

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

In the Matter of the Tariff Filing of Sprint Missouri, )  
Inc., d/b/a Sprint, to Modify Rates in Accordance ) **Case No. IT-2004-0229**  
with Sprint's Price Cap Regulation Pursuant to ) **Tariff No. JI-2004-0615**  
Section 392.245, RSMo 2000. )

**Dissenting Opinion of Commissioner Gaw**

I respectfully dissent from the Commission's order. I believe that the Commission should have granted the Office of the Public Counsel's motion to suspend the proposed tariff.

Although the price cap statute creates a presumption that a properly calculated increase under Section 392.245 is just and reasonable, this presumption may be rebutted.<sup>1</sup> In this case, however, neither the Office of the Public Counsel nor the Commission's Staff suggested that they have evidence to overcome the presumption. Nonetheless, I would suspend the proposed tariff and direct Staff to conduct a more thorough and meaningful review.

The price cap statute allows the Commission to use the price cap provisions as a surrogate for determining whether rates are just and reasonable. It does not, however, bar the Commission from examining the justness and reasonableness of a proposed increase

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<sup>1</sup> This issue was examined by the Commission in the Report and Order in Case No. IT-2004-0015 issued November 6, 2003, *In the Matter of Southwestern Bell Telephone Company, d/b/a SBC Missouri's Proposed Revised Tariff Sheet Intended to Increase by Eight Percent the Rates for Line Status Verification and Busy Line Interrupt as Authorized by Section 392.245, RSMo, the Price Cap Statute*, and in Case No. IT-2003-0292, *In the Matter of the Tariff Filing of Sprint Missouri, Inc. d/b/a Sprint to Increase the Rate for the Metropolitan Calling Area Plan*, when the Commission set forth its interpretation of the price cap statute. In Case No. IT-2003-0292, Commissioner Robert Clayton thoroughly analyzed portions of the price cap statute in his concurring opinion. As Commissioner Kelvin Simmons and I noted in our joint dissent, we agree with Commissioner Clayton's interpretation of the price cap statute.

by a company. Section 392.245.11 refers to a price cap company's ability to increase rates by up to eight percent annually:

[T]he maximum allowable prices for nonbasic telecommunications services of an incumbent local exchange telecommunications company may be annually increased by up to eight percent for each of the following twelve-month periods upon providing notice to the commission and filing tariffs establishing the rates for such services in such exchanges at such maximum allowable prices . . . . An incumbent local exchange telecommunications company may change the rates for its services, **consistent with the provisions of section 392.200**, but not to exceed the maximum allowable prices, by filing tariffs which shall be approved by the commission within thirty days, provided that any such rate is not in excess of the maximum allowable price established for such service under this section. [Emphasis added.]

Section 392.200.1 provides (in part): "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."<sup>2</sup>

Section 392.245.1 states in pertinent part: "The Commission shall have the authority to ensure that rates, charges, tolls, and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation." This section does not say that the Commission must use price cap regulation as the *exclusive* means of determining that rates are just and reasonable.

A logical reconciliation of all of these provisions is that rate hikes within the price cap carry a rebuttable presumption that they are just and reasonable. That is, rate increases under the price cap are presumed to be just and reasonable. However, if there

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<sup>2</sup> Section 392.200.1 RSMo Supp. 2004. All subsequent statutory references, except where otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

is reason to believe that the increases are *not* just and reasonable, the Commission is required to verify whether they are in fact just and reasonable. This interpretation gives meaning to the reference to Section 392.200 and that section's requirement that rates be "just and reasonable and not more than allowed by law or by order or decision of the commission."

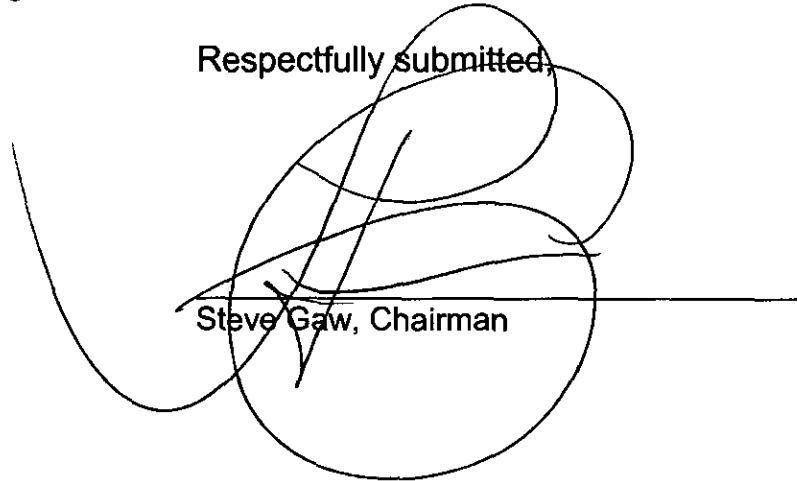
Thus, once it is established that a price cap company, like Sprint, enjoys a rebuttable presumption that its proposed increase is lawful, the next question is whether there is any reason to challenge the presumption. Sprint takes the position that whether the increased rates are just and reasonable is not within the Commission's purview. Staff, after a limited review of the increased rates, suggests that it has no evidence that the rates proposed are not just and reasonable. My question is whether Staff has adequately analyzed whether such evidence exists. Staff indicates that it considered "the various 'yardsticks' discussed in the Commission's order in IT-2004-0015." Staff, however, also states that it could not examine the facts in this case as thoroughly as it did in Case No. IT-2004-0015 unless the Commission suspended the tariff sheets for approximately six more months. Nonetheless, I believe that in cases where price increases of certain services have increased significantly more than cost or price indicators over the same time, especially over multiple years, the Commission's Staff should conduct a thorough analysis of whether the proposed rate increases comply with Section 392.200.<sup>3</sup>

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<sup>3</sup> In Case No. IT-2004-0015, the Commission indicated that proposed price increases for price cap companies could be reviewed in light of two objective indicators, the CPI-TS and the GDP-PI, depending upon the measure to which the subject carrier's basic rates are tied. The Commission further stated that although Section 392.245.11 does not specifically refer to either the CPI-TS or the GDP-PI, it is reasonable to look to Section 392.245.4 for guidance in the implementation of Section 392.245.11. Consistent with Case No. IT-2004-0015, the Commission's Staff should have conducted a more thorough analysis of whether the proposed rate increases comply with Section 392.200.

I am not content to allow the analysis to end with Staff's limited review. Consumers deserve a more thorough analysis of the proposed rate increases when rates for some services continue to increase at eight percent per year while the CPI-TS is far less. Therefore, I would suspend the proposed tariff sheets and order Staff to conduct a more thorough and meaningful review of the increased rates.

Respectfully submitted,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right. The signature is written over the text "Steve Gaw, Chairman".

Steve Gaw, Chairman

Dated at Jefferson City, Missouri,  
On this 30<sup>th</sup> day of January, 2004.