

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Conference

March 2, 2005
Jefferson City, Missouri
Volume 1

In the Matter of AT&T Communications of the)
Southwest Inc.'s Proposed Tariff to Establish a) Case No.
Monthly Instate Connection Fee and Surcharge) TT-2002-129

In the Matter of Sprint Communications Company)
L.P.'s Proposed Tariff to Introduce an In-State) Case No.
Access Recovery Charge and Make Miscellaneous) TT-2002-1136

In the Matter of MCI WorldCom Communications,)
Inc.'s Proposed Tariff to Add an Instate Access) Case No.
Recovery Charge and Make Miscellaneous Text) XT-2003-0047
Changes)

In the Matter of MCI WorldCom Communications)
Inc.'s Proposed Tariff to Increase its) Case No.
Intrastate Connection Fee to Recover Access) LT-2004-0616
Costs Charged by Local Telephone Companies)

In Re the Matter of Teleconnect Long Distance)
Services and Systems Company, a MCI WorldCom)
Company d/b/a TelecomUSA's Proposed Tariff) Case No.
to Increase its Intrastate Connection Fee to) XT-2004-0617
Recover Access Costs Charged by Local)
Telephone Companies)

MORRIS L. WOODRUFF, presiding,
SENIOR REGULATORY LAW JUDGE

REPORTED BY:
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1 PROCEEDINGS

2 JUDGE WOODRUFF: Good morning everyone, we're
3 here today for a prehearing conference in numerous cases;
4 TT-2002-129, TT-2002-1136, XT-2003-0047, LT-2004-0616, and
5 XT-2004-0617. And I am going to begin today by taking
6 entries of appearance, and I'll note for the record that we
7 have a couple of attorneys on the telephone.

8 Beginning with TT-2002-129, who's here for
9 AT&T?

10 MR. ZARLING: Good morning, Judge Woodruff.
11 This is Kevin K. Zarling representing AT&T Communications of
12 the Southwest, Inc. My business address is 919 Congress
13 Avenue, Suite 900, Austin, Texas, 78701.

14 Also this morning Juanita Brown for AT&T is on
15 the conference bridge.

16 JUDGE WOODRUFF: Ms. Brown -- is Ms. Brown an
17 attorney?

18 MR. ZARLING: No, she is not, just for the
19 record stating she is on the bridge.

20 JUDGE WOODRUFF: Okay. Thank you. And for
21 staff in that case?

22 MR. MEYER: David Meyer with the Staff -- for
23 the Staff of the Missouri Public Service Commission. Our
24 address is PO Box 360, Jefferson City, Missouri, 65102.

25 JUDGE WOODRUFF: And for Public Counsel?

1 MR. DANDINO: Michael Dandino, Office of the
2 Public Counsel, Post Office Box 2230, Jefferson City,
3 Missouri, 65102, representing the Office of Public Counsel
4 and the public.

5 JUDGE WOODRUFF: Okay. And for the record,
6 Mr. Zarling and Mr. Dandino are both on the telephone line.
7 The next case, then, is TT-2002-1136, for
8 Sprint?

9 MR. LEOPOLD: Brett Leopold for Sprint, 6450
10 Sprint Parkway, Overland Park, Kansas, 66251.

11 JUDGE WOODRUFF: Okay. Thank you. And Staff
12 and Public Counsel, I assume Mr. Meyer and Mr. Dandino are
13 representing in this case as well.

14 MR. DANDINO: That's correct, your Honor.

15 MR. MEYER: That's correct.

16 JUDGE WOODRUFF: All right. And for all the
17 other cases as well I assume.

18 MR. DANDINO: That's correct, your Honor.

19 JUDGE WOODRUFF: All right. Next case, then,
20 is XT-2003-0047, appearing for MCI.

21 MR. LUMLEY: Carl Lumley of the Curtis Heinz
22 Firm, 130 South Bemiston, Suite 200, Clayton, Missouri,
23 63105.

24 JUDGE WOODRUFF: Okay. And again, counsel for
25 Public Counsel and Staff was -- is the same.

1 The other two cases are LT-2004-0616 and
2 XT-2004-0617. Mr. Lumley, are you representing the parties
3 in those cases also?

4 MR. LUMLEY: Yes, sir.

5 JUDGE WOODRUFF: Okay. Teleconnect Long
6 Distance, I believe is an MCA subsidiary?

7 MR. LUMLEY: Correct, MCI.

8 JUDGE WOODRUFF: All right. Anything I've
9 missed as far as anybody else that wants to appear? All
10 right.

11 First question is, to hopefully avoid this
12 long rigmarole of going through various case names, I want to
13 ask if these cases can be consolidated.

14 MR. LUMLEY: Speaking for MCI and Teleconnect,
15 we would support that, your Honor.

16 JUDGE WOODRUFF: For all five cases?

17 MR. LUMLEY: Correct.

18 MR. ZARLING: Your Honor, Kevin Zarling for
19 AT&T and we would support that as well.

20 JUDGE WOODRUFF: All right.

21 MR. DANDINO: Public Counsel would support it
22 being consolidated even though you may want separate
23 decisions, but at least for any purposes of a record, I think
24 they can be consolidated.

25 JUDGE WOODRUFF: Okay. Mr. Dandino, why do

1 you think there might be need for separate decisions?

2 MR. DANDINO: Because you may have -- because
3 of -- the situations may be a little by the different --

4 JUDGE WOODRUFF: Okay.

5 MR. DANDINO: -- for each one.

6 JUDGE WOODRUFF: I understand. Okay. And I
7 think MCI is the only one that's not been heard from.

8 MR. LEOPOLD: Sprint, and we're fine with
9 consolidation.

10 JUDGE WOODRUFF: Okay. All right. Well, the
11 real purpose for today is to get suggestions from the parties
12 on how they want to proceed today. I don't know if you had
13 any discussions before this as to what you're proposed to do,
14 so I'm going to open that up to anyone that has any
15 suggestions on what they want to do.

16 Let's go ahead and begin with -- well, let's
17 begin with Public Counsel.

18 MR. DANDINO: Well, good, that's what I was
19 hoping you'd say. Public Counsel doesn't believe that the
20 record as established in each of these cases would support
21 Findings of Fact and Conclusions of Law that would address
22 the Court's problems.

23 The Court -- specifically they talked about
24 our point number two, which was that there was -- that the
25 Commission did not make Findings -- or did not make Findings

1 of Fact as to the discriminatory -- as to our allegations of
2 discrimination. And to justify why the -- why these --
3 whether residential ratepayers were treated differently than
4 others. We don't think there's anything in the record, facts
5 in the record that the Commission could even make findings
6 on.

7 The other parties may disagree so we think
8 there should -- if not a hearing, at least that the
9 Commission hear some or take some -- judicial evidence
10 whether by affidavit or -- or on-the-record presentation with
11 some testimony under oath in order to establish a record,
12 which the Commission can make its decision one way or the
13 other on the discrimination issue.

14 JUDGE WOODRUFF: All right. Thank you.
15 Mr. Lumley.

16 MR. LUMLEY: Judge, if I could respond, the
17 Court of Appeals expressly indicated that the Commission
18 could proceed without a hearing and issue revised Findings
19 and Conclusions based on the information already in front of
20 it, and that's the procedure that we would support. And we
21 would suggest that the Commission allow the parties to file
22 proposed decisions -- proposed Findings and Conclusions to
23 help the Commission do that and we suggest a date of April
24 18th as the due date.

25 MR. ZARLING: Your Honor, this is Kevin

1 Zarling for AT&T. We support the comments of Mr. Lumley
2 there for MCI. We feel like the Court's decision was not
3 only clear, but to respond to Public Counsel, it's my belief
4 that at least with regard to the AT&T application, there is
5 sufficient evidence in the record.

6 The Court -- it may be indicative but I think
7 it's instructive, again, the Court did cite to portions of
8 the Commission's Order that said so long as the company's
9 application comply with the requirements of the law tariff
10 sheets filed by the company may be an adequate regard for
11 review, and clearly there's more than simply the tariff
12 sheets in this case and the Court did not call into question
13 that portion of the Commission's order where the Commission
14 made that statement.

15 So, you know, we believe that they're both --
16 in terms of what was developed in the AT&T record as well as
17 the tariffs that were on file for probably all of the
18 competitive long distance carriers in this case, that would
19 be an adequate record for the Commission to make findings in
20 response to the concerns that the appellate court raised.

21 JUDGE WOODRUFF: All right. Thank you,
22 Mr. Zarling. Sprint?

23 MR. LEOPOLD: Sprint generally agrees with the
24 approach suggested by MCI and AT&T. We think the April 18th
25 date would be appropriate for submission of proposed Findings

1 and Conclusions.

2 In addition, we would suggest we should put a
3 date for replies to those filings of perhaps Wednesday, May
4 18th, so file the initial submissions on April 18th and
5 replies by any interested parties on Wednesday, May 18th.

6 JUDGE WOODRUFF: Okay. Staff?

7 MR. MEYER: Actually, Staff would defer with
8 the discussions of both parties insofar as we would just ask
9 the Commission note there's a rulemaking proceeding under way
10 currently that potentially has implications for these
11 charges. While we don't see the current version of the rule
12 conflicting with these charges, if the rule changes, and it
13 could change, it may be counterproductive to begin this
14 process anew at this particular point in time when the
15 Commission is actually considering a rule simultaneously that
16 would give guidance on the issues raised in these cases.

17 The FCC also has an open meeting scheduled for
18 March 10th that has an item to address the Nasuca Truth --
19 Nasuca, N-A-S-U-C-A, Truth and Billing Petition. That
20 petition also addresses these type of line item charges. As
21 everyone knows the FCC could quite easily act to preempt
22 further state action in this area at all.

23 We would recommend in light of both ongoing
24 actions; in other words, the Commission rulemaking action and
25 FCC potential action that, the Commission allow the Missouri

1 rulemaking to take its course over the next month or two and
2 during that time FCC action may also become clear.

3 And just for the record in this case, the
4 Commission rulemaking hearing is set on May 11th and will
5 presumably be involving similar issues as would be discussed
6 in this case. Commission action then would be required 90
7 days or less thereafter.

8 JUDGE WOODRUFF: So a proposed rule has been
9 filed?

10 MR. MEYER: A proposed rule has been filed and
11 is at the Secretary of State. The rulemaking hearing is set
12 for May 11th.

13 JUDGE WOODRUFF: Thank you. Mr. Dandino, do
14 you want to respond?

15 MR. DANDINO: Yes, your Honor. I understand
16 the Court of Appeals' decision did say that the Commission
17 can either have a hearing or they can base it upon -- or they
18 don't have to have a hearing, and I understand that, and I'm
19 just, you know, putting the parties on notice that if the
20 Commission proceeds with just making Findings of Fact based
21 on the current records, Public Counsel tends to, you know,
22 the point that we will raise is that the record -- the record
23 -- existing record is inadequate and would not support any --
24 any approval of it.

25 But if the parties -- and Public Counsel would

1 still say that the Commission ought to hear additional
2 evidence, and I don't want to waive that point, but if the --
3 if the Commission decides that they don't want to reopen the
4 record to hear any additional evidence, then those -- the
5 April 18th and -- and the May 18th dates for proposed
6 Findings and that will be fine with us.

7 I just want to make sure that everyone knows
8 that our position is that the record needs -- the record --
9 the present record is inadequate to support any approval of
10 the -- of the Findings. If the Commission wants to proceed
11 on that, that's -- that's their prerogative.

12 JUDGE WOODRUFF: All right. Well, I'm not
13 going to decide the issue today. This is an issue I'm going
14 to have to take up to the Commission.

15 What I'd like the parties to do is by Friday
16 of this week, that would be the 4th, is file some brief
17 written arguments reiterating what you've told me today and
18 I'll try to get it up to the Commission next week to make a
19 decision as to how they want to proceed.

20 All right. Anything else anyone wants to
21 bring up while we're on the record? All right. Do you wish
22 to have any further discussions with the people on the
23 telephone?

24 All right. With that, then, we are adjourned
25 and I'm going to hang up the phone.

1 WHEREUPON, the recorded portion of the
2 prehearing conference was concluded.

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