

**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 )  
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) )

Case No. TR-2002-251

**SPRINT'S RESPONSE TO OPC'S MOTION TO ESTABLISH  
INVESTIGATION INTO SPRINT'S COSTS OF LOCAL BASIC  
SERVICE AND INTRASTATE SWITCHED ACCESS**

COMES NOW Sprint Missouri, Inc. ("Sprint") and hereby provides the following Response to the Motion to Establish Investigation into Sprint's Costs of Local Basic Service and Intrastate Switched Access as Required by Section 392.245.5 RSMo filed by the Office of Public Counsel on February 10, 2003. (OPC's Motion):

1. The Commission should reject OPC's Motion to establish an investigation in the above mentioned case. Simply put, an investigation into Sprint's cost of local basic service and intrastate switched access services has already been completed. That investigation served as the foundation for the Commission decision rendered on December 6, 2001 approving Sprint's tariff. Furthermore, the Commission's decision to not hold evidentiary hearings has been upheld by the Court. The Court returned this case back to the Commission for the sole purposes of developing sufficient findings of fact – a task that can be completed with the current record and without evidentiary hearings or additional investigations. OPC's Motion is just one more attempt to hold hearings that are not required nor warranted.

2. The Court of Appeals clearly ruled that "no contested hearing is contemplated by the statute." The Court also furthered ruled that there was no property interest at stake that would require a hearing. The fault that the Court found with the Commission's order was that the order failed to provide sufficient findings of fact to determine how the controlling issues were decided. The Court also stated that detailed factual summaries were not necessary. Nothing in the Court's Opinion in any way suggests that the Commission must have a hearing to issue sufficient findings. Indeed, the Court Opinion states just the opposite.

3. Sprint disagrees with the inaccurate conclusions reached by the OPC in its Motion. Amongst other things, OPC states that "the Court noted that the Commission did not conduct its own investigation" (OPC Motion page 2). Sprint brings the full sentence of the Court Decision to the Commission's attention: "the Commission, however, failed to conduct an investigation into Sprint's costs of providing basic local service and intrastate access service within the one deadline provided by Section 392.245.9 RSMo." (Court Decision page 3-4). 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. Finally, nothing about OPC's request for an investigation at this time in any way changes the timeliness of the investigation.

4. Another aspect of OPC's Motion which Sprint disagrees with is OPC's inaccurate characterization of a footnote in the Court's opinion. OPC suggests that the Commission "should hear evidence and make findings of fact on whether [Sprint's] cost studies used as justification for rebalancing were properly performed". (OPC Motion page 2) However, footnote 6 of the

Court decision required no such hearing nor did footnote 6 rule that the cost studies were flawed in any manner. Footnote 6 simply reiterated that the Commission December 6, 2001 Order lacked adequate findings of fact.

5. The current verified record is more than sufficient to address the Court's comments in footnote 6. Footnote 6 states that the "proper allocation of costs between each category of service is central to determining whether the rebalancing is appropriate under Section 392.245.9, RSMo." (Last sentence of footnote 6 of Court Decision) The issue of loop allocation is defined by reference to the statutes. Section 392.245.9 RSMo requires that the Commission use long run incremental costs. Section 386.020(32) RSMo defines long run incremental costs. Section 386.020(32) RSMo reads as follows:

(32) **"Long run incremental cost,"** the change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology, and excluding any costs that, in the long run, are not brought into existence as a direct result of the increment of output. The relevant increment of output shall be the level of output necessary to satisfy total current demand levels for the service in question, or, for the new services, demand levels that can be demonstrably anticipated.

Section 386.020(32) *specifically excludes* from the Commission's consideration any cost not brought into existence as a direct result of the increment of output subject to the cost studies.

The Missouri statutes further provide definitions for the services subject to the Commission review in this case – basic local telecommunications service and exchange access service.<sup>1</sup>

Under those definitions, the basic local telecommunications service requires the offering of "two-way switched local service within a local calling scope." The local loop must be constructed to provide this. Thus, the loop is a cost brought into existence as a direct result of offering basic local service. Alternatively, under the definition of exchange access, the local exchange network is assumed to already exist and the service merely allows a customer "to enter and exit" an existing network. Therefore, it is consistent with the statutory definition of long run

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<sup>1</sup> Section 386.020(4) RSMo and Section 386.020(17) RSMo. respectively

incremental cost to include the entire portion of the jurisdictionalized loop cost as cost of basic local service when identifying "long run incremental cost" of basic local service as required by Section 392.245.9 RSMO pursuant to the definition provided in Section 386.032 RSMo.

Similarly, it is consistent with the statutory definition of long run incremental cost to exclude the jurisdictionalized loop cost as cost of access service when identifying the long run incremental cost of access services that offers entry and departure for the local telecommunications network. If Sprint did not offer access service, the cost of the loop would not go away.

6. Section 392.245.9 RSMo provides that the Commissions shall review the long run incremental costs. Within the statute the legislature has already made the pricing policies. The Commission's decision in this case allowed a statutory pricing mechanism to be implemented that put more of the cost of local service in the local service rate and to remove some of those subsidies from the access rate.

7. Given the clear definition of long run incremental costs provided by the legislature, the issues of loop allocation can be addressed by findings of facts the Commission issued based on the current record. An understanding of the facts that were before the Commission and how those facts relate to the requirements of Section 392.245.9 and Section 386.032 RSMo will satisfy any footnote comments of the Court.


8. In summary, this case was remanded only because the Order that did not contain sufficient facts to advise the Court of the basis of the Commission's decision. In remanding the Commission order, the Court made it clear that no hearing is required by the statute or by due process. All that is needed is a new order that provides the basis for the Commission's earlier decision. As stated above, the current record has more than enough evidence for the Commission to issue adequate findings of fact and conclusions of law. In fact, Sprint filed its Proposed Findings of Facts and Conclusions of Law on February 9, 2004 showing that there was

a substantial verified record in front of the Commission when this case was decided on December 6, 2001. That verified record will clearly show that the Commission has completed an investigation and that Sprint meets the mathematical test defined in statute.

WHEREFORE for the reasons stated above, Sprint respectfully requests the Commission once again deny OPC's Motion for hearing.

Respectfully submitted,

SPRINT



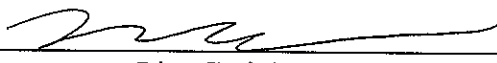
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### **CERTIFICATE OF SERVICE**

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 20th day of February, 2004:

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