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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 19th
day of August, 1999.

In the Matter of the Petition of Sprint)
Missouri, Inc. Regarding Price Cap)
Regulation Under RSMo Section 392.245) CASE NO. TO-99-359
(1996).)

ORDER APPROVING PRICE CAP APPLICATION

On February 23, 1999, Sprint Missouri, Incorporated (Sprint) filed a verified petition seeking price cap regulation under Section 392.245, RSMo¹. Sprint has asserted that it is eligible to convert from rate base/rate of return regulation to price cap regulation. Sprint cites as authority for its request Section 392.245.2 which states:

A large incumbent local exchange telecommunications company shall be subject to regulation under this section upon a determination by the commission that an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the large incumbent company's service area.

In order to qualify for price cap determination under the statute, the Applicant must show: (1) that a competitive local exchange company (CLEC) is properly certificated to provide service in

¹ All statutory references are to the Revised Statutes of 1998 Cumulative Supplement unless otherwise noted.

the Applicant's service area, and (2) that the CLEC is in fact providing service in any part of the Applicant's service area. In support of its application, Sprint cites the Commission's Report And Order issued on November 25, 1997, which granted a certificate to ExOp of Missouri Incorporated (ExOp) to provide basic local exchange service within the exchanges of Sprint. On June 3, 1998, the Commission issued an order approving the interconnection agreement between ExOp and Sprint and ExOp's tariff became effective on December 15, 1998.

Sprint attached to its verified petition documentation in support of the fact that ExOp is providing service to customers within the Kearney and Platte City, Missouri, exchanges of Sprint.

The Commission has reviewed the Petition filed by Sprint and has determined that:

a) Sprint is a local exchange telecommunications company which has been authorized to provide and has provided telecommunications services in a specific geographic area in the state of Missouri prior to December 31, 1995, and thus is an incumbent local exchange telecommunications company as defined in Section 386.020(22).

b) Sprint has at least 100,000 access lines in the state of Missouri, and thus is a large local exchange telecommunications company as defined in Section 386.020(30).

c) ExOp received a certificate of service authority to provide basic local telecommunications service on November 25, 1997 and ExOp's tariffs became effective on December 15, 1998.

d) ExOp received its certificate of service authority to provide basic local telecommunications services subsequent to December 31, 1995, and thus is an alternative local exchange telecommunications company as defined in Section 386.020(1).

e) ExOp is providing basic local telecommunications service to customers in the Kearney and Platte City, Missouri, exchanges of Sprint.

The Commission has determined that Sprint has met the conditions contained in Section 392.245.2, and thus shall be subject to price cap regulation.

Section 392.245.3 provides that the maximum allowable rates for a company subject to price cap regulation are those in effect on December 31 of the year preceding the year in which the company is first subject to price cap regulation, except as otherwise provided in the statute. The Commission has determined that the initial maximum allowable prices which Sprint may charge for its telecommunications services are the prices which were in effect on December 31, 1998.

Section 392.245.4 provides that the maximum allowable rates for basic local telecommunications service and exchange access service shall not be changed prior to January 1, 2000, except in certain circumstances. The Commission has determined that Sprint shall be prohibited from changing the maximum rates for those services before January 1, 2000, or until such time as one of the statutory exceptions may apply.

On March 5, 1999, the Office of the Public Counsel (Public Counsel) filed a motion requesting an evidentiary hearing in which it

argued that "an evidentiary hearing is necessary prior to this Commission making such a determination as required by Section 392.245 (1996), RSMo." The Commission has previously held, in Case No. TO-99-294² that "The statute does not require notice to the public nor does it state that such determination may only be made after hearing. In fact, the statute does not require findings of fact and conclusions of law, but rather, only anticipates 'a determination by the Commission' that such events have occurred." Upon judicial review, the court has upheld this position. Section 392.245(2), RSMo Supp. 1998, does not require notice and hearing prior to the determination of the PSC that a large local exchange telecommunications company is subject to price cap regulation. See State of Missouri ex. rel. Public Counsel Martha S. Hogerty v Missouri Public Service Commission, Case No. CV199-282CC, conclusions of law 2, page 5, Findings of Fact, Conclusions of Law and Judgment, issued July 27, 1999.

The Commission has determined that Sprint qualifies under the statutory provision and shall be granted price cap status.

IT IS THEREFORE ORDERED:

1. That Sprint Missouri, Incorporated has met the prerequisites of Section 392.245.2, RSMo Supp. 1998, and may therefore convert from rate base/rate of return regulation to price cap regulation.

² In re the petition of GTE Midwest Incorporated regarding price cap regulation under RSMo Section 392.245 (1996).

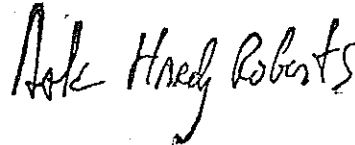
2. That the maximum allowable prices which may be charged by Sprint Missouri Incorporated are the prices which were in effect on December 31, 1998.

3. That Sprint Missouri Incorporated may not change the maximum allowable prices for basic local telecommunications service or exchange access service prior to January 1, 2000, unless otherwise authorized by the Commission in accordance with Sections 392.245.8, 392.245.9, or 392.247, RSMo Supp. 1998.

4. That this order shall become effective on August 29, 1999.

5. That this case may be closed on August 30, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray,
Schemenauer, and Drainer, CC., concur

Roberts, Chief Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION