

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Oral Argument

July 16, 2004
Jefferson City, Missouri
Volume 1

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

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

LEWIS MILLS, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

STEVE GAW, Chairman,
CONNIE MURRAY,
ROBERT M. CLAYTON,
LINWARD "LIN" APPLING,
COMMISSIONERS.

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1 P R O C E E D I N G S

2 JUDGE MILLS: We're on the record this
3 morning for oral argument in Case No. LT-2004-0616 and
4 XT-2004-0617. I think I'll begin by taking entries of
5 appearance, and then we will go right into the oral
6 arguments. Let's start on my left with Staff.

7 MR. MEYER: Good morning. David Meyer for
8 the Staff of the Missouri Public Service Commission. Our
9 address is P.O. Box 360, Jefferson City, Missouri 65102.

10 JUDGE MILLS: And for Public Counsel?

11 MR. DANDINO: Michael Dandino, Office of
12 the Public Counsel, Post Office Box 2230, Jefferson City,
13 Missouri 65102, representing the Office of the Public
14 Counsel and the public.

15 JUDGE MILLS: Thank you. And for the
16 companies?

17 MR. LUMLEY: Good morning, Judge. In
18 Case 616, Carl Lumley appearing on behalf of MCI WorldCom,
19 and in Case 617 appearing on behalf of Teleconnect, Curtis
20 Heinz Law Firm, 130 South Bemiston, Suite 200, Clayton,
21 Missouri 63105.

22 JUDGE MILLS: Thank you. I believe the
23 order we'll take oral arguments is, we'll begin with
24 Public Counsel as the moving party in this case, followed
25 by Staff, then the companies and, if necessary, a brief

1 response from Public Counsel. Are there any questions?

2 Any objections to that order?

3 (No response.)

4 JUDGE MILLS: Okay.

5 MR. DANDINO: Your Honor, should we mark

6 those as exhibits -- not really exhibits. One's a case

7 and one's just a --

8 JUDGE MILLS: It's simpler for the record

9 to mark them as exhibits. So if you've given a copy to

10 the court reporter, why don't you identify them and we'll

11 have them marked.

12 MR. DANDINO: If I can retrieve a couple,

13 I'll give them to the court reporter.

14 (EXHIBIT NOS. 1 AND 2 WERE MARKED FOR

15 IDENTIFICATION BY THE REPORTER.)

16 JUDGE MILLS: Okay. We've marked those two

17 exhibits as Exhibits 1 and 2, Mr. Dandino, if you could

18 identify for us what those are.

19 MR. DANDINO: Exhibit 1, your Honor, is

20 just a chart, and it says APR on the first page. I

21 believe it's four pages. Then the second one, Exhibit 2

22 would be a case from the Minnesota Public Utilities

23 Commission, AT&T communications case.

24 JUDGE MILLS: Okay. Thank you.

25 MR. DANDINO: Thank you, your Honor. May

8 Well, in connection with these tariff
9 cases, I urge the Commission to reject these in-state
10 access recovery tariffs of these two MCI companies in
11 order to preserve APR, and in this case I mean -- by APR I
12 mean actual phone rates. What I mean is that the customer
13 needs to clearly identify what's the real rate he's going
14 to pay.

15 I think these rates -- Public Counsel
16 claims that these rates are unjust, unfair and
17 unreasonable. For competition to work effectively,
18 consumers must have information by which they can
19 differentiate between products offered, and one of the
20 factors they consider is price, they need to compare
21 prices. These surcharges distort the pricing information
22 for the consumers, confuse the consumers, and hides the
23 real APR, actual phone price, actual phone rate, for the
24 consumer.

25 In another way that these surcharges are

1 unfair, unjust and unreasonable is that when you consider
2 the purpose of the surcharge and the incidents where the
3 surcharge is applied, it is to recover the in-state access
4 charges that MCI incurs as a result of their customers
5 originating and terminating long distance phone calls
6 within the state of Missouri, but it's only levied on one
7 class of customers, the residential class.

8 This is when both residential and business
9 customers, by making long distance phone calls, generate
10 access charges for MCI to pay to the local companies.
11 Like in taxation, I think there has to be a rational
12 basis, rational nexus between the incidents of the
13 surcharge and the purpose of the surcharge, because I
14 think that goes to the very essence of whether it is fair,
15 just and reasonable.

16 In addition, Public Counsel says -- urges
17 the Commission to reject this because of the
18 discriminatory nature of these -- of these surcharges.
19 As I said before, if the discrimination is prohibited
20 under Section 392.200 RSMo, then that section applies
21 whether it's a competitive company, a price cap company or
22 a rate of return company. The discrimination that occurs
23 in this case is that the business class is exempted while
24 assessing only the residential class. There's no rational
25 basis for that and no justification for it.

1 I think if you look at the cases Public
2 Counsel cited in their motion -- and I'll refer you to
3 page 9 of our motion -- talk about the St. Paul Hospital
4 School of Nursing case versus the PSC. And the courts
5 there said that you can -- that hospitals shouldn't be
6 charged a higher commercial classification rate than a
7 hotel because it was of like character and under virtually
8 the same conditions as service was provided to residences.
9 The case went on to talk about the state ex rel Laundry,
10 Inc. versus Public Service Commission case where it says
11 that any differences in the charges must be based upon
12 differences in the service and must have a reasonable
13 relationship in the amount of the difference.

14 Now, you can have discrimination in setting
15 rates, but not arbitrary discriminations, not unjust
16 discriminations. And if there's any differences in the
17 rates, it must be based upon a reasonable and fair
18 difference in conditions which equitably and logically
19 justify a different rate. MCI, the MCI companies have not
20 come forward in their tariff filing with any justification
21 for the difference in rate or really for the exemption of
22 the business class versus the residential class.

23 Also like to talk terms of discrimination
24 is that the surcharge being a flat rate is discriminatory.
25 It is based -- or access charges are based upon minutes of

1 use. So you have a usage sensitive surcharge or usage
2 sensitive access fees that is recovered by a flat rated
3 surcharge. And if the Commission would look at Exhibit A,
4 and on the second page -- Exhibit 1, on the second page,
5 you can see that the effect of a -- of the surcharges, if
6 you have a 5 cent a minute rate and the customer has 20
7 minutes, so they have -- of long distance. So they have a
8 dollar for actual service rates.

9 You add the \$2.95 surcharge, it's a dollar,
10 over a dollar, so you have \$3.95. Divide that by the
11 20 minutes and your actual rate, your actual phone rate,
12 your actual, your APR is 19.7 cents. Also looking at
13 heavy phone user, 5 minute rate again, this time you have
14 10,000 minutes, which would be roughly 1/4 of all the
15 minutes in a month, \$500 toll charge, once again you'd
16 only have a \$2.95 surcharge. 502.95 divided by the
17 10,000 minutes and you have an actual phone rate of 5.3
18 cents a minute.

19 Turn the page to page 3 of Exhibit 1.
20 Let's look at the other part of discrimination where we
21 have 10,000 minutes, \$500, and you exempt the entire
22 business class, and a residential surcharge is applied.
23 So what you're really getting is business gets a free ride
24 and the residential customer gets the full burden of the
25 access cost recovery under the surcharge.

1 Now, I know that in both cases the
2 surcharge has already been approved in prior cases, and
3 this is just talking about an increase here. You probably
4 want to say, well, what difference does it make? Well, I
5 think it's time to draw the line here, and it's time to
6 draw the line where we don't continue down the wrong road.

7 If you approve the \$2.95 charge, if you
8 approve the dollar increase in charge, you'll be hard
9 pressed to deny it to AT&T if they come in for that dollar
10 increase, for Sprint when they come in, for any other.
11 And then we're back to the place as it's where is the
12 customer going to go then?

13 One of the big reasons why this Commission
14 approved the prior surcharges is that they said, well, the
15 customer can go somewhere else. There's over 500
16 opportunities to -- other companies to go to. Well, I
17 doubt if there's still 500 companies still operating and
18 doing business in the state. I don't know for sure. But
19 certainly the well-known names and the carriers that are
20 identifiable by the customers, there's probably very few
21 of those.

22 I did want to point out, and I want to --
23 let's also go back to the point about you approved the
24 surcharge before and we have a different amount and that
25 the customers had someplace else to go. Well,

1 unfortunately, just because the customer has somewhere
2 else to go doesn't excuse a discriminatory tariff. It
3 doesn't excuse the discriminatory rate pricing practice.
4 It is still in violation of Section 392.200.

5 Let's go back, and I provided the
6 Commissioners and the counsel with a copy of a case from
7 Minnesota, Minnesota Public Utilities Commission. It's
8 Exhibit No. 2. Now, I felt I had to advise the Commission
9 of this, even though the Minnesota Commission approved
10 this, approved these same type of surcharges by AT&T,
11 Sprint, MCI, Excel, Teleconnect, U.S. -- and U.S. Telecom
12 in November of 2003.

13 But the -- well, one is to disclose what
14 happened, but more importantly I wanted to point out to
15 you that the consumer advocating entities in Minnesota,
16 the Department of Commerce and the Attorney General's
17 Office, the residential and small business utility section
18 both brought up the very same issues that Public Counsel
19 is bringing up here today for levels of discrimination and
20 unfairness in pricing and misleading of pricing.

21 I think it's -- unfortunately, I believe
22 that the Minnesota Commission took the wrong -- took the
23 wrong view. I think by reading this opinion, you'll see
24 that the reasons how they rebut and justify their decision
25 sounds kind of hollow, and I urge you to look at that

1 decision, but I hope you don't follow the result.

2 Finally, in today's St. Louis Post-Dispatch
3 there's an editorial on surcharges on how they -- and
4 especially about a petition that the National Association
5 of State Consumer Advocates filed with the FCC asking the
6 FCC to open a docket and investigate the use of surcharges
7 on phone bills. And I think this ties in generally
8 with -- once again, I think it's important for that --
9 important if competition is going to operate and be
10 allowed to operate, then it has to operate in such a way
11 as to protect the consumer.

12 The only way the consumer can be protected
13 is with adequate information out there in order to compare
14 prices. If this is not happening or if there's activity
15 in the marketplace that prevents the customer from making
16 these comparable studies, the comparable price
17 comparisons, then there's a defect in the competitive
18 market. And this Commission, under Section 392.185,
19 subsection 6, is to protect the consumer, because you are
20 to promote full and fair competition so long as it is
21 consistent with the protection of the ratepayer and the
22 preservation of the public interest.

23 I urge this Commission to protect the
24 ratepayer and preserve the public interest and reject
25 these surcharge increases. Thank you.

1 JUDGE MILLS: Thank you. Please don't go
2 away. We'll see if there's questions from the Bench.
3 Commissioner Murray?

4 COMMISSIONER MURRAY: I have a couple.
5 Thank you.

6 Mr. Dandino, you indicated that you don't
7 like or you think that the Minnesota PUC was wrong; is
8 that right?

9 MR. DANDINO: That is correct.

10 COMMISSIONER MURRAY: And I assume you
11 think the Missouri Public Service Commission was wrong
12 when it approved the prior rates?

13 MR. DANDINO: Respectfully, yes,
14 Commissioner.

15 COMMISSIONER MURRAY: And did the Office of
16 the Public Counsel appeal those decisions?

17 MR. DANDINO: Yes, Commissioner. They're
18 now pending before the Missouri Court of Appeals.

19 COMMISSIONER MURRAY: And there's been no
20 decision come out?

21 MR. DANDINO: No. It's been briefed and
22 argued.

23 COMMISSIONER MURRAY: When do you expect a
24 decision?

25 MR. DANDINO: I couldn't hazard a guess.

1 COMMISSIONER MURRAY: You indicated that
2 there was -- these charges were hiding the actual phone
3 rate. They are explicit surcharges; is that right?

4 MR. DANDINO: That's correct.

5 COMMISSIONER MURRAY: And isn't the
6 surcharge just a basic cost that is being imposed on the
7 user for the availability of long distance service, and
8 provided that they make at least one dollar's worth of
9 phone calls in any one month, they pay that for access to
10 their long distance service, and then they get as many
11 minutes after that as they want at the 5 cent or whatever
12 the rate per minute is; is that correct?

13 MR. DANDINO: Well, I feel that the
14 customer is already paying.

15 COMMISSIONER MURRAY: Just is that correct?

16 MR. DANDINO: No, Commissioner, it's not
17 correct.

18 COMMISSIONER MURRAY: Okay. What does it
19 do, then?

20 MR. DANDINO: I think the point -- it
21 recovers charges that -- and solely within the discretion
22 and judgment of MCI to recover access costs, access costs
23 that they feel the -- access costs on elements, which is
24 an element that is already included in their rates.

25 COMMISSIONER MURRAY: Access charges are a

1 cost to the company of providing long distance service to
2 its customers; is that right?

3 MR. DANDINO: That's correct.

4 COMMISSIONER MURRAY: And by establishing a
5 basic rate that they're going to put into a surcharge for
6 recovery of one of those costs of providing service, it
7 appears to me that they're just saying, we know we have to
8 pay access, we know that sometimes we pay probably more
9 than \$2.95 for a customer for access. Sometimes we pay
10 less, depending on the usage of that customer, but this is
11 a basic level at which we feel we need to recover access.
12 What is wrong with that?

13 MR. DANDINO: First of all, I think they
14 come up with this charge -- when they instituted the
15 charge as a separate charge for recovery, they didn't make
16 an adjustment in their rates, and prior to the institution
17 of the surcharge, they were -- somehow they were
18 collecting -- they were collecting access fees.

19 COMMISSIONER MURRAY: What are the access
20 fees, what are the ranges of access fees in Missouri?

21 MR. DANDINO: I couldn't tell you right
22 offhand.

23 COMMISSIONER MURRAY: Do some of them go up
24 to maybe 15 cents a minute, in that range?

25 MR. DANDINO: Certainly.

1 COMMISSIONER MURRAY: So how can a 5 cents
2 a minute charge recover that?

3 MR. DANDINO: Well, if it's a competitive
4 market and they feel that they can charge that amount in
5 order to get not only the business in those areas but also
6 in the St. Louis area, that's their competitive judgment.

7 COMMISSIONER MURRAY: But I thought you had
8 said they were recovering. I'm asking you how can 5 cents
9 recover 15?

10 MR. DANDINO: Well, they've made a judgment
11 on how much they're going to recover in those -- in their
12 rates, as is probably the better way I should have said
13 it.

14 COMMISSIONER MURRAY: So they may have made
15 a judgment not to recover some of it in the past, and
16 because they made that, your opinion is that they should
17 continue to not recover; is that right?

18 MR. DANDINO: If they're -- I think if
19 they're going to do it, they ought to reflect it clearly
20 in their rates.

21 COMMISSIONER MURRAY: It's reflected
22 clearly in a surcharge that the customer can pick up a
23 bill and see, I'm paying this much so my company can
24 recover some of the access.

25 MR. DANDINO: I don't think the average

1 consumer would consider it that way. They're looking at
2 the rates.

3 COMMISSIONER MURRAY: And what statutory
4 provision are you claiming that this tariff violates?

5 MR. DANDINO: Section 138 -- 392.200.1,
6 which is just and reasonable.

7 COMMISSIONER MURRAY: The catchall that you
8 could claim anything was a violation of that statute, I
9 assume, and make a just and reasonable argument or a
10 public interest argument; is that right?

11 MR. DANDINO: Well, no, Commissioner, I
12 don't believe that's right. I think we made a reasonable
13 and justifiable claim why this is unjust and unreasonable,
14 first of all, showing that there's no connection between
15 the -- what their -- between the surcharge and who they're
16 levying the surcharge on.

17 There's no reasonable connection to limit
18 it just to residential, and I think it is -- and also I
19 think of come around to whether it's straightforward and
20 demonstrated what their per minute rate is, I think to
21 hide it or to misdirect it, let's say, misdirect the
22 consumer into looking at 5 cents a minute, rather than
23 looking at the \$3 or 2.95 cents surcharge. I certainly
24 don't see that as fair, yes, or reasonable.

25 Q. Then would you take the position that it's

1 not discriminatory if it were also applied to businesses?

2 MR. DANDINO: On that one ground, yes, but
3 it isn't.

4 COMMISSIONER MURRAY: I think that's all my
5 questions for you for right now. Thank you.

6 JUDGE MILLS: Thank you.

7 MR. DANDINO: Thank you.

8 JUDGE MILLS: Commissioner Clayton?

9 COMMISSIONER CLAYTON: None.

10 JUDGE MILLS: Commissioner Appling.

11 COMMISSIONER APPLING: Thank you, Judge.

12 Good morning. How are you doing, sir?

13 MR. DANDINO: Good morning, sir.

14 COMMISSIONER APPLING: Misdirection of the
15 customer, and there's a lot of talk out there about the
16 customers are smart guys and they can figure out what they
17 need and what they don't need as far as their phone rates
18 are concerned. Are you saying that these rates are being
19 disguised in some way and that the customer really doesn't
20 know that he or she is paying this amount of money? Help
21 me out with that.

22 MR. DANDINO: I do. I feel -- I think
23 disguised is probably a very good word. Customers
24 normally -- a customer's looking at, here's how much it is
25 per minute. They're looking at 5 cents a minute. Hey,

1 there's a 5 cents a minute rate. Here's another one.
2 Well, then they'll see, well, there's these other charges,
3 but I don't think the normal, the average consumer will
4 sit down and take \$2.95 for this charge, one for this
5 charge and add them up and say, what am I really paying
6 per minute for this?

7 And I think that's an important thing to
8 disclose for the customers, and I think they at least
9 ought to be very up front with the customer.

10 COMMISSIONER APPLING: If that was laid out
11 on a piece of paper like you laid out in Exhibit 1 for the
12 customer, they could see that, would that be okay?

13 MR. DANDINO: That would certainly help.
14 That would help in terms of having them understand as to a
15 step forward in truth in billing. Does it help the
16 legality of this whole statute? Only on that part. It
17 doesn't solve the discrimination, I think, the
18 unreasonableness and unjustness of it.

19 COMMISSIONER APPLING: Your appeal is for
20 the \$1.95, and that doesn't include the dollar that
21 they're asking to increase. It's just purely addressing
22 what we already approved, which is \$1.95; is that correct?

23 MR. DANDINO: That's correct, Commissioner.
24 It's \$1.95 for MCI and AT&T and a dollar for Sprint.

25 COMMISSIONER APPLING: Commissioner

1 Clayton, I think that's my final question. Judge, thank
2 you.

3 JUDGE MILLS: Okay.

4 COMMISSIONER CLAYTON: These -- let me ask
5 you something. Have you ever had anybody call you on the
6 phone trying to get you to switch long distance carriers?

7 MR. DANDINO: Oh, certainly.

8 COMMISSIONER CLAYTON: It happened on more
9 than one occasion?

10 MR. DANDINO: Before the no-call list,
11 quite a few.

12 COMMISSIONER CLAYTON: Do you know whether
13 or not any of these companies that have called you have
14 had one of these charges like the one that's before us in
15 this case?

16 MR. DANDINO: It was MCI that called me and
17 asked me why I switched from MCI, and I told them
18 specifically I don't like the surcharge that you're
19 charging on this. Of course, the customer service rep on
20 the other side had no idea what I was talking about.

21 COMMISSIONER CLAYTON: They didn't know
22 there was a charge? In your conversation, it didn't
23 appear to you that they knew there was such a charge?

24 MR. DANDINO: They probably didn't know
25 what it was for. They probably saw something on their

1 website or on their script that would have it as a charge,
2 but --

3 CHAIRMAN GAW: Do you know whether or
4 not -- have you ever asked when somebody has called, one
5 of these long distance carriers, whether they had such a
6 surcharge?

7 MR. DANDINO: No, I haven't.

8 CHAIRMAN GAW: Do you know whether or not
9 it is disclosed as part of rates that are being covered
10 whenever someone is making that salespitch?

11 MR. DANDINO: Usually it is disclosed. In
12 every situation, I don't -- there is usually an asterisk
13 that refers you down to the bottom.

14 CHAIRMAN GAW: No, no. I'm talking about
15 when these telemarketers called.

16 MR. DANDINO: Oh, that I couldn't tell you.

17 CHAIRMAN GAW: Some others of us in this
18 room could probably tell you whether it is in their
19 experience, I suspect.

20 MR. DANDINO: Correct.

21 CHAIRMAN GAW: There are often charges that
22 are stated as a flat charge before a per minute rate goes
23 into effect in some of these plans; isn't that correct?

24 MR. DANDINO: That's correct.

25 CHAIRMAN GAW: So some charges may have,

1 and I don't know in particular, but a minimum amount
2 of 3.95 or \$4 or \$5 that's a part of the rate, correct?

3 MR. DANDINO: That's a part of the service.

4 CHAIRMAN GAW: Part of service.

5 MR. DANDINO: The charge for the service.

6 CHAIRMAN GAW: This isn't like that, is it?

7 This is not the same thing when you're saying, okay,
8 you're starting out you've got a minimum of \$5, and then
9 you get 7 cents a minute or 5 cents a minute; this isn't
10 the same kind of a proposal, is it?

11 MR. DANDINO: In order that by paying \$5
12 you'd get that advertised 7 cent a minute rate?

13 CHAIRMAN GAW: Right.

14 MR. DANDINO: No, that is not the case.

15 CHAIRMAN GAW: Public Counsel has not
16 objected to those kind of charges, have you, in any cases
17 here?

18 MR. DANDINO: I don't believe we have.

19 CHAIRMAN GAW: And that's something
20 that's -- at least you find when telemarketers are
21 calling, they normally do tell you about those minimum
22 charges, don't they, as a part of their plan that they're
23 offering?

24 MR. DANDINO: In some cases. In some cases
25 they don't, to the customer's surprise. But also at least

1 you're getting a benefit or looks like there's a direct
2 benefit. You get a rate for paying this minimum fee.
3 This minimum fee I still -- I still don't like those. I
4 have some type of reservation about it because, once
5 again, the figure, the actual phone rate, you'd have to
6 calculate that.

7 CHAIRMAN GAW: Yeah, it would be easier if
8 everyone said it's so many cents a minute and you could
9 compare apples to apples.

10 MR. DANDINO: That's correct.

11 CHAIRMAN GAW: But in those cases, at least
12 it's a part of what the plan is when it's advertised, when
13 you say there's a plan, this plan costs this amount of
14 money and it's this many cents per minute?

15 MR. DANDINO: Well, certainly.

16 CHAIRMAN GAW: I'm not saying that I think
17 that they're great to do that either, but I'm saying that
18 as a part of the plan, isn't it true that whenever they
19 have those minimum charges, they're stated as a part of
20 the plan whenever there's some discussion of the plan
21 being offered?

22 MR. DANDINO: Certainly, if you look at
23 their websites and everything, they'll show minimum amount
24 and then the rate that you get, and toward the end they'll
25 say, plus other charges and taxes and fees, but in many

1 case it is doesn't enumerate what those are.

2 CHAIRMAN GAW: Is there necessarily any
3 correlation between the amount that's being charged here
4 on this line item add-on charge and the amount that's
5 actually being incurred for access fees? Is there any
6 correlation made?

7 MR. DANDINO: The companies have not
8 identified any correlation.

9 CHAIRMAN GAW: In fact, isn't it true that
10 the company could be putting \$10, \$15, \$20, whatever
11 amounts they chose to put down there on that line and
12 identify that as charges that they added on because of
13 access fees? Is there anything in here that indicates
14 there's any correlation between the amount being charged
15 and the access fees that are being incurred by this class?

16 MR. DANDINO: No, Commissioner, there's
17 not.

18 CHAIRMAN: So couldn't they also be putting
19 \$10 down instead, or \$15 down?

20 MR. DANDINO: They can put any amount they
21 want to. It's kind of unusual that they're all putting
22 virtually the same rates down.

23 CHAIRMAN GAW: I understand that they could
24 also, on the other hand, charge whatever amount they
25 wanted per minute or whatever the plan would be per minute

1 and put that forward as what they're offering. I mean, it
2 could be that they could say we want to charge \$20 an hour
3 or \$20 a minute for your call routing. They could do it?

4 MR. DANDINO: They could do that, subject
5 to this Commission's review of reasonableness.

6 CHAIRMAN GAW: But the fact of the matter
7 is they're not likely to do that, are they?

8 MR. DANDINO: No, sir.

9 CHAIRMAN GAW: Because of why? Why would
10 you say that would be?

11 MR. DANDINO: Because they are trying to be
12 competitive with their -- with their competitors.

13 CHAIRMAN GAW: They'd lose business,
14 wouldn't they?

15 MR. DANDINO: Certainly.

16 CHAIRMAN GAW: Now, if they hide a charge
17 down in the line items down below, it's not as obvious to
18 the customer when they're trying to convince them to
19 switch the plan, is it?

20 MR. DANDINO: Certainly not, and certainly
21 not to -- I would think to the class of residential
22 customers.

23 CHAIRMAN GAW: Well, I hope that we can
24 figure out a way to deal with these charges eventually,
25 sir, whether or not we deal with it in a case or some

1 other forum, but I am primarily concerned -- I understand
2 your argument on the discrimination issue, and I respect
3 the fact that you raised it. I have significant issues
4 with how this charge is handled and where it's placed and
5 what I perceive as a problem on hiding these charges from
6 consumers when they're trying to get people to switch. So
7 I'm not sure how that fits into your argument in regard to
8 discrimination. I recognize those as two different
9 issues.

10 MR. DANDINO: Well, the question in the
11 truth in billing, that type of issue?

12 CHAIRMAN GAW: Yes.

13 MR. DANDINO: And disclosure, I have really
14 put that under just and reasonableness and fairness,
15 because as I said at the beginning, the competition
16 depends upon adequate knowledge and information by the
17 consumer where they can make informed decisions and
18 compare rates. And if they're prohibited by the market,
19 by the players in the market from discerning that
20 information easily, I think it would be -- it's a defect
21 in the competitive market where I think this Commission
22 has a duty to step in to assure and to protect -- to
23 assure that the protection of public interest and the
24 consumer.

25 CHAIRMAN GAW: Just one more thing and I'll

1 let this go. The petition in front of the FCC to do
2 something on these issues with the rulemaking, I
3 understand it is not confined to just this kind of a
4 charge, but what's the status of that, do you know?

5 MR. DANDINO: After the Commission, after
6 NASUCA filed their petition, I believe the FCC has opened
7 a docket and is requesting comments on the petition.
8 That's the status. I don't know what the deadline dates
9 are.

10 CHAIRMAN GAW: Okay. Thank you, sir.

11 JUDGE MILLS: Thank you. Further questions
12 from the Bench? Commissioner Appling?

13 COMMISSIONER APPLING: I think he summed it
14 up very well, and I echo his support on trying to find
15 some way to get at the heart of this issue, as far as the
16 consumer knowing exactly what they're paying for. I'm a
17 consumer myself, and I want to know what you're charging
18 me. I don't need that hidden from me, and the companies
19 that are doing it need to go out and clear, they need to
20 figure out some way to get that done.

21 MR. DANDINO: I agree, Commissioner. I
22 believe the ultimate right of the consumer is to know how
23 much he's paying for the product he's getting.

24 COMMISSIONER APPLING: That's only fair. I
25 don't think that's asking too much. Thank you.

1 JUDGE MILLS: Thank you. Commissioner
2 Murray?

3 COMMISSIONER MURRAY: Mr. Dandino, is
4 Office of the Public Counsel participating in any of the
5 proceedings at the FCC that are designed to look at the
6 real underlying problem to this, which is access rates?

7 MR. DANDINO: Yes, in cooperation or in
8 conjunction and NASUCA, and the access -- I can't remember
9 the name of the docket. Oh, let's see. Is it
10 compensation joint compensation or intercompany
11 compensation docket? I don't remember the exact name, but
12 we are involved with it to that extent.

13 COMMISSIONER MURRAY: And by your
14 involvement, I'm assuming that you're agreeing that
15 there's a real need to address that issue?

16 MR. DANDINO: Well, certainly. I think by
17 looking at the intercompany compensation, that's -- you
18 know, we can't ignore that issue in any type of reform of
19 telephone. Something's going to have to be done with
20 that, and that means looking at access rates and doing --
21 you know, doing something about it.

22 COMMISSIONER MURRAY: That issue underlies
23 a lot of other issues, does it not?

24 MR. DANDINO: It certainly does.

25 COMMISSIONER MURRAY: Including this one?

1 MR. DANDINO: Including this one.

2 COMMISSIONER MURRAY: Thank you.

3 JUDGE MILLS: Thank you. Mr. Dandino, you
4 may step down.

5 Mr. Meyer for the Staff.

6 MR. MEYER: Good morning. At the risk of
7 repeating some of the discussion that's already taken
8 place, I'll start out by indicating that this has, of
9 course, been going the direction of a policy decision, but
10 what is before the Commission at this time is a
11 determination of whether or not a dollar increase is
12 appropriate in an already existing tariffed charge. The
13 underlying in-state access recovery fee or intrastate
14 connection fee or whatever it may be characterized will
15 remain in place and the old Commission decisions will
16 remain on appeal with a judgment to come from the Western
17 District whenever that may be.

18 But certainly even this issue here is a
19 policy decision on whether or not competitive
20 considerations outweigh the Office of Public Counsel's
21 concerns. The Commission in its order in the Sprint
22 initiating case in the earlier series of cases had stated
23 that considering the competitive climate in which the
24 service is offered, the Commission finds that allowing
25 full and fair competition to substitute as regulation will

1 ensure that consumers pay only reasonable rates, and that
2 appeared to echo the provisions of 392.185, and there's
3 certainly public policy perspective to be derived from
4 other statutory sections.

5 Section 392.361.4 also references a lesser
6 degree of regulation when dealing in the competitive
7 context. These legislative directives appear to have
8 formed the Commission's decision from the beginning to
9 exercise reduced review of charges for this nature for
10 competitively classified phone companies, and therefore,
11 in those earlier cases, as it regularly did and still
12 does, the Commission relied upon Section 392.500 for its
13 statutory directive on how to treat these cases.

14 And just briefly what that provides and
15 what Staff does in its review of these is that a rate gets
16 filed, generally via a tariff, which of course you're all
17 familiar with, and then 10 days notice if it involves an
18 increase has to be provided to customers. And the
19 Commission and the Staff of the Commission usually seek
20 verification of that, and that took place in this case.
21 After determining that those provisions were complied
22 with, the Staff has recommended that these be approved,
23 and in previous cases the Commission has approved similar
24 charges.

25 The Commission, as again you are well

1 aware, doesn't regulate these companies on a cost based or
2 rate of return method, and after determining that a
3 competitive situation or environment is in place, the
4 regulatory review does become very limited. It's probably
5 worth noting that in those earlier cases, the Commission
6 could have let the tariff sheets that were filed go into
7 effect by doing nothing at all but, in fact, did create a
8 record and did issue orders approving those.

9 The Commission -- the Staff recommends, and
10 in the past the Commission has treated the rate increases
11 here as it's treated rate increases in other situations.
12 It is probably worth noting that the competitively
13 regulated companies are under no legal burden to explain
14 their raising their rates, and I believe that's already
15 been discussed. They could have indicated that they are
16 changing them to waive fees, to offer discounts, to
17 recover costs or just to adjust them to take into account
18 what the market will bear.

19 The fact is the companies have chosen to
20 provide a reason; the reason for the increase is tight
21 access charges. Access charges, briefly, are what a long
22 distance carrier pays the local carrier to have access to
23 their local network, either take the outgoing call from
24 the caller to the interexchange network or to send the
25 incoming call from the interexchange network to the local

6 There's certainly no evidentiary discussion
7 or support for that issue in this case. But again, in the
8 past and in forming the Staff's perspective here, the
9 Commission's determined that if a company in a competitive
10 industry wants to do this, they can do so and send the
11 customers a new card. The basic reduction of the charges
12 on what were in this case the dollar increase merely
13 because they're recurring or flat charges are something
14 the Commission may do, but certainly has not done in the
15 past.

23 JUDGE MILLS: Thank you. Questions from
24 the Bench?

1 had been an increase of \$10, would that change your
2 impression or your analysis?

3 MR. MEYER: It could have. Certainly the
4 just and reasonable 392.200 factor is available.

5 CHAIRMAN GAW: It's a competitive company.
6 Why would you have to look at just and reasonable rates
7 provisions to decide whether or not the rates in this
8 particular category were too high?

9 MR. MEYER: I think it may still
10 potentially relate to the fact that the company has tied
11 an allegation of what the purpose is. It doesn't have to
12 because it's done so.

13 CHAIRMAN GAW: Doesn't have to, right?

14 MR. MEYER: That's correct.

15 CHAIRMAN GAW: They could have come up with
16 a line item that said, these four corporate executive
17 salaries?

18 MR. MEYER: Certainly.

19 CHAIRMAN GAW: They could come up with a
20 line item that said water bills?

21 MR. MEYER: Certainly to pay for anything
22 they wish.

23 CHAIRMAN GAW: They could have come up with
24 a list of 200, 300 of those line item charges?

25 MR. MEYER: That's true, and if customers

1 see that and do not wish to pay it, they have the option
2 to go off it.

3 CHAIRMAN GAW: Why would it make any
4 difference if they raised one of them to \$5 or \$10, in
5 your analysis?

6 MR. MEYER: I think that's something that
7 Staff would look at on a case-by-case basis.

8 CHAIRMAN GAW: Have you ever done that?
9 Have you ever rejected one of these line items in the
10 history of Staff on a competitive long distance company?

11 MR. MEYER: Not to my knowledge.

12 CHAIRMAN GAW: Your knowledge goes back
13 probably farther than mine.

14 MR. MEYER: I think it's almost exactly the
15 same.

16 CHAIRMAN GAW: Staff is taking this
17 position because the Commission has taken this position
18 also in the past; is that correct?

19 MR. MEYER: That is correct.

20 CHAIRMAN GAW: Mr. Meyer, have you ever
21 gotten one of these phone calls?

22 MR. MEYER: Actually, I have not.

23 CHAIRMAN GAW: How in the world did that
24 happen?

25 MR. MEYER: If you want personal testimony,

1 I've actually dropped my long distance completely and
2 switched to my cellphone. Nobody calls me anymore.

3 CHAIRMAN GAW: I've got Commissioner Murray
4 smiling over there in the corner. She's going to bring
5 this up. I'm going to tell you, she's going to bring it
6 up.

7 Okay. So what's your analysis of Public
8 Counsel's discrimination arguments?

9 MR. MEYER: The Section 254(g) has two
10 parts, the first part addressing urban and rural and other
11 geographic forms within the state. Analysis certainly
12 does not appear to apply here, because these rates are for
13 any MCI customer who has above a dollar charges,
14 regardless of where they're located.

15 The second part of 254(g) addresses a
16 discrepancy between the interstate rates, and certainly
17 these charges are in an intrastate tariff before the
18 Missouri Commission, and that simply does not apply. But
19 what it comes down to is the nature that these charges
20 apply to any customer receiving service under this tariff,
21 unless they have below a dollar in charges.

22 CHAIRMAN GAW: Well, any residential
23 customers, right?

24 MR. MEYER: That is true.

25 CHAIRMAN GAW: They are not attaching

1 charges to any other customer?

2 MR. MEYER: Not to my knowledge.

3 CHAIRMAN GAW: I guess what I'm asking is,
4 maybe you answered my question, but I was more trying to
5 get Staff's analysis of Public Counsel's argument on the
6 discrimination between residential and business customers.

7 MR. MEYER: I think our perspective is
8 within this tariff there is no discrimination. On its
9 face, it is not discriminatory.

10 CHAIRMAN GAW: They're treating them
11 differently, aren't they?

12 MR. MEYER: If customers receiving service
13 under a different tariff receive a different type of
14 charge, that's a discretion of the company to do that. I
15 mean, it comes down to --

16 CHAIRMAN GAW: We've had this discussion
17 before. I don't know if I want to go down this road or
18 not. Are you saying that as long as the tariff describes
19 the customers impacted, that as long as the tariff isn't
20 discriminatory within those that are included in the
21 tariff, it's not discriminatory?

22 MR. MEYER: No. I think it's -- the
23 language does not discriminate between customers. It's
24 just simply any customer and, of course, as a matter of
25 practice would be any customer receiving service under

1 this tariff.

2 CHAIRMAN GAW: Now, that's because only
3 residential customers are impacted by this tariff?

4 MR. MEYER: That may be the case.

5 CHAIRMAN GAW: So what if I said --

6 MR. MEYER: I think Mr. Voight certainly,
7 being our tariff expert, could probably answer that.

8 CHAIRMAN GAW: You probably do want to
9 avoid this line of questioning that I might go down. I'm
10 trying to understand what you're saying with who's
11 included in this group. As long as the tariff just
12 includes a particular group, does it matter who's in that
13 group?

14 MR. MEYER: Our review is on the words of
15 the language, which are nondiscriminatory and, of course,
16 the language is in the tariff.

17 CHAIRMAN GAW: But the language just
18 includes residential customers, correct?

19 MR. MEYER: That is true.

20 CHAIRMAN GAW: Are you saying because it
21 doesn't say that in the language somewhere that it's just
22 residential customers, that it's not discriminatory, or
23 are you saying -- I'm trying to understand what you're
24 telling me. Is it not discriminatory because you can't --
25 it's okay to discriminate and treat residential customers

1 differently than business customers and so it's not a
2 problem to do that in this case?

3 MR. MEYER: I think our perspective has
4 been, or at least my perspective as I've dealt with this
5 along the way, is that all residential customers are
6 treated the same, and it's the company's choice to --

7 CHAIRMAN GAW: What if all residential
8 customers with blond hair?

9 MR. MEYER: I think at that point you would
10 have unjust discrimination.

11 CHAIRMAN GAW: Why?

12 MR. MEYER: Well, I think there's some case
13 law floating around that's probably been referenced along
14 the way that you can have some discrimination, as long as
15 it's reasonable discrimination; for example, allowing
16 people who don't pay, who don't accrue bills of a dollar
17 or more not to pay this at all.

18 I think there was some discussion,
19 especially in Sprint, where if you have local and long
20 distance service, the charge was waived. Again, that type
21 of different treatment was acceptable. I think actually
22 that was discussed in the Minnesota decision that was put
23 in earlier today.

24 CHAIRMAN GAW: In the Minnesota Public
25 Service Commission. We often don't follow our own

1 decisions here, let alone others.

2 MR. MEYER: That's just the most recent
3 analysis. I know we've had discussions of that in these
4 cases, and I think that's been discussed in the previous
5 round as we've gone up to the Court of Appeals.

6 CHAIRMAN GAW: What is the line on when
7 something becomes discriminatory?

8 MR. MEYER: I think that's in the judgment
9 of the Commission.

10 CHAIRMAN GAW: From your standpoint, from
11 Staff's standpoint?

12 MR. MEYER: I think it's case-by-case
13 basis.

14 CHAIRMAN GAW: Discrimination --

15 MR. MEYER: Mr. Voight usually --

16 CHAIRMAN GAW: -- is not usually decided on
17 the basis of you-know-it-when-you-see-it standards.

18 MR. MEYER: Mr. Voight may have an opinion
19 on that as well.

20 CHAIRMAN GAW: I'm just trying to get
21 guidance here. The discrimination issue is not what I
22 generally am most concerned about when I deal with this
23 particular matter, but it is teed up by Public Counsel in
24 this case and the one that's up on appeal, if I recall
25 correctly. And I'm trying to see where, where does the

1 discrimination language kick in in regard to cases? I
2 mean, I --

3 MR. MEYER: I think some of the case law,
4 and again, I prefer to --

5 CHAIRMAN GAW: I hate to keep putting you
6 on the spot, Mr. Meyer.

7 MR. MEYER: I know Mr. Voight would like to
8 speak as well.

9 CHAIRMAN GAW: He doesn't look like he's
10 really enthused about it to me. I mean, I recognize that
11 he's sitting there, but I haven't seen him just trying to
12 jump up out of his chair

13 MR. VOIGHT: I'll be happy to speak to
14 that.

15 CHAIRMAN GAW: Really to me it's a legal
16 question.

17 MR. MEYER: I think it may be, but of
18 course the telecommunications department has its policy on
19 that, but I believe that the case law tends to discuss it.
20 And I think Mr. Dandino actually cited a couple of cases
21 that similarly situated customers receiving similar
22 services should be charged the same. I think that may be
23 the laundry case, some of the other ones that were cited
24 in I think most people's Briefs in this case.

25 CHAIRMAN GAW: I'll let you off the hook,

1 and I'm sure Mr. Lumley will probably have answers back
2 there from his perspective. I'm done.

3 JUDGE MILLS: Commissioner Murray?

4 COMMISSIONER MURRAY: Thank you.

5 Mr. Meyer, just one last follow-up on that. Business
6 customers are treated differently than residential
7 customers for all types of reasons, are they not?

8 MR. MEYER: That is, in fact, the case.

9 COMMISSIONER MURRAY: They are a different
10 class of customers?

11 MR. MEYER: In general, yes.

12 COMMISSIONER MURRAY: And is it correct
13 that there's no statutory reason to do a cost analysis of
14 this tariff, whether it's cost based; is that correct?

15 MR. MEYER: If it's a competitive company,
16 that is correct, and this is in that situation.

17 COMMISSIONER MURRAY: And this is a long
18 distance tariff we're talking about?

19 MR. MEYER: That is correct, yes.

20 COMMISSIONER MURRAY: Nobody has claimed
21 that this is not a competitive carrier?

22 MR. MEYER: There's been no allegation of
23 that, to my knowledge.

24 COMMISSIONER MURRAY: And then the issue
25 has been raised as to whether if the company had come in

1 and said rather than \$2.95 a month, \$10 a month. If you
2 were to look at access rates in the state of Missouri, do
3 you know what the highest access rates are?

4 MR. MEYER: I do not personally know that,
5 no.

6 COMMISSIONER MURRAY: If you took a
7 customer who charged 60 minutes a month of long distance
8 calls, I calculated that an access rate of 16.7 cents
9 would get you up to \$10.2 a month just to cover the access
10 rates. Is that something that you would without sitting
11 down with the calculator have any reason to doubt?

12 MR. MEYER: Mathematically, that sounds
13 about right.

14 COMMISSIONER MURRAY: So it wouldn't take
15 many minutes to run up even \$10 worth of access fees for a
16 carrier if the access rates were, you know, in the range
17 of 15 cents a minute.

18 MR. MEYER: If that charge was passed
19 through, that would be the result, yes.

20 COMMISSIONER MURRAY: So even if we were
21 looking at a cost analysis, we wouldn't have any reason to
22 say it's unjust and unreasonable?

23 MR. MEYER: If a cost analysis were in play
24 here, that might be the determination.

25 COMMISSIONER MURRAY: And you cited a

1 couple of statutory provisions, one of which was that
2 competitive carriers were subject to a lesser degree of
3 regulation; is that right?

4 MR. MEYER: Yes. I think that's
5 Section 352.361.4.

6 COMMISSIONER MURRAY: 392?

7 MR. MEYER: I'm sorry. 392.

8 COMMISSIONER MURRAY: And then you cited, I
9 believe, 392.500 to show that competitive --
10 competitively -- competitive companies have no legal
11 burden to show why they're increasing their rates. They
12 simply have a statutory duty to file a tariff 10 days --
13 an increase 10 days prior to its effective date; is that
14 right?

15 MR. MEYER: That's true. Section 392.500
16 has two steps with a cross reference to Section 392.200,
17 exceptions not being in effect or applying. If those
18 exceptions don't apply and the two steps have been met,
19 then, yes, that would go into effect.

20 COMMISSIONER MURRAY: And does the
21 telecommunications department get a lot of tariff filings
22 for long distance carriers, to your knowledge?

23 MR. MEYER: I think that's a safe
24 assumption, yes.

25 COMMISSIONER MURRAY: And normally they're

1 routed through an approval only routing; is that right?

2 MR. MEYER: As I understand it, that is the
3 case.

4 COMMISSIONER MURRAY: Staff analyzes the
5 tariff to see that it complies with the minimal statutory
6 requirement for competitive carriers; is that right?

7 MR. MEYER: Staff reviews it for the
8 requirements of all applicable statutes, yes.

9 COMMISSIONER MURRAY: And there are minimal
10 requirements for competitive carriers?

11 MR. MEYER: I think that's the statutory
12 language, yes.

13 COMMISSIONER MURRAY: Thank you. I think
14 that's all I have.

15 JUDGE MILLS: Commissioner Appling?

16 COMMISSIONER APPLING: Mr. Meyer -- and,
17 Judge, thank you. Just a clarification and follow-up on a
18 question that the Chair asked.

19 When they're asking for a dollar increase
20 and he asked you if it was \$10, did I hear you right when
21 you said if it had been \$10 you would have took a
22 different look at this?

23 MR. MEYER: I don't know that we would have
24 taken a different look at it. I think we would have taken
25 a look at it and again made the same kind of judgments as

1 does this trigger any kind of concern under justness and
2 reasonableness, et cetera, but again the limited look that
3 normally these tariff filings receive.

4 COMMISSIONER APPLING: But if it was a jump
5 from \$1.59 to \$10, that would not seem to you unjust,
6 unreasonable?

7 MR. MEYER: Me personally, I mean, my
8 perspective, I think again we're dealing with competitive
9 companies, so I think it's a risk they take to potentially
10 lose customers here.

11 COMMISSIONER APPLING: Okay. Thank you.
12 Judge, can I direct a question again that was raised by
13 the Chair of the Public Counsel?

14 Where does the language of discrimination
15 kick in on this case? That was a question that was asked
16 by the Chair. Do you have a thought on that?

17 MR. DANDINO: What provisions of law apply,
18 is that what you're asking?

19 COMMISSIONER APPLING: Yes.

20 MR. DANDINO: It would be 1-- or 392.200,
21 and it would be subsections 3 -- subsection 2 and 3 in
22 terms of discrimination.

23 COMMISSIONER APPLING: Okay. Thank you.

24 JUDGE MILLS: Thank you. Commissioner
25 Clayton, do you have questions? Anything further from the

1 Bench, Chairman Gaw?

2 CHAIRMAN GAW: I think just real quickly,
3 the -- well, I'll pass, Judge. I'll come back.

4 JUDGE MILLS: Commissioner Murray?

5 COMMISSIONER MURRAY: Mr. Dandino, in that
6 you were asked to cite those statutory provisions
7 concerning discrimination, do you have them in front of
8 you that you could read them into the record?

9 MR. DANDINO: Certainly. Section 392.200,
10 subsection 2, no telecommunications company shall directly
11 or indirectly or by any special rate, rebate, drawback or
12 other device or method charge, demand, collect or receive
13 from any person or corporation a greater or less
14 compensation for any service rendered or to be rendered
15 with respect to telecommunications, or in connection
16 therewith, except as authorized in this chapter, and that
17 charges, demands, collects or receives from any other
18 person or corporation for doing a like and contemporaneous
19 service with respect to telecommunications under the same
20 or substantially the same circumstances and conditions.
21 Promotional programs for telecommunications services may
22 be offered by telecommunications companies for a period of
23 time so long as the offer is otherwise consistent with the
24 provisions of this chapter and approved by the Commission.
25 Neither this subsection nor subsection 3 of

1 this section shall be construed to permit an economy rate
2 telephone service offering. This section and
3 Section 392.220 to the contrary notwithstanding, the
4 Commission is authorized to approve tariffs filed by local
5 exchange telecommunications companies which elect to
6 provide reduced charges for residential telecommunications
7 connection services pursuant to the Lifeline connection
8 assistance plan as promulgated by the Federal
9 Communications Commission. Eligible subscribers for such
10 connection services shall be those as defined by
11 participating local exchange companies --
12 telecommunications companies' tariffs.

13 Subsection 3. No telecommunications
14 company shall make or give any undue or unreasonable
15 preference or advantage to any person, corporation or
16 locality or subject any particular person, corporation or
17 locality to any undue or unreasonable prejudice or
18 disadvantage in any respect whatsoever, except that
19 telecommunications messages may be classified into such
20 classes as are just and reasonable, and different rates
21 may be charged for the different classes of messages.

22 COMMISSIONER MURRAY: Thank you. And would
23 you agree that the business class and the residential
24 class are two different classes of customers?

25 MR. DANDINO: Yes, they're different

1 classes of customers.

2 COMMISSIONER MURRAY: And, Mr. Meyer, you
3 were asked, I think, personally if you would feel that a
4 \$10 increase was just and reasonable. I'm not sure
5 exactly how you were asked that question, but if you had
6 -- if you were using a landline phone for long distance
7 today and you received a notice that your bill was going
8 to be increased \$10 a month for a surcharge for resi-- or
9 for long distance access, how would you respond?

10 MR. MEYER: I would probably look to see
11 what other companies are offering, and if I found one that
12 offered the same service but for a less price, I would
13 probably change.

14 COMMISSIONER MURRAY: Would you be able to
15 change to a wireless flat-rated plan, for example?

16 MR. MEYER: I would consider it. I think I
17 would look at whatever would be the best for my calling
18 pattern.

19 COMMISSIONER MURRAY: Would you have quite
20 a number of options you could examine in today's market?

21 MR. MEYER: In Columbia, that's what I
22 found to be the case.

23 COMMISSIONER MURRAY: Thank you.

24 JUDGE MILLS: Commissioner Appling?

25 COMMISSIONER APPLING: I'm not going to let

1 you off the hook on this \$10 versus \$1. What if all the
2 companies was offering \$10 and jumping from 1 to 10, what
3 would your thoughts be then?

4 MR. MEYER: I might look at alternative
5 technologies. Perhaps I don't want to go there either.

6 COMMISSIONER APPLING: Maybe going back
7 to -- okay. That's fine. Thank you very much.

8 MR. MEYER: And, your Honor, also just
9 because I think it was discussed earlier, Ms. Dietrich
10 informed me that NASUCA petition FCC docket has been
11 opened, comments reviewed and response to that on July 14,
12 which I think was two days ago, and replies are due on
13 August 13th.

14 CHAIRMAN GAW: I have a question.

15 JUDGE MILLS: Okay.

16 CHAIRMAN GAW: Did we file comments,
17 Mr. Meyer? Was there discussion with the Commission of
18 filing comments?

19 MR. MEYER: I'm seeing a head shaking.

20 CHAIRMAN GAW: Is it too late to file
21 comments?

22 MS. DIETRICH: We can file reply comments
23 or we can file ex parte.

24 MR. MEYER: Thank you. Ms. Dietrich said
25 for the record that we may file reply comments or ex parte

1 comments.

2 JUDGE MILLS: And just for the record,
3 NASUCA is the National Association of State Utility
4 Consumer Advocates, N-A-S-U-C-A, all caps. Thank you.

5 Mr. Meyer, you may step down.

6 Mr. Lumley?

7 MR. LUMLEY: Good morning. Try to keep my
8 comments brief and try to direct them to some of the
9 questions as I go, though I'm sure you'll still have some.

10 It's important to recognize that we're
11 talking about a competitive long distance rate change, and
12 I know that's come up in the questioning. Staff has
13 indicated the required notices were given in compliance
14 with the statutes, and as has been discussed, customers
15 are free to change if they're not satisfied with the rate.
16 Because of advance notice, they're free to change
17 beforehand, and in light of the suspension of the tariff,
18 they're actually given additional time in this instance to
19 make their decision.

20 And as has been discussed, I don't suggest
21 that their right to change it is a trivial one. They have
22 substantial number of options, including wireline,
23 wireless, voice over Internet, Internet chats in lieu of
24 voice communications, e-mail communications. There's any
25 number of ways that people can communicate with each

1 other, and they're free to make their decision. And in
2 the long distance market in particular, they're able to
3 make their changes on a per call basis. They can pick any
4 carrier they want by dialing access codes. They don't
5 have to go to the trouble of presubscribing to make these
6 choices. They can try other carriers out on a
7 call-by-call basis.

8 We're not talking about commercial lending
9 or taxes, and I don't believe that those discussions are
10 pertinent. We're also not talking about company marketing
11 practices or billing practices.

12 However, I do not mean by any means to
13 minimize your concerns about those points. Certainly
14 companies have obligations to market their services
15 truthfully, and they have obligations to issue correct and
16 accurate bills that are understandable. There's a lot of
17 regulations from a wide variety of angles that cover these
18 matters, and as you're well aware, they're areas that are
19 always under review as well.

20 I don't believe that those issues are
21 pertinent for the question of whether a dollar increase is
22 in order. The surcharge has been approved. It was
23 affirmed by the circuit court and the appeal is pending,
24 and has been mentioned, but I want to emphasize we are
25 talking about a rate change. We aren't talking about a

1 structural change. The surcharge has already been
2 introduced and is in effect.

3 Public Counsel has conceded in some of the
4 pleadings in these various cases that these market forces
5 are applying, and I quoted that in our comments. They
6 conceded that in the circuit court pleadings. And also
7 they are submitting some fairly old market statistics in
8 their motions today. Specifically want to emphasize that
9 subsequent to the year 2000 figures that they're quoting,
10 this Commission and the FCC allowed SBC to enter these
11 markets, and subsequent to that this Commission declared
12 SBC's services to be subject to effective competition.

13 So it's up to the customer to determine the
14 merit of this dollar increase, in our opinion, and we
15 believe it's important that the Commission continue to
16 treat companies in a uniform manner, which is a totally
17 different subject of discrimination but equally important.

18 As has been discussed, there's no basis to
19 assert any kind of double cost recovery, and there is no
20 opportunity for confusion in terms of the tariff. The
21 surcharge is straightforward, and a notice of increase as
22 required by law was provided.

23 On the question of discrimination, the
24 issue collapses on itself, and that point is driven home
25 on page 9 of Public Counsel's own motion, because their

1 own language is contradictory.

2 They said without any justifications for
3 the difference in treatment of toll users and for applying
4 the same rate to all without a rational basis, and therein
5 lies the problem. There is no discrimination because the
6 surcharge does apply to all residential customers. It's
7 an intrastate, a within state rate. And I believe by not
8 even discussing the statute in their arguments, Public
9 Counsel's acknowledged that 254(g) has no application.

10 But just to drive home the point, we have
11 no urban and rural distinctions here and we're not talking
12 about between state calling or interstate calling. We're
13 talking about Missouri calls. So that statute has no
14 application whatsoever.

15 There is a residential versus business
16 distinction, it's set forth in the tariff distinctly.
17 This is a traditional and established categorization of
18 service, and I think the Commission, if it takes a step
19 back, would understand that it would be extremely unwise
20 to disturb that categorization now. You place in jeopardy
21 the entire local rate structure in this state when you
22 question the distinctions between residential and business
23 service today based on this dollar increase.

24 There's nothing unusual about average or
25 flat charges. They are a normal and reasonable calling

1 structure. There are a substantial number of services out
2 there that are flat rates with unlimited calling, and I
3 submit there's no difference between the surcharge and a
4 minimum charge combined with the use and charge. It's the
5 same thing.

6 In their pleading Public Counsel tries to
7 make the case that there is some category of low user
8 versus high user. Within residential customers there is
9 no such distinction. We all know everybody's calls vary
10 day to day, week to week, month to month. Do we have kids
11 in college this year or don't we? Have some of our family
12 moved out of state or haven't they? Everyone's calling
13 patterns change on a regular basis.

14 To address the question of what if this had
15 been \$10 versus \$1, I think it's an important question. I
16 think it's better analyzed by stepping back, and let's not
17 even talk about whether it's 1, 10 or \$500. I don't think
18 there's any doubt that at some point you could hypothesize
19 a situation where the Commission would look at the actions
20 of some or all carriers and think maybe something's wrong
21 here.

22 But you don't answer that question in a
23 particular isolated tariff case. Instead you return to
24 your authority under Chapter 392 to look at the
25 competitive status of the industry itself on a particular

1 service basis, and if there's a problem you can deal with
2 it and you can change the way the services are regulated.
3 But in my opinion, it would be inappropriate to single out
4 one carrier on one tariff change to try to address those
5 kind of overarching concerns.

6 With that, I'll conclude my comments and
7 address any remaining questions you may have for me.

8 JUDGE MILLS: Thank you, Mr. Lumley.
9 Chairman Gaw?

10 CHAIRMAN GAW: Thank you. Mr. Lumley, it
11 is frequent practice to charge different rates between
12 interstate and intrastate rates for a long distance
13 company, isn't it?

14 MR. LUMLEY: I believe so. I couldn't
15 quote you specific rates, but that's my walk-around
16 understanding.

17 CHAIRMAN GAW: There's nothing to prevent
18 MCI from rolling this -- whatever additional money that
19 they think they need on their cost recovery into their
20 intrastate rates instead of putting it into a line item
21 charge that's down in the taxes and other line item
22 charges down at the bottom of the bill, is there?

23 MR. LUMLEY: I just want to make sure I
24 heard your question correctly. You talked about within
25 state calling, intrastate?

1 CHAIRMAN GAW: Intra.

2 MR. LUMLEY: No, I don't believe they would
3 be precluded from doing it.

4 CHAIRMAN GAW: Is there a reason why that's
5 not done?

6 MR. LUMLEY: In this particular instance?

7 CHAIRMAN GAW: Yes.

8 MR. LUMLEY: I can't comment on the
9 judgments. I have no information about the judgment
10 process they went through in determining, you know, what
11 rate goes where. I have no idea.

12 CHAIRMAN GAW: But they could have put it
13 in the intrastate rates?

14 MR. LUMLEY: Certainly.

15 CHAIRMAN GAW: They could have added some
16 per minute or flat rate additional charge that was
17 included as a part of the rate for intrastate calling?

18 MR. LUMLEY: Yes, I agree that they have a
19 fairly broad range of discretion on how to structure the
20 rates.

21 CHAIRMAN GAW: But they didn't do that?

22 MR. LUMLEY: That's correct.

23 CHAIRMAN GAW: Instead they decided to put
24 it in one of the line item charges hidden down in the
25 taxes and other things; is that correct?

1 MR. LUMLEY: All except I think you put the
2 word "hidden" in there.

3 CHAIRMAN GAW: I thought that was just a
4 thought.

5 MR. LUMLEY: I thought I heard that, but
6 other than that.

7 CHAIRMAN GAW: Could have been. It's
8 possible.

9 MR. LUMLEY: I agree that they chose to
10 make it a line item surcharge.

11 CHAIRMAN GAW: So let me ask you this: The
12 petition that's before the FCC that was mentioned earlier
13 that's been filed by consumer advocates, has MCI filed
14 comments on that?

15 MR. LUMLEY: I don't know. I'm not
16 familiar with that petition at all, sir.

17 CHAIRMAN GAW: Could you find out?

18 MR. LUMLEY: I can.

19 CHAIRMAN GAW: And whether or not the
20 comments are favorable.

21 MR. LUMLEY: Favorable to who? It would be
22 better to just submit a copy of them and then you can make
23 your own judgment.

24 CHAIRMAN GAW: Do you think it would be
25 difficult for you to determine whether they were favorable

1 or not?

2 MR. LUMLEY: I can determine whether
3 they're favorable to quite a number of people.

4 CHAIRMAN GAW: To the petition.

5 MR. LUMLEY: Oh, I'm sorry. I'm sure I
6 would be able to determine that. Do you want -- what form
7 of -- do you just want a copy of them, is that it?

8 CHAIRMAN GAW: If they're lengthy, we can
9 probably retrieve them ourselves. I just thought if it's
10 easy to tell us if it's a black and white comment. If
11 it's not, if it's something that has positives --

12 MR. LUMLEY: Whether it's generally support
13 or against?

14 CHAIRMAN GAW: Yes, that would be helpful.
15 I recognize that you don't want to spend much time on
16 marketing. I understand that. But are you familiar with
17 the marketing that's done by MCI over the telephone for
18 its long distance products?

19 MR. LUMLEY: I don't think I have -- I'm
20 one of their customers, but I believe I did it on an
21 unsolicited basis. I can't recall a specific experience
22 that I would consider marketing. They've certainly called
23 from time to time to check on the status of our service.

24 CHAIRMAN GAW: Do you know, would it not be
25 generally the case that the rates for interstate and

1 intrastate calls would be disclosed by a marketer when
2 they're trying to get someone to switch to MCI or to
3 anybody else for that matter?

4 MR. LUMLEY: I would assume that the rates
5 would be discussed, yes.

6 CHAIRMAN GAW: Do you know whether this
7 particular charge is disclosed to the customer?

8 MR. LUMLEY: I don't know why it wouldn't
9 be, but I can't tell you one way or the other. I just
10 don't have any idea. I've never seen any scripts or
11 anything like that.

12 CHAIRMAN GAW: Does that mean MCI would
13 consent to an Order that required that disclosure at the
14 time of any marketing of this product?

15 MR. LUMLEY: I don't have any specific
16 authority to give that consent, but I would assume the
17 company understands it must be truthful in its marketing.

18 CHAIRMAN GAW: Do you think that you might
19 be able to inquire as to whether or not the company would
20 consent?

21 MR. LUMLEY: Oh, sure.

22 CHAIRMAN GAW: That's all I have. Thanks.

23 JUDGE MILLS: Thank you. Commissioner
24 Murray?

25 COMMISSIONER MURRAY: I'll pass for right

1 now. I may come back.

2 JUDGE MILLS: Commissioner Clayton?

3 COMMISSIONER CLAYTON: Do you believe that
4 we have the legal ability to discharge or suspend this
5 tariff filing, or is your position we just shouldn't
6 because it's okay? I want to talk purely the legal basis.
7 Do we have the ability to suspend this?

8 MR. LUMLEY: I think the -- I can't cite
9 you a specific case. This is more my gut understanding of
10 your law. I would submit that your discretion in whether
11 or not to suspend the tariff is broader than your
12 discretion in whether to ultimately reject or approve it.

13 COMMISSIONER CLAYTON: On a temporary basis
14 versus permanent?

15 MR. LUMLEY: Yeah. I think the courts
16 would yield to you in the first instance, whether you need
17 more than 7, 10 or 30 days --

18 COMMISSIONER CLAYTON: Let's eliminate that
19 distinction. Do we have the ability to reject -- do we
20 have the legal ability to reject this tariff filing?

21 MR. LUMLEY: I don't believe so.

22 COMMISSIONER CLAYTON: We do not? For this
23 type of competitive service, what is your understanding of
24 our ability to review tariff filings, fees and charges?

25 MR. LUMLEY: I think you have the right to

1 make sure that the tariff is clear and understandable. I
2 think you have the right to look for discrimination. I
3 think it's one of your most important tasks. And while
4 I've already argued the point about residential versus
5 business, I think there are quite a number of recognized
6 protected classes that could clearly jump out at you if
7 someone were to impose an improper tariff, and there might
8 be some that are a little more subtle.

9 I was thinking back. I know there are some
10 companies that have been formed basically as sort of the
11 equivalent of the Sam's Club; they sort of have their
12 customers in mind as they get organized. And sometimes I
13 wonder whether that goes too far.

14 COMMISSIONER CLAYTON: So for Office of
15 Public Counsel to succeed, they would have to prove
16 discrimination --

17 MR. LUMLEY: Right.

18 COMMISSIONER CLAYTON: -- for potential
19 rejection?

20 What else would they -- are there any other
21 standards that we would look to to reject a tariff?

22 MR. LUMLEY: If there was something wrong
23 with the tariff language, if there was a failure to comply
24 with the notification requirements. Otherwise, I think
25 the law suggests that the market's going to determine

1 whether the level of the charge is reasonable or not.

2 COMMISSIONER CLAYTON: Okay. So the only
3 bases that we could look to in determining whether to
4 reject a tariff would be whether or not the charge was a
5 discriminatory charge, correct, or a lack of notification,
6 or a technical problem with the actual tariff sheet or a
7 technical problem with implementation of the program,
8 correct? Anything else?

9 MR. LUMLEY: Those are the ones that come
10 to mind. I do agree, as I stated earlier, that you might
11 see something that causes you to have a broader concern,
12 but I don't think that those are appropriately addressed
13 in review of tariff, but instead in looking at do you want
14 to change the rules on marketing, change the rules on
15 billing, look at a service and determine maybe it's not
16 competitive anymore, I think you have those broader
17 authorities, but I don't think they're properly exercised
18 in an isolated tariff.

19 COMMISSIONER CLAYTON: And not to single
20 out your client but just as an example, with the existing
21 \$1.95 charge, if we were to look to the possibility of
22 considering these types of fees and charges, whether or
23 not they're hidden or whether or not they're included in
24 the marketing or not, taking that argument aside, would we
25 be able to go backward in time and unwind the approval of

1 such charges to afford more equitable treatment across the
2 various companies that are doing business in Missouri?

3 MR. LUMLEY: Yes, if either a statute or a
4 regulation was passed that prohibited this surcharge.

5 COMMISSIONER CLAYTON: I understand. Let's
6 talk about first under current, current law, current regs,
7 do we have the ability to go back? Could we go to MCI and
8 say, we don't think -- not only do we think the 2.95 is
9 wrong, we think the 1.95 is wrong? Could we institute a
10 case to go back and reject a previously filed and approved
11 tariff sheet?

12 MR. LUMLEY: You wouldn't be able to
13 retroactively change the exchange of funds that's occurred
14 in the past. But you do have complaint jurisdiction, and
15 if someone comes to you and proves under complaint that
16 something's wrong, then yes, you can act on that. You can
17 act against a specific company, and then you could engage
18 in a rulemaking to make sure that everyone must comply
19 with your decision. Yes, I agree with that.

20 COMMISSIONER CLAYTON: Part of your
21 argument is that if we reject this increase, that we will
22 be allowing other companies to use this type of billing
23 and wouldn't be allowing you to use this type of billing;
24 is that one of your arguments? It's unfair treatment
25 among companies in the same business?

1 MR. LUMLEY: Well, I would be concerned
2 that you're headed down that road. I don't know that --
3 I'm not aware that anyone else has specifically proposed
4 such an increase and that you've approved it. Assuming
5 you have not, I don't know that by making a decision on
6 this one necessarily is discriminatory, but I would be
7 concerned that you would be headed down that road of
8 treating us differently.

9 COMMISSIONER CLAYTON: And there are
10 various companies that have relatively similar fees or
11 surcharges?

12 MR. LUMLEY: Right. The reason I'm
13 hesitant is the Teleconnect rate I don't believe was the
14 subject of the prior disputes and, frankly, I wasn't even
15 aware it existed, because I've been involved in the other
16 case. So obviously it wasn't even challenged. I don't
17 know when it went into effect, and so there may well be a
18 substantial number of other companies with this surcharge
19 at whatever rates. I have no idea because I've not
20 researched it, but it would cause me concern.

21 COMMISSIONER CLAYTON: One of the arguments
22 that I heard over the past week at the NERUC conference in
23 the NASUCA petition was that if one company or various
24 companies are allowed to use certain type of surcharge and
25 change the per minute rate or the monthly charge amount on

1 a given service, that every company is going to be
2 compelled to use this type of billing mechanism to not
3 necessarily hide, but to offer a similar type of package,
4 a similar package of service.

5 Would your client have a position if this
6 type of charge were done away with for everyone, then
7 everyone would bill in the same way, would they not?

8 MR. LUMLEY: From the perspective of equal
9 regulation, if you prohibit it for everyone, it's hard to
10 discriminate. I would disagree with the premise that
11 everyone in the market is going to jump to the same thing.
12 I think the advertising suggests exactly the opposite,
13 that there's a substantial number of companies looking for
14 every opportunity to distinguish themselves.

15 COMMISSIONER CLAYTON: Through creative
16 billing?

17 MR. LUMLEY: No. I mean, I can't think of
18 a specific example for telecom, but clearly in other
19 industries, you know, there are many companies that market
20 themselves, you know, we have an extremely simple rate
21 structure; this is the one number you have to look at;
22 there are no other charges whatsoever. So I would assume
23 that there are phone companies that engage in the same
24 kind of marketing that target -- MCI says, look, they've
25 got a three-part rate structure; we've got one number.

1 You always know what our one number is. That's marketing.
2 There's nothing untruthful about either company if they
3 present all the information.

4 But I would be surprised to find that
5 everybody does it exactly the same way, because that's
6 just not the way the industry works, in my observation.

7 COMMISSIONER CLAYTON: This is a long
8 distance service, correct?

9 MR. LUMLEY: Correct.

10 COMMISSIONER CLAYTON: Does this service
11 have a monthly fee, an advertised monthly fee?

12 MR. LUMLEY: If you look at the MCI
13 WorldCom tariff, but we don't have the full tariff pages,
14 I don't have them with me.

15 COMMISSIONER CLAYTON: If you don't --

16 MR. LUMLEY: If we look at the MCI tariff,
17 the surcharge only applies to Option A, dial and direct
18 dial, and Option B, credit card. I don't believe that
19 Option A -- I'm just going on recollection. I don't
20 believe that Option A has a minimum charge. I think there
21 are a substantial number of other plans going through the
22 alphabet that do, but my recollection is that that one
23 does not. The credit card one may. That's kind of gone
24 back and forth over the years, and I don't really recall
25 the current status of it.

1 COMMISSIONER CLAYTON: So we don't know
2 whether there's a fee or Option A or Option B?

3 MR. LUMLEY: As I stand here today, I can't
4 tell you for sure. It's in the Commission's files, but I
5 don't know the answer.

6 COMMISSIONER CLAYTON: Does anyone know?
7 No. Okay. Thank you very much.

8 JUDGE MILLS: Thank you. Commissioner
9 Murray?

10 COMMISSIONER MURRAY: I'll wait.

11 JUDGE MILLS: Commissioner Appling?

12 COMMISSIONER APPLING: I was going to go
13 back to the \$1/\$10 thing, but I think I'll skip over it.
14 No further questions, please. Thank you.

15 JUDGE MILLS: Thank you.

16 COMMISSIONER MURRAY: Mr. Lumley, you
17 indicated that one of the things that the Commission could
18 find as a cause to reject the tariff would be that it was
19 discriminatory; is that right?

20 MR. LUMLEY: Right. Not this tariff, but a
21 tariff in general, right.

22 COMMISSIONER MURRAY: But in order to do so
23 it would have to be unlawful discrimination, would it not?

24 MR. LUMLEY: Correct.

25 COMMISSIONER MURRAY: Because some

1 discrimination is lawful?

2 MR. LUMLEY: Right.

3 COMMISSIONER MURRAY: And is not the
4 discrimination that was read into the record by
5 Mr. Dandino earlier not a lawful discrimination? And I
6 believe that was 392.200, subsection 3, where he spoke
7 about different classes could be treated differently.

8 MR. LUMLEY: Correct.

9 COMMISSIONER MURRAY: And when the
10 Commission approves a tariff, that tariff is presumed just
11 and reasonable, is it not?

12 MR. LUMLEY: There's a statute to that
13 effect, correct.

14 COMMISSIONER MURRAY: So if a complaint
15 were filed saying you're charging an unjust and
16 unreasonable rate but you're charging in accordance with
17 your tariff, the presumption is that it is just and
18 reasonable, is it not?

19 MR. LUMLEY: The complainant would have the
20 burden of proof, and presumably a burden of proving
21 changed circumstances, or at least something that was
22 unknown before, something like that, right.

23 COMMISSIONER MURRAY: It wouldn't be just
24 that someone could come back after the Commission had
25 approved a tariff and file a complaint and say, you're

1 charging an unjust and unreasonable rate because the
2 tariff that was approved is unjust and unreasonable?

3 MR. LUMLEY: I'm not sure I follow your
4 question, but they certainly would have to come forward
5 with evidence of what the particular problem is, I think.

6 COMMISSIONER MURRAY: You said earlier a
7 changed circumstances. I'm assuming there would be some
8 burden to show that, because of some change in
9 circumstance, what the Commission previously approved is
10 no longer just and reasonable?

11 MR. LUMLEY: I also think there might be a
12 distinction between whether the Commission engaged in at
13 least this kind of scrutiny versus a tariff that just went
14 into effect. While we're complying with due process by
15 giving people notice, the tariffs are going to take
16 effect. I think everybody knows that people don't sit
17 around watching -- I'm probably one of the few people that
18 reads your yellow tariff sheet every week. I wouldn't
19 submit that most consumers do that every week. I would
20 hope they don't. I would feel bad for them.

21 COMMISSIONER MURRAY: I hope they have more
22 interesting lives than that as well. All right. I think
23 that's all I have, thank you.

24 JUDGE MILLS: Thank you. Anything further
25 from the Bench?

1 CHAIRMAN GAW: Just briefly. Really I
2 think it's a question for Mr. Dandino.

3 JUDGE MILLS: When we began, Mr. Chairman,
4 I offered Mr. Dandino, because he went first, the
5 opportunity to do a brief rebuttal argument, and I think
6 we're up to that if you're ready, Mr. Dandino.

7 CHAIRMAN GAW: As a part of that,
8 Mr. Dandino, if you could -- I'm trying to get a better
9 grasp of your discrimination argument and whether or not
10 it's hinged on the difference between residential
11 customers and other customers, or if it's attributed to
12 difference between residential customers and what they pay
13 and compared to the usage. I'm not sure I'm clear on
14 that. So if you could as a part of what your closing is
15 address that, I'd appreciate it.

16 MR. DANDINO: Certainly. I planned on
17 addressing that, because you've got -- first of all,
18 you've got res-- the difference between residential and
19 business. Yes, there are two classifications, but they
20 are classified based upon certain characteristics of use
21 of the service.

22 However, what they are being charged for or
23 whatever this service is -- and I don't think it's really
24 a service. They're not getting anything for it. It's a
25 billing assessment -- is that there's no difference in the

1 service, in long distance service and the accumulation of
2 access charges between a residential customer and a
3 business customer.

4 So I think on that basis there is no
5 reasonable classification of why they should be treated
6 differently for the purposes -- and I think that's the
7 important thing -- for the purposes of this cost recovery
8 mechanism.

9 But to answer your question, there is a
10 difference between residential and business. There's also
11 a difference I see within the class of residential persons
12 where the way the rate structure -- if you want to say
13 that this surcharge is part of the rate structure, that
14 they are charging effectively -- the effective rate is
15 different. As I demonstrated in Exhibit 1, if you have
16 10,000 minutes versus you have 20 minutes, you're paying
17 effectively a different rate.

18 Now, the test of discrimination under, I
19 think, the Hope case is not necessarily what the tariff
20 says, but it's the effect of the tariff. And I think
21 that's what I ask the Commission to do is you look at the
22 effect of this, is you would be -- there's no difference
23 for what they're getting for 10,000 -- 10,000 minutes
24 would accumulate much more access costs, but yet they're
25 paying the same as a low volume user. If that's going to

1 be the criteria, the purpose that we're recovering these
2 access rates should be on an equitable and a just basis.

3 And I think that's what the law is, is I
4 don't think that the Commission, when they're evaluating
5 the tariffs by any competitive company, as the cases talk
6 about, is that if there's a difference in the treatment,
7 whether it's within a class or whether it's between
8 classes, even, I'd say, if it's between -- if it's two
9 separate classes, you probably have some initial start,
10 say, well, we're starting off and I can see there are two
11 different classes and there's probably some justification
12 for it.

13 But in here where it doesn't appear that
14 there's any real justification, the company hasn't come
15 forward with any difference in the changes of the rates
16 based upon any real difference in the service, the type of
17 service, and the reasonable relationship in the amount of
18 the difference. Here you have an exemption for business
19 and you have a flat fee for residential, and I don't think
20 that is equitable or even logical to look at that, and I
21 think this Commission has a duty to look at all tariffs in
22 terms of equitable and logical.

23 I'm not saying that the Commission is -- on
24 competitive companies is going to be micromanaging them or
25 giving in to all their costs, but I think there's still an

1 element of protection and reasonableness, I think, that
2 we're going to have to hold everyone under your
3 jurisdiction to a just and reasonable standard.

4 I think Mr. Lumley was talking about they
5 don't have to just go to other telecommunications
6 companies; there's wireless, there's voice over the
7 Internet and chat rooms. This Commission's jurisdiction
8 is telecommunications. Telecommunications as defined by
9 386.020 does not include Internet, wireless, chat rooms.
10 It's talking about telecommunications. I think it's your
11 duty to make sure that there is competition in
12 telecommunications.

13 That's all I have, your Honor.

14 JUDGE MILLS: Thank you. Further
15 questions, Chairman Gaw?

16 CHAIRMAN GAW: No, thank you.

17 COMMISSIONER MURRAY: I do. Mr. Dandino,
18 would you agree that the competitively regulated companies
19 have no legal burden to say why they're increasing rates?

20 MR. DANDINO: Why they're increasing rates?
21 I think that's -- that's correct to the extent that those
22 rates aren't discriminatory.

23 COMMISSIONER MURRAY: They have no legal
24 basis, though, to indicate I'm raising this rate because
25 of X, Y or Z; is that right?

1 MR. DANDINO: I think unless it would --
2 unless by increasing it, it would cross the line of being
3 reasonable.

4 COMMISSIONER MURRAY: I'm not asking you
5 about reasonable. I'm asking you about whether they have
6 to indicate why they were raising a rate.

7 MR. DANDINO: There is no statute that says
8 they're required to justify.

9 COMMISSIONER MURRAY: And then would your
10 argument go away, your argument about discrimination based
11 on the fact that you say that they're claiming that
12 they're recovering an access fee, but they're recovering
13 more from some user than from others, would that go away,
14 that argument, if the tariff had simply been filed as just
15 a surcharge or a surcharge to allow the customers to make
16 long distance calls?

17 MR. DANDINO: I don't think I quite follow.

18 COMMISSIONER MURRAY: Well, your argument
19 that this tariff discriminates between -- by recovering
20 more access rates from some customers than others based on
21 their minutes of usage, if it's not related to -- if it's
22 not stated as being related to an access recovery, does
23 that argument go away?

24 MR. DANDINO: So if they just say we're
25 putting on a surcharge?

1 COMMISSIONER MURRAY: Just say surcharge.

2 MR. DANDINO: Surcharge. Then at least
3 there would be no ability for the Commission to judge
4 whether there's any reasonable relationship to anything.
5 So you'd just have to look at it just like a normal
6 increase. You have to treat it as an increase in prices.

7 COMMISSIONER MURRAY: And there is no legal
8 requirement that it be related to anything; is that right?

9 COMMISSIONER MURRAY: No statutory
10 requirement, no.

11 COMMISSIONER MURRAY: Thank you.

12 JUDGE MILLS: Commissioner Clayton?

13 COMMISSIONER CLAYTON: Did the Missouri
14 Office of Public Counsel submit comments to the FCC on the
15 rulemaking that's been discussed?

16 MR. DANDINO: We were a party or one of the
17 members of the moving petition.

18 COMMISSIONER CLAYTON: So you-all are
19 members of NASUCA?

20 MR. DANDINO: NASUCA.

21 COMMISSIONER CLAYTON: Is every state a
22 member of NASUCA?

23 MR. DANDINO: No.

24 COMMISSIONER CLAYTON: Is it automatic
25 membership or who writes a check for dues or how does one

1 become a member of NASUCA?

2 MR. DANDINO: You've got to pay your dues.

3 COMMISSIONER CLAYTON: Okay. Are you aware
4 of how many other companies have a similar surcharge?

5 MR. DANDINO: My best estimate is that
6 there are these two companies, AT&T, Sprint, and I think
7 there may be another one. I know that Sierra had applied
8 for one and we challenged that, and for other reasons the
9 Commission rejected it. And Excel applied for it. We
10 challenged it and they withdrew it. And I believe when
11 Teleconnect filed for theirs, I think we just let that go
12 through because we already had the other three cases.

13 COMMISSIONER CLAYTON: What was the basis
14 for the other surcharges being challenged? Was it the
15 same basis?

16 MR. DANDINO: Same basis. With Sierra, I
17 think it was the --

18 COMMISSIONER CLAYTON: The ones that were
19 actually rejected by the Commission, what was the grounds
20 of the rejection? Was it another basis?

21 MR. DANDINO: It was another basis,
22 unrelated.

23 COMMISSIONER CLAYTON: On each of those
24 other cases?

25 MR. DANDINO: There was really only one.

1 Excel withdrew theirs.

2 COMMISSIONER CLAYTON: Okay. Well, in this
3 instance, can the same argument be made to the other long
4 distance providers that their monthly recurring charge for
5 intrastate access or whatever they call those surcharges,
6 that they are discriminatory in the same manner that you
7 have alleged in this tariff filing?

8 MR. DANDINO: Yes.

9 COMMISSIONER CLAYTON: And how many of
10 those charges are on appeal right now, just one? Or
11 what's the case that's on appeal in the Western District?

12 MR. DANDINO: AT&T, MCI and Sprint.

13 COMMISSIONER CLAYTON: So all of them are
14 actually being challenged right now?

15 MR. DANDINO: Yes.

16 COMMISSIONER CLAYTON: This may have been
17 asked before. If the Commission is reversed on appeal in
18 approving those surcharges, that would obviously affect
19 this tariff filing?

20 MR. DANDINO: Yes, because the -- would
21 take away the underlying authority for this one, I would
22 think.

23 COMMISSIONER CLAYTON: Okay. If the Court
24 of Appeals finds that the Commission acted properly, or
25 sustains the Commission, do you anticipate in the Order of

1 the court that there would be a legal finding whether or
2 not we have discretion on these types of charges? And I
3 ask this because I haven't read those briefs and I'm not
4 familiar with them.

5 MR. DANDINO: That was one of the issues
6 presented. It would probably depend. If the Commission,
7 if they said maybe it was the wrong remedy we had or
8 something, we may take another route.

9 COMMISSIONER CLAYTON: But that may
10 ultimately decide whether or not we have discretion or not
11 to reject it?

12 MR. DANDINO: That's true. That's true.
13 Commissioner, just to go back, you said this tariff, in
14 approving this tariff is dependant on the other ones. I
15 would want to point out to you that if you approve 2.95
16 here, then if Excel comes in now, or any of the other ones
17 come in and they're asking for 2.95 rather than \$1.95, as
18 I said, the Commission is really hard put not to grant
19 them the same price. What would be your basis for
20 treating them differently?

21 COMMISSIONER CLAYTON: How many long
22 distance companies are providing intrastate long distance
23 in this state?

24 MR. DANDINO: The actual number, I don't
25 know. The number 500 has been bandied around.

1 COMMISSIONER CLAYTON: And there are only
2 three that have this charge, correct?

3 MR. DANDINO: The three largest.

4 COMMISSIONER CLAYTON: Okay. I believe
5 that's all. Thank you.

6 JUDGE MILLS: Thank you. Commissioner
7 Applling? Anything further from the Bench?

8 (No response.)

9 JUDGE MILLS: Hearing nothing -- Mr. Meyer,
10 you look like you're going to say something.

11 MR. MEYER: I think just to potentially
12 respond to Commissioner Clayton's question, I actually
13 pulled some of my old files of some of OPC's previous
14 motions in some of the other cases, and I can suggest that
15 perhaps the Commission take notice of some of its old case
16 files. It was Case XT-2003-256; that was U.S. Telecom.
17 XT-2003-267 --

18 COMMISSIONER CLAYTON: What's he reading
19 off?

20 MR. MEYER: These are other cases that have
21 companies \$1.95 or thereabouts.

22 COMMISSIONER CLAYTON: State the result if
23 you're going to list those.

24 MR. MEYER: The Commission approved all of
25 these. These are just additional ones, so that you know

1 there are other companies out there.

2 COMMISSIONER CLAYTON: So there are other
3 companies other than just the big three that are --

4 MR. MEYER: That have these charges, yes,
5 that's true. I just wanted -- so you understood these are
6 not the only three. XT-2003-267, which was Artech
7 Telecom, d/b/a Clear Choice Communications, and
8 LT-2003-268, which is Artech Telecom, Inc., all have --
9 and I think one of those was 1.86 if I recall correctly,
10 and those were all approved through cases where OPC had
11 filed a motion and the motion was overruled. I think
12 Mr. Dandino probably would agree, if he remembers.

13 MR. DANDINO: I don't recall those.

14 MR. MEYER: I only know that because I
15 actually still have the files.

16 JUDGE MILLS: Thank you. Anything further?

17 (No response.)

18 JUDGE MILLS: Hearing nothing, we're
19 adjourned, and we're off the record.

20 WHEREUPON, the hearing of this case was
21 concluded.

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