BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In Re the matter of MCI Communications, Inc.'s proposed tariff to increase its intrastate connection fee to recover access costs charged by local telephone companies	))))	Case No. LT-2004-0616

MCI's REPLY TO PUBLIC COUNSEL's MOTION FOR RECONSIDERATION OF DENIAL OF MOTION FOR REHEARING

COMES NOW MCI, pursuant to 4 CSR 240-2.080(15), and for its reply to the Motion for Reconsideration of Denial of Motion for Rehearing filed by Office of the Public Counsel ("Public Counsel" or "OPC"), states to the Commission as follows:

1. On August 12, 2004, Public Counsel filed its motion urging the Commission to reconsider its order denying Public Counsel's motion for rehearing.

2. The rationale for Public Counsel's motion is that the Missouri Court of Appeals, Western District, handed down its decision in *State ex rel. Coffman v. PSC*, Case No. WD 63134, on August 10, 2004 that reversed and remanded the order in XT-2003-0047, relating to the establishment of MCI's access recovery surcharge.

3. For the reasons stated below, MCI suggests that the PSC should deny OPC's motion to reject MCI's tariff filing.

4. Public Counsel is correct in noting that the appellate decision is not final. MCI and others expect to file a Motion to Transfer and/or Motion for Rehearing with the Court of Appeals. As the Commission is no doubt aware, the Court of Appeals did not hold that surcharges are illegal as a matter of law. The court held for OPC on only one of its five points: That point being the Commission needed to more adequately explain in

its order the "disparate treatment of similarly situated customers with respect to the surcharges." (*State ex rel. Coffman v. PSC*, Slip Opinion, pg. 7) MCI hopes and expects that the Court of Appeals and/or the Missouri Supreme Court will ultimately uphold the Commission's order. MCI also recognizes that this is not the forum in which to resolve that matter.

5. Even if the Commission eventually must rewrite its decision in Case No. XT-2003, such action will not necessitate a rehearing in this case.

6. Accordingly, MCI asks the Commission to deny the motion of Public Counsel.

7. MCI disagrees with Public Counsel's assertion that customers would suffer irreparable harm if the increase in the surcharge remains in effect. Customers may choose among literally hundreds of providers of long distance service. MCI also notes that a passage in the Court of Appeals' opinion quotes Public Counsel's motion filed in the original proceeding that "between them, AT&T, Sprint, and MCI have over a 70% market share of residential customers in Missouri, making it difficult for those customers to switch to a competitor in order to avoid the surcharge." *State ex rel. Coffman v. PSC*, (Slip Opinion, pg. 5) MCI strongly asserts that that figure is very, very stale, given that SBC has entered the in-region long distance market as a result of the FCC granting such authority under section 271 of the Telecommunications Act of 1996 and there have been other significant changes in telecommunications in recent months.

WHEREFORE, PREMISES CONSIDERED, MCI prays that the Commission deny the motion of Public Counsel.

Respectfully submitted,

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

Carl J. Lumley, #32869
Leland B. Curtis, #20550
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
(314) 725-8788
(314) 725-8789 (FAX)
clumley@lawfirmemail.com
lcurtis@lawfirmemail.com

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the above and foregoing document was sent via e-mail or U.S. Mail on the 23rd day of August, 2004 to the following:

Dana K. Joyce
P.O. Box 360
200 Madison Street, Suite 800
Jefferson City, Missouri 65102
gencounsel@psc.state.mo.us

Michael Dandino
P.O. Box 2230
200 Madison, Suite 640
Jefferson City, Missouri 65102
mdandino@ded.state.mo.us

/s/ Carl J. Lumley