

**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 PROPOSAL FOR PROCEEDING**

COMES NOW Sprint Missouri, Inc. ("Sprint") and its Proposal for Proceeding in the above referenced case in response to the Opinion issued by the Missouri Court of Appeals, Western District on October 28, 2003 in Case No. WD62016 (Appeal Case). In support of its Proposal for Proceeding, Sprint states as follows:

1. On February 2, 2004, the Circuit Court of Cole County, Missouri, issued its order remanding this matter to the Commission pursuant to the Mandate of the Missouri Court of Appeals. The Court of Appeals Mandate, issued on October 28, 2003, concluded "[i]n short, the Commission's [December 6, 2001] order fails to provide sufficiently detailed findings to permit this Court to conduct a meaningful review". (Appeal Order page 13)

2. Given the Court's ruling, Sprint strongly urges the Commission to issue further findings based on the existing and verified record established by the Commission when approving Sprint's tariff in December of 2001. This avenue is available to the Commission and it should be pursued. *See State of Missouri ex rel. AG Processor, Inc. v.*

*Thompson*, 100 S.W. 3d 915, 922 (Ct App 2003) (The Commission may simply reformulate findings based on record on remand for further findings); *see also* Amended Report and Order, *In the Matter of Alma Telephone Company Filing to Revise Access Service Tariff*, PSC Mo. No. 2, Case No TT-99-428 et al. (April 9, 2002) (Reformulate factual findings issued after similar remand despite request to conduct further hearings). The certified record in this case supports the Commission's earlier decision and it should be used to supply adequate findings for the December 6, 2001 Order.

3. The existing record in this case contains substantial verified facts that will allow the Commission to satisfy the direction of the Court. Specifically, the verified record in this case contains over 2,000 pages of documented cost studies and supporting material. This costing information is verified by Sprint's Director of Network Costing and was reviewed by two individuals on the Staff of the Missouri Public Service Commission. Both the Staff's Regulatory Auditor and Regulatory Economist found Sprint's cost studies to be true and correct to the best of their knowledge. Based on the extensive record, the Commission determined that Sprint's tariff complied with the requirements of Section 392.245.9 RSMo on December 6, 2001. As demonstrated by the attached Proposed Findings of Facts and Conclusions of Law,<sup>1</sup> the record addressed all issues raised by OPC in the original proceeding,<sup>2</sup> as well as any issue noted by the Court of Appeals.<sup>3</sup> Therefore, the Commission does not have to gather any additional evidence.

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<sup>1</sup> The Proposed Findings of Facts and Conclusions of law are the same Proposed Findings submitted by Sprint on February 9, 2004 in this case.

<sup>2</sup> The core of OPC's *Motion to Suspend and For Hearing on Rebalancing and Investigation into Cost Justification for such Rebalancing* was an allegation that no investigation had been completed as no hearing occurred and the cost studies were not a part of the record. The verified record that reflects staff review of extensive cost studies, as well as the lack of a hearing requirement is more than sufficient facts to respond to OPC's Motion.

<sup>3</sup> The Court noted that that the Commission should address the basis upon which it concluded that the cost studies were accurate and address specifically how the results of the cost relate to the stat-wide

4. The fact that the record was developed without a hearing does not make the record deficient. Indeed, the Court of Appeals affirmatively ruled that no hearing was, or is, required under the applicable statute. Further, the Court explicitly ruled that there is no due process right to a hearing. The sole basis of the Court's remand is that the findings in the Commission's December 6, 2001 Order failed to advise the Court of the grounds upon which its earlier decision was based. The Commission can, and should, respond to the Court's remand by reviewing the verified record and providing sufficient and adequate findings based on the record that supported its 2001 decision.

5. Adequate findings do not require a hearing. The Commission routinely issues findings based on verified records compiled without a hearing. (*See e.g.*, recent orders approving interconnection agreement, Case Nos. TK-2004-0255; TK-2004-0179, TK-2004-0230 and TK-2004-0180.)<sup>4</sup> Indeed, the Commission also makes findings based on non-verified records compiled without a hearing. (For examples from last month, *see Tariff Filing of Sprint Missouri Inc d/b/a/ Sprint to Modify Rates In accordance with Price Cap Regulation Pursuant to Section 392.245 RSMo* (2000), Order Approving Tariffs, Case Nos. IT-2004-0225-0229 (January 15, 2004); *In the Matter of tariff Filing of AT&T Communications of the Southwest, Inc To Extend the Enrollment Date of One Rate 5 Cent Plan, Order Approving Tariffs*, Case No XT-2004-0288 (January 15, 2004).

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price for the services. As reflected in Sprint's Proposed Findings, the cost studies were verified by Sprint Director of Costing, as well as attested to be true to the best of the knowledge and belief of a regulatory Economist and Auditor. The record also reflects precisely how the results of the cost study relate to the state-wide prices for the services.

<sup>4</sup> For other type of orders, *see also In the Matter of Application of North Suburban Public utility Company, Inc. to Acquire 72 Shares of the Outstanding Stock of Ozark Shares Water Company*, Case No WF-2000-519 Order Approving Stock Purchase, (May25, 2000).

6. Consistent with this practice, Courts have never held that a hearing was necessary to make adequate findings. As mentioned above, the Appeals Court in this case, relying on established law, explicitly held: (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. (Opinion at p. 11). Given that the Appeals Court explicitly and repeatedly held that no hearing was required by statute or due process, the Court did not mandate that the Commission hold a hearing to satisfy any due process considerations or the need to issue adequate findings. Indeed, the decisions relied on by the Court of Appeals in finding no hearing requirement, just as clearly reflect that a hearing is not necessary before adequate findings can be issued. See *State ex rel. Jackson County, Missouri et al. v. Public Service Commission*, 532 S.W 2d 20 (Mo. 1975) (Authorizing the file and suspend method of tariff approval wherein Commission does not have to hold a hearing); *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W. 2d 561 (Mo App. 1976) (Order granting interim relief without hearing upheld by Court); *State ex rel. Beaufort Transfer Company v. Public Service Commission*, 593 S.W. 2d 241 (Mo. Ap. W.D. 1979) (Commission denied hearing requests and issued adequate findings based on verified filing of applicant). Given the extent of the current record, there is no reason that the Commission should reopen the record and conduct a hearing.

7. Finally, even OPC admits that a hearing is not necessary to establish sufficient evidence in the record upon which the Commission can issue adequate findings. In response to a question from a panel of judges on the Western District Court

of Appeals during Oral Arguments of a pending case on February 19, 2004, OPC stated that the findings requirement does not mean that every case must have a hearing.<sup>5</sup> OPC stated that one alternative to a hearing was to have information put in the record through affidavits. That is exactly what occurred in this case.

8. At this point, the Commission's task is to review the existing verified record and reformulate the findings to more specifically provide the facts upon which the Commission relied upon in reaching its December 6, 2001 Order. The Commission should proceed with all due deference to its earlier decision. The record supports the earlier decision and the current record should be used. On February 9, 2004, Sprint put forward its Proposed Findings of Fact and Conclusions of Law in this case that contains 12 pages of facts and conclusions reached with the existing record. Specifically, Sprint noted 20 Findings of Fact and 11 Conclusions of Law that were reached with the record currently before the Commission. Based on the verified and complete record, the Commission should issue the Proposed Findings submitted by Sprint on February 9, 2004 in this case.

9. Further, it should be noted that OPC abandoned a similar claim against Verizon relating to verified cost studies relied on by the Commission to approve Verizon's rate rebalancing. The Commission's Order in the Verizon case (Case No. TR-2002-250 issued December 20, 2001) was very similar to the Order issued for this case. Further, in the Verizon case, the parties relied on the Commission's earlier review of Verizon's unbundled network element cost studies to justify the rebalancing. The Verizon cost studies were long run incremental cost studies just as Sprint's verified cost

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<sup>5</sup> Case No WD 63133, State of Missouri ex rel. Public Counsel v. Public Service Commission.

studies are and the allocation of the loop was the same. Despite this, OPC dropped its challenge to Verizon's second rate rebalancing.

10. Another consideration for the Commission is the impact that re-opening this case could have on other Commission cases currently on appeal. There are multiple cases currently on appeal where OPC has raised similar arguments relating to adequate findings in Commission orders. One example is the OPC's appeal of the Commission's approval of the In-State Recovery Fee charged by several interexchange carriers.<sup>6</sup> In that case, OPC challenged the Commission's findings and the Commission denial of a hearing even though no hearing was required by law. In another example, OPC is challenging the Commission's findings and failure to conduct a hearing in the Commission's approval of Sprint's recent increase to its optional Metropolitan Calling Plan rates -- despite the fact that OPC explicitly acknowledged in a pre-hearing that evidentiary hearings were not warranted nor required by law.<sup>7</sup> Any decision by the Commission in this case reflecting that a hearing is necessary for adequate findings would defeat the Commission's ability to defend its decision in these case as well as numerous other cases.

11. Finally the Commission should be mindful of the future impacts of any ruling suggesting a hearing is required in this case. If the Commission determines that the only way to issue adequate findings of facts and conclusions of law is to hold evidentiary hearings, even when such hearings are not required by statute, then every future case before this Commission will require such hearings. This would result in an unreasonable outcome not contemplated by the Courts or statute. Clearly, there is no other conclusion than adequate findings do not require a hearing.

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<sup>6</sup> Case No WD63133, State of Missouri ex rel. Public Counsel v. Public Service Commission.

<sup>7</sup> P.S.C. Case No. IT-2003-0292.

WHEREFORE, based on the above, this Commission should evaluate the record upon which the Commission made its decision in 2001 and from that record reformulate the findings to more specifically provide the findings necessary to the Commission's earlier decision.

Respectfully submitted,

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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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Lisa Creighton Hendricks

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Reducing Certain Switched Access Rates and	)	
Rebalancing to Local Rates, as Allowed By	)	
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**PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

COMES NOW Sprint Missouri, Inc. ("Sprint") and files these proposed findings of facts and conclusion of law in response to the Opinion issued by the Missouri Court of Appeals, Western District on October 28, 2003 in Case No. WD62016 (Appeal Case). In the Appeal Case, the Court remanded the case for further proceeding to provide sufficient detailed findings to permit the court to conduct a meaningful review. The following proposed findings of facts and conclusions of law comply with this directive:

**FINDINGS OF FACTS**

**I. Procedural Background**

1. On August 16, 2001, Sprint met with members of the Missouri Public Service Commission Staff ("Staff") to outline Sprint's intention to seek the second of four rate rebalances allowed under Section 392.245.11 RSMo. (Appendix C, Staff's Verified Recommendation).

2. On September 7, 2001, Sprint sent Staff a detailed, narrative description of Sprint's rebalancing plan and summary pages of cost studies that would be used to support Sprint's anticipated request for the second of four rate rebalances allowed under Section 392.245.11 RSMo. (Appendix C, Staff's Verified Recommendation). Sprint also sent to Staff the



calculations necessary to determine a Weighted Local Service rate, Weighted Average Composite Access Rate, a summary and detailed analysis of the rate rebalancing rate and revenue impact for both local and access service, and information on Sprint's Local Intra Office Usage. (Appendix C, Staff's Verified Recommendation). The information on the average rates reflected that the statewide rate for basic local residential service was \$9.84 and the state-wide rate for basic local business services was \$17.20. (Appendix C, Staff's Verified Recommendation). The state-wide two-way access rate was \$0.195. (Appendix C, Staff's Verified Recommendation). The summaries of the cost for local and business service reflected that the cost for local residential and business services were substantially above the statewide average rates and cost for access substantially below the current rate. (Appendix C, Staff's Verified Recommendation).

3. On September 13, 2001, Sprint met with the Staff and provided an explanation of the cost models used to develop Sprint's cost to provide basic local service and access service in Missouri. (Staff's Verified Recommendation at Paragraph 5 and 6 and Appendix B). These cost studies included summaries of the methodology used in Sprint's cost studies and its compliance with long run incremental costing methodology. (Appendix B, Staff Verified Recommendation). The cost studies contain approximately 260 pages of information regarding the method and inputs used. (Appendix to Staff Verified Recommendation and Verified Cost Studies filed on December 6, 2001 and Sprint's verified cost studies).

4. During the week of October 18, 2001, Sprint contacted the Office of Public Counsel regarding a potential meeting to discuss Sprint's plans for rate rebalancing. (Exhibit 1 to Sprint's Response to the office of Public Counsel's Motion to Suspend Sprint's Annual Price Cap Regulation Tariff Change Requests and OPC's Reply to Sprint and Staff's Filing at Para. 6.)

5. On October 26, 2001, Sprint filed with the Commission revised pages for the following Sprint tariffs: (a) General Exchange; (b) Message Telecommunications Service; (c) Private Line Service; (d) WATS; and (e) Access Service. The revisions submitted by Sprint on October 26, 2001 had a proposed effective date of December 11, 2001. Sprint stated that the tariff revisions sought to modify rates in accordance with Sprint's Price Cap regulation, pursuant to 392.245, RSMo. Within the filing, Sprint proposed to reduce its basic rates by the change in the CPI-TS as required by 392.245(4); update its maximum allowable prices for non-basic services and adjusting certain rates as allowed by 392.245(11); and reduce certain switched access rates and rebalanced to local rates, as fully allowed by 392.245(9). (Appendix B to Staff Verified Recommendation).

6. On December 3, 2001, 39 days after Sprint filed its tariff, and after the tariff was placed on the Commission's agenda for discussion, OPC filed a motion to intervene and suspend Sprint's tariff change. In its motion, OPC admitted that "it could have been more vigilant or aggressive in bringing legal and factual concerns to the Commission at an earlier date." (OPC's Motion to Suspend tariff and for Hearing on Rebalancing and Investigation into Cost Justification for Such Rebalancing at Para. 6). OPC also argued: (1) The Commission can not consider the tariff until an investigation and a hearing is conducted; (2) The Commission can not approve the tariff until a written report of the investigation is issued and (3) the Commission is required to consider all relevant factors and make specific determinations concerning long run incremental cost.

7. On December 4, 2001, Sprint responded to OPC's motion, summarizing the results of Sprint's cost studies and explaining how the results satisfied the requirements of Section 392.245.9 RSMo. Further, Sprint summarized the extent of communication between

Sprint and Staff during which the support for the rate rebalance had been fully explained and investigated.

8. On December 4, 2001, the Commission issued an Order requiring that Sprint file its cost studies verified by an affidavit of a knowledgeable person stating that the cost studies are true according to his or her best knowledge. The order also directed Staff to file its analysis, recommendation and any associated work papers that demonstrate compliance with Section 392.245.9 and to verify the accuracy on the documents filed.

9. On December 5, 2001, Sprint complied with the Commission Order and filed cost studies verified by Mr. Kent Dickerson, the Director of Cost Support for Sprint, who performed the study and attested to its accuracy.

10. Also on December 5, 2001, Sprint filed its, recommendation, analysis and work papers supporting its analysis and recommendation in compliance with the Commission's December 4 Order. These documents and pleadings were verified by Natelle Dietrich, a Regulatory Economist whose duties include analysis of cost telecommunications cost studies and by Thomas A. Solt, a Regulatory Auditor whose duties include analysis of telecommunications companies' rate filings.

## II. Factual Findings

11. The average statewide price for Sprint's basic local residential service is \$9.84 and the average statewide rate for basic local business service is \$17.20. (Appendix C, Staff's Verified Recommendation). The state-wide two-way access rate was \$0.195. (Appendix C, Staff's Verified Recommendation).

12. Sprint submitted a verified cost study that was analyzed by members of the Staff of the Missouri Public Service Commission including a Regulatory Economist with responsibility for reviewing telecommunications cost studies.

13. Sprint's verified cost studies were performed pursuant to a Total Service Long Run Incremental Cost methodology (TSLRIC). (Appendix B, Staff's Verified Recommendation and Verified Cost Studies). TSLRIC captures forward-looking, long run incremental cost created by total demand for a given service. (Appendix B, Staff's Verified Recommendation and Verified Cost Studies). Sprint's TSLRIC utilize least cost, most economical efficient technology and forward-looking engineering practices. (Appendix B, Staff's Verified Recommendation and Verified Cost Studies).

#### COST OF PROVIDING BASIC LOCAL TELECOMMUNICATIONS SERVICE

14. Sprint's TSLRIC cost study for local service contains four major components: Loop, Network Interface Device (NID), Port and Usage Cost. (P. 1 of 8, Cost of Local Service, Sprint's Verified Cost Study). The TSLRIC loop costs capture the costs of the customer line from the Central Office to the NID. (P. 3 of 8, Cost of Local Service, Loop Cost Study methods, Sprint's Verified Cost Study) Sprint assigned 75% of the loop cost to intrastate jurisdiction. (P. 1 of 8, Cost of Local Service, Sprint's Verified Cost Study). The NID cost represents the cost for the interconnection to the customer premise wiring. (P. 3 of 6, Cost of local Service, NID Methodology, Sprint's Verified Cost Study). The port costs reflect the non-sensitive traffic cost for local switching associated with basic local exchange service. (P. 3 of 16, Switch Cost Study Methods, Sprint's Verified Cost Study). In developing the switching TSLRIC cost for local service, Sprint utilized the Switch Cost Information System/Model Office (SCIS/MO), developed by Telecordia that is widely used to capture switch investment in the telecommunications industry. (P. 4 of 16, Switch Cost Study Methods, Sprint's Verified Cost Study). The usage cost category represents the investment associated with usage sensitive line-side switching. (P.12 of 16, Switch Cost Study Methods, Sprint's Verified Cost Study). Finally, Sprint developed a common cost factor that was applied to the cost components before

identifying a TSLRIC cost. (P. 1 of 8, Cost of Local Service, Sprint's Verified Cost Study). The costs that are produced by Sprint's cost study, while highly confidential, clearly demonstrate that Sprint's cost of basic local residential and business service are more than sufficiently above the price of basic local residential and business service to allow for three more rate rebalances of \$1.50 each to be placed on basic local service and maintain a price that is equal or less than the long run incremental cost of Sprint's basic local residential and business service.

15. Further, while OPC has raised an issue of whether the studies correctly allocate the loop cost, the Commission finds that the TSLRIC cost produced by Sprint's studies would allow removal of up to 50% of the loop cost assigned by Sprint to basic residential local service that appear on Row 20 of the Summary Sheet contained in Sprint's Cost of Local Service and still allow three more rate rebalancing of \$1.50 each to be placed on basic local service and maintain a price that is equal to less than the long run incremental cost of Sprint's basic local residential service. (See P. 1 of 8. Summary Sheet, Cost of Local Service, Residential Cost Summary, Sprint's Verified Cost Studies).

16. Additionally, we find that the TSLRIC cost produced by Sprint's studies would allow removal of up to 33% of the loop cost assigned by Sprint to basic business intrastate jurisdictional local service that appear on Row 20 of Sprint Summary Sheet for business cost and still allow three more rate rebalancing of \$1.50 each to be placed on basic local service and maintain a price that is equal to less than the long run incremental cost of Sprint's basic local business service. (See P. 3 of 8. Summary Sheet, Cost of Local Service, Business Cost Summary, Sprint's Verified Cost Studies).

#### COST OF PROVIDING INTRASTATE SWITCHED ACCESS SERVICE

17. With respect to Sprint intrastate switched access long run incremental cost, Sprint also performed and verified a TSLRIC cost study. Sprint's cost studies capture forward-looking

least cost digital switch technology. (P. 6 of 16, Host Cost Switching Inputs, Sprint's Verified Cost Studies). There are three components of the switching study: Tandem switching, call termination and common transport. (Page 1 of 1, Cost Summary, Cost of Access, Sprint Verified Cost Study). There is also a common factor applied to each component of the switching cost. (Page 1 of 1, Cost Summary, Cost of Access, Sprint Verified Cost Study).

18. The costs that are produced by Sprint's intrastate access cost study, while confidential, clearly demonstrate that Sprint's cost of intrastate access are more than sufficiently below the price of intrastate access service to allow for three more rate rebalances of \$1.50 each to be placed on basic local service and maintain a price for access that is equal or more than the long run incremental cost of Sprint's intrastate service.

19. The revenue analysis that was submitted by Sprint and appear in Staff's Verified Analysis and Recommendation demonstrate that the proposed balance is revenue neutral: (1) Sprint proposes to reduce its access charges in such a way as to decrease its annual revenue by \$2,968,000 and (2) 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. (Staff's Verified Recommendation and Analysis).

20. Further, while OPC has raised an issue of whether the studies correctly allocate the loop cost, we find that the TSLRIC cost produced by Sprint's studies would allow us to allocate almost 100% of the intrastate loop cost to intrastate access that appear on Row 20 of the Summary Sheet contained in Sprint's Cost of Local Service and still allow three more rate rebalancing of \$1.50 each to be placed on basic local service, with a resulting decrease in the access price, and maintain a price for access that is equal or above the long run incremental cost of Sprint's access service. To arrive at this conclusion based on the record in front of the Commission, the total minutes of access (Attachment: Rates #4, p. 1 of 3 in Appendix C of

Staff's verified filing) were divided by the number of lines (Page 1 and 2 of summary sheet, Cost of local service in Sprint's and Staff's verified filings) to get the total number of minutes per line. Then 100% of the cost of loop was divided by the total number of minutes per line.

### CONCLUSIONS OF LAW

21. Sprint is a large incumbent local exchange carrier subject to price cap regulation under Section 392.245 RSMO.

22. Section 386.020(4) defines Basic local telecommunications service as follows:

(4) **"Basic Local telecommunication service,"** two-way switched voice service within a local calling scope as determined by the commission comprised of any of the following services and their recurring and nonrecurring charges:

(a) Multiparty, single line, including installation, touchtone dialing, and any applicable mileage or zone charges;

(b) Assistance programs for installation of, or access to, basic local telecommunications services for qualifying economically disadvantaged or disabled customers or both, including, but not limited to, lifeline services and link-up Missouri services for low-income customers or dual party relay service for the hearing impaired and speech impaired;

(c) Access to local emergency services including, but not limited to, 911 service established by local authorities;

(d) Access to basic local operator services;

(e) Access to basic local directory assistance;

(f) Standard intercept service;

(g) Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission;

(h) One standard white pages directory listing. Basic local telecommunications service does not include optional toll free calling outside a local calling scope but within a community of interest, available for an additional monthly fee or the offering or provision of basic local telecommunications service at private shared-tenant service locations.

23. Section 386.020(17) defines exchange access service as follows:

(17) **"Exchange access service,"** a service provided by a local exchange telecommunications company which enables a telecommunications company or other customer to enter and exit the local exchange telecommunications network in order to originate or terminate interexchange telecommunications services.

24. Section 392.245 governs the Commission's determination in this case.

Section 392.245.9 RSMo provides, in part:

No later than one year after the date the incumbent local exchange telecommunications company becomes subject to regulation under this section, the commission shall complete an investigation of the cost justification for the reduction of intrastate access rates and the increase of maximum allowable prices for basic local telecommunications service. If the commission determines that the company's monthly maximum allowable average statewide prices for basic local telecommunications service after adjustment pursuant to this subsection will be equal to or less than the long run incremental cost, as defined in section 386.020, RSMo, of providing basic local telecommunications service and that the company's intrastate access rates after adjustment pursuant to this subsection will exceed the long run incremental cost, as defined in section 386.020, RSMo, of providing intrastate access services, the commission shall allow the company to offset the revenue loss resulting from the remaining three-quarters of the total needed to bring that company's intrastate access rates to one hundred fifty percent of the interstate level by increasing the company's monthly maximum allowable prices applicable to basic local telecommunications service by an amount not to exceed one dollar fifty cents on each of the next three anniversary dates thereafter; otherwise, the commission shall order the reduction of intrastate access rates and the increase of monthly maximum allowable prices for basic local telecommunications services to be terminated at the levels the commission determines to be cost-justified.

25. Section 386.020(32) defines long run incremental cost as:

(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.

26. 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. Therefore, in considering whether the long run incremental cost of basic local service, that requires switched voice services within a local calling scope, we find that it does not violate



the statutory definition of long run incremental cost to include a substantial portion, and perhaps the entire portion, of the jurisdictionalized loop cost as cost of basic local service. Further, in considering whether the long run incremental cost of access services, that offers entry and departure for the local telecommunications network, we find that it does not violate the statutory definition of long run incremental cost to exclude a substantial portion, and perhaps the entire portion, of the jurisdictionalized loop cost as cost of access service. If Sprint did not offer access service, the cost of the loop would not go away. Finally, given the large margins of error with respect to allocating loop costs discussed in Paragraphs 15, 16 and 20, we find that the Commission does not have to make a definitive finding in this case on what exact percentage of the loop, if any, needs to be allocated away from basic local telecommunications service to intrastate switched access services. Based on the above, we find that Sprint's cost studies are not inconsistent with the statutory directive to identify cost based on long run incremental cost as defined in Section 386.020(32).

27. Finally, the issue of loop allocation as it relates to the OPC 254(k) argument has been dealt with by the FCC. In its CALLs Order, the FCC reduced, and in most instances, eliminated implicit subsidies for the local loop among end-users by permitting loop costs to be recovered through a flat rate charge assessed on the local basic service customer rather than through the traffic sensitive per minute charge assessed on the long distance customer. Further, opponents of this cost recovery structure argued that the CALLs proposal violated Section 254(k) for similar reasons as OPC and the FCC rejected those arguments. The FCC stated:

We find that section 254(k) is not implicated by our action today. Section 254(k) is directed at the allocation of costs between competitive and non-competitive services, both regulated and non-regulated, and prohibits subsidization of competitive services by non-competitive services. The SLC is a method of recovering loop costs; not an allocation of those costs between supported and unsupported services.

Neither basic local service or switched access service are competitive services for Sprint. Further, the cost studies were consistent with the statutory requirement.

28. The mathematical questions before the Commission are apparent:

- (a) Are Sprint's costs to provide basic local residence service higher than \$11.24 for this year (and higher than \$14.24 for future years)?
- (b) Are Sprint's costs to provide basic local business service higher than \$18.54 for this year (and higher than \$21.54 for future years)? and
- (c) Are Sprint's costs to provide access services lower than \$0.185 for this year (and lower than \$0.165 for future years)?

Based on the record in front of the Commission, the answer to each one of these questions is yes.

29. Therefore, 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 switched access services. That leaves only one question remaining before the Commission: have Sprint's cost studies that provided the input for the mathematical equation produced accurate and reasonable results? Once again, the answer is yes. First, as an independent and knowledgeable party, Staff spent a substantial amount of time and effort in their evaluation of Sprint's cost models. This information formed a part of Staff's recommendation to approve Sprint's requested tariff changes. Second, Sprint's costs for basic local service are significantly above Sprint's rates that even if an error was made, that error would have to produce results near 50% below what was produced by Sprint's cost study to make a difference in the Commission's calculation. With reference to Sprint's access study, the error would have to be even greater than 50% to have any effect on the Commission's mathematical determination. Thus, the margin of error is substantial. Furthermore, there are no indications of any errors,


much less substantial errors in Sprint's cost studies. Sprint's cost studies are correct and fully comply with the statutory requirement to reflect long run incremental cost.

30. Further, the Commission reaffirms that no contested hearing is required under Section 392.245.9 RSMo.

31. Based on the above, the Commission has found that the proposed tariff sheets filed by Sprint Missouri Inc. doing business as Sprint, on October 25, 2001, designated as tariff File No. 200200318 are approved.

Respectfully submitted,

SPRINT

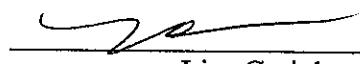
  
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#### **CERTIFICATE OF SERVICE**

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 9th day of February, 2004:

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