

**REBUTTAL TESTIMONY**  
**OF BARBARA MEISENHEIMER**

**Case No. TT-2002-129**

AT&T Communications of the Southwest Inc.'s Proposed Tariff to  
Establish a Monthly Instate Connection Fee and Surcharge

**Case No. TT-2002-1136**

In the Matter of Sprint Communications Company, L.P.'s Proposed Tariff  
to Introduce an In-State Access Recovery Charge and Make  
Miscellaneous Text Changes

**Case No. XT-2003-0047**

In the Matter of MCI WorldCom Communications, Inc.'s Proposed Tariff  
to Add an In-State Access Recovery Charge and Make Miscellaneous Text  
Changes

**Case No. LT-2004-0616**

In the Matter of MCI WorldCom Communications, Inc.'s Proposed Tariff  
to Increase its Intrastate Connection Fee to Recover Access Costs Charged  
by Local Telephone Companies

**Case No. XT-2004-0617**

In Re the Matter of Teleconnect Long Distance Services and Systems  
Company, a MCI WorldCom Company d/b/a TelecomUSA's Proposed  
Tariff to Increase its Intrastate Connection Fee to Recover Access Costs  
Charged by Local Telephone Companies

***I INTRODUCTION***

**Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

A. Barbara A. Meisenheimer, Chief Utility Economist, Office of the Public Counsel,  
P. O. 2230, Jefferson City, Missouri 65102.

**Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND EMPLOYMENT BACKGROUND.**

A. I hold a Bachelor of Science degree in Mathematics from the University of  
Missouri-Columbia (UMC) and have completed the comprehensive exams for a  
Ph.D. in Economics from the same institution. My two fields of study are  
Quantitative Economics and Industrial Organization. My outside field of study is  
Statistics. I have taught Economics courses for the following institutions:  
University of Missouri-Columbia, William Woods University, and Lincoln  
University. I have taught Economics courses at both the undergraduate and  
graduate level. I have also taught undergraduate level Mathematics for the  
University of Missouri-Columbia and undergraduate level Statistics for William  
Woods University.

**Q. PLEASE SUMMARIZE YOUR EXPERIENCE IN THE REGULATION OF  
TELECOMMUNICATIONS RELATED TO EXCHANGE ACCESS SERVICES, LONG  
DISTANCE RATE DESIGN AND SURCHARGE RECOVERY MECHANISMS.**

Since 1996, I have regularly submitted testimony on behalf of Public Counsel on  
issues related to costing and pricing of exchange access services including, but  
not limited to instate, intraLATA and interLata interexchange access costing and  
pricing for both incumbent and competitive local exchange companies and the  
rebalancing of instate access and basic local service rates. This experience

1 includes the review of instate costing and rate design for both small and large  
2 Missouri local exchange companies, interexchange carrier costs and long-distance  
3 rates and interjurisdictional cost allocations. With respect to interstate access,  
4 long distance rates and rebalancing, I have assisted in the development of  
5 comments submitted to the Federal Communications Commission (FCC) by both  
6 the Missouri Office of Public Counsel and the National Association of State  
7 Consumer Advocates (NASUCA).

8 The passage of the Federal Telecommunications Act of 1996, directed  
9 increased attention at the Federal level to restructuring access rates and shifting  
10 greater recovery to the Subscriber Line Charge and the Federal Universal Service  
11 Fund. I served on the Federal/State Universal Service Joint Board Staff for a  
12 number of years. In this capacity, I reviewed information on access restructuring  
13 and assisted the Federal/State Joint Board in preparing recommendations for the  
14 FCC related to consumer impacts associated with increasing the SLC and  
15 Universal Service Fund to accommodate access reductions and reviewed FCC  
16 Reports designed to evaluate trends in interstate long-distance rates.

17 The Telecommunications Act of 1996 as well as Missouri Senate Bill 507  
18 precipitated the proliferation of a host of new surcharges appearing on consumer bills.  
19 Through activities at the state and federal levels, I have had the opportunity to gain  
20 experience in the consumer perceptions and the bill impacts of such charges.

21 **Q. IN PREPARATION OF YOUR TESTIMONY, WHAT MATERIALS DID YOU REVIEW?**

22 A. I have specifically reviewed the direct testimonies of Daniel Rhinehart filed on  
23 behalf of AT&T, James Appleby filed on behalf of Sprint, and Andrew Graves

1 filed on behalf of MCI. I have reviewed portions of the Federal  
2 Telecommunications Act of 1996 and relevant Missouri statutes, material from  
3 the companies' tariffs and websites, data request responses submitted to the  
4 Office of the Public Counsel and the Commission's past Report and Orders, and  
5 court decisions related to these cases.

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 A. The purpose of my testimony is to respond to portions of the Companies' direct  
8 testimony and to demonstrate that the carriers have not provided adequate  
9 evidence that the proposed charges are appropriate and based on an economic  
10 evaluation of Federal and State requirements. I also provide the Commission with  
11 evidence demonstrating that such charges are discriminatory and are not  
12 reasonable, and should be prohibited as they do not serve the public interest.

13  
14 ***II OPC'S POSITION IN RESPONSE THE PROPOSED TARIFF CHARGES***

15 **a) AT&T "Instate Connection Fee"**

16  
17 **Q. PLEASE DESCRIBE AT&T'S INSTATE CONNECTION FEE.**

18 A. AT&T's original tariff filing imposed a \$1.95 monthly service charge known as  
19 an "instate connection fee" on residential customers that are presubscribed to  
20 AT&T toll service. The monthly charge would apply if a customer has \$1.00 or  
21 more of billable charges and credits on their bill, including, but not limited, to,  
22 monthly recurring charges, minimum usage, or single bill fee charges. Further,  
23 the charge does not contribute towards the minimum monthly usage charge. In  
24 2004, AT&T's revised its tariff to increase the charge to the current fee of \$2.49.

1 This surcharge applies to customers with any billable charges or credits except  
2 Lifeline customers or AT&T local customers.

3 Q. PLEASE SUMMARIZE YOUR SPECIFIC OBJECTIONS TO AT&T'S INSTATE  
4 CONNECTION FEE.

5 A. The fee is unjust, unreasonable, and discriminatory. My objections to AT&T's  
6 instate connection fee are as follows:

- 7 1) It applies even in cases in which customers have no instate calling<sup>1</sup>;
- 8 2) Variance between instate and interstate access rates<sup>2</sup> is an  
9 inappropriate basis for determining a reasonable cost based rate for the  
10 instate access charge because it fails to reflect that a substantial portion  
11 of interstate access costs are recovered by LECs through the Federal  
12 Subscriber Line Charge;
- 13 3) It is discriminatory in that it applies to only residential customers  
14 without adequate justification for why it should not apply to business  
15 customers. Single line business customers are required to pay the  
16 same Federal Subscriber Line Charge as residential customers. As a  
17 matter of fairness and based upon the stated purpose of the instate  
18 connection fee, AT&T has failed to provide adequate and reasonable  
19 justification for excluding business customers.
- 20 4) It is discriminatory in that it applies on a flat-rate basis when the  
21 purportedly high access rates are charged to the Company on a per-

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<sup>1</sup> See Schedule 1, page 2 – BAM Rebuttal and Schedule 2, page 2 - BAM Direct (Relevant portions of DR #1 Response and DR #8 Response)

<sup>2</sup> See Schedule 3 BAM – Rebuttal

1 minute of use basis. The impact and effect of this method is that those  
2 customers who use less will pay proportionally more;

3 5) It effectively discriminates against rural customers who cannot qualify  
4 for the exemption as an AT&T local customer because AT&T local  
5 service offerings are targeted to metropolitan and urban areas. Rural  
6 rates comparable to urban rates are mandated by Section 254(g) of the  
7 1996 Act; and

8 6) Although AT&T has the burden of proof, the Company fails to  
9 demonstrate that the charge is in the public interest as required by  
10 Section 392.200, Subsections 4(1) and 5 RSMo.

11  
12 b) Sprint's "In-state Access Recovery" charge

13 c)

14 **Q. PLEASE DESCRIBE SPRINT'S IN-STATE ACCESS RECOVERY CHARGE.**

15 A. Sprint's tariff filing imposes a \$1.99 monthly service charge known as an "in-  
16 state access recovery" charge on residential customers that are presubscribed to  
17 Sprint toll service. This charge is applied if a customer has Sprint long distance  
18 billable charges and credits on their bill, including, but not limited to, monthly  
19 recurring charges or minimum usage charges. The In-State Access Recovery  
20 charge does not apply if a customer's local service is provided by a Sprint  
21 company. Also, customers who subscribe to Sprint 40 Cents Anytime Anywhere  
22 are excluded from the charge. The charge does not contribute towards the  
23 minimum monthly usage charge.<sup>3</sup>

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<sup>3</sup> Schedule 4 BAM – Rebuttal

1       **Q. PLEASE SUMMARIZE YOUR SPECIFIC OBJECTIONS TO THE SPRINT IN-STATE**  
2       **ACCESS RECOVERY CHARGE.**

3       **A. The fee is unjust, unreasonable, and discriminatory. My objections to Sprint's In-**  
4       **State Access Recovery charge are as follows:**

5               1) It applies even in cases in which customers have no instate calling;

6               2) The difference between instate access (calculated by instate access  
7               rates multiplied by national average minutes) and national average  
8               (calculated by national access rates multiplied by national average  
9               minutes) is an inappropriate basis for determining a reasonable cost  
10              based rate for the instate access charge because it fails to reflect  
11              Missouri cost based on Missouri minutes of use<sup>4</sup>; <sup>5</sup>

12             3) It is discriminatory in that it applies to only residential customers  
13             without adequate justification for why it does not apply to business  
14             customers. In response to an OPC data request DR #18 the Company  
15             acknowledges that the type or class of retail customers placing calls  
16             does not impact the wholesale access service cost.<sup>6</sup> This contradicts  
17             Sprint's statement in the tariff where the Company characterizes the  
18             charge as being based on access fees that Sprint pays to local phone

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<sup>4</sup> Schedule 5, page 2 BAM – Rebuttal

<sup>5</sup> Although Sprint does not appear to rely as heavily on a instate/interstate variance calculation for support of its position regarding the level of surcharge as does AT&T, the instate and interstate rates shown in Exhibit JAA#3 should not be construed as providing an "apples to apples" comparison of the cost of providing access.

<sup>6</sup> Schedule 6 BAM – Rebuttal

1 companies.<sup>7</sup> In addition, business customers pay the SLC as described  
2 above;

3 4) It is discriminatory in that it applies on a flat-rate basis when the  
4 purportedly high access rates are charged to the Company on a per-  
5 minute of use basis. The impact and effect of using this method is that  
6 those customers who use less will pay proportionally more; and

7 5) Although Sprint has the burden of proof, the Company fails to  
8 demonstrate that the charge is in the public interest as required by  
9 Section 392.200, subsections 4(1) and 5, RSMo.  
10

11 **d) MCI's and Teleconnect's "Instate Access**  
12 **Recovery Fee"**  
13

14 **Q. PLEASE DESCRIBE MCI'S AND TELECONNECT'S INSTATE RECOVERY FEE.**

15 A. MCI's and Teleconnect's instate recovery fees impose a \$1.95 monthly service  
16 charge on presubscribed residential customers that have \$1.00 or more of billable  
17 charges on their bill. The carriers requested and were granted an increase to \$2.95.

18 **Q. PLEASE SUMMARIZE YOUR SPECIFIC OBJECTIONS TO THE MCI AND**  
19 **TELECONNECT INSTATE RECOVERY FEES.**

20 A. The fees are unjust, unreasonable, and discriminatory. My objections to the MCI  
21 and Teleconnect instate recovery fees are as follows:

22 1) They apply even in cases in which customers have no instate calling<sup>8</sup>;

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<sup>7</sup> Schedule 4 BAM – Rebuttal

<sup>8</sup> See Schedule 7, pages 1 and 2 – BAM Rebuttal



- 1           2) Although the MCI and Teleconnect testimony cites differences between  
2           state access rates as justification for the fees, data request responses  
3           disclose that for years the variance of intrastate from interstate access rates  
4           have apparently been the primary driver for pursuing approval of the  
5           access recovery fees as well as providing the purported cost basis for the  
6           specific level.<sup>9</sup> Just as I described for AT&T's fee, the variance between  
7           instate and interstate access rates is an inappropriate basis for determining  
8           a reasonable cost based rate for these instate recovery fees. The variance  
9           calculation fails to reflect that a substantial portion of interstate access  
10          costs are recovered by LECs through the Federal Subscriber Line Charge;  
11          3) They are discriminatory in that they apply to only residential customers  
12          without adequate justification for why it does not apply to business  
13          customers. The Companies' decision to impose these fees only on  
14          residential customers, and not business customers is apparently based on  
15          the rate the market will support given competitive considerations<sup>10</sup> despite  
16          a) the Companies' claims that "excessive" access costs are the purported  
17          justification for the fees<sup>11</sup>; and b) the Companies' acknowledgement that  
18          the rate for access paid by an interexchange carrier is the same regardless  
19          of whether the end user is a residential or business customer;<sup>12</sup>  
20          4) It is discriminatory in that it applies on a flat-rate basis when the  
21          purportedly high access rates are charged to the Company on a per-minute

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<sup>9</sup> See Schedule 8, pages 1, 4, 7, 8, 9 and 16 – BAM Rebuttal

<sup>10</sup> See Schedule 9 – BAM Rebuttal

<sup>11</sup> See Schedule 10 – BAM Rebuttal

<sup>12</sup> See Schedule 11 – BAM Rebuttal

1 of use basis. The impact and effect of this method is that those customers  
2 who use less will pay proportionally more;

3 5) It effectively discriminates against rural customers who cannot qualify for  
4 the exemption as an MCI or MCI affiliate's local customer because MCI  
5 local service, like AT&T local service offerings, are targeted to  
6 metropolitan and urban areas. Rural rates comparable to urban rates are  
7 mandated by Section 254(g) of the 1996 Act; and

8 6) Although MCI and Teleconnect bear the burden of proof to show that the  
9 fee is just, reasonable and nondiscriminatory, the Companies fail to  
10 produce facts that demonstrate that the charges meet these standards and  
11 are otherwise in the public interest as required by Section 392.200,  
12 subsections 4(1) and 5 RSMo. In fact, MCI's and Teleconnect's brazen  
13 responses to OPC data requests provide what I believe is among the most  
14 compelling evidence that allowing such charges does not serve the public  
15 interest. In the responses, these Companies' describe that they believe any  
16 level of state access rates above interstate rates is excessive<sup>13</sup> and that, to  
17 date, they have made no decision regarding anything less than complete  
18 interstate/intrastate parity that would induce them to rescind the instate  
19 recovery fees.<sup>14</sup> Further, it appears that competition has not acted to  
20 protect residential customers and to curb a significant increase in the fee  
21 within 2 years of the original request.<sup>15</sup> I believe this is a clear indication

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<sup>13</sup> See Schedule 12 – BAM Rebuttal

<sup>14</sup> See Schedule 13 – BAM Rebuttal

<sup>15</sup> See Schedule 14 – BAM Rebuttal

1                   that the Commission should be wary of the floodgate that will open if  
2                   these unjustified fees are allowed to propagate.

3  
4           **OBSERVATIONS APPLICABLE TO ALL ACCESS RECOVERY SURCHARGES**

5           **Q. DO YOU AGREE WITH AT&T WITNESS RHINEHART THAT THE COMMISSION**  
6           **DOES NOT HAVE AUTHORITY TO DETERMINE IF AT&T'S RATES ARE JUST AND**  
7           **REASONABLE?**

8           A. Although neither of us are attorneys, I disagree with Mr. Rhinehart. Under  
9           Section 392.185, the PSC has the authority and responsibility to ensure that rates  
10           are reasonable. Further, competition is to act as a substitute for traditional  
11           regulation when it ensures the protection of the public interest and promotes  
12           reasonable rates. I think the Missouri Court of Appeals also addressed the issue  
13           in its opinion and said that the Commission can review the rates of competitive  
14           companies offering competitive services for just and reasonableness in its  
15           discretion and for discrimination as mandated by the statutes.

16           **Q. SPRINT WITNESS APPLEBY SAID THAT THE MISSOURI INTRASTATE TOLL**  
17           **MARKET IS "HIGHLY COMPETITIVE." DOES THE AVAILABILITY OF ALTERNATE**  
18           **PROVIDERS, INCLUDING WIRELESS AND INTERNET PROVIDERS, RENDER THE**  
19           **INSTATE ACCESS RECOVERY CHARGE JUST AND REASONABLE AND**  
20           **NONDISCRIMINATORY?**

21           A. No. The number of competitors in and of itself does not prove anything other  
22           than a certain number of IXCs have obtained certificates of service authority. It  
23           says nothing of the competition these companies offer, the strength and durability

1 of the companies, whether or not these companies actually offer services or serve  
2 any customers or where the companies provide services. The number alone does  
3 nothing to demonstrate that they serve only one set of customers (business or  
4 residential). In any event, competition does not make an unfair and unreasonable  
5 charge fair and reasonable. In the same way, competition does not excuse a  
6 discriminatory charge. Just because the customer can change companies is not  
7 justification for the approval of unjust, unreasonable and discriminatory charges.  
8 Public policy and the public interest demand reasonable and nondiscriminatory  
9 charges notwithstanding competition. Section 392.200, RSMo contains no excuse  
10 for competition.

11 **Q. THE COMPANIES HAVE FILED TESTIMONY THAT THEY HAVE COMPLIED WITH**  
12 **THE FILING REQUIREMENTS OF SECTION 392.500, RSMo. DOES COMPLIANCE**  
13 **WITH THAT SECTION DEMONSTRATE THAT THE SURCHARGE IS JUST AND**  
14 **REASONABLE AND NONDISCRIMINATORY?**

15 **A.** No. It is my understanding that section relates to procedural requirements for  
16 customer notice of increase and the timetable for filing of the tariffs. Compliance  
17 with these “housekeeping” requirements do not provide evidence that the  
18 surcharge is just and reasonable and nondiscriminatory. There is no logical  
19 correlation between the two.

20 **Q. DOES COMPLIANCE WITH THE FEDERAL TRUTH IN BILLING REGULATIONS MAKE**  
21 **THE ACCESS RECOVERY SURCHARGES JUST AND REASONABLE AND**  
22 **NONDISCRIMINATORY?**

1 A. No. Compliance with these truth-in-billing federal regulations does not relate to  
2 whether or not there are reasonable and valid grounds to charge residential  
3 customers, but not business customers, to exempt the carrier's local exchange  
4 customers, or to recover usage sensitive charges with a flat rate surcharge.

5 **Q. HAVE THE COMPANIES PROVIDED SUFFICIENT FACTS TO JUSTIFY IMPOSING THE**  
6 **ACCESS RECOVERY SURCHARGE ONLY ON RESIDENTIAL CUSTOMERS?**

7 A. No. Instead of providing hard evidence comparing the access costs associated  
8 with serving residential versus various types of business customers, the carriers  
9 primarily rely on non-cost based considerations. For example they use marketing  
10 as the justification to charge residential customers, but allow business customers  
11 to escape this special cost recovery fee. AT&T, Sprint and MCI have not  
12 identified with any relevant evidence any class cost differential associated with  
13 the total instate access rates charged to the companies in Missouri. No such class  
14 cost studies were identified or relied upon. Sprint's witness at p. 12 of Direct  
15 states that marketing techniques justify the exclusion of business customers from  
16 the surcharge, but failed to demonstrate any factual basis for that conclusion.

17 The carriers claim that these access cost recovery charges are driven by  
18 high access rates they pay in Missouri, but did not produce evidence to justify  
19 imposing a charge only on residential customers. The decision to only impose  
20 these fees on residential customers, but not business customers is apparently  
21 based on the rate the market will support given competitive considerations<sup>16</sup>  
22 despite a) the Companies' claims that "excessive" access costs are the purported

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<sup>16</sup> See Schedule 9 – BAM Rebuttal

1 justification for the fees<sup>17</sup>; and b) the Companies' acknowledgement that the rate  
2 for access paid by an interexchange carrier is the same regardless of whether the  
3 end user is a residential or business customer.<sup>18</sup>

4 **Q. WHAT FACTS DEMONSTRATE THAT IT IS DISCRIMINATORY TO ASSESS THE**  
5 **SURCHARGE ONLY TO RESIDENTIAL CUSTOMERS AND NOT TO BUSINESS**  
6 **CUSTOMERS?**

7 A. If the stated purpose of the recovery surcharges is to recover for the company the  
8 access fees it pays to Missouri LECs that it considers as excessive, then reason  
9 and fairness dictates that all customers should be subjected to the surcharge. That  
10 is not the case and as a result the customers that are assessed the fee are  
11 disadvantaged and treated worse than those customers who are exempted from the  
12 surcharge and thereby are shown a preference and given an undue advantage not  
13 enjoyed by the other customers. The access charge paid by the long distance  
14 carriers to an LEC are likely the same if made/received by a business customer or  
15 if made/received by a residential customer. In light of these simple facts, the  
16 companies have not produced facts that would provide a reasonable and just basis  
17 to treat these two customer classes differently.

18 **Q. IS THE EXEMPTION OF THE CARRIER'S LOCAL BASIC SERVICE CUSTOMERS JUST**  
19 **AND REASONABLE AND NONDISCRIMINATORY?**

20 A. No. Again there has been no demonstration that local customers should be  
21 excluded from the surcharges. The exemption of local customers may be a  
22 reasonable business decision and a sound business practice, but it does not make it

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<sup>17</sup> See Schedule 10 – BAM Rebuttal

<sup>18</sup> See Schedule 11 – BAM Rebuttal

1 a proper public policy decision or a lawful and reasonable regulatory decision.  
2 AT&T and MCI did not provide local basic service in each exchange in the state  
3 just as they offered long distance service statewide, but rather concentrated on  
4 urban and metropolitan areas. So the effect of exempting the carrier's local  
5 service customers is to have rural exchange customers more likely to be charged  
6 the access recovery surcharge than the carrier's long distance customers in urban  
7 and metropolitan exchanges.

8 **Q CAN THE VARIANCE BETWEEN THE AVERAGE MISSOURI INTERSTATE ACCESS**  
9 **FEES AND AVERAGE MISSOURI INTRASTATE ACCESS FEES REASONABLY BE**  
10 **CONSIDERED AS EVIDENCE THAT THE INTRASTATE RATES ARE "EXCESSIVE"?**

11 A. No. The evidentiary record in the case investigating CLEC switched access costs  
12 (TR-2001-65) revealed that switched access was "subsidy free" and that the rates  
13 charged by ILECs (included the small ILECs in rural Missouri) did not exceed  
14 their stand-alone costs. Furthermore, the data presented by the Staff's own expert  
15 witness Dr. Ben Johnson conceded that 1/3 of access rates were above  
16 incremental cost but less than fully distributed costs, 1/3 were within the range of  
17 Dr. Johnson's fully distributed cost study ranges, and 1/3 were above the fully  
18 distributed cost range, but still less than stand alone costs. There was no  
19 compelling cost-based reason or justification to state that Missouri access rates  
20 should be reduced. The record in that case also made it clear that comparisons of  
21 local and access rates in other states was not particularly helpful or insightful to  
22 judge whether Missouri access rates are "too high," "too low," or "just right." A  
23 variety of factors influence the access rates in other states. Most of the rates

1 compared in Dr. Johnson's study were RBOCs with both urban and rural service  
2 areas. Some of the access rates were the outcomes of overearnings cases or were  
3 affected by state USF funds and local calling scopes much greater than those  
4 Missouri. If "excessive" switched access rates is the basis for the state access cost  
5 recovery surcharge, there is no justification for it.

6 **Q THE TEST OF WHETHER A RATE IS JUST AND REASONABLE OR DISCRIMINATORY**  
7 **OR NOT IS THE IMPACT OR EFFECT OF THE RATE ON THE RATEPAYER. CAN YOU**  
8 **ILLUSTRATE HOW THE INSTATE ACCESS RECOVERY SURCHARGES AT ISSUE IN**  
9 **THIS CASE DO NOT MEET THE JUST AND REASONABLE STANDARD AND ARE**  
10 **DISCRIMINATORY?**

11 A. A. Yes, in Schedule 15 – BAM Rebuttal, I have prepared an illustration of the  
12 absurd results and discriminatory effects on the consumer as a result of applying  
13 the surcharges as the companies want.

14 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

15 A. Yes, it does.