Court of Appeals, Western District, having been fully briefed and oral argument taken. The Commission should follow this precedent and approve MCI's tariff changes.

The Commission should apply the standards for competitive rate filings regarding MCI's tariff changes and approve them.

The rates, terms and conditions for MCI's instate long distance service, a competitive service, are constrained by what the market will bear. Accordingly, the statutes require that the Commission rely upon such market forces rather than apply the close scrutiny historically reserved for monopoly telephone service rate changes. See, e.g. Section 392.185. When addressing the prior tariffs, the Commission properly approved them, because there was no reason to conclude the tariffs would

result in unreasonable rates. The Commission expressly considered the reasonableness of the tariff changes as a whole. Specifically, the Commission stated in its Order regarding MCI's tariff:

> MCI WorldCom is a competitive company providing competitive telecommunications services. A proposed tariff that increases rates or charges of a competitive telecommunications company is governed by Section 392.500(2). That statute allows a proposed tariff increasing rates or charges to go into effect after the proposed tariff has been filed with the Commission and the affected customers are given at least ten days' notice. The Commission finds that MCI WorldCom has complied with the technical requirements of Section 392.500(2).
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> In interpreting the various provisions of Chapter 392, the Commission turns to the purposes of the chapter as specified in Section 392.185.
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> That section states in part:
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> The provisions of this chapter shall be construed to:
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> (4) Ensure that customers pay only reasonable charges for telecommunications service;
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> (5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;
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> (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;
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> * * *
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> It is the Commission's task to balance these purposes.
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> Because MCI WorldCom's proposed monthly service charge of $1.95 applies only to a competitive service, consumers are free to obtain service from an alternative provider if they object to the charge. Considering the competitive climate in which this service is offered, the Commission finds that the allowing full and fair competition to substitute for regulation will ensure that consumers pay only reasonable rates. As Staff noted, monthly recurring charges and surcharges are common in the telecommunications industry and MCI WorldCom should not be treated differently than other similarly situated telecommunications companies. The Commission determines that the proposed tariff is just and reasonable and should be approved. Therefore, the Commission will deny the motion to suspend and will approve the tariff sheet.

(Case No. XT-2003-47, Order dated August 27, 2002).

Public Counsel recognized in the prior proceedings that there are inherent price controls in competitive markets. It admitted, "the competitive marketplace determines to what extent the carrier will seek to recover all or any part of [its] costs in its rates." OPC Circuit Court Brief, p. 12. This admission confirms the total lack of foundation for OPC's Motion.

Public Counsel's assertions regarding cost recovery are misplaced. Competitive companies, like MCI, do not have to provide cost justification for their rates. Rather, as Public Counsel admits, competitive companies set their rates within the constraints of the competitive market. If a company errs and sets a rate too high, the customers simply choose another provider. There is no basis for an assertion that a competitive company is recovering some specific cost twice, just as there is no basis for an assertion that a competitive company is actually recovering the total of all its costs at a particular point in time. Cost studies are not required or conducted and the absence of such studies in this matter is immaterial. Rather, competitive firms derive a profit if they are able to control their expenses and generate sufficient revenues from all lines of business.

Similarly, Public Counsel's complaints about customer confusion have no basis. The rate change is in no way hidden, nor could it have been. As with any competitive rate increase, customer notice was provided. See Section 392.500. There is no basis for Public Counsel's assertion that MCI's rate increase is hidden or confusing and, therefore, somehow unjust and unreasonable.

As the Commission has previously concluded, MCI's customers can change carriers if they are not satisfied with its rates. MCI does not dominate the market. There are numerous other carriers serving the market, competition is vigorous, and customers can and do change providers. The fact that MCI, AT&T and Sprint still serve a sizable portion of the Missouri long distance market only goes to show that their customers are not dissatisfied. Moreover, although Public Counsel fails to mention it, the Commission is well aware that SBC - the largest carrier in the state

(and one of the largest in the country and the world) - has entered the intrastate long distance service market in Missouri[1], thereby providing yet another choice to customers and even greater competitive constraints on MCI and the other instate long distance services providers.

The foregoing demonstrates that Public Counsel has not and cannot show the Commission should not approve MCI's tariff change. With no reason to believe that the competitive rate increase in question would be unreasonable, the Commission should approve MCI's tariff.

MCI's tariff is reasonable on its face and does not discriminate against customers in violation of Section 392.200 RSMo.

MCI's tariff is reasonable on its face. It simply increases a monthly surcharge on the intrastate long distance bills of its customers. The charge applies uniformly to all its intrastate residential long distance customers; it does not discriminate between such customers. In addition, it does not violate Section 392.200. Public Counsel has not demonstrated otherwise or that the tariff is unreasonable as a matter of law.

Apparently Public Counsel would prefer that MCI implement a different rate structure. But Public Counsel is not charged with such discretionary authority over MCI. In fact, even the Commission does not have the authority to micromanage MCI's competitive rates in this way.

As noted above, the Commission is only charged with assuring the reasonableness of rates under Section 392.200 and does not have authority to totally usurp the discretion of MCI management to select among various reasonable alternative structures for rates for MCI's services. See, e.g., State ex rel. Kansas City Transit v. PSC, 406 SW2d 5 (Mo. 1966). Such management discretion includes the ability to use average rate structures, instead of using usage sensitive structures, as well as discretion to use different rate structures for residential versus business rates.

[1] Public Counsel's citation of year 2000 long distance market data is out of date.

Thus, even though the Commission has jurisdiction over the reasonableness of the *resulting* rate structure, Public Counsel has in no way demonstrated that the structure selected by MCI is unreasonable. The Commission should continue to rely upon the competitive marketplace to assure reasonableness.

Further, there is no basis for Public Counsel's implicit assertion that Section 392.200 prohibits average charges. Public Counsel cites no authority for such a proposition. Customer usage varies from month to month and from year to year. There is no fixed class of low-volume or high-volume users - any customer can change usage at any time he or she chooses. MCI has the discretion to develop an average charge for customers. Moreover, differences between residential and business charges have always been permitted under the statute, and such differences routinely result in different rates. Such differences alone do not make the rates unreasonable. Public Counsel cites no contrary authority.

In light of the foregoing, MCI's tariff is reasonable and Public Counsel has not shown otherwise.

MCI's tariff does not violate Section 254(g) of the Federal Telecom Act and related rules.

MCI's tariff changes concern intrastate services. These changes amend an intrastate tariff under the jurisdiction of the Missouri Commission. The changes expressly refer to "instate" calls and charges. The tariff changes do not implicate Section 254(g) of the Federal Telecommunications Act of 1996.

Section 254(g) of the Federal Telecommunications Act (47 USC 254(g)) directed the FCC to establish rules that "require that a provider of **interstate** interexchange telecommunications services

shall provide **such** services[2] to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State." (Emphasis added). The FCC did establish such rules, but merely by restating the contents of Section 254(g). See 47 CFR 64.1801.

MCI's tariff changes apply to instate services, not interstate service. Hence, the tariff changes are subject to the jurisdiction of the Missouri Commission, not the FCC. Likewise, the tariff changes are subject to Missouri law, not the provisions of Section 254(g) cited by Public Counsel, which expressly apply only to **interstate** services.

Public Counsel incorrectly contends that the tariff changes involve interstate service. The tariff demonstrates the errors in Public Counsel's argument. On its face, the tariff applies to "instate long distance calls". The proposed changes were filed with the Missouri Commission, not the FCC (which has detariffed long distance rates).

Public Counsel incorrectly asserts that the proposed intrastate tariff changes somehow would increase interstate rates and create a discrepancy as to interstate rates charged in other states. As shown herein, the tariff in question does not affect interstate rates.

There simply is no reason for the Missouri Commission to undertake an examination of Public Counsel's erroneous arguments regarding the purported interstate effects of the intrastate tariffs at issue, because by definition the approved tariffs can have no interstate effects.

Public Counsel also erroneously refers to a provision in Section 254(g) regarding parity of urban and rural rates. Whether or not that statutory provision and related FCC regulations (which again merely restate 254(g), see 47 CFR 64.1801) apply to intrastate services as well as interstate

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[2] Public Counsel omits the first part of the sentence, which makes clear that "such" services refer to "interstate" services. Public Counsel further omits language that makes clear that the part of the quote that follows the ellipses is actually a separate sentence addressing a separate subject. Indeed, in the statute, the two points are made in reverse order, which is not at all clear from Public Counsel's Motion. Whether or not the provisions regarding urban and rural customers apply beyond interstate services, it is made expressly clear that the provisions regarding parity of rates from state to state only apply to interstate services.

services, MCI's tariff changes apply uniformly without regard to the geographic location of a customer in the state; urban and rural customers are not treated differently. Therefore, neither Section 254(g) nor 47 CFR 64.1801 provides a basis for finding the tariff to be unlawful.

At bottom, Public Counsel appears to contend that MCI's intrastate charge is somehow converted into an interstate charge in months where a customer does not make any intrastate calls. Such is not the case. MCI could have structured its charge in any number of ways, given the latitude afforded by Missouri law to a competitive carrier, but regardless of the structure selected it nonetheless establishes charges for intrastate service. The fact that MCI chose an average monthly charge for intrastate long distance calling, rather than a charge that varies with calling volume, does not convert the charge to an interstate one anymore than it converts the charge to a fee for any other product or service. Under Public Counsel's "theory", if there were no telephone calls at all in a month, but for the $1.00 exemption, MCI's tariff could somehow be characterized as an increase in some other utility rates, such as electrical service charges, or even non-utility rates such as automobile repair costs. Of course that is not the case. The charge is for intrastate long distance and simply applies consistently each month; it does not go up when there is a substantial amount of intrastate long distance calling and it also does not go down when there is little or no intrastate long distance calling.

Public Counsel cannot by argument convert an intrastate rate into an interstate rate. The intrastate tariff changes are not subject to the provisions of Section 254(g) regarding interstate services. Moreover, there is absolutely no requirement that intrastate rates must be the same in every state, nor does Public Counsel even purport to identify such a requirement.

The Commission does not need to hold a hearing before approving MCI's tariff changes.

MCI submitted its proposed tariff changes in compliance with Sections 392.220 and 392.500, in that MCI gave proper advance notice to the Commission and customers of the proposed changes, and used a 30-day effective date. Public Counsel does not assert that MCI violated these statutes.

The Commission is not required to hold a hearing before approving the tariff. Under Section 392.230.3, when the Commission receives a proposed increase in competitive rates, it may in its discretion either approve the tariff and allow it to take effect, or suspend the tariff for further inquiry. Under this "file and suspend" method of ratemaking, the Commission does not have to hold a hearing if it determines after considering relevant factors that a hearing is not necessary. See, e.g., State ex rel. Jackson County v. PSC, 532 SW2d 20, 28-29 (Mo. 1975); State ex rel Laclede Gas Co. v. PSC, 535 SW2d 561, 566 (Mo. App. 1976); State ex rel UCCM v. PSC, 585 SW2d 32, 49 (Mo. 1979). Parties such as Public Counsel do not have a right to hearing in such circumstances. Id.

The Commission would not abuse its discretion in deciding to approve MCI's tariff changes without a hearing. So long as the Commission's Order demonstrates a careful consideration of the points presented by Public Counsel in its Motion to Reject or Suspend, particularly given the fact that the Commission has already gone through the process of considering similar tariffs filed by others, it can act without hearing.

The Commission's Order need only demonstrate the basis for its action.

Full-blown findings of fact and conclusions of law are not required in a non-contested case like this one in which the Commission does not have to hold a hearing. See Section 536.090; KCP&L v. Midland Realty, 93 SW2d 954, 960 (Mo. 1936). Rather, all that is required is a sufficiently detailed explanation of the Commission's action and the basis for it. See Section

386.280, 386.510. In its Order, the Commission can specifically explain that it has balanced the factors set forth in Section 392.185 and determined that it can rely upon the competitive market to assure that the rates will remain reasonable. The Commission can indicate that it has made certain that MCI had complied with the applicable statutes regarding competitive rate changes.

Conclusion

MCI is a competitive carrier and as such its tariff applications should be processed as any other competitive carrier - in other words, customers who are free to choose their long distance carrier in this competitive market will decide the merits of this surcharge. The Commission should deny Public Counsel's Motion to Reject or Suspend, as it has already done regarding the previous tariff filings of MCI and other carriers. Contrary to Public Counsel's assertions, the proposed tariffs are straightforward, non-discriminatory and do not involve double-recovery of costs (a concept that cannot even be applied when rates are based on market conditions rather than regulated cost recover). As previously noted, these intrastate tariffs do not apply to interstate services and are uniformly applicable to urban and rural areas of Missouri; hence, the tariffs do not run afoul of Section 254(g) of the Telecommunications Act of 1996 as erroneously alleged by Public Counsel.

WHEREFORE, MCI requests the Commission to deny Public Counsel's Motion to Reject or Suspend Tariff and to approve MCI's tariff filing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the above and foregoing document was sent via e-mail or U.S. Mail on the 12th day of July, 2004 to the following:

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