

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

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| 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 RESPONSE TO THE OFFICE OF PUBLIC COUNSEL'S JUNE 17TH FILING

COMES NOW Sprint Missouri, Inc. ("Sprint") and provides the following brief response to the June 17th filing by the Office of Public Counsel (OPC's Filing) opposing Sprint's Motion to Strike:

1. In its filing, OPC is very quick to cast aspersions upon Sprint for not making arguments OPC believes weigh in its favor with respect to Sprint's allegation that OPC violated the Protective Order in Case No TR-2001-065 by importing in a wholesale fashion Highly Confidential Information provided by **all ILECs** in the state of Missouri into this case. OPC's arguments opposing Sprint are not that its actions did not violate Paragraph S of the Protective Order in Case No TR-2001-065 that restricts the use of the Highly Confidential Information. Alternatively, OPC claims that because it has general access to the Commission records, Paragraph S does not apply to OPC. However, in making this argument, OPC fails to point out that the Protective Order issued in TR-2001-065, as well as every Commission standard protective order, specifically identifies which provisions do not apply to OPC. Paragraph W of the Protective Order specifically provides:

The provisions of paragraph C, D J and L of this Protective Order do not apply to Staff or Public Counsel.

No where in the Protective Order does the Commission exempt OPC from the requirements of Paragraph S. Therefore, OPC itself has failed to point to relevant authority that contradicts its arguments. Further, the fact that OPC secured the Highly Confidential information about all ILECs from Staff, does not exempt OPC from the requirements of Paragraph S of the Protective Order in Case No.TR-2001-065. Clearly the intent of the Commission's Protective Order is to offer protection to and control of Highly Confidential Information provided by the parties to a proceeding. If OPC is allowed without notice to parties to have free reign with its use of anyone's highly confidential information because it has access to the Commission's records, then the ability of the Commission to offer any assurance that it can control and limit use of sensitive information is illusory. The provision of the Protective Order that Sprint seeks to enforce in its motion serves a vital purpose in the Commission's ability to regulate utilities and it should be enforced.

2. Further, with all due respect to OPC, OPC's Filing continues to mischaracterize the Court of Appeals Order. Despite OPC's statements on page 11 -12, the Court of Appeals did not hold that the record developed in this case is inadequate. The Court of Appeals held that the *findings* were not adequate and made no ruling on the sufficiency of the record. Second, while OPC's suggests that "the Court noted that the Commission did not conduct its own investigation", OPC failed to complete the Court's statement that went on to add that the Commission did not conduct an investigation within the year deadline that OPC maintained was present in Section 392.245.9 RSMo. This observation of the Court relates solely to the timing of the investigation, not the caliber of the investigation. Further, the Commission admitted in its briefs that it did not conduct the investigation within the first year of Sprint coming under Price Cap, but argued that omission was not fatal to its decision to approve the tariff. The Court

accepted the Commission's arguments on this point as it did not strike down the earlier ruling on this basis.

3. Sprint reiterates that the only disagreement between the parties at this point is the manner in which the loop cost is allocated for basic local service. On this issue, OPC has failed to identify any factual disputes that need to be resolved in a hearing. While OPC claims to raise additional issues regarding whether the evidence in the record complied with contested case standards and that a hearing was necessary to conduct an investigation, the Court of Appeals has already rejected OPC's arguments on these issues when it ruled: (1) there is no statutory requirement for a hearing in Section 392.245.9 RSMo; (2) there is no property interest at stake that requires due process right to a hearing; (3) no contested hearing is contemplated by the statute; and (4) the Commission did not abuse its discretion in denying Public Counsel's request for a hearing. *State ex rel. Coffman v. PSC*, (121 S.W. 3d 534, 539-542 (Mo App. 2003)). As the Court of Appeals has decided these additional issues, they are not now in front of the Commission for determination.

4. Finally, Sprint is confident that the Commission can look at OPC's April 9th filing of 15 pages and its May 28th filings of over 68 pages and make an objective determination of whether OPC waited unfairly to make arguments in support of its request for a hearing in this case in its later filing.

Respectfully submitted,

SPRINT



Lisa Creighton Hendricks MO Bar #42194
6450 Sprint Parkway, Building 14
KSOPHN0212-2A253
Overland Park, Kansas 66251
Voice: 913-315-9363
Fax: 913-315-9829
E:mail: moreg@mail.sprint.com

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 18th day of June, 2004:

William K. Haas
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
gencounsel@psc.state.mo.us

Michael F. Dandino
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102-7800
opcservice@ded.state.mo.us



Lisa Creighton Hendricks