

**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)	
Fee and Surcharge)	(consolidated)

OFFICE OF THE PUBLIC COUNSEL'S STATEMENT OF POSITION

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

OPC: The PSC should reject these tariffs because they are not just and reasonable and are discriminatory. The companies have failed to produce competent and substantial evidence that the recovery of these costs under the provisions of the proposed tariffs is based upon reasonable and fair conditions which equitably and logically justify this rate design.

The companies have failed to produce competent and substantial evidence that provide a valid justification or basis for allowing the carriers to single out low volume toll customers and residential customers for discriminatory treatment and extra charges. There is no justification for the preferential treatment of the carriers' local exchange customers. The companies have failed to produce competent and substantial evidence that this discriminatory method of assessing a cost recovery charge for access fess is reasonable and proper and in the public interest. Any differences in charges must be based upon differences in service and there must be some reasonable relationship in the amount of difference. *State ex rel. Laundry, Inc. v. Public Service Commission*, 34 SW 2d 37, 45 (Mo 1931). Arbitrary discriminations are unjust. If there is to be any difference in

rates, the difference must be "based upon a reasonable and fair difference in conditions which equitably and logically justify a different rate...." *State ex rel. City of St. Louis v. Public Service Commission*, 36 SW2d 947, 950 (Mo 1931); *State ex rel. DePaul Hospital School of Nursing v. PSC*, 464 SW2d 737, 740 (Mo App 1970),

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?

Yes. The Missouri Court of Appeals has held that the PSC has the discretion to apply the just and reasonable standard to competitive companies.

The surcharges are not just and reasonable because the methods of determining and assessing the access recovery charge, including the customers who must pay the surcharge and those who are exempted, bears no reasonable relationship to the purpose of the surcharge and is inconsistent with the protection of the ratepayers and otherwise inconsistent with the public interest. In particular, the charges are unjust and unreasonable because (1) they apply even when customers have no instate calling; (2) the basis and method to establish the surcharge is based upon the variance between instate and interstate access rates that fails to consider the role of the Federal Subscriber Line Charge (3) both residential and business customers cause the companies to incur access costs (4) no reasonable basis to exclude the companies' local service customers from the surcharge (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.(Meisenheimer Rebuttal p. 5-16; Schedule BAM 15)

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

OPC: No. There is a lack of valid and reasonable justifications for the difference in treatment of residential and business toll users and the companies' local service customers and noncustomers based on reasonable and fair differences in conditions which equitably and logically justify a different rate, i.e., the surcharge. Also, there is no reasonable justification for a flat rate surcharge that has a stated purpose of recovering usage sensitive access charge cost to apply on a nonusage sensitive basis to low volume users and high volume users. (Meisenheimer Rebuttal p. 5-16; Schedule BAM 15)

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically transmitted, mailed or hand-delivered to all counsel of record on this 10th day of August 2005.

/s/ Michael F. Dandino
