

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

In the Matter of the Tariffs Filed by Sprint)	
Missouri, Inc., d/b/a Sprint, to Reduce the)	
Basic Rates by the Change in the CPI-TS as)	
Required by Section 392.245(4), Updating)	
Its Maximum Allowable Prices for Non-)	
basic Services and Adjusting Certain Rates)	Case No. TR-2002-251
as Allowed by Section 392.245(11), and)	
Reducing Certain Switched Access Rates and)	
Rebalancing to Local Rates, as Allowed By)	
Section 392.245(9))	

**SPRINT'S MOTION TO STRIKE OFFICE OF PUBLIC COUNSEL'S
REPLY TO SPRINT AND STAFF**

COMES NOW Sprint Missouri, Inc. ("Sprint"), and hereby files this Motion to Strike Office of Public Counsel's Reply to Sprint and Staff. In support of its Motion, Sprint hereby states as follows:

Executive Summary

In its March 8, 2004 Order Directing Filing, the Commission directed the Office of Public Counsel ("OPC") to file evidence regarding "whether and in what respect, [Sprint's] cost study is inaccurate, incomplete, based on inappropriate or erroneous assumptions, or made on an improper methodology" no later than April 9, 2004. Per the same Commission Order, Sprint and Staff were to provide Responses no later than May 10, 2004, with OPC having a final Reply opportunity by no later than May 28, 2004. Sprint's Motion to Strike pertains to OPC's May 28 Reply and is based upon two factors.

First, in its May 28, 2004 Reply, OPC knowingly and deliberately violated the Commission's Protective Order in Case No. TR-2001-065 by transferring Highly

Confidential information from that proceeding into this case. Sprint moves that the Commission strike all citations and references to Highly Confidential information taken from Case No. TR-2001-065 contained in OPC's Reply to Sprint and Staff filed on May 28, 2004. Second, Sprint moves to strike the remaining aspects of OPC's May 28, 2004 Reply based on the fact that OPC violated the language and intent of the Commission's March 8, 2004 Order Directing Filing issued in this case. Specifically, OPC intentionally waited until its Reply comments to raise issues and put forth statements that could have, and should have, been raised in its initial comments, thereby inappropriately attempting to deny an opportunity for appropriate responses from Staff and Sprint. As a result of this deliberate and calculated action by OPC, Sprint moves that the balance of OPC's May 28, 2004 "Reply" also be stricken.

In the alternative to Sprint's Motion to Strike, Sprint also provides its supplemental responses to OPC's "Reply" Comments. Specifically, as discussed further, below and in the attached affidavits of Sprint's Director of Cost Support -- Mr. Kent Dickerson, and Sprint's Senior Regulatory Economist -- Dr. Brian Staihr, OPC's arguments on the single issue of local loop allocation are misplaced and/or totally incorrect. OPC is wrong in suggesting that the local loop is a common cost simply because it may support multiple services. OPC intentionally (and inappropriately) introduces cost recovery issues into a Commission decision that by statute is only a cost causation issue. OPC does this as there are no contested facts and OPC wants to save its request for a hearing by suggesting a "battle of the experts" is needed. However, the cost recovery "battle" was decided by the legislature and is not in front of the Commission in connection with the limited issues in this case. It would be highly ill advised to reopen

the record in this case and dedicate substantial and expensive resources to an issue the Commission will not decide in this case.

Sprint and the Staff have clearly demonstrated throughout the proposed Findings of Fact and Conclusions of Law, already presented in this proceeding, that there is more than adequate evidence in the current record for the Commission to uphold its previous decision without the need for further evidentiary hearings or to examine irrelevant issues, as OPC suggests.

**The Commission Should Strike Confidential Information Illegally
Taken By OPC From Case No. TR-2001-065**

In the Reply Comments of Mr. Regan filed on behalf of OPC, Mr. Regan repeatedly cites to Highly Confidential information used by Staff's witness Dr. Ben Johnson in Case No. TR-2001-065. Most of the highly confidential information used by Mr. Regan is Highly Confidential information submitted by Sprint in Case No. TR-2001-065. In addition, certain information used and relied on by Mr. Regan is Highly Confidential information provided by all the ILECs in Missouri including SBC, CenturyTel and the numerous small ILECs in Case No. TR-2001-065. OPC's use of this Highly Confidential information is a direct and critical violation of the Protective Order issued in Case No. TR-2001-065. Further, and even more alarming, OPC knew its use of this sensitive and Highly Confidential information was in violation of the Protective Order issued in Case No. TR-2001-065. OPC deliberately and intentionally violated the Commission's Protective Order. Based upon this, the Commission, should, at a minimum, strike all references to the Highly Confidential information in OPC's May 28 Reply.

On May 18, 2004, Sprint received a letter from OPC requesting permission to use Sprint's Highly Confidential information from Case No TR-2001-065. (The letter is attached hereto at Attachment A). In the request, OPC stated: "Under the terms of the protective order, use of HC information obtained in one case cannot be used for other purposes and in other cases without the consent of the party. Please advise if you object to the use of HC information provided in the access costing case (TR-2001-065) in the rebalancing case." OPC was correct that under Paragraph S of the Protective Order issued in Case No TR-2001-065, OPC could not use the Highly Confidential information in any other case. However, OPC is incorrect that parties can authorize a violation of the Commission's protective order by giving permission to transfer Highly Confidential information submitted in one case to another.

On May 19 and 20, 2004, Sprint responded to OPC stating that it would not agree to allow the Highly Confidential information to be taken from Case No. TR-2001-065 and be used in this case. Sprint further indicated that it had never agreed to such a request. Additionally, Sprint questioned OPC's motives in requesting Highly Confidential information from Case No. TR-2001-065 for two reasons. First, in its final Order in Case No. TR-2001-065, the Commission specifically made no findings regarding access costs or loop cost allocation. In fact, the Commission made no findings at all regarding the cost of access in Case No. TR-2001-065.

The Commission will not address the issues relating to what sort of costing methodology should be used, whether the same method should be applied to all carriers, whether loop costs should be included in reckoning access costs, and if so, to what extent, or what specific values and assumptions should be used as inputs. The Commission will also not address the issue of what further action to take, other than to note that no further action will be taken in this case, at least.

Second, OPC completely failed to criticize any aspect of Sprint's access cost study in the 065 access case in 2002 nor in its April 9, 2004 filing in this case, in which it was specifically ordered to state "whether and in what respect, the cost study is inaccurate, incomplete, based on inappropriate or erroneous assumptions, or made on an improper methodology." Sprint's written response of May 20, 2004 to OPC regarding the Highly Confidential information in Case No. TR-2001-065 is attached hereto at Attachment B.

As the letter exchange demonstrates, OPC knowingly and willfully violated the protective order issued in Case No. TR-2001-065 by placing Sprint's Highly Confidential information from that case into this case. Further, OPC not only transferred Sprint's Highly Confidential, information, but the Highly Confidential information from all ILECs in the state of Missouri (Schedule WDA-6 of Mr. Regan's Reply Comments). Because of OPC's knowing and blatant violation of the Protective Order in Case No TR-2001-065, at the minimum, this Commission should strike all references to Highly Confidential Information from Case No. TR-2001-065. The specific sections that should be stricken appear in Mr. Regan's testimony at the following locations:

- a) Page 5, line 6 through page 7, line 5;
- b) Page 14, line 7 through page 15, line 8;
- c) Page 17, line 3 through page 18, line 5;
- d) Page 18, line 7 though page 18, line 9;
- e) Page 18, line 11 through page 18, line 17;
- f) Footnote 19;
- g) Page 19, line 2 through page 20, line 3;
- h) Footnote 21;
- i) Schedule WDA-5 in its entirety; and
- j) Schedule WDA-6 in its entirety.

Based on the above, Sprint requests that the Commission grant its requests to strike these sections of Mr. Regan's testimony.

**The Commission Should Strike the Remaining Portions of OPC's
Reply or in the Alternative Accept Sprint's Response**

OPC clearly and inappropriately used its May 28, 2004 Reply filing as an opportunity to attempt to raise several issues that could have, and should have been raised at the outset in its initial comments. OPC had the opportunity to raise any issue in its April 9, 2004 filing when the Commission directed it to state "in what respects, the cost study is inaccurate, incomplete, based on inappropriate or erroneous assumptions, or was made on an improper methodology." Ignoring the Commission's Order, OPC deliberately waited until its May 28, 2004 Reply filing to provide its arguments and assertions with respect to the sole issue OPC has taken with Sprint's cost study for basic local services – loop allocation.

By putting forth its case for a hearing in its May 28, 2004 filing, OPC is deliberately seeking to prevent Sprint and Staff from being able to respond to arguments that the Commission wanted addressed before it decided to hold a hearing. OPC's arguments are easy to refute and when refuted provide no basis for the Commission to undo its earlier order approving the rate rebalancing. Hence, OPC's blatant attempt to make an "end run" at this late stage in the process. For example, on page 7 of its "Reply," OPC states "The Staff's Affidavits do not (and Public Counsel would suggest, cannot) provide authority from any other regulatory body that has approved inclusion of the loop in the provisioning of basic service." OPC is absolutely wrong in making this assertion. Other state commissions have supported inclusion of the loop cost in provision of local service. For example, just recently, the Florida Commission joined numerous other state commissions in rejecting OPC's loop allocation argument when it ruled:

We find that the ILECs' access charge rates provide support to local exchange service. In making this determination, we accept the economic testimony of the ILECs' and IXCs' witnesses, which treat the cost of the local loop as a cost of basic local service. In particular, the testimony shows there is no economic principle requiring that the cost of that loop be allocated across other ancillary services that are provided over the loop.

We are not persuaded by the testimony of AARP and OPC's witnesses that all or some of the cost of the local loop should be shared, such that any costs shared by more than one service would be excluded from the ILECs' Total Service Long Run Incremental Cost (TSLRIC) calculations. This would be inconsistent with our past decisions, perhaps most notably in our 1998 Report on Fair and Reasonable Rates to the Legislature, that the costs associated with the local loop should not be allocated. The arguments raised by OPC and AARP have been considered and rejected in the past, and we find no new persuasive basis upon which to deviate from our consistent policy on this issue.¹

Undoubtedly, had OPC appropriately placed its affirmative arguments in its April 9, 2004 filing as directed by this Commission in the March 8, 2004 Order Directing Filing, Sprint and Staff could have easily demonstrated that this, as well as the other arguments raised by OPC, lack merit and therefore should be rejected by the Commission. As OPC waited to place its affirmative arguments in its May 28, 2004 filing, OPC violated the Commission's March 8, 2004 Order Directing Filing and, as a result, its response should be struck.

Alternatively, given that OPC's arguments are factually incorrect, contain multiple misstatements and are easily refuted, the Commission should consider Sprint's response herein to OPC's Reply in determining whether to abandon the comprehensive and complete record previously developed and the decision reached by the Commission earlier in this case. The attached affidavits of Messrs. Kent Dickerson and Dr. Brian Staihr address the misguided positions taken by OPC in its May 28, 2004 "Reply". The

¹ Order No. PSC-04-0456-FOF-TL, Docket Nos. 030867-TL, 030868-TL, 030869-TL, 030961-TL, December 24, 2003, pg. 21.

affidavits clearly reveal that there are no contested factual issues. All parties agree that multiple services can and do utilize the local loop. Further, all parties agree that the local loop must be in place in order for basic local service to be available to a customer and that the cost of the local loop is incurred by a company regardless of what other services, if any, the customer may purchase.

The sole issue raised by OPC in December 2001, and the sole issue raised again by OPC today, is the manner in which Sprint allocated the local loop cost it incurs to provide basic local service. As it has done before, and continues to do today, OPC intentionally introduces cost recovery issues into a Commission decision that by Missouri Statute is only a cost causation issue. Sprint agrees that there are multiple services from which you can recover the cost of the local loop via rates. However, this does not mean that the multiple services caused Sprint to incur loop cost in the first place. If two different customers subscribe to basic local service, and one only subscribes to basic local service and the other has basic local service plus vertical services and toll, Sprint's loop costs are the same. What changes is Sprint's ability to recover that cost. In one case, Sprint has multiple services from which it can recover the loop costs and in the other case, Sprint only has one source – basic local service. In this case, the legislature has already considered the multiple revenue sources for recovery and decided to address the loop cost recovered via inflated access charges. By removing the recovery issues, the legislature left only the cost causation issue to be decided by the Commission. Further, in giving this issue to the Commission, the legislature provided the precise costing methodology the Commission must use and defined the services subject to the methodology. Therefore, despite OPC's contentions to the contrary, this case is only

about the LRIC cost of basic local service and access service as those terms are defined by the law.

As OPC has no new facts to add to the record, has not even reviewed Sprint' cost studies, and is requesting the opportunity to place further discussion (not facts) about a cost recovery issue that is not even now before the Commission, the Commission should deny OPC's requests for a hearing. The record in this case is more than adequate to issue findings consistent with the governing statute that support the Commission's earlier decision.

Conclusion

Based on the above, OPC has clearly and willfully violated the terms of the Protective Order issued in Case No. TR-2001-065 and, at a minimum, should have the information that caused that violation removed from its testimony. Further, OPC clearly violated the Commission's March 8, 2004 Order Directing Filing by failing to put forward its affirmative arguments in its April 9, 2004 initial filing. Therefore, OPC's Reply should be struck or, in the alternative, Sprint response to OPC's Reply should be considered.

Respectfully submitted,

SPRINT



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing was served on each of the following parties by first-class/electronic/facsimile mail this 7th day of June, 2004:

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May 13, 2004

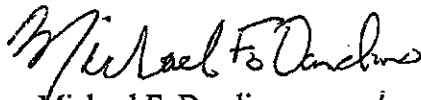
Lisa Creighton Hendricks
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Re: Case No. TR-2002-251

Dear Lisa:

Public Counsel has recently retained William Dunkel and Associates to review the Sprint cost study re the rebalancing case TR-2002-251. While they have executed the necessary confidentiality agreements in this case and in TR-2001-65, the access costing case, and have access to all HC and proprietary information in both cases, they may need to reference some information in the access costing case provided by Sprint in this rebalancing case. Under the terms of the protective order, use of HC information obtained in one case cannot be used for other purposes and in other cases without consent of the party. Please advise if you object to the use of HC information provided in the access costing case (TR-2001-65) in the rebalancing case. Thanks in advance for your cooperation in this matter.

Very truly yours,


Michael F. Dandino
Senior Public Counsel *by room*

MFD:kh

cc: John Idoux



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May 20, 2004

Michael F. Dandino
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Dear Mr. Dandino:

To confirm our conversation of yesterday, and in response to your letter of May 13, 2004, Sprint does not consent to the use of any of the proprietary and confidential information from Case No TR-2001-065 for use in regard to issues in Case No. TR-2002-251. To my knowledge, Sprint has never agreed to such a request.

Further, as I indicated, your request raises several additional concerns. The Office of Public Counsel (OPC) was ordered in the 251 Case to state why Sprint's cost studies were inaccurate and not credible in its May 10, 2004 filing. In OPC's filing of May 10, 2004, OPC failed to provide any basis to conclude that Sprint's cost studies were inaccurate and not credible, other than a general discussion of loop allocation as it relates to basic local service. Sprint is at a loss to understand how OPC can now come forth and attempt to raise concerns for the first time in its May 28, 2004 filing that relate to a cost study it did not attack in its initial filing, Sprint's access cost study.

Very truly yours,

A handwritten signature in black ink, appearing to be "Lisa Creighton Hendricks", written over a horizontal line.

Lisa Creighton Hendricks