

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair  
Commissioner  
Commissioner  
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Commissioner

In the Matter of the Intrastate Access Recovery,  
or Similar Charges, Filed by AT&T  
Communications, Sprint Communications,  
MCI WorldCom, Excel Communications,  
Teleconnect, U.S. Telecom Long Distance

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ORDER ALLOWING INTRASTATE  
RECOVERY CHARGES

**PROCEDURAL HISTORY**

AT&T Communications of the Midwest (AT&T), Sprint Communications, L.P. (Sprint), MCI WorldCom Communications, Inc. (MCI), Excel Communications, Inc. (Excel), Teleconnect, a subsidiary of WorldCom, and U.S. Telecom Long Distance, Inc. (U.S. Telecom) filed separate petitions in each of the respective Dockets listed above. The petitions were filed on varying dates between April 2002 and January 2003 requesting to introduce a monthly service charge for certain customers. The proposed charges were for recovery of intrastate access charges and were of varying amounts ranging from \$1.95 to \$1.99 per month.

On February 11, 2003, the Department of Commerce (DOC) filed comments recommending rejection of the intrastate access recovery tariffs on grounds that the intrastate access recovery charges were confusing, inaccurate, misleading, deceptive and discriminatory.

On March 5, 2003, Sprint, MCI and MCI WorldCom filed joint reply comments, and AT&T and U.S. Telecom each filed reply comments.

On March 5, 2003, the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) filed reply comments recommending that the tariffs be rejected on grounds that the charges were misleading and discriminatory.

On June 30, 2003, the matter came before the Commission. The Commission deferred action pending further briefing on: 1) whether assessing the intrastate access fee against residential customers and not against business customers is unduly discriminatory, 2) whether assessing the fee against customers who do not take local service from their long distance provider and not

against customers who do take local service from their long distance provider is unduly discriminatory, and 3) how any intrastate access recovery fee found to be permissible should be presented on customers' bills.

On August 13, 2003 initial briefs were filed by AT&T, Sprint, and the RUD-OAG. MCI filed supplemental comments and the DOC filed comments.

On August 28, 2003, the DOC filed reply comments.

The matter came before the Commission on September 25, 2003.

## FINDINGS AND CONCLUSIONS

### **I. The Legal Standard**

As a telecommunications carrier, AT&T, Sprint, MCI, Teleconnect, Excel Communications and U.S. Telecom are exempt from both rate regulation and rate of return regulation. Minn. Stat. §§ 237.01, subd. 6; 237.74, subd. 4. The Company is, however, subject to the anti-discrimination provisions of Minn. Stat. § 237.74, subd. 2 and 3, which read in part as follows:

**Subd. 2. Discrimination prohibited; practices, services, rates.** No telecommunications carrier shall offer telecommunications services within the state upon terms or rates that are unreasonably discriminatory. . . . A company that offers long-distance services shall charge uniform rates and charges on all long-distance routes and in all geographic areas in the state where it offers the services. However, a carrier may offer or provide volume or term discounts or may offer or provide unique pricing to certain customers or to certain geographic locations for special promotions, and may pass through any state, municipal, or local taxes in the specific geographic areas from which the taxes originate. . . .

**Subd. 3. Special Pricing.** Except as prohibited by this section, prices unique to a particular customer or group of customers may be allowed for services when differences in the cost of providing a service or a service element justify a different price for a particular customer or group of customers. Individual pricing for services may be allowed when a uniform price should not be required because of market conditions. Unique or individual prices for services or service elements in effect before August 1, 1993, are deemed to be lawful under this section.

Minn. Stat. § 237.74, subs. 2 and 3.

### **II. The Intrastate Access Recovery Charge**

The tariffs proposed by the petitioning long distance carriers were for charges to certain customers for recovery of access charges paid to local telephone companies for carrying in-state long distance calls over their lines.

The six proposed tariffs differ in their approach to assessing the intrastate recovery charges. Some tariffs provide for an exemption to customers who spend less than \$1.00 per month.<sup>1</sup> In many instances business customers<sup>2</sup> or customers who use the long distance provider for local service as well as long distance service<sup>3</sup> are also exempt from the charge.

The petitioning carriers identify the charges to their customers using various names and different criteria to assess the charges. The following table presents the carriers in question, the name of the charge, date the charges became effective, and the amount of the monthly charge:

<b>Company</b>	<b>Name of Monthly Charge</b>	<b>Effective Date</b>	<b>Charge</b>
AT&T	In State Connection Fee	April 15, 2002	\$1.95
Sprint	In-State Access Recovery Charge	July 1, 2002	\$1.99
MCI WorldCom	Intrastate Access Recovery Fee	September 1, 2002	\$1.95
Excel	State Access Recovery Fee	October 23, 2002	\$1.95
Teleconnect	Intrastate Access Recovery Fee	December 1, 2002	\$1.95
U.S. Telecom	Intrastate Connection Fee	January 9, 2003	\$1.95

### **III. Positions of the Parties**

#### **A. DOC**

The DOC recommended that the Commission reject the intrastate recovery tariffs and require the companies to stop charging such fees immediately.

The DOC argued that to charge only residential customers the intrastate access recovery charge is inconsistent with the concept of pricing based on cost. It argued that although the companies state that the access recovery fees are for the recovery of access charges, access charges are applied the same way, on a per-minute of use basis, to business customers as they are applied to residential customers, but only the residential customers are charged the fee.

The DOC stated it was concerned about the discriminatory effect of such fees. It argued that the residential customers of the Companies proposing to apply the intrastate recovery access fee only to the residential customers (AT&T, MCI WorldCom, and Teleconnect) would be charged a higher rate for long distance than the business customers of the same carrier for no apparent reason.

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<sup>1</sup> AT&T, MCI WorldCom, Excel, Teleconnect.

<sup>2</sup> AT&T, MCI WorldCom and Teleconnect.

<sup>3</sup> AT&T, Sprint.

The DOC also argued that Sprint's and AT&T's proposals to apply the intrastate access recovery charge to all subscribers to their respective long distance service, except for those customers who subscribe to the Company's local service as well, were unreasonably discriminatory. The DOC argued that applying the charge to one group of customers and waiving the charge for other customers similarly situated, without a cost basis for the different pricing, is discriminatory and in violation of Minnesota statutes.<sup>4</sup>

Further, the DOC argued that the intrastate access recovery charge, as presented on customers' bills, fails to provide adequate and accurate information regarding the applicable charges in a manner that allows consumers to take full advantage of the competitive market. There is no way for the consumer to correlate the charges they owe with the services they actually receive. The carriers have not made clear to their customers that the intrastate recovery fee is a part of the carrier's rate structure and is charged at the carrier's discretion. The DOC argued that the companies are masking the fee as a government required tax.

## **B. RUD-OAG**

The RUD-OAG also recommends that the Commission reject the intrastate access recovery charges as unclear, misleading and discriminatory.

The RUD-OAG was particularly concerned that the line-item charges, as billed, misleadingly suggest a government mandate or tax and, as such, the consumer is unaware that such charges can be avoided or reduced by shopping around and comparing prices among carriers.

The RUD-OAG argued that inclusion of the intrastate access recovery charge as a line-item charge rather than as part of the rate prevents the consumer from making an informed choice. It argued that long distance carriers now market plans to consumers at a fixed rate per minute or a fixed monthly rate. Such plans do not include such charges as the intrastate recovery access charge, so that consumers do not get a true picture of the plan for which they are signing up.

Further, the RUD-OAG argued that these intrastate access recovery charges not only treat business and residential customers differently, they also discriminate on geographic lines. If a long distance carrier is not available to provide local service in a particular area, the long distance service costs more for a customer in that area than for a customer in an area that the company has chosen to provide local service.

## **C. AT&T**

AT&T argued that Minnesota statutes<sup>5</sup> only prohibit "unreasonable discrimination" and do not prohibit every conceivable difference in price or terms. Further, AT&T argued that there is no requirement that a price difference be justified with exact cost calculation in order to be considered "reasonable."

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<sup>4</sup> See Minn. Stat. §237.74, subd. 3.

<sup>5</sup> See Minn. Stat. § 237.74, subd. 2.

AT&T argued that the in-state connection fee<sup>6</sup> is not unreasonably discriminatory because business customers are not similarly situated when it comes to access charges. A majority of AT&T's business customers' calls are provisioned by the use of a combination of switched and special access.<sup>7</sup> The in-state connection fee relates only to switched access and is designed to recoup the excess switched access charges. AT&T argued that it would be inappropriate for AT&T to impose this charge on business customers who rely on both switched and special access.

AT&T also argued that the in-state connection fee does not unreasonably discriminate in favor of AT&T long distance customers who also have AT&T local service. When AT&T is the competitive local exchange carrier providing the customer's local service AT&T does not incur originating switched access charges. Also, when AT&T provides both local and long distance service to a customer, it gains a larger volume of business and has a better opportunity to recover costs, including the intrastate access charges, through an array of bundled services. For these customers, not having to pay the in-state connection fee is a discount for the bundling of two or more services.

Finally, AT&T argued that the existing language describing this on customers' bills was not confusing or misleading. The charge was listed under "AT&T Other Charges and Credits," not under the separate section for "Taxes and Surcharges." Further, AT&T argued that all customers received a notice with an explanation and rationale for the fee and with a toll-free number to call to get more information.

#### **D. Sprint and MCI**

Sprint and MCI argued that the substantial differences between the residential and business markets justify a difference in treatment. It stated that its long distance offerings that appear in approved tariffs in Minnesota reflect different rate offerings to residential and business customers.

They suggested several justifications for treating business and residential customers differently. They argued that business customers utilize significantly more minutes than residential customers and this volume difference provides an opportunity to set pricing for businesses that generates less variable margin per minute yet recovers the fixed costs and needed profits. They argued that offerings to business tend to be set on volume and term discounts, whereas residential offerings are most often set on monthly recurring charges and tend to be more uniform than business offerings. Finally, they argued that providers need flexibility to address the unique and complex needs of the business customers.

Sprint and MCI stated that there are at least 400 certified long distance carriers in Minnesota. Therefore, if residential customers do not want to pay the charge, they have alternatives.

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<sup>6</sup> AT&T's name for the intrastate access recovery fee.

<sup>7</sup> Special access facilities are leased by AT&T to send calls to and from AT&T's point of presence. Switched access facilities are facilities of the incumbent LEC.

Further, Minnesota statutes specifically allow carriers to offer bundled products.<sup>8</sup> Sprint and MCI argued that it is not any more discriminatory to waive the in-state access recovery fee to encourage the purchase of multiple services (i.e., local and long distance service) than to offer bundled service at a discount.

Finally, Sprint argued that the way the charge is presented on Sprint's bills it is clear that the charge is a Sprint charge and, therefore, is not a tax and not a charge that is applied by all competitors. Further, Sprint provided a notice to its customers that clarified the amount of the charge as well as the basis for the charge.

MCI stated that it offers its local service plan, "The Neighborhood," throughout Qwest's territory in zones 1, 2 and 3. This plan provides residential customers with unlimited local and long distance service for a flat monthly fee. For that plan MCI obtains unbundled network elements (UNEs) from Qwest and pays Qwest the Commission-ordered rates. In this case, MCI pays UNE rates and does not incur any net access charges. MCI argued that in this case it would be inaccurate to include such charges on these customers' bills.

#### **E. U.S.Telecom**

U.S. Telecom argued that the intent of this fee was to clearly delineate actual per minute telecommunications service charges from separate service costs. It argued that this enables subscribers and potential subscribers to make more informed decisions regarding actual per minute service costs. It argued that this is not possible if service and other costs are aggregated into a single per minute rate.

U.S.Telecom argued that disaggregating direct per minute costs and other service costs would serve the public well but to the extent the Commission does not allow this, U.S.Telecom requested that the Commission ensure that the prohibition on intrastate connection charges applies uniformly to all regulated entities.

#### **IV. Commission Action**

The Commission will accept the proposals by the Companies herein to charge a monthly fee to certain customers for explicit recovery of intrastate access charges.

The Commission finds that not charging the intrastate access fee to customers who take both local and long distance service from the same company is not unduly discriminatory. Providers are increasingly offering bundled long distance and local services that provide for a lower total price than the sum of the individual parts. Waiving the intrastate access fee to long distance customers who also take local service is a variation on this bundling concept and is not unreasonably discriminatory.

Similarly, the Commission finds that it is not unreasonable for the Companies herein to charge a monthly intrastate access charge to residential customers in certain circumstances and to exempt business customers from this charge. These two groups are not necessarily similarly situated, in

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<sup>8</sup> See Minn. Stat. 237.626.2 (2003).

regards to access fees. The business customers utilize more minutes than residential customers and because of the higher volume are not limited to service only through switched access lines. Residential customers, on the other hand, tend to buy fewer services, generate lower volume and present fewer alternatives to developing a separate rate design.

Further, the proposed charge applies only to a competitive service, and given the competitive environment for long distance service, there is clearly the opportunity for the consumer to find another long distance carrier if the consumer so desired.

Finally, the Commission will not order any changes to the companies' billing format as it relates to the assessment of the intrastate access charge. There is no evidence of actual customer confusion and no evidence that the bills are deceptive.

### **ORDER**

1. The petitions filed by AT&T on April 12, 2002, Sprint on June 28, 2002, MCI on August 30, 2002, Teleconnect on November 25, 2002, Excel Communications on October 7, 2002, and U.S. Telecom on January 8, 2003, for recovery of Intrastate Access Recovery Charges, are hereby accepted.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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