

**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)	Case No. TT-2002-129, <i>et al.</i>
Establish a Monthly Instate Connection)	(consolidated)
Fee and Surcharge)	

STAFF'S STATEMENT OF POSITIONS

COMES NOW the Staff of the Commission and as its Statement of Positions, states as follows:

I. Based on the following sub-issues, should the Commission reject the AT&T, Sprint and MCI tariffs at issue in this case?

No. The Commission should permit the surcharges at issue to remain in effect.

A. Should the Commission apply the provisions of subsection 392.200.1 to the AT&T, Sprint and MCI surcharges at issue, and if so, are the surcharges just and reasonable under subsection 392.200.1?

The Commission should apply the provisions of Section 392.200.1 to the surcharges in question. Section 392.200.1 provides:

1. 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.

The surcharges in this case are just and reasonable. In support of the justness and reasonableness of the surcharges, Staff's expert witness opines that (1) adequate customer notice was provided; (2) similar surcharges have been implemented in other jurisdictions; (3) such surcharges, where customers incur monthly fees that have little or nothing to do with actual usage are common in the industry; (4) Missouri has relatively high exchange access rates; (5) competitive necessity dictates that long distance carriers develop a rate structure that reduces the incentive for high volume customers to shop elsewhere; (6) alternatives exist that permit subscribers to avoid the surcharges; (7) market-based behavior may substitute for regulation in this situation to ensure that the rates are reasonable; and (8) customers may compare providers with one another and are free to choose another provider if they object to the surcharges. Rebuttal Testimony of William Voight, pages 3-6; Surrebuttal Testimony of William Voight, pages 2, 5 and 11.

B. Do the AT&T, Sprint and MCI surcharges at issue comply with subsections 392.200.2 and 392.200.3 RSMo. (2000)?

The surcharges comply with subsections 392.200.2 and 392.200.3. The pertinent portion of subsection 392.200.2 states:

2. 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. ...

Subsection 392.300 states:

3. 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.

The fundamental premise for both statutory sections is that similarly situated customers should be treated similarly, but telecommunications companies may create different classifications and charge different rates if it is just and reasonable to do so. In this case, the surcharges do not unduly discriminate (1) between residential and business customers, as customers in these categories pay different rates from one another in virtually all facets of the telecommunications industry; (2) between high and low volume customers because volume discounts are statutorily authorized and are routinely provided; (3) between urban and rural customers because marketplace realities find that service bundling is widely accepted and not all carriers provide both local and long distance throughout the state. Surrebuttal Testimony of William Voight, pages 3-4.

WHEREFORE, the Staff submits its Statement of Positions for the Commission's consideration.

Respectfully submitted,

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I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 10th day of August 2005.

/s/ David A. Meyer
