

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

**In the Matter of the Tariff Filings of )  
Sprint Missouri, Inc. d/b/a Sprint to )  
modify Rates in Accordance with Sprint's )  
Price Cap Regulation, Pursuant to )  
Section 392.245, RSMo 2000. )**

**Case No. IT-2004-0134  
Tariff No. JI-2004-0272**

**In the Matter of the Tariff Filings of )  
Sprint Missouri, Inc. d/b/a Sprint to )  
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**Case No. IT-2004-0135  
Tariff No. JI-2004-0273**

**SPRINT'S RESPONSE TO  
OFFICE OF PUBLIC COUNSEL'S MOTION TO  
SUSPEND TARIFF AND REQUEST FOR EVIDENTIARY HEARING  
AND STAFF'S MOTION TO CONSOLIDATE**

COMES NOW Sprint Missouri, Inc. ("Sprint") and hereby files its response to both (a) the Office of Public Counsel's ("OPC's") Motion to Suspend Tariff and for Evidentiary and Local Public Hearings ("OPC's Motion") and (b) Staff's Motion to Consolidate. Sprint notes that both the above referenced cases<sup>1</sup> are inextricably linked and must be considered as a whole. In response, Sprint states as follows:

1. On August 29, 2003, Sprint filed tariff revisions to its Access Service Tariff and its General Exchange Tariff which contained the last of four rate rebalancing steps allowed under Section 392.245.9 RSMo (2000). Specifically, Sprint proposed to reduce its carrier common line rates by approximately one cent per minute (\$0.00414 originating and \$0.00624 terminating). At the same time, Sprint proposed to increase basic local service rates by \$1.50 per month. The total amount of the local service

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<sup>1</sup> While the OPC and Staff Motions were issued only for Case No. IT-2004-0134, Sprint notes that both cases are interrelated, and hereby incorporates this Response in both cases. The only reason two

increase is equal to the total amount of the carrier common line decrease. Thus, Sprint's rate rebalance is revenue neutral and provides no financial benefit to Sprint.

2. On September 15, 2003, OPC filed its motion requesting that the Commission suspend Sprint's tariff filing and set the matter for an evidentiary and public hearing. On September 23, 2003, Staff filed its Response to the Office of Public Counsel's Motion to Suspend. Staff also filed its Recommendation to approve Sprint's tariffs and a Motion to Consolidate. Sprint will address the OPC Motion and the Staff Motion separately.

3. As mentioned above, Sprint's proposed rate rebalance is the fourth of four rebalances allowed by statute. The first of four rate rebalances (the 2000 rate rebalance) was generally viewed to be automatic<sup>2</sup> whereas the remaining three rebalances could only occur if the Commission made a determination that an ILEC's access rates were above costs and its basic local service rates were below costs. Sprint made this demonstration as part of the second rate rebalance process in 2001. The 2001 and 2002 rate rebalances were approved by this Commission without an evidentiary or public hearing despite the fact that OPC filed similar motions in both years. The Commission's 2001 approval of Sprint's rate rebalance was appealed to the Cole County Circuit Court by the OPC and upheld. (Sprint provides this brief history for overview purposes – case numbers and statute references will be provided when discussed in detail below.)

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separate tariff filings were made rather than a single, comprehensive filing was to accommodate the requirements associated with electronic filings.

<sup>2</sup> The first rate rebalance did not require a demonstration that access rates were above costs and basic local service rates were below costs; however, statute did require a mathematical comparison between interstate and intrastate access rates, including carrier common line, as well as a 10% reduction in Sprint's instate toll rates.

### **OPC's Motion**

4. OPC makes four primary allegations in its September 15, 2003 Motion:
  - a) that the Commission's review of Sprint's tariffs is not limited to a "mathematical test" (§ 1);
  - b) that the Commission must determine if the proposed maximum allowable prices of non-basic services are just and reasonable and consistent with the Commission's finding in Case No. TT-2002-447 (§ 2);
  - c) that Sprint's adjustments, rebalancing, and basic local services are not supported by evidence and that the Commission has not conducted an investigation into Sprint's incremental cost of local basic service or intrastate switched access services (§ 3 - § 6); and
  - d) that an evidentiary hearing and local public hearings are required (§ 7 - § 8).

Sprint will address each OPC allegation below; however, Sprint points out that these are the same allegations that OPC made in 2001 and 2002, which were rejected by this Commission.

5. OPC's first allegation is that the Commission's review is not limited to a "mathematical test". In fact, the Commission explicitly found the opposite in Sprint's 2001 rate rebalance filing.<sup>3</sup>

In its Memorandum and Recommendation, filed on December 4, Staff explains that Sprint proposes to reduce its switched access charges in such a way as to decrease its annual revenue by \$2,968,000; Sprint proposes to make up this revenue loss by raising its basic local service rates by \$1.50 per month per access line, with an estimated revenue impact of \$2,967,000 annually. The access rate

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<sup>3</sup> Case No. TR-2002-251, Tariff No. 20020318, Order Regarding Tariff And Motion To Suspend, issued December 6, 2002

reduction will be passed on to consumers by their interexchange carriers. Staff's analysis shows that the proposed rebalancing is compliant with Section 392.245; that the mathematical test set by the statute is met. Staff recommends that the Commission approve the proposed tariff sheets. Sprint's cost study, while highly confidential, also shows that the statutory test is met.

Public Counsel's motion does not contend that Sprint's tariff sheets are noncompliant; rather, it asserts that Public Counsel does not know them to be compliant. Upon review of the material filed by Staff and by Sprint, the Commission concludes that the proposed tariff sheets meet the requirements of Section 392.245.9. Therefore, Public Counsel's motion must be dismissed because the law requires that the Commission approve Sprint's tariffs. (Emphasis added)

6. As will be discussed in detail below, Sprint does meet the mathematical test set by statute. Sprint's access rates remain substantially above cost while rates for local basic service remain substantially below costs. This implicit subsidy is an inherent inhibitor to meaningful competition in the local arena and is inconsistent with Missouri telecommunications policy.

7. OPC's second allegation is that the "PSC must determine if the proposed maximum allowable prices for non-basic services and adjustments are just and reasonable". While Sprint has a different opinion than OPC on this matter, this is a moot point because Sprint's proposed tariff changes do not impact non-basic services. Sprint's rate rebalance proposal impacts basic service and access service. Sprint proposes no changes to its non-basic services under these proposed tariff changes. Furthermore, Case No. TT-2002-447 has absolutely no relevance or impact to cases being addressed here.

8. The third allegation raised by OPC is that Sprint's adjustments, rebalancing, and basic local services are not supported by evidence and that the Commission has not conducted an investigation into Sprint's incremental cost of local basic service or intrastate switched access services. Not only does Sprint feel that OPC is wrong, the Commission has also previously ruled that OPC is wrong. In Case No. TR-

No. TR-2002-251, Sprint filed verified cost studies and the Commission Staff conducted an extensive investigation over several months of the cost of Sprint's switched access and local services. This investigation was conducted by a Regulatory Economist and an Auditor of the Commission staff. Both of these Commission Staff members maintained under oath that they had reviewed Sprint's cost studies and that the cost studies demonstrated that Sprint's tariff filing complied with the statutory requirements. Despite this evidence, OPC filed a motion to suspend and conduct a hearing making the exact same arguments made in support of OPC's Motion in this case. In its *Order Regarding Tariff and Motion to Suspend*, the Commission found that:

The cost study and analyses filed by Sprint and by Staff show that Public Counsel is simply wrong in its assertion that the Commission has failed to determine that the proposed tariff sheets comply with the law. The Commission's Staff reviewed ample cost material provided by Sprint and performed a lengthy analysis of that cost data. Furthermore, the standard set by the statute is mathematical. Simply put, the test requires that basic local prices after adjustment be below cost, while access rates after adjustment be above cost. The proposed tariff sheets either meet the requirements of the law or they do not. Furthermore, the statute in question requires the Commission to approve the rebalancing if the mathematical test is passed: "If the commission determines that [the mathematical test is passed] . . . the commission shall allow the company to offset the revenue loss . . . ." (Emphasis added).

9. The statute has not changed regarding this issue and the OPC offers no new arguments its latest Motion. The Commission already has performed the necessary investigation and found that Sprint passes the mathematical test contained within statute. The ample cost material provided by Sprint, as well as the lengthy analysis of that cost data performed by Staff, clearly demonstrated that Sprint not only met the requirements for 2001 but for the remaining two rate rebalances allowed by statute. In Sprint's 2001 case, Sprint noted the following:

"[T]he straight forward mathematical determination unquestionably demonstrates that Sprint's cost of local service is substantially above its rates and its cost for access are substantially below its rates."

"The mathematical questions before the Commission are apparent:

- (a) Are Sprint's costs to provide basic local residence service higher than **\*\*\*Begin Confidential \*\*\*** **\*\*\*End confidential**;
- (b) Are Sprint's costs to provide basic local business service higher than **\*\*\*Begin Confidential \*\*\*** **\*\*\*End confidential** ; and
- (c) Are Sprint's costs to provide access services lower than **\*\*\*Begin Confidential \*\*\*** **\*\*\*End confidential**?

"[T]he answer to each one of these questions is yes. Sprint's statewide average costs to provide local basic service is **\*\*\*Begin Confidential \*\*\*** **\*\*\*End confidential** for residence and business, respectively.<sup>4</sup> For access services, Sprint's average statewide cost is **\*\*\*Begin Confidential \*\*\*** **\*\*\*End confidential** (also for a two-way call).<sup>5</sup>

10. From a mathematical perspective, Sprint clearly meets the statutory requirements in that its cost to provide basic local service is higher than the price and the opposite is true for access services. This was not only true in 2001 but was true for 2002 and remains true for 2003.

11. Sprint notes that the OPC has failed to offer a single criticism of the inputs, methodology, or calculations of any aspect of Sprint's cost studies. The OPC has had access to the same cost studies used by Staff in its review, as well as the Staff's lengthy analysis, for nearly two years. OPC has access to electronic copies of the cost study which should have facilitated and expedited any review. OPC offers no arguments claiming that the cost studies are in any way inappropriate or inaccurate. Furthermore, in the OPC's appeal of Sprint's

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<sup>4</sup> This is after the standard 25% allocation to interstate services. Actual costs are higher.

2001 rebalancing to the Circuit Court of Cole County and now to the Missouri Court of Appeals, Western District, it offers absolutely no criticism of Sprint's cost studies even though it has had more than sufficient time to review the details. Clearly, there is not an issue relating to the cost basis for the Commission to approve in Sprint's tariff revisions.

12. The OPC's fourth allegation regards evidentiary hearings and local public hearings. These issues were also raised by the OPC in 2001 and 2002 and were rejected by this Commission at that time. OPC continues to argue that the Commission must hold a hearing with all the associated rights of a contested hearing to address the issues OPC has raised. This argument completely ignores the fact that there is nothing upon which to have a hearing and the fact that the controlling statute does not require a contested case proceeding, and thus no hearing was required to approve Sprint's filing.

13. OPC's argument that hearings are required also ignores the many conclusions reached by the Commission and the Cole County Circuit Court. The Commission has rejected OPC's requests for a hearing in connection with Sprint's second and third rate rebalancing. The Cole County Circuit Court affirmed the Commission's order in Sprint's second rate rebalancing in Case No. 02CV323112. There, the Court found no hearing was necessary because an investigation under Sec. 392.245.9 is not a contested case and it is improper "to construe the statute to find an implicit requirement for notice and hearing."<sup>6</sup>

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<sup>5</sup> PSC Case No. TR-2002-251, Sprint's *Notice Of Compliance With December 4, 2001 Order Directing Filing And Response*, filed December 4, ¶5

<sup>6</sup> State of Missouri ex rel. Coffman v. PSC, Case No. 02CV323112 (Cole Co. Cir. Ct. Aug. 3, 2002).

14. The controlling decision in this case – whether the mathematical test set by statute – was made in Case No. TR-2002-251. Under the applicable statute, Section 392.245, that decision authorized three subsequent rate rebalancing as long as the mathematical test remains satisfied. Therefore, OPC can not relitigate the issue of Sprint's cost studies in this case.

15. Further, Section 392.245 does not provide OPC with a right to a hearing. Legislative intent can only be derived from the words of the statute itself. *State ex. rel. Missouri State Bd. Of Registration for the Healing Arts v. Southworth*, 704 S.W. 2d 219, 224 (Mo. banc 1986). Courts must give effect to the language used in the statute and cannot read into a statute a policy different than that enunciated by the legislature. *City of St. Louis v. Crowe*, 376 S.W. 2d 185, 190 (Mo. 1964); *Wollard v. City of Kansas City*, 831 S.W. 2d 200, 203 (Mo. Banc 1992). Section 392.245.9 RSMo is the controlling statutory provision for this proceeding. Section 392.245.9 RSMo 2000 requires the Commission to allow a price cap regulated local exchange company which reduces its intrastate access service rates, to offset the revenue loss resulting from the access service rate reduction by increasing its monthly prices for basic local services, if the Commission determines during its investigation that the company's costs are consistent with the statute. This investigation occurred in Case No. TR-2002-251. Section 392.245.9 RSMo 2000 does not contain a requirement that these determinations must be made "after notice and hearing." The absence of such "after notice and hearing" language from Section 392.245.9 is in stark contrast to the procedures mandated by the legislature for many other actions and findings by the Commission. For example, Section 392.210.2 that reads in relevant part: ...



and the Commission may, after a hearing, prescribe by order...." and Section 392.220.6 RSMo that reads in relevant part: "If after notice and a hearing, the Commission determines that a telecommunications company has violated the requirements of 392.200...." There are numerous other examples of where the legislatures explicitly included a hearing requirement.<sup>7</sup> Therefore, since the legislature did not include the "after notice and hearing" requirement in Section 392.245.9, this controlling statute should not be construed by the Court to require an evidentiary hearing in this proceeding.

16. The procedures set forth in Section 392.245.9 are analogous to the procedures that apply when the Commission exercises its discretion under the "file and suspend" method of ratemaking. See *State ex rel. Laclede Gas Co. v. Public Service Comm'n*, 535 S.W.2d 561, 566 (Mo. App. 1976). The procedures are also analogous to the procedures used by the Commission for applications involving transfers of assets, mergers and consolidations,<sup>8</sup> financing cases,<sup>9</sup> stock dividends,<sup>10</sup> and private shared tenant service certificates.<sup>11</sup> These procedures do not require formal notice or evidentiary hearings and these matters are treated as "non-contested" cases.<sup>12</sup>

17. Finally, there is no other legal basis upon which OPC can claim a hearing requirement. Missouri law is clear that utility customers do not have any vested right to any particular rate except to the extent that the Public Service law

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<sup>7</sup> Other examples include Section 392.210(2); Section 392.220(6); Section 392.230(5); Section 392.240(1) and (2); Section 392.240(3); Section 392.250; and Section 392.280 RSMo 2000.

<sup>8</sup> See Section 392.300 RSMo 2000.

<sup>9</sup> See Section 392.310 RSMo 2000.

<sup>10</sup> See Section 392.320 RSMo 2000.

<sup>11</sup> See Section 392.520 RSMo 2000.

<sup>12</sup> Section 536.060 specifically authorizes summary action by state agencies when it states in part: "[N]othing contained in Section 536.060 to 536.095 [of the Administrative Procedures and Review

grants him or her such right: and that a utility customer is not entitled to invoke claims of due process or equal protection under the law in such circumstances. *Jackson County, Missouri et al v. Public Service Commission* 532 S.W. 2d 20, 31 (Mo. 1975) cert denied 429 U.S. 822 (1976). Since OPC represents the utility customer, OPC has no due process rights that are infringed upon by the failure of the Commission to conduct a hearing in the absence of a statutory requirement.

#### **Staff's Motion To Consolidate**

18. In paragraph 8 of its September 23<sup>rd</sup> Response, Recommendation and Motion to Consolidate, Staff moves that the Commission consolidate Case No. IT-2003-0134 and Case No. IT-2004-0135 if the Commission ultimately suspends one of the two tariffs. Sprint notes that the two cases are inextricably linked and must be considered as a whole to preserve the revenue neutrality requirements inherent in the statute. Otherwise, Sprint would be left in a position to reduce access rates by millions of dollars without the opportunity for a corresponding rate increase to cover the loss of revenue. Sprint wholeheartedly supports Staff's Motion for Consolidation.

#### **CONCLUSION**

WHEREFORE Sprint respectfully urges the Commission to consider the above and (a) reject the OPC's Motion and (b) approve Sprint's tariff change request.

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Act] shall be construed (1) to impair the power of any agency to take lawful summary action in those matters where a contested case is not required by law...."

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 25th day of September, 2003.

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