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 Monthly Instate Connection Fee and Surcharge.	)))	**Case No. TT-2002-129, et al.**

REPORT AND ORDER

Issue Date: **December 13, 2005**

Effective Date: **December 23, 2005**

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 Monthly Instate Connection Fee and Surcharge.	)))	**Case No. TT-2002-129, et al.**

Table of Contents

Appearances

Brett D. Leopold and **Kenneth A. Schifman**, 6450 Sprint Parkway, Overland Park, Kansas 66251, for Sprint Communications Company, L.P.

Kevin K. Zarling, AT&T Communications of the Southwest, 919 Congress, Suite 900, Austin, Texas 78701, and **Mark W. Comley**, Newman Comley & Ruth P.C. 601 Monroe Street, Suite 301, Jefferson City, Missouri 64111, for AT&T Communications of the Southwest, Inc.

Carl J. Lumley and **Leland B. Curtis**, Curtis, Heinz, Garrett & O'Keefe, P.C., 130 S. Bemiston, Suite 200, St. Louis, Missouri 63015, for MCI Communications Services, Inc. and Teleconnect Long Distance Services and Systems Company.

Michael F. Dandino, Senior Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel.

David A. Meyer, Associate General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission

REGULATORY LAW JUDGE: Morris L. Woodruff, Senior Regulatory Law Judge

REPORT AND ORDER

Syllabus: This report and order denies motions filed by the Office of the Public Counsel to reject tariff filings made by several long distance telecommunications companies to create, or increase the amount of, instate access recovery fees and surcharges for certain long distance customers.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or

argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

This consolidated case concerns five separate tariffs filed by AT&T Communications of the Southwest, Inc. (Case No. TT-2002-129); MCI WorldCom Communications, Inc. (Case Nos. XT-2003-0047 and LT-2004-0616); Teleconnect Long Distance Services and Systems Company, a MCI WorldCom Company d/b/a TelecomUSA (Case No. XT-2004-0617); and Sprint Communications Company, L.P. (Case No. TT-2002-1136). At various times in 2001, 2002, and 2004, the companies filed tariffs that implemented or increased an instate access recovery charge to be added to customer bills for long distance toll service. In response to each tariff filing, the Office of the Public Counsel filed a motion asking the Commission to suspend the tariff, conduct an evidentiary hearing and ultimately reject the tariff. The Commission denied Public Counsel's motions to suspend and allowed the in-state access recovery charge tariffs to go into effect.

Public Counsel appealed the Commission's decision in each case to the Circuit Court of Cole County. The first three cases to be appealed – TT-2002-129, TT-2002-1136, and XT-2003-0047 – were consolidated on appeal. On June 27, 2003, the circuit court ruled in favor of the Commission. Public Counsel appealed, however, and on August 10, 2004, the Missouri Court of Appeals for the Western District reversed that ruling and ordered the cases remanded to the Commission for further action.[1]

[1] *State ex rel. Coffman v. Public Service Commission*, 150 S.W.3d 92 (Mo. App. W.D. 2004)

In reversing the Commission's decisions to approve the tariffs, the Court of Appeals held that the Commission had failed to make sufficient findings of fact and conclusions of law to justify its orders. The Court of Appeals remanded the cases and directed the Commission to make findings of fact and conclusions of law. The Court of Appeals indicated that on remand the Commission could reopen the case and hear additional evidence. Otherwise it could make the required findings of fact and conclusions of law based on the evidence already presented.[2]

The two later cases – LT-2004-0616 and XT-2004-0617 – had also been appealed to the Circuit Court of Cole County, but the circuit court had not yet issued a decision on them when the Court of Appeals entered its decision remanding the three earlier cases. Thereafter, on February 22, 2005, acting on a stipulation of the parties, the Circuit Court of Cole County ordered that those two cases also be remanded to the Commission for further consideration.

Acting on remand, the Commission consolidated the five tariff cases and established a procedural schedule for the submission of evidence in the form of prefiled testimony. Witnesses on behalf of each of the parties submitted testimony. In a unanimous stipulation and agreement that was approved by the Commission on August 25, the parties agreed that all submitted testimony should be admitted into evidence. In that same document, the parties waived their right to cross examine the witnesses that offered testimony. As a result, no hearing was held. The parties submitted initial briefs on October 7, reply briefs on November 3, and proposed findings of fact and conclusions of law on November 14.

[2] *Id*. at 102.

AT&T and Its Tariff

AT&T is a competitive interexchange and local exchange telecommunications company authorized to provide telecommunications services in Missouri. All of the services that it offers in Missouri are classified as competitive, except for exchange access service.

AT&T initially filed a tariff creating an instate connection fee on August 14, 2001. The fee was set at $1.95 per month, and applied to all AT&T consumer accounts except those with monthly spending under $1.00, as well as customers of AT&T Digital Phone Service, AT&T Digital Broadband, AT&T Long Distance Lifeline Program, and customers under the AT&T Price Protection Plan.[3] After initially suspending that tariff, the Commission approved it to become effective on December 22, 2001. AT&T actually started billing its customers for the fee in the spring of 2002.[4]

Subsequently, in a tariff filed November 15, 2004, AT&T modified its instate connection fee by increasing the fee to $2.49 per month and applying the fee to all of its long distance customers except those customers in AT&T's Lifeline Program, and those who have AT&T Local Phone Service. That tariff was not challenged and went into effect on December 15, 2004.[5] The fee appears as a separate line item on AT&T's bill to its customers.[6]

---

[3] Rhinehart Direct, Exhibit 1, page 4, lines 7-15.

[4] Rhinehart Direct, Exhibit 1, page 4, lines 16-17.

[5] Rhinehart Direct, Exhibit 1, page 5, lines 3-9.

[6] Rhinehart Direct, Exhibit 1, page 6, lines 17-18.

Sprint and Its Tariff

Sprint is a competitive interexchange and local exchange telecommunications company authorized to provide telecommunications services in Missouri. Sprint also provides services as an incumbent local exchange carrier in portions of Missouri.

Sprint initially filed a tariff creating an instate access recovery charge on May 30, 2002. The fee was set at $1.99 per month, and applied to all of Sprint's residential long distance customers, except those that purchased local service from a Sprint company.[7] After initially suspending that tariff, the Commission approved it to become effective on July 31, 2002. Sprint's instate access recovery charge remains in effect and appears as a separate line item on Sprint's bill to its customers.

MCI, Teleconnect, and Their Tariffs

MCI is a competitive interexchange and local exchange telecommunications company authorized to provide telecommunications services in Missouri. Teleconnect, a subsidiary of MCI, is a competitive interexchange company authorized to provide telecommunications services in Missouri. All of the services that they offer in Missouri are classified as competitive, except for exchange access service.

MCI initially filed a tariff creating an instate access recovery fee on August 3, 2002. The fee was set at $1.95 per month, and applied to all MCI residential customer accounts except those with monthly spending under $1.00. MCI also indicated that the fee is not charged to customers who obtain local telephone service from MCI.[8] The Commission

[7] Appleby Direct, Exhibit 3, page 10, lines 21-22.

[8] Graves Amended Direct, Exhibit 5, page 19, lines 17-19.

denied Public Counsel's motion to suspend that tariff and instead approved it to become effective on September 3, 2002.

Subsequently, Teleconnect filed a tariff to implement an instate access recovery fee. That tariff was not challenged and went into effect on December 1, 2002.

In the spring of 2004, MCI and Teleconnect filed tariffs to increase their instate access recovery fees by $1.00 per month. Public Counsel moved to suspend those tariffs, but, after period of suspension, the Commission approved those tariffs to become effective on August 1, 2004. MCI's and Teleconnect's instate access recovery charges remain in effect and appear as a separate line item on their bills to their customers.

Instate Access Recovery Fees

All of the long distance carriers indicate that the purpose of the instate access recovery fees is to recover a portion of what they believe to be excessive switched access charges levied on them in Missouri by incumbent, as well as competitive, local exchange companies. Switched access charges are imposed on long distance carriers by local exchange companies as the price for originating and terminating long distance calls on the local facilities that serve the end use customer. Switched access charges vary between local phone companies, but in general, the rates charged by Missouri companies are higher than such rates in other states.[9] In fact, Missouri currently has the third highest average intrastate originating plus terminating switched access charges in the nation, trailing only South Dakota and New Mexico. Missouri intrastate access rates are almost three times the nation-wide intrastate average.[10]

[9] Graves Amended Direct, Exhibit 5, page 16, lines 10-19.

[10] Rhinehart Surrebuttal, Exhibit 2, page 13, lines 14-19.

Each of the long distance service providers whose tariffs have been challenged in these cases also offers local phone service to Missouri customers. When these providers complete a long distance call to one of their local customers, or originate such a call for one of their local customers, they avoid having to pay either originating or terminating access charges for completion of that call, thereby reducing their costs.[11]

Competition For Long Distance Service

The intrastate long distance market in Missouri is highly competitive. Many companies offer such services in Missouri.[12] In addition to companies that offer long distance service over land line connections, consumers can also choose to obtain their long distance service from a wireless carrier or from a VOIP (voice over internet) provider.[13] Consumers can compare rates offered by various providers**,** and if unhappy with the price they pay to receive long distance service, can obtain such service from another company.

Furthermore, the competitive long distance providers offer other long distance plans that do not include a monthly instate cost recovery fee. For example, AT&T offers a plan called One Rate Simple that does not include a monthly fee. That plan recovers AT&T's costs through a higher per minute charge compared to the much lower per minute charges offered under plans that include the monthly fee.[14] In addition, if a consumer does not wish to pay a monthly fee, they have the option of choosing not to pre-subscribe to a long

[11] Rhinehart Direct, Exhibit 1, page 15, lines 1-8.

[12] Graves Amended Direct, Exhibit 5, page 10, lines 16-26.

[13] Graves Amended Direct, Exhibit 5, page 11, lines 11-16.

[14] Rhinehart Direct, Exhibit 1, page 5, lines 10-17.

distance carrier, and instead use a dial-around toll service or a prepaid service for their long-distance needs.[15]

The Cost of Service to Business and Residential Long Distance Customers

For many years telecommunications companies have placed business and residential long distance customers into different customer classes.[16] The long distance providers market their services to those classes of customers differently.[17] That means that business customers pay different rates for services than do residential customers. Generally, business customers pay more for the services they receive than do residential customers. In fact, business customers pay as much as two and a half times more for basic local telephone service than do residential customers.[18] Business customers also generally pay higher per minute rates for long distance service than do residential customers.[19]

There are also differences between the cost for switched access that a long distance carrier will incur for service to the class of business customers and for service to the class of residential customers. AT&T's witness Daniel Rhinehart convincingly explained those differences in great detail in his surrebuttal testimony.[20] That testimony need not be repeated in this report and order.

---

[15] Appleby Direct, Exhibit 3, page 10, lines 10-15.

[16] Rhinehart Surrebuttal, Exhibit 2, page 27, lines 16-20.

[17] Rhinehart Surrebuttal, Exhibit 2, page 27, lines 20-22.

[18] Voight Surrebuttal, Exhibit 8, page 3, lines 5-7.

[19] Rhinehart Surrebuttal, Exhibit 2, page 28, lines 4-18.

[20] Rhinehart Surrebuttal, Exhibit 2, pages 25-26, lines 16-34, 1-31.

The long distance carriers also incur different switched access costs depending upon whether they are serving a stand-alone long distance customer, or a customer who also takes local exchange services from the long distance carrier. When the long distance carrier operates solely as an interexchange carrier, it must pay both originating and terminating switched access charges. However, if it also provides local exchange service to a long distance customer, it can avoid paying either terminating or originating access charges for calls made by, or completed to, that customer.[21]

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law:

AT&T, Sprint, MCI, and Teleconnect are Telecommunications Companies as that term is defined by Section 386.020(51), RSMo Supp. 2005. As such, they are subject to the jurisdiction of the Commission pursuant to Section 386.250(2), RSMo 2000. In addition, each of the companies is a Competitive Telecommunications Company as that term is defined by Section 386.020(9), RSMo Supp. 2005, having been so classified by the Commission pursuant to Section 392.361, RSMo 2000.

Section 392.200.1, RSMo Supp. 2005 provides as follows:

> 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.

[21] Rhinehart Direct, Exhibit 1, page 15, lines 1-8. *See also*, Graves Amended Direct, Exhibit 5, page 20, lines 3-12.

If this section applies, then the charges contained in the challenged tariffs must be "just and reasonable."

The relevant portion of Section 392.200.2, RSMo Supp. 2005, provides as follows:

> 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.

Section 392.200.3, RSMo Supp. 2005, provides as follows:

> 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.

These sections prohibit undue or unreasonable prejudice or disadvantage. They permit different treatment for different classes of customers and require similar treatment of similarly situated customers. Public Counsel contends that the surcharges contained in the challenged tariffs fail to comply with the anti-discrimination provisions of these sections of the statute.

Section 392.200, RSMo, applies to all telecommunications companies – non-competitive as well as competitive. Section 392.500, however, establishes separate standards for the approval of rate changes proposed by competitive companies. At the time the Commission first considered these tariffs, that section explicitly made rate changes by competitive companies subject to the provisions of Section 392.200. However, in

SB 37, enacted by the legislature in 2005, Section 392.500 was amended to provide that only subsections 2 to 5 of Section 392.200 would apply to rate changes made by competitive companies. Thus by direct implication, Section 392.200(1), which requires that rates be just and reasonable, no longer applies to rate changes made by competitive companies. Instead, the legislature has determined that competition will ensure that the rates charged by competitive companies will be just and reasonable.

In its decision remanding these cases to the Commission, the Court of Appeals found that, based on Section 392.500 as it existed at that time, the Commission had the discretion to require that the tariffs of competitive companies comply with the "just and reasonable" requirements of Section 392.200.1. That discretion has since been removed by the legislature. Nevertheless, it could be argued that the Court of Appeals' finding that the Commission had the discretion to require the tariffs to comply with the "just and reasonable" requirements of Section 392.200.1 became the law of the case such as to require the Commission to decide that question on remand.

However, the doctrine of the law of the case is not absolute, and need not be applied where there has been a change of law after the appeal.[22] Clearly, the law has changed since the Court of Appeals' decision. Furthermore, the Commission's decision in this case can only be forward-looking; the Commission has no jurisdiction to require adjustment of the charges that have already been collected under the challenged tariffs.[23] Therefore, there is no reason to continue to apply to old law when considering the validity of these

[22] *State of Missouri ex rel. Alma Telephone Co. v. Pub. Serv. Comm'n*, 40 S.W. 3d 381, 388 (Mo App. W.D. 2001).

[23] *DeMaranville, et al. v. Fee Fee Trunk Sewer, Inc.*, 573 S.W. 2d 674, 676 (Mo. App. E.D. 1978)

tariffs. As a result, the Commission does not need to decide whether the challenged tariffs comply with the "just and reasonable" requirements of Section 392.200.1.

Section 392.240.1, RSMo 2000, allows the Commission to determine whether the rates charged by a telecommunications company are just and reasonable based on whether those rates allow the company to earn a reasonable rate of return on its investments. That section is the basis for the traditional "rate of return" regulation that the Commission uses to regulate non-competitive companies. However, Section 392.361.5, RSMo 2000, gives the Commission the authority to suspend or modify the application of Section 392.240.1, as well as most other statutes contained within sections 392.200 to 392.340. The Commission has suspended the applicability of "rate of return" regulation under Section 392.240.1 for each of the competitive companies whose tariffs have been challenged in this proceeding.

DECISION

After applying the facts as it has found them to the applicable law, the Commission has reached the following decisions.

The parties agreed that these cases would be submitted to the Commission for decision on the following issue:

> 1. Based on the following sub-issues, should the Commission reject the AT&T, Sprint and MCI tariffs at issue in this case?
>
> 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?
>
> B. Do the AT&T, Sprint and MCI surcharges at issue comply with subsections 392.200.2 and 392.200.3, RSMo (2000)?

Application of Section 392.200.1, RSMo

The Commission previously concluded as a matter of law that Section 392.500 has been amended to provide that Section 392.200.1 does not apply to tariffs filed by competitive companies. Therefore, the Commission may not apply that subsection when considering any of the tariffs at issue in this case. Instead, the legislature has determined that competition will ensure that tariffs for competitive services provided by competitive companies will be just and reasonable. The Commission does not need to look beyond that legislative determination. Nevertheless, the Commission will examine the arguments that Public Counsel presents to support its contention that the surcharges are not just and reasonable.

In its initial brief, Public Counsel presents five arguments as to why the access recovery charges are unjust and unreasonable:

> (1) They apply even when customers have no instate calling;
> (2) The basis and method to establish the surcharges are based upon the variance between instate and interstate access rates that fails to consider the role of the Federal Subscriber Line Charge;
> (3) Residential customers bear the surcharge even though both residential and business customers cause the companies to incur access costs;
> (4) There is no reasonable basis based upon costs and the surcharges' purpose to exclude the companies' local service customers from the surcharge; and
> (5) Sprint's surcharge is based upon a methodology that relies on average national factors and fails to reflect Missouri costs based upon Missouri minutes of use.[24]

Public Counsel's first argument complains that the surcharges could apply even when customers have no instate calling. That fact is true, but it does not indicate that the

[24] Public Counsel's Initial Brief, pages 3-4.

surcharge is in any way unjust or unreasonable. It merely indicates that the surcharges are flat rates.

Companies may choose to recoup their costs by charging all of their customers a flat rate that recovers an average cost, covering both high and low costs of providing service. Some customers will make more calls than others, thereby costing the companies more to serve those customers. A customer may make many calls in one month and few, or none, in the next month. Such flat rates have always been common in the telecommunications industry. For example, the monthly fee that local exchange companies charge their customers for local calling services is a flat rate. No party, including Public Counsel, suggests that all such flat rates are unreasonable, unlawful, or undesirable. Furthermore, since these flat rates are being charged by competitive companies for competitive services, the customer is free to seek services from another carrier if they do not want to pay a flat rate. Thus the fact that the access recovery fees in question are flat rates is not a basis for finding them to be unjust or unreasonable.

Public Counsel's second and fifth arguments are based on a contention that the companies improperly calculated the amount of the access recovery fees that they would charge their customers. Public Counsel seems to believe that the costs that the companies want to recover are not as high, or as unreasonable, as the companies claim. The assumption underlying the argument is that the companies have to justify the rates they charge based on the costs that they incur. However, these are competitive companies offering competitive services. They are not subject to rate of return regulation and the Commission has no authority to regulate the competitive rates that they will charge their customers based on the companies' costs or the amount of profits they will make.

Public Counsel's third and fourth arguments relate to allegations that the access recovery fees are not just and proper because they unfairly discriminate against residential customers, and against customers who are not local services customers of the long distance carriers whose tariffs have been challenged. These arguments are closely related to the second issue and will be further addressed in relation to that issue.

The Commission concludes that the provisions of Section 392.200.1 do not apply to the tariffs for competitive services submitted by competitive companies that are challenged in this case. However, Sections 392.200.2 and .3 clearly do still apply to these tariffs and the Commission must determine whether the challenged tariffs comply with the anti-discrimination provisions of those statutes.

The Anti-Discrimination Provisions of Sections 392.200.2 and 392.200.3

There are two methods by which a long distance carrier could pass high intrastate access charges along to its long distance customers. The first would be to incorporate those charges into the per-minute rate charged by the long distance carrier to its customers. The other method would be to impose a flat monthly charge on the customer's bill. All of the long distance carriers whose tariffs have been challenged chose the second alternative and imposed a monthly surcharge on the bills they send to their customers.

In challenging the decisions to impose monthly surcharges to recover intrastate access charges, Public Counsel argues that the imposition of a flat monthly surcharge to recover a cost that varies with the amount of minutes used unjustly discriminates against some of the long distance carrier's customers.

In particular, Public Counsel contends that a flat surcharge is unfair to long distance customers that use only a few, or no, long distance minutes in a given month. In effect,

such customers might be required to pay more per minute for long distance calling than would a customer that used many long distance minutes, and thus was able to spread the surcharge over a greater number of minutes.

This is essentially the same flat rate argument that Public Counsel raised in regard to its allegation that the surcharges are not just and reasonable. Once again, there is no reason to believe that this flat rate is any more discriminatory than any other flat rate that is commonly charged by a telecommunications company for other services. A customer that makes few calls and as a result pays more per minute of service in one month may well make more calls the next month and as a result pay less per minute for those services. If that customer finds that he or she is not receiving good value for the long distance service used, the competitive market will allow them to choose either a different service plan or a different service provider. The monthly instate recovery fees included in the challenged tariffs do not improperly discriminate against customers that use fewer minutes of long distance service.

Public Counsel also argues that the monthly surcharges discriminate against residential customers of the long distance carriers because the surcharges do not apply to business customers, even though calls by business customers incur the same intrastate access charges as calls made by residential customers.

Public Counsel's argument is not persuasive because residential and business service classes have long been recognized as separate classes of customers, and Section 392.200.3 specifically permits telecommunications companies to charge different rates for service to different classes. Furthermore, since business customers generally pay

more per minute for their long distance services, there is less need for the companies to impose a surcharge on business customers to recover access fees.

Most fundamentally, long distance services for business and residential classes are offered in different competitive markets. A reasonable rate in the business market might not be a reasonable rate in the residential market. These companies, which are competing in those markets, have the ability to choose the rates at which they will offer their services in those markets. But if they choose poorly, they will lose their customers to other competitors and they will be driven out of the market. This Commission will not attempt to dictate rates different than those that result from the discipline of the marketplace.

Finally, for the charges imposed by AT&T, MCI, and Teleconnect, but not by Sprint, Public Counsel argues that the monthly surcharges discriminate against rural Missouri long distance customers because the surcharges are not paid by long distance customers that receive local phone service from those companies or their local affiliates. According to Public Counsel, AT&T, MCI, and Teleconnect target their local phone service offerings toward Missouri's urban areas. As a result, a rural customer is more likely to be unable to receive local service from those companies and is thus more likely to be required to pay the monthly surcharge.

Public Counsel presented no evidence to support its assertion that AT&T, MCI, and Teleconnect target their local phone service offerings to urban Missouri, to the exclusion of more rural areas. There is nothing in the tariffs that explicitly favors urban consumers, or excludes rural consumers. The companies are justified in waiving the surcharges for customers that also take local phone service from that company because of the reduced access fees that the company will need to pay to complete long distance calls to their own

customers. Any exclusion of rural consumers that might result from a decreased ability to obtain local service from these providers is merely incidental and is not a sound basis for rejecting these tariffs.

The evidence and arguments presented by the parties establishes that the monthly instate connection fees established by the tariffs at issue do not unduly discriminate against any Missouri customer. Furthermore, the "just and reasonable" requirement of Section 392.200.1 does not apply to the competitive rates offered by competitive companies that are challenged in these cases. Instead the legislature has determined that these rates are just and reasonable because they result from the operation of the competitive marketplace. On that basis, Public Counsel's motions to reject these tariffs must be denied.

IT IS THEREFORE ORDERED:

1. That the Office of the Public Counsel's motion to reject the tariff submitted by AT&T Communications of the Southwest, Inc., to establish a monthly instate connection fee and surcharge, pending in case number TT-2002-129, is denied.

2. That the Office of the Public Counsel's motion to reject the tariff submitted by Sprint Communications Company, L.P. to establish a monthly instate connection fee and surcharge, pending in case number TT-2002-1136, is denied.

3. That the Office of the Public Counsel's motion to reject the tariff submitted by MCI WorldCom Communications, Inc., to establish a monthly instate connection fee and surcharge, pending in case number XT-2003-0047, is denied.

4. That the Office of the Public Counsel's motion to reject the tariff submitted by MCI WorldCom Communications, Inc., to increase its monthly instate connection fee and surcharge, pending in case number LT-2004-0616, is denied.

5. That the Office of the Public Counsel's motion to reject the tariff submitted by Teleconnect Long Distance Services and Systems Company, a MCI WorldCom Company, d/b/a TelecomUSA to increase its monthly instate connection fee and surcharge, pending in case number XT-2004-0617, is denied.

6. That this Report and Order shall become effective December 23, 2005.

BY THE COMMISSION

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, and Appling, CC.,
concur;
Gaw and Clayton, CC., dissent, with
dissenting opinion to follow;
and certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 13th day of December, 2005.