

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 10th day of  
January, 2006.

In the Matter of AT&T Communications of the	)	
Southwest, Inc.'s Proposed Tariff to Establish a	)	<b><u>Case No. TT-2002-129, et al.</u></b>
Monthly Instate Connection Fee and Surcharge	)	

**ORDER DENYING MOTION FOR REHEARING**

Issue Date: January 10, 2006

Effective Date: January 10, 2006

On December 13, 2005, the Commission issued a Report and Order denying motions filed by the Office of the Public Counsel to reject tariff filings made by several long distance telecommunications companies. The challenged tariffs created, or increased the amount of, instate access recovery fees and surcharges for certain long distance customers. That Report and Order became effective on December 23. On December 21, Public Counsel filed a timely motion for rehearing. AT&T Communications of the Southwest, Inc., MCI Communications Services, Inc., and Teleconnect Long Distance Services and Systems Company filed a joint response to Public Counsel's motion on January 3.

Public Counsel's motion for rehearing again argues that the Commission erred in not rejecting the challenged tariffs. Those arguments have already been considered and rejected by the Commission in its Report and Order and will not be readdressed in this order.

Public Counsel also raises two entirely new arguments against the challenged tariffs. For the first time in its motion for rehearing, Public Counsel argues that inclusion of the surcharges as line-items rather than as part of the per-minute rate prevents the consumer from making an informed choice. This argument is not properly before the Commission and is totally unsupported by any evidence. Furthermore, the evidence that was presented to the Commission clearly indicates that the companies have complied with all Commission procedural and notice requirements for approval of these tariffs.<sup>1</sup>

Public Counsel also, for the first time in its motion for rehearing, argues that the surcharges violate Section 254(g) of the Federal Telecommunications Act of 1996. Specifically, Public Counsel alleges that when the surcharges are applied to interstate calls, the result is to effectively price Missouri interstate calls higher than interstate calls in other states that are not assessed an instate access recovery charge or are assessed a lower charge. Public Counsel's argument is totally unsupported by any evidence in the record. Furthermore, this issue was not presented to the Commission for decision and is not properly before the Commission at this time.

As Public Counsel repeatedly points out, one of the statutory purposes of Commission regulation of the provision of telecommunications services in Missouri is to ensure that customers pay only reasonable charges for telecommunications services.<sup>2</sup> However, the statutes regarding the Commission's efforts to regulate telecommunications also require that the Commission "permit flexible regulation of competitive telecommunications companies and competitive telecommunications services," and "allow

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<sup>1</sup> Rhinehart Direct, Ex. 1, pages 6-7, lines 5-24, 1-18; Appleby Direct, Ex. 3, pages 3-5; Graves Amended Direct, Ex. 5, pages 21-22, lines 10-21, 1-5; Voight Rebuttal, Ex. 7, pages 6-7, lines 10-23, 1-12.

<sup>2</sup> Section 392.185(4), RSMo 2000.

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.”<sup>3</sup> Full and fair competition, as it exists in the long distance market, is the means that the legislature has chosen to ensure that customers pay reasonable charges for telecommunications service.

In advocating the rejection of these tariffs, Public Counsel asks the Commission to return to some of the principles that applied to the regulation of the telecommunications industry under rate-of-return regulation, as it existed before the advent of competition. The law, as it now exists, does not allow the Commission to turn back the clock in that manner.

Section 386.500.1, RSMo (2000), provides that the Commission shall grant an application for rehearing if “in its judgment sufficient reason therefor be made to appear.” In the judgment of the Commission, Public Counsel has failed to establish sufficient reason to grant its motion for rehearing.

**IT IS THEREFORE ORDERED:**

1. That the Motion for Rehearing filed by the Office of the Public Counsel is denied.
2. That this order shall become effective on January 10, 2006.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray and Appling, CC., concur  
Gaw and Clayton, CC., dissent

Woodruff, Senior Regulatory Law Judge

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<sup>3</sup> Section 392.185(5) and (6), RSMo 2000.