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 increase the	)	**Case No. TT-2002-447**
Residential and business monthly rate for	)	**Tariff No. 200200766**
The Metropolitan Calling Area (MCA) Plan.	)	

SPRINT MISSOURI, INC. BRIEF

COMES NOW Sprint Missouri, Inc. d/b/a Sprint ("Sprint") and for its brief in this case states as follows:

INTRODUCTION

This case focuses on Sprint's intention to raise its actual prices for its Metropolitan Calling Area ("MCA") plans to levels that are equal to, or less than, the maximum allowable price previously approved by the Commission. The Missouri Price Cap Statute[1] requires price cap companies to establish a maximum allowable price for all services. In accordance with the statute, the maximum allowable price for existing services was initially set based on the actual current tariff rate on December 31, 1998. Thereafter, price cap companies are allowed to increase the maximum allowable price for non-basic service a maximum of eight percent annually. In this case, Sprint differentiates between the "actual rate" currently being charged and the "maximum allowable price" approved by the Commission and argues that it is neither in the public interest nor required by statute that price cap companies set these two equal.

In connection with Sprint's tariff filing to raise MCA rates to the maximum allowable prices, three legal issues are present. They are:

[1] Section 392.245 RSMo.

(1) Are the Commission's previous decisions approving Sprint's tariff that contained maximum allowable prices and separate actual rates consistent with the Price Cap Statute?

(2) What impact, if any does the just and reasonable rate requirement of Section 392.200(1) have on the Commission's determinations made under the Price Cap Statute?

(3) What impact, if any, does the Commission's decision in Case No. TO-99-483 have on the Commission's determination under the Price Cap Statute?

Sprint maintains that the Commission's earlier decisions approving Sprint's tariffs with separate maximum allowable MCA prices and actual MCA rates are consistent with the Price Cap Statute. Further, neither Section 392.200.1 nor the Commission's decision in Case No. TO-99-483 has an impact on the Commission's decisions under the Price Cap Statute. The Commission should reject OPC's challenge to Sprint's tariff and find that Sprint can set its rates equal to or below the approved maximum allowable price.

BACKGROUND

On March 13, 2002, Sprint filed revised tariff pages to increase the residential and business monthly rate for the Metropolitan Calling Area Plan to an amount at or below the maximum allowable price previously approved by this Commission. On March 19, 2002, OPC filed a motion to reject the tariffs or in the alternative, to suspend the tariffs and request an evidentiary hearing. In its motion, OPC provides two paragraphs and argues that the proposed increase is in excess of the maximum allowable rates. No other argument was raised by OPC. On March 29, 2002, Sprint filed a response to OPC's motion to suspend arguing that its tariff was lawful and within the maximum allowable rate. On April 1, 2002, Staff filed its recommendation to approve the tariff and concurred with Sprint's response to OPC's motion to suspend. On April 11, 2002, the Commission issued its Order suspending the tariff and setting a

pre-hearing conference for April 23, 2002. On April 23, 2002, the parties attended a pre-hearing conference and agreed to brief the legal issues in this case by April 29, 2002.

ARGUMENT

ISSUE 1: ARE THE COMMISSION'S PREVIOUS DECISIONS APPROVING SPRINT'S TARIFF THAT CONTAINED MAXIMUM ALLOWABLE PRICES AND SEPARATE ACTUAL RATES CONSISTENT WITH THE PRICE CAP STATUTE?

The Commission's decisions of December, 2000 and 2001 to approve Sprint's tariff filings containing a maximum allowable rate and a separate price for MCA service were consistent with the language of the Price Cap Statute interpreted as a whole in light of the intent of the statute. Further, allowing separate prices and maximum allowable rates best serves the purpose of the price cap statue.

In August 1999, Sprint entered price cap regulations pursuant to the Price Cap Statute, Section 392.245 RSMo. Since entering price cap regulation, Sprint has filed twice to increase its maximum allowable prices for MCA service. In December 2000, the Commission approved revisions to Sprint's P.S.C. MO. No.22 that established maximum allowable price for MCA services that were eight percent (8%) above the actual rates separately stated in Sprint' tariff. In December, 2001, the Commission approved further revisions to Sprint's Tariff P.S.C. MO. No.22 that established an increased maximum allowable price for Sprint MCA service that was eight percent over the maximum allowable price from the previous year. Sprint did not increase the actual rates in either the December 2000 or 2001 tariff revisions.

In this case, Sprint contends that the 2000 and 2001 Commission decisions regarding Sprint's tariff are lawful as the Price Cap Statute allows actual rates and maximum allowable prices to be separate and different. OPC, on the other hand, contends that actual prices and

maximum prices must be the same. The determination on whether actual prices and maximum allowable rates are separate or equal is crucial in this case as both parties ***agree*** that maximum allowable prices can be raised eight percent per year. Thus, under both parties' positions in this case, if actual prices and maximum allowable prices can be set separately, a provider can cumulate the year's maximum allowable price without altering the actual rate.

In construing the Price Cap Statute, the primary rule of statutory construction, which underlies all others, is to ascertain and give effect to the legislative intent. *Dalton v. Miles Laboratories,* 282 S.W. 2d 564 (Mo. 1955); *McCord v. Missouri Crooked River Backwater Levee*, 282 S.W. 2d 564, 573; *Taney County v. Empire Dist. Elect. Co.*, 309 S W. 2d 610, 614 (Mo. 1958); *Garrard v. State of Public Health & Welfare*, 375 S.W. 2d 582 (Mo. App. 1964). In determining such intent, one of the primary factors for consideration is the purpose or objective of the statute. See e.g., *State ex rel. Gerber v. Mayfield*, 281 S.W.2d 295, 297((Mo. 1955); *In re Duren,* 200 S.W.2d 343, 352(Mo. 1947); *Globe-Democrat Pub. Co. v. Industrial Com'n. of Missouri,* 301 S.W.2d 846, 852(Mo. App. 1957); *Willis v. American National Life Ins. Co.*, 287 S.W.2d 98, 104(Mo. App. 1956); *Wellston Fire Protection Dist. of St. Louis County v. State Bank & Trust Co. of Wellston,* 282 S.W.2d 171, 174(Mo. App. 1955). Further, while the Commission cannot capriciously ignore the plain language of a statute, "in determining what the language really means we may consider the entire purpose and policy of the statute and 'the language in the totality of the enactment' and construe it in the light of 'what is below the surface of the words and yet fairly a part of them.'" *State ex inf. Kamp ex rel. Rodgers v. Pretended Cons. School Dist. No. 1 of Montgomery County,* 223 S.W.2d 484, 488 (Mo. 1949); *State ex rel. Henderson v. Proctor,* 361 S.W.2d 802, 805 (Mo. Banc 1962).

In some instances, "the meaning of the questioned words cannot be determined independent of the particular context in which they are used and the subject matter under discussion." *Union Electric Co. v. Morris*, 222 S.W. 2d 767 (Mo. 1949), *Household Finance Corp. v. Robertson*, 364 S.W. 2d 595, 602 (Mo. 1963); *State v. Bern*, 322 S.W. 2d 175, 177 (Mo.1959). And, "'if a statute is susceptible of more than one construction, it must be given that which will best effect its purpose rather than one which would defeat it, even though such construction is not within the strict literal interpretation of the statute * * *." *Household Finance Corp. v. Robertson*, 364 S.W. 2d 595, 602 (Mo. 1959)

As indicated above, to determine the legislator's intent, the Commission must first look to the language of the statute. In several provisions of the statute, the language clearly contemplates that the rates charged for a service will be a different price than the maximum allowable price. Section 392.245.4.5 RSMo provides:

> "An incumbent local exchange company may change the rates for its services, consistent with the provisions of 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 prices** established for such services under this section." (Emphasis added)

Further, Section 11 again specifically states that:

> 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 services under this section."**

Therefore, the legislature gave price cap companies the option to set their actual rates *below* maximum allowable price and still maintain the upper limits of the maximum allowable price.

In this case, OPC directs the Commission to one sentence in Section 11 and argues that it can be interpreted to mean that there can be no "phantom" maximum allowable price that is not equal to the actual rate charged the customer. This sentence reads:

> The maximum allowable prices for non-basic telecommunications services of an incumbent local exchange company may be annually increased by up to eight percent for each of the following periods upon providing notice to the commission and filing tariffs establishing the rates for such services in such exchanges at such maximum allowable prices.

The fallacy in OPC's interpretation is that it relies on only **one** sentence of the statute and renders Section 4.5 and the other portions of Section 11 meaningless. Further, it overlooks the alternative interpretation of the Price Cap Statute – one that allows separate maximum allowable rates and actual prices-- which best services the purpose of the Price Cap Statute.

As indicated above, the Commission cannot base its interpretation of the Price Cap Statue on one sentence alone within the statute. The Commission must determine the legislative intent by reference to the entire statute, including other portions of Section 11 and Section 4.5. Indeed, the sentence from Section 11 relied on by Sprint *immediately follows* OPC's sentence and reiterates that a provider can change its rates as long as they do not exceed the maximum allowable prices and directs the Commission to approve the tariff changes provided that the rates are not in excess of the maximum allowable prices. Therefore, it is very likely that the words that allow actual prices to be below maximum allowable prices were intended to be read into the sole sentence relied on by OPC. Indeed, unless the Commission preserves the option to set rates below the maximum allowable price, there would be absolutely no need for the last sentence of Section 11, (the sentence referred to by Sprint) as it would be meaningless. If actual rates were always set at the maximum allowable price, there would be no reason to state "not to exceed the

maximum allowable prices" and "not in excess of the maximum allowable price" in that last sentence. Finally, to demonstrate the dangers of relying on a sole sentence, a company could circumvent the OPC's interpretation of the Price Cap Statute by simply raising its actual rate to equal the maximum allowable price for a single day on the first day of the 12-month period, and then lower the actual rate back to the current level. On the last day of the 12-month period, the company could raise the rates back up to the full eight percent, and then file a tariff increasing the rates by eight percent the next day, and then lower the rates back down to current rates, with the ability to increase rates by sixteen percent during the following 12-month period. While this allows a provider to accumulate increases, it is highly unlikely that the legislature intended to place these unnecessary administrative burdens on the Commission and the providers or to inundate consumers with price increases that last one day. The only other option under OPC's interpretation is to force providers to increase a full eight- percent every year. As will be explained below, this is not consistent with the purpose and policies of the Price Cap Statute.

Sprint's interpretation on the other hand, incorporates all portions of Section 11 and is consistent with the other provisions of the Price Cap Statute. Further, the canons of statutory interpretation allow the Commission to recognize the meaning "below the surface of the words, yet fairly a part of them." *State ex inf. Kamp ex rel. Rodgers v. Pretended Cons. School Dist. No. 1 of Montgomery County,* 359 Mo. 639, 645, 223 S.W.2d 484, 488; *State ex rel. Henderson v. Proctor, Mo. (banc),* 361 S.W.2d 802, 805(1). 375 SW 2d 825. Given the other language in Section 11 which explicitly contemplates that actual rates can be set below maximum allowable prices, maintaining that option is clearly a part of what is intended in the single sentence from Section 11 relied on by OPC.

Further, by giving meaning to the entire Section 11, as well as the entire Price Cap Statute, the Commission will best serve the purpose and policy behind the Price Cap Statute. The general purpose of price cap legislation is to provide pricing flexibility to incumbent providers as they move from a monopoly environment to a competitive environment. This is consistent with the Missouri Price Cap Statute as it allows incumbent providers to increase non-basic service without any requirements of undergoing rate cases if a competitor is offering services in their service areas. Section 392.245.2 and 11 RSMo. Further, the Missouri statutes specifically direct the Commission to construe the provisions of the Price Cap Statute with a view towards allowing the competitive market to serve as a substitute for regulation as well as protecting the consumer interest. See Section 392.182.3 and 6 RSMo.

Under Sprint's suggested interpretation – one that allows separate actual rates and maximum allowable pricing – providers are allowed to receive benefits of deregulation -- namely pricing flexibility -- while protecting consumer interest. The consumer interest is protected by not forcing providers to increase their rates by a full eight percent per year. As the facts in this case reflect, if providers know that they can maintain separate rates that are under the maximum allowable prices, and that they can forego taking a particular year's increase until subsequent years, they will not be inclined to take the full eight percent per year. This is a benefit to the consumer, provides pricing flexibility, and allows the competitive markets to replace regulation in making pricing determinations. Other State Commissions evaluating whether to allow separate actual rates and maximum allowable rates under the Price Cap Statute have reached this conclusion. *See Consumer Advocate Division v. Tennessee Regulatory Authority and United Telephone,* In the Court of Appeals of Tennessee, No. M1999-01699-COA-R12-CV 9 (June 15, 2000). On the other hand, taking OPC's approach, Sprint would have had to raise its MCA rates

in December, 2000 and then again in December, 2001 to maintain the full pricing flexibility it is entitled to under Missouri statute. In other words, Sprint would have raised actual rates twice over the past two year to be at the same price level as is currently being proposed. Consequently, consumers would have been paying eight percent more throughout 2001, and an additional eight percent more for year-to-date, 2002. In essence, under the OPC's approach, consumers would have been paying substantially more. Consumers benefit from the Sprint approach because they save money when companies defer increases. Companies also benefit from Sprint's approach because they actually have pricing flexibility to react to market conditions and move toward a market-based, not regulatory-based, environment.

Further, OPC's argument about consumer rate shock is simply misplaced and yet another attempt to deny Sprint and other price cap companies the full pricing flexibility granted to them under Missouri law. The non-basic services that are allowed pricing flexibility under Missouri statute are discretionary, competitive, or both. Consequently, companies are required to apply market-based factors in establishing the price and may not be able to raise rates to the maximum levels year over year. This is exactly the intent of pricing flexibility and this is exactly the situation with Sprint's proposed tariffs in which most of the proposed actual rates are still below the actual maximum allowable price.

The Commission should give greater weight to Sprint's suggested interpretation that allows separate actual rates and maximum allowable prices. Sprint's interpretation considers **all** the language of the Price Cap statute, as well as the purpose and policies behind the Price Cap Statute. Therefore, the Commission's previous decisions are lawful and should be followed in this case as the statute allows separate actual rates and maximum allowable prices.

ISSUE 2: WHAT IMPACT, IF ANY DOES THE JUST AND REASONABLE RATE REQUIREMENT OF SECTION 392.200(1) HAVE ON THE COMMISSION'S DETERMINATIONS MADE UNDER THE PRICE CAP STATUTE?

The just and reasonable rate requirement of Section 392.200.1 does not impact Commission decisions under the Price Cap Statute as the Price Cap Statute explicitly addresses just and reasonable rates. Missouri case law clearly establishes that when a subsequent statute specifically addresses a requirement, the language of that specific statute will prevail over the general statute. *City of Kirkwood v. Leslie Allen*, 399 S.W 2d 30 (Mo. 1966); *City of Springfield v. Forrest Smith*, 125 S.W 2d 883 (Mo. 1939). In this case, Section 392.200 was originally passed in 1939 and generally applies to all telecommunications companies. Section 392.200 requires that all charges for any services rendered by telecommunications companies shall be just and reasonable. The Missouri Price Cap Statute was passed in 1996 and applies specifically to Price Cap companies. Section 392.245.1 of the Price Cap Statute states that "[t]he commission shall have the authority to ensure that rates, charges, tolls and rental for telecommunications services *are just, reasonable and lawful by employing price cap regulation****." (Emphasis added). Therefore, by applying the Price Cap Statute, the Commission satisfies its obligation to ensure that rates are just and reasonable and the Commission's determination on this subject matter is complete.[2]

This conclusion is further supported by the fact that the Price Cap Statute explicitly exempts price cap companies from rate-of-return reviews and from price caps set outside of the Price Cap Statute. See Section 392.245.7 RSMo. Therefore, the legislators intended the

[2] Sprint acknowledges that both Sections 11 and 4.5 of the Price Cap Statute cite to Section 392.200. However, Section 392.200 contains many provisions, the majority of which deal with unjust discrimination. As the Price Cap

determination as to the just and reasonable nature of a charge to be made in reliance only on the Price Cap Statute.

ISSUE 3: WHAT IMPACT, IF ANY, DOES THE COMMISSION'S DECISION IN CASE NO. TO-99-483, HAVE ON THE COMMISSION'S DETERMINATION UNDER THE PRICE CAP STATUTE?

The Commission's decision in Case No. TO-99-483 does not impact the Commission's determinations in this docket because (1) it was intended to apply to CLEC pricing and (2) the Price Cap Statute exempts price cap companies from caps on rates inconsistent with the Price Cap Statute. The decision reached in Case No TO-99-483 was intended to address the impact of competitive local exchange companies' participation in the MCA plan. While the Commission discussed caps for MCA services, the Commission explicitly found that "* * * it is in the public interest to allow ILECs to exercise the full pricing flexibility that they are statutorily entitled to have." (Page 22)[3] Further, the Commission explicitly held in its Conclusions of Law in the Order that "[p]ricing flexibility for price cap companies is subject to maximum allowable prices under Section 392.245, RSMo Supp 1999" (page 25). Therefore, the Commission could not have intended that any cap set in its Order in Case No. TO-99-483 to apply to companies regulated under the Price Cap Statute.

Further, the Missouri statutes do not contemplate that price cap companies will operate under caps other than those set by the Price Cap Statute. The Commission's general authority exercised in the MCA Order to impose any condition upon telecommunication carriers, if its deems such conditions are in the public interest, is limited to those conditions consistent with the

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Statute does not explicitly address unjust discrimination, Sprint must still comply with the requirements of Section 392.200.

provisions of Chapter 392. See Section 392.470 RSMo. This requires that the cap set out in the Price Cap Statute be followed by the Commission when setting any conditions on price cap companies. Further, the Price Cap Statute explicitly exempts price cap companies from any determination of maximum allowable prices for a telecommunications service set outside of the parameters of the Price Cap Statute. See Section 392.245.7 RSMo. Finally, as mentioned above, the Price Cap Statute explicitly addresses just and reasonable rates and finds that as long as the Price Cap Statute is followed, the rates set are just and reasonable. Therefore, there is no provision of the Missouri statutes that would allow the Commission to override the maximum allowable prices established in the Price Cap Statute.

CONCLUSION

For the reasons stated above, Sprint renews its request for the Commission to reconsider its earlier order suspending Sprint's tariff changes raising the actual rates for its MCA services to a level at or below the maximum allowable prices previously approved by the Commission.

[3] Citations to page numbers are to page numbers as they appear on Order published on Commission's website.

WHEREFORE, Sprint requests that this Commission approve its tariff revision and withdraw its motion to suspend.

Respectfully submitted,
Sprint

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing was mailed, postage prepaid, to the parties listed below, this 29th day of April, 2002.

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