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OCT 17 2002 IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

OCT 10 2002

Adjudication Division  
Public Service Commission

DEBORAH M. CHESHIRE  
CLERK CIRCUIT COURT  
COLE COUNTY, MISSOURI

State of Missouri ex rel Acting Public Counsel  
John B. Coffman,

Relator,

vs.

Public Service Commission of the State of  
Missouri, a state agency, and its members Kelvin  
Simmons, Connie Murray, Sheila Lumpe,  
Steve Gaw, and Bryan Forbis in their official  
capacity,

Respondents.

Case No. 02CV325672

Division II

RECEIVED  
OCT 17 2002  
COLE COUNTY  
SHERIFF'S OFFICE

WRIT OF REVIEW

TO: THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Acting Public Counsel John B. Coffman (Public Counsel), having filed a Petition for Writ of Review of the Commission's actions and decisions concerning Commission Case No. XT-2003-0047, and the Court being informed in the premises,

IT IS ORDERED AND ADJUDGED by the undersigned Judge of the Circuit Court that the Public Service Commission of Missouri certify fully, and return to the Circuit Court of Cole County, Missouri (19<sup>th</sup> Judicial Circuit), within thirty (30) days of the issuance of this Writ, a full, true and complete copy of the record in Case No. XT-2003-0047, including without limitation, all motions and responses thereto, all orders issued therein, and all other records the Respondent considered in said cases, to the end that the Circuit Court of Cole County may determine the lawfulness and reasonableness of the Commissioners' actions and decisions and orders therein.

IN WITNESS WHEREOF, I have hereunto signed this Writ on this 16<sup>th</sup> day of October, 2002.

STATE OF MISSOURI }  
COUNTY OF COLE } ss

I, DEBORAH M. CHESHIRE, Clerk of the Circuit Court of Cole County, Missouri, hereby certify that the above and foregoing is a full true and correct copy of Writ of Review

as fully as the same remains of record in my said office. 02CV325672

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my said office this 16<sup>th</sup> day of October 2002

DEBORAH M. CHESHIRE, Clerk

JUDGE

Circuit Court of Cole County, Missouri

Deputy Clerk

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

FILED

OCT 10 2002

DEBORAH M. CHESHIRE  
CLERK CIRCUIT COURT  
COLE COUNTY, MISSOURI

State of Missouri ex rel Acting Public Counsel )  
John Coffman, )  
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Relator, )  
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vs. )  
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Public Service Commission of the State of )  
Missouri, a state agency, and its members Kelvin )  
Simmons, Connie Murray, Sheila Lumpe, )  
Steve Gaw, and Bryan Forbis )  
 )  
in their official capacity, )  
 )  
Respondents. )

Case No. 02 CV325672  
Division II

**PETITION FOR WRIT OF REVIEW**

**COMES NOW Relator** Acting Public Counsel John Coffman ("Public Counsel") of the State of Missouri and pursuant to Section 386.510, RSMo. 1994, states the following to the Court as the Office of the Public Counsel's Petition For Writ of Review of the Public Service Commission of the State of Missouri's ORDER DENYING SUSPENSION AND APPROVING TARIFF dated August 27, 2002 and effective September 3, 2002 that denied Office of the Public Counsel's motion brought pursuant to Sections 392.200, 392.230.3, 386.250, 392.185, 386.320, 386.330, and 386.710, RSMo. 2000 and Section 254 (g) of the Federal Telecommunications Act of 1996 to suspend MCI WorldCom Communications, Inc. (MCI) proposed tariff to

introduce an in-state access recovery charge and approved the tariff. The PSC denied Office of the Public Counsel's motion to suspend tariff of MCI establishing a \$1.95 monthly Access Recovery charge for all WorldCom residential customer accounts in Missouri that are presubscribed to MCI WorldCom for long distance toll service where "MCI spending" exceeds one dollar in a month.

1. Relator Acting Public Counsel John Coffman is an officer of the State of Missouri and pursuant to the statutory authority in Sections 386.700 and 386.710, RSMo. represents the public in all proceedings before the Public Service Commission and on appeal before the courts.

2. The Public Service Commission is a state administrative agency with the power and duty to regulate public utilities, including telecommunications companies under Chapters 386 and 397, RSMo. 1996 (as amended). Respondents Kelvin Simmons, Sheila Lumpe, Connie Murray, Steve Gaw and Bryan Forbis are the duly appointed and acting Commissioners of the Public Service Commission and are sued in their official capacity and collectively comprise the current Commission. The Respondents' principle office is located in Jefferson City, Cole County, Missouri. MCI WorldCom, Inc., Inc. is a certified competitive interexchange telecommunications company that provides interstate and intrastate toll service to Missouri customers. MCI filed its tariff on August 2, 2002 with an effective date of September 3, 2002 to establish a \$1.95 monthly service charge known as an "instate connection fee" to certain residential customers to MCI toll service.

3. On August 8, 2002, the Office of the Public Counsel filed a motion to suspend the tariff and for evidentiary and public hearings. (A copy of the motion is attached hereto and incorporated herein as Exhibit A.)

4. The PSC issued its Order Denying Suspension and Approving Tariff dated August 27, 2002, effective September 3, 2002 that denied Office of the Public Counsel's motion and approved the tariff. (A copy of the Order is attached hereto and incorporated herein by reference as Exhibit B.)

5. On August 29, 2002 pursuant to Section 386.500, RSMo. and 4 CSR 240-2.160, Public Counsel timely filed a motion for rehearing that set forth the reasons that warranted a rehearing. (A copy of the motion for rehearing is attached hereto and incorporated herein by reference as Exhibit C.)

6. On September 17, 2002, the PSC issued its order denying Public Counsel's motion for rehearing. (A copy of this order denying rehearing is attached hereto and incorporated herein by reference as Exhibit D.)

7. The order is unlawful, unjust, and unreasonable and is arbitrary, capricious, unsupported by substantial and competent evidence, and is against the weight of the evidence considering the whole record, is in violation of constitutional provisions of due process, is unauthorized by law, made upon an unlawful procedure and without a fair trial, and constitutes an abuse of discretion, all as more specifically and particularly described in this petition.

8. This new charge to recovery access costs paid by MCI is a discriminatory rate increase for certain Missouri residential customers who subscribe to MCI long distance services. The effect of the charge is to increase the effective price per minute for

a Missouri residential customer so that the Missouri customer pays more per minute for toll service (interstate) than a MCI customer in another state where this access recovery fee is not charged or charged at a lower rate. This violates Section 254 (g) of the Federal Telecommunications Act of 1996.

9. Section 254 (g) of the Federal Telecommunications Act of 1996 and FCC Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61 (August 7, 1996) (11 FCC Rcd 9564) requires interexchange carriers such as AT&T to "provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State . . . to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers." (para.80). The \$1.95 Missouri surcharge is discriminatory in that this surcharge is not levied on similarly situated customers in other states.

10. MCI's proposed charge bears no relationship to its stated purpose to recover the access charges MCI pays to the local telephone company to utilize its local phone lines. The proposed charge for access recovery is unjust and unreasonable because MCI levies this surcharge only upon residential customers even though business customers also generate access charges for MCI. If the purpose is to recover costs then it should not arbitrarily and unreasonably exclude business customers that generate the same type of access fees and often in a greater amount.

11. MCI's proposed charge bears no relationship to its stated purpose to recover the access charges MCI pays to the local telephone company to utilize its local phone lines. The charge is applied to Missouri residential accounts without regard to the amount of long distance toll the customer uses. If the residential customer is presubscribed to MCI and makes no toll calls during a month, the customer still is charged \$1.95. A customer with \$10,000 in toll calls will be charged \$1.95. Each customer pays the same amount no matter how many toll calls are made and no matter how long the calls are. Customers who make few, if any, long distance and local toll calls are treated as if they are huge business concerns or have a substantial long distance or even international call operations.

12. The tariff violates Section 392.200, RSMo 2000 by its adverse discriminatory effect on Missouri customers as it unreasonably applies a charge whose purpose is to recover access costs paid by the company on customers that have little or no toll usage. The same charge is made for all accounts, with or without actual toll calls billed. It is also applied in a flat rate without regard to the type, amount and duration of toll calls and the resultant access charges incurred by the company, if any. The charge results in an unreasonable and prejudicial disadvantage for a class of MCI customers that have a low amount or no toll calling while customers with considerable toll calling are given an undue and unreasonable preference and advantage by paying the same amount per month.

13. Section 392.200.3 RSMo provides: "No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any

undue or unreasonable prejudice or disadvantage in any respect whatsoever except that telecommunications messages may be classified into such classes as are just and reasonable, and different rates may be charged for the different classes of messages.”

14. Section 392.200, RSMo 2000, subsection 2 provides in pertinent part: “No telecommunications company shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to telecommunications or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to telecommunications under the same or substantially the same circumstances and conditions.”

15. Access charges have a long history and the interexchange carriers have incorporated this cost factor and element into their rates. The competitive marketplace determines to what extent the carrier will seek to recover all or any part of those costs in its rates. By separating this cost element from the normal rate structure, MCI distorts the competitive toll rate structure. It also seeks to recover this cost twice and without regard to customer actual usage or costs by charging a separate, additional surcharge to customers for access costs.

16. Section 392.200. 1, RSMo provides:

Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. **All charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the commission.** Every unjust or unreasonable

charge made or demanded for any such service or in connection therewith or in excess of that allowed by law or by order or decision of the commission is prohibited and declared to be unlawful. (emphasis supplied)

17. Section 392.185, RSMo provides in part:

The provisions of this chapter shall be construed to:

(4) Ensure that customers pay only reasonable charges for telecommunications service;

\*\*\*

(6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest[.]

18. MCI's separate and distinct additional charge is in reality merely a rate increase for residential customers disguised in different terminology. This flat rate charge unfairly inflates the per minute rate charged by MCI and hides the true cost to the consumer in a list of separate charges. The resulting effective rates are unreasonable and unjust.

19. The Commission failed to consider and determine that the tariff violated Section 254 (g) of the Federal Telecommunications Act of 1996 and FCC Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61 (August 7, 1996) (11 FCC Rcd 9564). It discriminates against Missouri customers as compared to customers in other states in violation of Section 254 (g) of the Federal Telecommunications Act of 1996. MCI and other interexchange carriers must "provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State . . . to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers."



(Report and Order, para.80). This access recovery charge is applied to all 1+ presubscribed customers without regard to whether calls are interstate or intrastate. Application to interstate calls effectively prices Missouri interstate calls higher than other state calls that are not assessed an instate access recovery charge or are assessed a charge lower than \$1.95. The Commission's decision does not consider or address this significant objection to the tariff based on federal law.

20. The Commission failed to consider relevant and material matters of fact and law in its decision when it held that the access recovery charge was just and reasonable when there was no evidence adduced how the charge bears a reasonable relationship to its stated purpose to recover access charges on intrastate calls paid to local telephone companies to use their local phone lines. The tariff does not apply to MCI business customers even though those customers cause MCI to incur a considerable amount of instate access charges for calls made by business customers. Without a showing of this nexus between the purpose and the application and amount of the access recovery charge to Missouri customers, the Commission cannot properly determine whether or not the charge as applied is just, reasonable, and nondiscriminatory. MCI WorldCom has failed to disclose the justification and basis for singling out these residential customers for discriminatory treatment and extra charges. The PSC has not justified how and in what manner this discriminatory method of assessing a cost recovery charge is reasonable and proper and in the public interest. The PSC should demonstrate in its order that this discrimination and the recovery of these costs in this manner is based upon reasonable and fair conditions which equitably and logically justify this tariffed

rate. *State ex rel. DePaul Hospital School of Nursing v. PSC*, 464 SW2d 737 (Mo App 1970).

21. The Commission failed to consider relevant and material matters of fact and law in its decision when it held that the access recovery charge was just and reasonable. There is no evidence in the record to support that holding. The flat rated charge distorts the true cost of service to the consumer by using an indirect means to raise rates (and recover a cost of doing business) via a surcharge on a cost element that is already part of the existing per minute rate. The access recovery charge increased the effective price paid per minute by MCI customers affected by this tariff. The Commission failed to look at the impact of the access recovery surcharge and the resultant effective price as an indicator of the discriminatory impact of the proposed tariff.

22. The Commission failed to consider relevant and material matters of fact and law in its decision when it held that the access recovery charge was just and reasonable even though this flat rate surcharge is applied to residential customers with little or no usage of in-state long distance service who pay the same charge as high volume users with significant number and minutes of in-state calling. This results in an undue and unreasonable preference and advantage to those high volume customers and an unreasonable prejudice and disadvantage to low volume users of in-state calling, all in violation of Sections 392.220.2 and .3, RSMo.

23. The Commission failed to consider relevant and material matters of fact and law in its decision when it held that the access recovery charge was just and reasonable when it relied upon a related, but separate and distinct promotional tariff (No.

200201106) as providing specific exemptions and additional terms and conditions for MCI's In-State Access Recovery Charge. The decision fails to consider that the general and permanent Recovery Charge Tariff cannot in its approved form stand on its own. The intent and purpose of the tariff system is to provide notice to customers and to the public of the price, terms, and conditions of the service offered by the carrier. The tariff is also the legal authority for the carrier to impose the charges on the customers. With these elementary purposes in mind, this tariff creating a new charge must define the scope of the charge and how it operates and the full terms and conditions. The public is misled and the authority to levy the charge is inadequate if the tariff omits key terms and conditions of the permanent offering. The tariff, as approved, is vague and incomplete because the only way to determine the operative terms and conditions of the permanent tariff is to resort to reference to matters outside of that tariff. The Commission relies on the temporary promotional tariff to provide the exemptions that were an element of the finding that the tariff is just and reasonable. The promotional tariff's purpose and intent is to offer an incentive to customers to become a subscriber to the company and the service offering. This promotion will expire when the time for the promotional offering expires on December 31, 2002. The Commission improperly relies upon this temporary promotional tariff to provide the key terms and conditions of the permanent surcharge. The permanent and promotional tariffs are separate and distinct both as to duration and purpose. When the promotional tariff expires, it changes the scope, terms, and conditions of the permanent instate access recovery charge. These terms will expire by a date certain without action by MCI or the Commission. Those customers exempt under the promotional tariff will then be assessed the access recovery charge effective January 1,

2003. Therefore, the Commission erred in approving this permanent tariff that is defined and completed only by the terms of the promotional tariff.

24. As a result of the Commission's improper reliance upon the promotional tariff to provide the exemptions that the Commission believes makes the permanent tariff reasonable and just, the Commission has approved the permanent tariff that does not exempt Life Line Link up customers, customers with no long distance charges or de minimus charges, or customers with only interstate toll charges. This omission from the permanent tariff makes it discriminatory, unreasonable, and unjust in that customers in low income programs and customers who do not cause MCI to incur instate access charges or little usage still bear the burden of the access cost recovery. These customers are making a disproportionate contribution to the cost recovery. Assessing low-income customers on Lifeline and Link-Up programs defeats the public policy goals embodied in Universal Service legislation that minimizes the cost to connect to the network and maintain service. Therefore, the tariff is contrary to the public interest.

25. The Commission failed to consider relevant and material matters of fact and law in its decision when it held that the access recovery charge was just and reasonable when the tariff unreasonably exempts MCI local customers. The stated reason for the tariff is to recover in-state access costs incurred by MCI. Although MCI local customers can cause MCI to incur access costs by calls to non-MCI local customers, this class of customers is granted a total exemption that is unreasonable and discriminatory. This exemption shifts the burden of recovering access costs solely to other customers even though MCI local customers contribute to MCI's access cost burden.

26. The Commission failed to consider relevant and material matters of fact and law in its order when it held that the access recovery charge was just and reasonable since the tariff applies a flat rate non-usage sensitive charge to recover a cost paid by the company (access charges) that are incurred on a usage sensitive basis. High volume users pay the same as non-traffic generating customers or customers with very low number of calls and minutes of use. Low volume users are paying a disproportionate share of the access cost recovery when their usage has no bearing on the amount of recovery these customers are expected to contribute. The PSC's order fails to address or consider this unlawful and unreasonable discrimination. The order does not state how and in what manner this discriminatory method of assessing a cost recovery charge is reasonable and proper and in the public interest. There was no showing that this discrimination and the recovery of these costs in this manner is based upon reasonable and fair conditions which equitably and logically justify this tariffed rate. *State ex rel. DePaul Hospital School of Nursing v. PSC*, 464 SW2d 737 (Mo App 1970).

27. The Commission failed to consider relevant and material matters of fact and law in its decision when it indicates that because of the number of competitors for long distance service, protection of the consumer is left to the marketplace. The order justifies its "hands off" policy on grounds that consumers can avoid the surcharge by changing carriers. This presupposes that unjust and unreasonable and unlawful charges are acceptable so long as the customer can go to another carrier for its long distance service. This assumption does violence to the PSC's statutory duty to serve the public interest under Section 392.185 (4) and (6), RSMo to protect the consumer. The Commission cannot ignore its duty in Section 392.185 (4) to "Ensure that customers pay

only reasonable charges for telecommunications service” by stating that it need not review the charges since customers can go somewhere else. Likewise, the Commission cannot completely delegate to competition the protection of consumers when the emphasis of Section 392.185 (6) is to allow competition to “function as a substitute for regulation when consistent with the protection of the ratepayers and otherwise consistent with the public interest.” The key here is that protection of ratepayers and the promotion of the public interest is paramount to the functioning of competition. The protection offered by “full and fair competition” occurs only when there is widespread knowledge and information readily available for consumers to investigate alternatives and understand the price and service variations offered by the firms in the marketplace. Customers may not change carriers for a variety of reasons, including, but not limited to, the high costs in time and knowledge required to search for alternatives and the consumer’s awareness, education, commercial or purchasing sophistication, health, ability, and intelligence or mental capacity. The statute does not exempt these ratepayers from protection from unreasonable and unjust pricing schemes.

28. The order of the Commission failed to make adequate findings of fact and conclusions of law. The order in this case does not inform a reviewing court of the basic findings on which the Commission’s ultimate findings rest. The conclusory nature of the order is insufficient to show the basis of the decision. The order must contain unequivocal, affirmative findings of fact so that a reviewing court is able to determine whether the order is supported by substantial and competent evidence without combing the PSC’s evidentiary record. *Noranda Aluminum, Inc. v. PSC*, 24 S.W.3d 342, 245-6 (Mo. App. 2000).

29. The Commission has misinterpreted and failed to consider material issues of fact and law and acted unlawfully, unjustly, and unreasonably and abused its discretion when the Commission failed to make adequate findings of fact and conclusions of law that are based on competent and substantial evidence on the whole record in that the PSC disregarded evidence of violations of Section 392.200 and failed to consider the entire record and unreasonably limited its jurisdiction, authority and duty to review the tariff to a facial review of technical compliance with Section 392.500 relating to increasing a rate by filing of tariff with the PSC and notifying customers 10 days before the effective date.

For the foregoing reasons, Public Counsel asks the Circuit Court to set aside the Order of the PSC in this case approving the tariff and denying Public Counsel's motion to suspend and for evidentiary and public hearings and direct the PSC to rehear the case and suspend MCI's tariff establishing a instate connection fee and to hold an evidentiary hearing prior to making any determination and to issue an order accompanied by adequate and proper findings of fact and conclusions of law and for such further and additional relief as the court deems necessary and appropriate.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY: 

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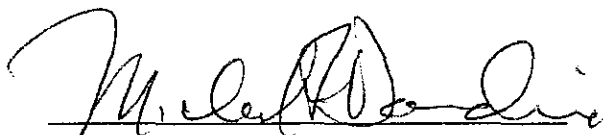
Email: mdandino@ded.state.mo.us

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed via certified mail to counsel for MCI and hand-delivered to counsel for Respondents this 10th day of October, 2002.

David Meyer  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

Carl Lumley  
Curtis, Oetting, Heinz, Garrett & Soule  
130 S. Bemiston, Suite 200  
St. Louis, MO 63105





FILED<sup>2</sup>  
JUN 08 2002  
Missouri Public  
Service Commission

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

In Re the matter of MCI WorldCom Communications )  
Inc's proposed tariff to add an in-state access )  
recovery charge and make miscellaneous text )  
changes )

Case No. \_\_\_\_\_  
Tariff No. 200300092

**OFFICE OF THE PUBLIC COUNSEL'S MOTION TO SUSPEND  
TARIFF AND FOR EVIDENTIARY AND PUBLIC HEARINGS**

COMES NOW the Office of the Public Counsel (Public Counsel) and respectfully moves the Public Service Commission of Missouri to make and enter its order suspending the proposed tariff of MCI WorldCom Communications Inc. introducing and establishing a \$1.95 monthly service charge known as an "In-State Access Recovery " charge for all WorldCom residential customer accounts in Missouri that are presubscribed to MCI WorldCom for long distance toll service where "MCI spending" exceeds one dollar in a month.

**Introduction**

Once again, another major interexchange long distance carrier has decided to use a special surcharge to confuse the consumer and to hide rate increases and the true cost of the service to customer. Once again, a long distance carrier has decided to double-charge the residential customer for costs already included in its existing rates by adding a surcharge or separate charge to "recover" these same costs. And once again, Missouri residential customers will be subjected to discriminatory treatment since the effective rates they pay for interstate long distance will be higher than the same effective rate paid by customers in other states.

Attachment A

CI WorldCom follows the path blazed first by AT&T and recently by Sprint to add almost \$2.00 per month to their Missouri residential customer bills. Residential customers on a national level account for 40% of the toll revenues. (Federal Communications Commission, *Trends in Telephone Service*, May 22, 2002, ([www.fcc.gov/wcb/stats](http://www.fcc.gov/wcb/stats)), 10-1). But AT&T, Sprint and now MCI WorldCom have decided to burden these residential customers with 100% of the effort to "recover" the costs of access fees paid for all toll calls. In Missouri, only residential customers of these companies are assessed the special surcharge. No matter how these telecommunications companies spin this special charge, the outcome is the same: the residential consumer pays more each month. The residential customer pays an extra charge not paid by any business MCI customer in the state, including some of the largest businesses in the state, nation, and world. A customer with a low volume of toll pays the same as a high volume user even though a high volume toll user can cause MCI WorldCom to incur significantly more access costs. The impact of this special surcharge is discrimination without justification or reason. MCI WorldCom's access recovery charge, as was AT&T's and Sprint's similar, results in unjust and unreasonable rates that unlawfully discriminates against Missouri residential customers.

Although the long distance market is considered competitive, there is still a high percentage of market concentration. On a national level, AT&T, MCI WorldCom, and Sprint control about 64% of the total toll market based on 2000 toll service revenues, the latest reported year. (FCC, *Trends*, p.10-14). The following table shows the dominance of these three carriers in the residential market nationally considering access lines, toll revenues, and direct-dial minutes as points of comparison. It also shows the dominance of

these three carriers in the Missouri residential market based on direct-dial minutes. The significance of these statistics is that even with competition, these three carriers have over a 70% market share of residential customers in Missouri, making it more difficult for customers to easily find and transfer to a well known competitor to avoid the access cost recover surcharges. The actions by these three companies affect over a million Missouri residential telephone customers. Competition has not protected them from the introduction of this added surcharge. The competitive positions of this big three have served to give them the market power to increase prices and impose the surcharge on the very customers who are less likely to switch carriers or seek alternatives. The marketplace has not protected these customers, so the Public Service Commission must act when the competitive market fails to protect the consumer. See, Section 392.185, RSMo 2000.

	AT&T	WORLDCOM	SPRINT	OTHER
ACCESS LINES	53.3%	18.1%	6.9%	21.8%
TOLL REVENUES	48.4%	22.2%	6.8%	22.6%
DIRECT DIAL MINUTES	44.7%	21.3%	7.3%	26.6%
MISSOURI DIRECT DIAL MINUTES	46.5%	11.2%	12.4%	29.9%

Source: FCC, *Trends in Telephone Service*, May 22, 2002 Tables 10.9, 10.10, 10.11

### Argument

Public Counsel suggests that this new charge is a discriminatory rate increase for Missouri residential customers who subscribe to MCI WorldCom long distance services. The effect of the charge is to increase the effective price per minute for a Missouri

residential customer so that the Missouri customer pays more per minute for toll service (interstate) than a MCI WorldCom customer in another state where this access recovery fee is not charged or is charged at a lower rate. This violates Section 254 (g) of the Federal Telecommunications Act of 1996.

Section 254 (g) of the Federal Telecommunications Act of 1996 and FCC Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61 (August 7, 1996) (11 FCC Rcd 9564) requires interexchange carriers such as MCI WorldCom to "provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State . . . to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers." (para.80).

The \$1.95 Missouri surcharge is discriminatory in that this surcharge is not levied on similarly situated customers in other states. MCI has singled out Missouri residential customers for discriminatory treatment so that when the per minute charge for interstate toll is factored with this special Missouri specific access cost recovery surcharge each month, Missouri residential customers pay a higher per minute price for MCI's interstate toll service than residential customers in other states. The FCC ruling and the clear import of Section 254 (g) of the Federal Telecom Act prohibit such discrimination between states.

MCI WorldCom's proposed charge is unjust and unreasonable because it does not bear a reasonable relationship to its stated purpose to recover the access charges MCI

WorldCom pays to the local telephone companies to utilize their local phone lines. The recovery charge makes no distinction based on the amount of toll and, therefore, the access costs incurred. If the customer is presubscribed to MCI WorldCom and makes \$1.10 in MCI toll calls during a month, the customer is charged \$1.95. A customer with \$10,000 in toll calls will be charged \$1.95. Each customer pays the same amount no matter how many toll calls are made and no matter how long the calls are. Customers who make few, if any, long distance and local toll calls are treated as if they are business or industrial giants, such as Hallmark or Boeing, or are customers with a substantial monthly long distance or international calling.

The proposed charge for access recovery is unjust and unreasonable because MCI levies this surcharge only upon residential customers even though business customers also generate access charges for MCI. If the purpose is to recover costs then it should not arbitrarily and unreasonably exclude business customers that generate the same type of access fees and often in a greater amount.

The access recovery charge is unjust and unreasonable because the same \$1.95 fee is applied to each residential account without differentiating between in-state toll calls and interstate toll calls, InterLATA calls and IntraLATA calls, domestic or international calls and the different access rate structure involved for each type of call. Even though Missouri access rates on interstate charges are less than the access rates for intrastate charges, the cost recovery charge is applied on a per account basis without recognition of the difference in these rate structures and without any recognition of whether the customer's toll calling pattern is exclusively or even predominately interstate or intrastate calling. There is often a different access rate charged for intraLATA calls than for

interLATA calls, yet the same \$1.95 fee applies to all accounts without distinction. The surcharge will be applied to a residential customer even if the customer subscribes to a toll saver plan that does not cause MCI to incur access fees. If a presubscribed MCI WorldCom Long Distance customer has MCA service for the local calling scope (to avoid toll charges), MCI WorldCom does not incur access charges on those MCA calls. If a customer subscribes to MCI's resale of SWBT's Local Plus service, SWBT pays the access charges for calls completed under resale of that plan. MCI incurs no access charges for its customers' calls on the resold Local Plus service. MCI WorldCom surcharge plan bills those customers to recover access costs that MCI WorldCom has avoided by the customer paying extra fees for MCA service or resold Local Plus service with SWBT paying the resultant access charges.

MCI WorldCom is following the same course that AT&T and Sprint laid out with the AT&T In-state Connection Fee approved in TT-2001-129 and Sprint's instate access recovery fee recently approved in TT-2002-1136. Public Counsel has appealed the AT&T decision to the Circuit Court; Public Counsel has asked the PSC to rehear the Sprint decision. As Public Counsel feared and predicted, the approval of the AT&T surcharge lit the fire for interexchange carriers to increase their rates by filing separate surcharges for access rate recovery in Missouri. Now that the three largest long distance carriers in Missouri and in the nation have filed for these surcharges and separate charges, there can be little doubt that the rest of the industry will follow their lead. Given the telecommunications market and industry woes, carriers will try to shift as much costs as possible to residential customers. As a result, the consumer will be inhibited and

perhaps effectively blocked from selecting a "competitive choice" that avoids this surcharge.

MCI does not explain the rationale for seeking the recovery of these access costs in a separate \$1.95 charge that only applies to Missouri residential customers. AT&T had based its surcharge for access recovery on its claim that Missouri access charges are "excessive." The Commission should not automatically accept the interexchange carriers' claims without investigating the underlying reasons and rationale. No evidence has been developed in support of the access recovery tariffs to show that this claim had any real substance or validity. Public Counsel suggests that the pending investigation into the cost of access service for CLECs in Missouri promises to explore these and related myths and shed light on Missouri telephone service rates. Public Counsel anticipates that the evidence adduced in TR-2001-65 and the results and the analysis of cost studies in that case will cast serious doubts on claims that Missouri access rates are "excessive."

The tariff violates Section 392.200, RSMo 2000 because it discriminates against Missouri residential customers in that it unreasonably applies a charge designed to recover toll access costs paid by the company on customers that have little toll usage. The same charge is made for all accounts in excess of the minimum of \$1.00 MCI spending. This could include a MCI customer who made no billed toll calls. If the customer has a MCI plan with a minimum payment of over \$1.00, the customer could have no toll calls and, therefore, did not cause MCI to incur access fees, yet still be billed the \$1.95 to recover access charges that were not incurred.

The access recovery charge is discriminatory because it is applied as a flat rate without regard to the type, amount and duration of toll calls and the resultant access charges incurred by the company, if any. The charge results in an unreasonable and prejudicial disadvantage for a class of MCI WorldCom presubscribed customers that have a low amount or no toll calling. Customers with considerable toll calling are given an undue and unreasonable preference and advantage by paying the same amount per month as those customers with low volume.

Section 392.200.3 RSMo provides:

"No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever except that telecommunications messages may be classified into such classes as are just and reasonable, and different rates may be charged for the different classes of messages."

Section 392.200, RSMo 2000, subsection 2, provides in pertinent part:

"No telecommunications company shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to telecommunications or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to telecommunications under the same or substantially the same circumstances and conditions."

MCI WorldCom has failed to disclose the justification and basis for singling out these residential customers for discriminatory treatment and extra charges. Public Counsel's investigation of MCI WorldCom's website provided no information on the new access recovery charge. MCI has not justified how and in what manner this discriminatory method of assessing a cost recovery charge is reasonable and proper and



in the public interest. MCI should be required to make a showing that this discrimination and the recovery of these costs in this manner is based upon reasonable and fair conditions which equitably and logically justify this tariffed rate. *State ex rel. DePaul Hospital School of Nursing v. PSC*, 464 SW2d 737 (Mo App 1970).

Access charges have a long history and the interexchange carriers have incorporated this cost factor and element into their rates. The competitive marketplace determines to what extent the carrier will seek to recover all or any part of those costs in its rates. By separating this cost element from the normal rate structure, MCI WorldCom distorts the competitive toll rate structure. It also seeks to recover this cost twice and without regard to customer actual usage or costs by charging a separate, additional surcharge to customers for access costs. It also seeks to recover the costs from only one class of customers without any justification for the discrimination in treatment and rates.

Section 392.200. 1, RSMo provides:

Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. **All charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the commission.** Every unjust or unreasonable charge made or demanded for any such service or in connection therewith or in excess of that allowed by law or by order or decision of the commission is prohibited and declared to be unlawful. (emphasis supplied)

Section 392.185, RSMo provides in part:

The provisions of this chapter shall be construed to:

(4) Ensure that customers pay only reasonable charges for telecommunications service;

\*\*\*

(6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest[.]

MCI WorldCom's separate and distinct additional charge is in reality a rate increase dressed up in different terminology to disguise its true effect. This flat rate charge unfairly inflates the per minute rate charged by MCI WorldCom and hides the true cost to the consumer in a list of separate charges. The resulting effective rates are unreasonable and unjust.

#### Commission's jurisdiction for review and suspension

Public Counsel suggests that Sections 392.200, and 392.185, RSMo 2000 provide the statutory basis for the PSC to review and suspend this tariff. In addition, the PSC has broad power to protect consumers even if the telecommunications provider is a competitive company and is providing a competitive service. Section 392.185, RSMo. The Commission's oversight and authority to suspend is an essential power of the PSC to carryout the legislative purpose of Chapters 386 and 392, RSMo.

In Case No. TO-99- 596, *In re Competitive Local Exchange Telecommunication Companies*, June 13, 2000, the Commission set out the scope of its jurisdiction and duty:

"In construing Chapter 392, including Section 392.361.3, the Commission must be mindful of the contents of Section 392.185, RSMo Supp. 1999, which has been set out in part above. In addition to reasonable prices and the protection of ratepayers, that section provides that the purpose of the chapter is to "[p]ermit flexible regulation of competitive telecommunications companies and competitive telecommunications services[.]" Section 392.185(5), RSMo Supp. 1999. Additionally, Section 392.200.4(2), RSMo Supp. 1999, declares that "[i]t is the intent of this act to bring the benefits of competition to all customers[.]"

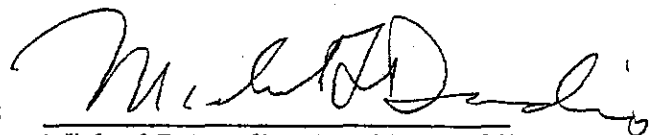
The offer of competitive services does not mean that customers are fair game for unreasonable and unjust rates. Here MCI WorldCom introduces a fee under the guise of a non-usage sensitive surcharge for the recovery of access rates paid by the company on a usage sensitive basis. The surcharge increases the effective rates for MCI WorldCom long distance service on a selective basis. The entire burden of recovering access charges through this tariff is placed on residential customers. The public interest is not served by allowing such surcharges to go into effect without an examination into whether such rates and surcharges are proper, reasonable, and just or are discriminatory.

For the foregoing reasons, Public Counsel asks the PSC to suspend the tariff and set this matter for an evidentiary hearing. In addition, Public Counsel asks the PSC to hold a public hearing on the broad impact this tariff has on so many Missouri toll customers in many parts of the state.

Respectfully submitted,

**OFFICE OF THE PUBLIC COUNSEL**

BY:



Michael F. Dandino (Bar No. 24590)

Senior Public Counsel

200 Madison Street, Box 7800

Jefferson City, MO 65102

Telephone: (573) 751-5559

Facsimile: (573) 751-5562

E-mail: mdandino@mail.state.mo.us

**CERTIFICATE OF SERVICE**

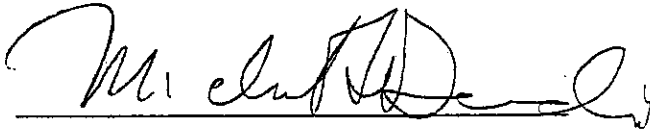
I hereby certify that a true and correct copy of the foregoing was emailed or hand delivered this 8th day of August, 2002 to the attached service list:

General Counsel  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

Stephen Morris  
MCI Telecommunications Corp.  
701 Brazos, Suite 600  
Austin, TX 78701

Carl J. Lumley  
Curtis, Oetting, Heinz, Garrett & Soule  
130 S. Bemiston, Suite 200  
St. Louis, MO 63105

Carmen L. Feliciano  
Tariff Administrator  
MCI WorldCom Communications, Inc.  
205 North Michigan Avenue, Ste. 1100  
Chicago, IL 60601



A handwritten signature in cursive script, appearing to read "Michael D. DeLoach", is written over a horizontal line.

**WORLDCOM**

**FILE COPY**

Midwest Region Public Policy  
205 North Michigan Avenue  
Suite 1100  
Chicago, IL 60601  
312 260 3060  
Fax 312 470 5571

August 1, 2002

Mr. Dale H. Roberts  
Executive Secretary  
Missouri Public Service Commission  
200 Madison Street, Suite 100  
Jefferson City, Missouri 65101

**RECEIVED**

**AUG 02 2002**

*Records  
Public Service Commission*

Dear Mr. Roberts:

Enclosed for filing with the Commission are an original and four(4) copies of revised tariff pages for MCI WORLDCOM Communications, INC. MO P.S.C. Tariff No. 1 MCI WORLDCOM respectfully requests an effective date of September 3, 2002.

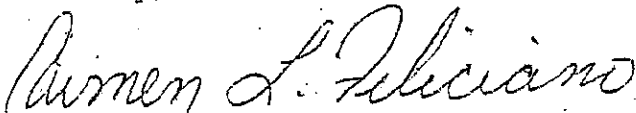
Page No.  
40.2

Revision No.  
Original

The purpose of this filing is to add new language that adds the Instate Recovery Fee to the Rules and Regulations section of the tariff.

If you have any questions or concerns regarding this filing please contact me at (312) 260-3220.

Sincerely,



Carmen L. Feliciano  
Tariff Administrator

Enclosure

**200300092**

**AUG 07 2002**

INTEREXCHANGE TELECOMMUNICATIONS SERVICES TARIFF

SECTION B - RULES AND REGULATIONS (Cont.)

6. USE OF SERVICE (Cont.)

.10 Instate Access Recovery Fee

MCI(R) is charged to originate and terminate its instate long distance calls over other companies networks. MCI will assess a monthly fee to residential customer to recover these charges. Customers will be exempt from this charge during any monthly billing period where their MCI spending is less than \$1.00.

Residential Customers:

An Instate Access Recovery Fee of \$1.95 per account per month will be Applied to invoices of customers of the following residential services under this tariff.

Option A (Dial One/Direct Dial)  
Option B (Credit Card) --etc.

**FILE COPY**

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service  
Commission held at its office in  
Jefferson City on the 27th day  
of August, 2002.

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

**Case No. XT-2003-0047**  
**Tariff No. 200300092**

**ORDER DENYING SUSPENSION AND APPROVING TARIFF**

This order approves the proposed tariff sheets filed by MCI WorldCom Communications Inc., and denies the Office of the Public Counsel's Motion to Suspend Tariff and for Evidentiary and Public Hearings.

On August 2, 2002, MCI WorldCom issued a tariff sheet designed to add an Instate Recovery Fee to the Rules and Regulations section of the tariff. The tariff revision would permit MCI WorldCom to assess a monthly fee of \$1.95 per account, per month, on residential customers. MCI WorldCom requested that the tariff become effective on September 3, 2002.

On August 8, 2002, the Office of the Public Counsel filed a motion asking the Commission to suspend MCI WorldCom's proposed tariff. In addition, the Public Counsel requested that the Commission hold both an evidentiary hearing and set the matter for local public hearings. The motion made several allegations that the tariff revision was not "just and reasonable" and that the proposed new charge would be discriminatory. Public Counsel stated that the proposed tariff is similar to the tariffs filed by AT&T

Attachment B

AUG 27 2002

MD  
motion for  
recovery  
needs to be  
filed by 8/30

100 3117

Communications of the Southwest, Inc., which the Commission approved in case number TT-2002-129, and by Sprint, which the Commission approved in case number TT-2002-1136.

On August 19, 2002, MCI WorldCom and the Staff of the Missouri Public Service Commission filed responses to Public Counsel's motion. MCI WorldCom indicates that its tariffs are similar to the AT&T and Sprint tariffs that the Commission has already approved. MCI WorldCom argues that it should not be treated any differently than those two companies. MCI WorldCom also points out that these tariffs apply to competitive services, do not unreasonably discriminate between customers, and comply with Section 392.500, RSMo 2000. MCI WorldCom asks the Commission to reject Public Counsel's motion and to approve the tariff.

Staff argues that as a competitive company, MCI WorldCom must comply with Section 392.500(2), RSMo, which authorizes rate increases with a tariff filing and notice to customers at least ten days before the increase. Staff states that MCI WorldCom has complied with Section 392.500(2). Staff also states that the Commission does not typically scrutinize the rate structure of competitive long distance service providers, except to determine compliance with a few limited rate requirements identified in Missouri statutes. Staff claims that this approach is consistent with Section 392.185(5), RSMo 2000, which permits "flexible regulation of competitive telecommunications companies and competitive telecommunications services," and with Section 392.185(6), RSMo 2000, which permits "full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest." Staff indicates



that MCI WorldCom's proposed service charges would not warrant Commission intervention to regulate the charging and billing structure of a competitive company.

In addition, Staff states that more than 500 companies hold certificates to provide long distance service in Missouri. MCI WorldCom's customers may choose to switch long distance carriers, thereby allowing the competitive marketplace to regulate the charges.

Finally, Staff points out that MCI WorldCom's tariff is similar to the tariffs issued by AT&T and Sprint that the Commission has approved. Staff observes that monthly-recurring charges and surcharges are common in the industry, and suggests that MCI WorldCom should not be singled out for special treatment based on this tariff. Staff recommends that the Commission approve MCI WorldCom's tariff.

MCI WorldCom is a competitive company providing competitive telecommunications services. A proposed tariff that increases rates or charges of a competitive telecommunications company is governed by Section 392.500(2). That statute allows a proposed tariff increasing rates or charges to go into effect after the proposed tariff has been filed with the Commission and the affected customers are given at least ten days' notice. The Commission finds that MCI WorldCom has complied with the technical requirements of Section 392.500(2).

In interpreting the various provisions of Chapter 392, the Commission turns to the purposes of the chapter as specified in Section 392.185. That section states in part:

The provisions of this chapter shall be construed to:

\* \* \*

(4) Ensure that customers pay only reasonable charges for telecommunications service;

(5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;

(6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;

\* \* \*

It is the Commission's task to balance these purposes.

Because MCI WorldCom's proposed monthly service charge of \$1.95 applies only to a competitive service, consumers are free to obtain service from an alternative provider if they object to the charge. Considering the competitive climate in which this service is offered, the Commission finds that the allowing full and fair competition to substitute for regulation will ensure that consumers pay only reasonable rates. As Staff noted, monthly recurring charges and surcharges are common in the telecommunications industry and MCI WorldCom should not be treated differently than other similarly situated telecommunications companies. The Commission determines that the proposed tariff is just and reasonable and should be approved. Therefore, the Commission will deny the motion to suspend and will approve the tariff sheet.

**IT IS THEREFORE ORDERED:**

1. That the Office of the Public Counsel's Motion to Suspend Tariff and for Evidentiary and Public Hearings is denied.
2. That the tariff filed by MCI WorldCom Communications, Inc., on August 2, 2002, is approved, to become effective on September 3, 2002. The approved tariff sheet is:

**MO PSC Tariff No. 1**  
Original Page No. 40.2

3. That this order will become effective on September 3, 2002.

BY THE COMMISSION

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

(SEAL)

Simmons, Ch., Murray, Lumpe and Forbis, CC., concur  
Gaw, C., dissents

Woodruff, Senior Regulatory Law Judge

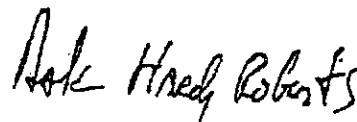
**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,  
Missouri, this 27<sup>th</sup> day of August 2002 .



---

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY**

**August 27, 2002**

**CASE NO: XT-2003-0047**

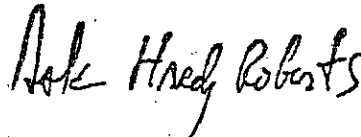
**Office of the Public Counsel**  
P.O. Box 7800  
Jefferson City, MO 65102

**General Counsel**  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**Carl J. Lumley**  
**Curtis, Oetting, Heinz, Garrett & Soule**  
130 S. Bemiston, Suite 200  
St. Louis, MO 63105

**Enclosed find certified copy of an ORDER in the above-numbered case(s).**

**Sincerely,**

A handwritten signature in dark ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

**FILE COPY**

In Re the matter of MCI WorldCom Communications )	
Inc's proposed tariff to add an in-state access )	Case No. XT-2003-0047
recovery charge and make miscellaneous text )	Tariff No. 200300092
changes )	

**OFFICE OF THE PUBLIC COUNSEL'S MOTION FOR REHEARING**

COMES NOW the Office of the Public Counsel (Public Counsel) and pursuant to Section 386.500, RSMo. and 4 CSR 240-2.160, specifically sets forth the reasons warranting a rehearing and respectfully moves the Missouri Public Service Commission (Commission) to grant rehearing of its ORDER DENYING SUSPENSION AND APPROVING TARIFF dated August 27, 2002 and effective September 3, 2002 that denied Office of the Public Counsel's motion brought pursuant to Sections 392.200 and 392.185, RSMo. 2000 and Section 254 (g) of the Federal Telecommunications Act of 1996 to suspend MCI WorldCom Communications, Inc. (MCI) proposed tariff to introduce an in-state access recovery charge and approved the tariff.

Public Counsel requests rehearing because the decision is unlawful, unjust, and unreasonable and is arbitrary, capricious, unsupported by substantial and competent evidence, and is against the weight of the evidence considering the whole record, is in violation of constitutional provisions of due process, is unauthorized by law, made upon an unlawful procedure and without a fair trial, and constitutes an abuse of discretion, all as more specifically and particularly described in this motion.

Attachment C

The proposed tariff of MCI WorldCom Communications Inc. establishes a \$1.95 monthly service charge known as an "In-State Access Recovery " charge for all MCI WorldCom residential customer accounts in Missouri that are presubscribed to MCI WorldCom for long distance toll service where "MCI spending" exceeds one dollar in a month.

1. The Commission overlooked relevant and material issues of law and fact when it failed to consider and determine that the tariff violated Section 254 (g) of the Federal Telecommunications Act of 1996 and FCC Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61 (August 7, 1996) (11 FCC Rcd 9564). The Commission did not consider that the tariff discriminates against Missouri residential customers as compared to customers in other states in violation of Section 254 (g) of the Federal Telecommunications Act of 1996. MCI and other interexchange carriers must "provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State . . . to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers." (Report and Order, para.80). This access recovery charge is applied to all 1+ presubscribed residential customers without regard to whether the customer's calls are interstate or intrastate. When the tariff surcharge is applied to interstate calls, the result is to effectively prices Missouri interstate calls higher than interstate calls in other states that are not assessed an instate access recovery charge or

are assessed a charge lower than \$1.95. The Commission's decision does not consider or address this significant objection to the tariff based on federal law.

2. Public Counsel suggests that the Commission overlooked relevant and material matters of fact and law in its decision when it held that the access recovery charge was just and reasonable when there was no evidence adduced how the charge bears a reasonable relationship to its stated purpose to recover access charges on intrastate calls paid to local telephone companies to use their local phone lines. Without a showing of this nexus between the purpose and the application and amount of the access recovery charge to only Missouri residential customers, the Commission cannot properly determine whether or not the charge as applied is just, reasonable, and nondiscriminatory. The PSC did not consider the lack of a reasonable relationship between the incidence on whom the charge falls upon and stated purpose to recover the access charges MCI WorldCom pays to the local telephone companies to utilize their local phone lines. Each residential customer pays the same amount no matter how many toll calls are made and no matter how long the calls are.

3. Public Counsel suggests that the Commission overlooked relevant and material matters of fact and law in its decision when it held that the access recovery charge was just and reasonable. There is no evidence in the record to support that holding. The flat rated charge distorts the true cost of service to the consumer by using an indirect means to raise rates (and recover a cost of doing business) via a surcharge on a cost element that is already part of the existing per minute rate. The access recovery charge increases the effective price paid per minute by MCI residential customers. MCI WorldCom's separate and distinct additional charge is in reality a rate increase dressed



up in different terminology to disguise its true effect. This flat rate charge unfairly inflates the per minute rate charged by MCI WorldCom and hides the true cost to the consumer in a list of separate charges. The Commission failed to look at the impact of the access recovery surcharge and the resultant effective price as an indicator of the discriminatory impact of the proposed tariff.

4. Public Counsel suggests that the Commission overlooked relevant and material matters of fact and law in its decision when it held that the access recovery charge was just and reasonable even though this flat rate surcharge is applied to residential customers with little or no usage of in-state long distance service who pay the same charge as high volume users with significant number and minutes of in-state calling. This results in an undue and unreasonable preference and advantage to those high volume customers and an unreasonable prejudice and disadvantage to low volume users of in-state calling, all in violation of Sections 392.220.2 and .3, RSMo.

5. The Commission has approved the instate access cost recovery tariff that does not exempt Life Line Link up customers, customers with no long distance charges or de minimus charges, or customers with only interstate toll charges. This omission makes it discriminatory, unreasonable, and unjust in that customers in low income programs and customers who do not cause MCI to incur instate access charges or little usage still bear the burden of the access cost recovery. These customers are making a disproportionate contribution to the cost recovery. The tariff fails to provide the exemptions for low income and lifeline customers that the PSC found important and necessary in the Sprint access recovery tariff case. Assessing low-income customers on Lifeline and Link-Up programs defeats the public policy goals embodied in Universal

Service legislation that minimizes the cost to connect to the network and maintain service. Therefore, the order approving the tariff is contrary to the public interest.

6. The Commission overlooked relevant and material matters of fact and law in its decision when it held that the access recovery charge was just and reasonable when the tariff only applies to residential customers and unreasonably exempts MCI business service customers. The stated reason for the tariff is to recover in-state access costs incurred by MCI. Although MCI business customers can cause MCI to incur access costs, this class of customers is excluded from the scope of the tariff and thus is granted a total exemption that is unreasonable and discriminatory. This exemption shifts the burden of recovering access costs solely to residential customers even though MCI's business customers contribute to MCI's access cost burden.

7. The Commission overlooked relevant and material matters of fact and law in its order when it held that the access recovery charge was just and reasonable since the tariff applies a flat rate non-usage sensitive charge to recover a cost paid by the company (access charges) that are incurred on a usage sensitive basis. High volume users pay the same as non traffic generating customers or customers with very low number of calls and minutes of use. Low volume users are paying a disproportionate share of the access cost recovery when their usage has no bearing on the amount of recovery these customers are expected to contribute. The access recovery charge is discriminatory because it is applied as a flat rate without regard to the type, amount and duration of toll calls and the resultant access charges incurred by the company, if any. The charge results in an unreasonable and prejudicial disadvantage for a class of MCI WorldCom presubscribed customers that have a low amount or no toll calling. Customers with considerable toll calling are given

an undue and unreasonable preference and advantage by paying the same amount per month as those customers with low volume in violation of Section 392.200.3 RSMo. and Section 392.200.2, RSMo 2000. The PSC's order fails to address or consider this unlawful and unreasonable discrimination. The order does not state how and in what manner this discriminatory method of assessing a cost recovery charge is reasonable and proper and in the public interest. There was no showing that this discrimination and the recovery of these costs in this manner is based upon reasonable and fair conditions which equitably and logically justify this tariffed rate. *State ex rel. DePaul Hospital School of Nursing v. PSC*, 464 SW2d 737 (Mo App 1970).

8       The Commission overlooked relevant and material matters of fact and law in its decision when it indicates that because of the number of competitors for long distance service, protection of the consumer is left to the marketplace. The order justifies its "hands off" policy on grounds that consumers can avoid the surcharge by changing carriers. The PSC stated in its order that over 500 interexchange carriers provide service in Missouri and therefore the customer can change companies if it does not wish to pay for the charge. The PSC failed to consider that now the three largest long distance carriers in Missouri and in the nation have had these surcharges approved in Missouri. These 3 companies have over 70% of the Missouri long distance 1+ direct dial market. If those 500 companies are actually certified and actually providing service to residential customers in each exchange in Missouri, the best case scenario is that other estimated 497 companies share the remaining 30%. After this approval there can be little doubt that the rest of the industry will follow with similar tariffs thus extinguishing an effective choice

by customers. The Commission's approval will restrict the real ability of the consumer from selecting a "competitive choice" that avoids this surcharge.

This presupposes that unjust and unreasonable and unlawful charges are acceptable so long as the customer can go to another carrier for its long distance service. This assumption does violence to the PSC's statutory duty to serve the public interest under Section 392.185 (4) and (6), RSMo to protect the consumer. The Commission cannot ignore its duty in Section 392.185 (4) to "Ensure that customers pay only reasonable charges for telecommunications service" by stating that it need not review the charges since customers can go somewhere else. Likewise, the Commission cannot completely delegate to competition the protection of consumers when the emphasis of Section 392.185 (6) is to allow competition to "function as a substitute for regulation when consistent with the protection of the ratepayers and otherwise consistent with the public interest." The key here is that protection of ratepayers and the promotion of the public interest is paramount to the functioning of competition. The protection offered by "full and fair competition" occurs only when there is widespread knowledge and information readily available for consumers to investigate alternatives and understand the price and service variations offered by the firms in the marketplace. Customers may not change carriers for a variety of reasons, including, but not limited to, the high costs in time and knowledge required to search for alternatives and the consumer's awareness, education, commercial or purchasing sophistication, health, ability, and intelligence or mental capacity. The statute does not exempt these ratepayers from protection from unreasonable and unjust pricing schemes.

9. The order of the Commission failed to make adequate findings of fact and conclusions of law. The order in this case does not inform a reviewing court of the basic findings on which the Commission's ultimate findings rest. The conclusory nature of the order is insufficient to show the basis of the decision. The order must contain unequivocal, affirmative findings of fact so that a reviewing court is able to determine whether the order is supported by substantial and competent evidence without combing the PSC's evidentiary record. *Noranda Aluminum, Inc. v. PSC*, 24 S.W.3d 342, 245-6 (Mo. App. 2000).

For the foregoing reasons, Public Counsel asks the Commission to rehear the case and further suspend MCI's tariff and conduct an evidentiary hearing to determine whether the tariff is lawful, just and reasonable and whether it complies with Section 254 (g) of the Federal Telecommunications Act of 1996, and is not otherwise discriminatory and contrary to the public interest and for such further and additional relief as may be necessary. The PSC failed to investigate and consider the justness and reasonableness of the proposed charge for access recovery given that MCI levies this surcharge only upon residential customers even though business customers also generate access charges for MCI. If the purpose is to recover costs then it should not arbitrarily and unreasonably exclude business customers that generate the same type of access fees and often in a greater amount.

Respectfully submitted,

**OFFICE OF THE PUBLIC COUNSEL**

BY:



Michael F. Dandino (Bar No. 24590)

Senior Public Counsel

200 Madison Street, Box 7800

Jefferson City, MO 65102

Telephone: (573) 751-5559

Facsimile: (573) 751-5562

E-mail: mdandino@mail.state.mo.us


**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed or hand delivered this 29th day of August, 2002 to the attached service list:

General Counsel  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

Stephen Morris  
MCI Telecommunications Corp.  
701 Brazos, Suite 600  
Austin, TX 78701

Carl J. Lumley  
Curtis, Oetting, Heinz, Garrett & Soule  
130 S. Bemiston, Suite 200  
St. Louis, MO 63105



*Calvin*

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office in  
Jefferson City on the 17th day of  
September, 2002.

**FILE COPY**

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

**Case No. XT-2003-0047**  
Tariff No. 200300092

**ORDER DENYING APPLICATION FOR REHEARING**

On August 27, 2002, the Commission issued an order that denied the Office of the Public Counsel's motion to suspend, and approved a tariff submitted by MCI WorldCom Communications, Inc. The Commission's order had an effective date of September 3. On August 29, Public Counsel filed a Motion for Rehearing. MCI WorldCom filed a response opposing Public Counsel's motion on September 3.

Section 386.500, RSMo (2000), provides that the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefor be made to appear." In the judgment of the Commission, Public Counsel has failed to establish sufficient reason to grant its Motion for Rehearing.

**IT IS THEREFORE ORDERED:**

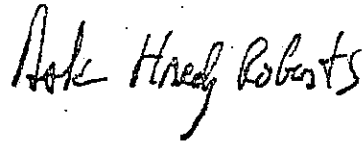
1. That the Motion for Rehearing filed by the Office of the Public Counsel is denied.

Attachment D

SEP 18 2002

2. That this order shall become effective on September 17, 2002.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive style with a large, stylized initial "D".

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

(SEAL)

Simmons, Ch., Murray, Lumpe and Forbis, CC., concur  
Gaw, C., dissents

Woodruff, Senior Regulatory Law Judge



**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and  
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,  
Missouri, this 17<sup>th</sup> day of Sept. 2002 .



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**Dale Hardy Roberts**  
Secretary/Chief Regulatory Law Judge

**MISSOURI PUBLIC SERVICE COMMISSION**

September 17, 2002

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

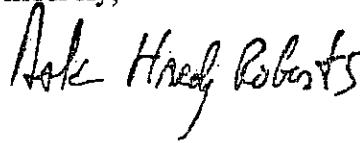
Dana K Joyce  
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Carl J Lumley  
MCI Worldcom Communications,  
Inc.  
130 S. Bemiston, Suite 200  
St. Louis, Missouri, 63105

**Enclosed find a certified copy of an ORDER in the above-numbered case(s).**

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**