

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

In the Matter of Sprint Communications Company, )	
L.P.'s Proposed Tariff to Introduce an In-State )	<b><u>Case No. TT-2002-1136</u></b>
Recovery Charge and Make Miscellaneous Text )	Tariff No. 20021020
Changes )	

**SPRINT COMMUNICATIONS COMPANY, L.P.'s  
RESPONSE TO OFFICE OF PUBLIC COUNSEL'S  
MOTION TO SUSPEND TARIFF AND FOR EVIDENTIARY AND PUBLIC HEARINGS**

COMES NOW Sprint Communications Company, L.P. ("Sprint") in response to the Office of Public Counsel's *Motion to Suspend Tariff and for Evidentiary and Public Hearings* and states:

**INTRODUCTION**

In this case, Sprint seeks the approval of a tariff change under which Sprint introduces an In-State Access Recovery Charge that is identical in all material aspects to AT&T's In-state Access Recovery Charge approved by this Commission on December 13, 2001 in Case No TT-2002-129.<sup>1</sup> As with the AT&T tariff change, OPC has filed a motion to suspend the tariff. In Case No. TT-2002-129, the Commission denied OPC's motion. The Commission should do the same in this case.

**BACKGROUND**

On May 31, 2002, Sprint submitted a tariff revision with a proposed effective date of July 1, 2002. The tariff revision is identified as Tariff No. 200201020. The proposed tariff revision introduces a monthly service charge called the In-state Access Recovery Charge of \$1.99 and makes various text changes. On June 13, 2002, the Office of Public Counsel (OPC) filed a motion requesting the Commission suspend the tariff. OPC suggests in its motion that the new charge, the "In-state Access Recovery Charge", is "a discriminatory rate increase for certain

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<sup>1</sup> *In the Matter of AT&T Communications of the Southwest, Inc.'s Proposed Tariff to Establish a Monthly Instate Connection Fee and Surcharge.*

Missouri customers who subscribe to Sprint long distance services.” On June 18, 2001, the Commission issued an Order Setting Time for Response, shortening the response time to June 21, 2002.

### **ARGUMENTS**

The Commission determinations in this case are governed by Section 392.500(2) RSMo. that requires competitive companies to file proposed tariff with the Commission and that affected customer are given no less than ten (10) days notice.<sup>2</sup> The section only requires minimal evidence and does not impose a requirement of conducting a hearing by the Commission.<sup>3</sup> As long as the proposed tariff sheets comply with the requirements of the law, the tariff sheets filed by Sprint are an adequate record for the Commission to review.<sup>4</sup> The only exceptions to this procedure are when (1) a proposed tariff is not just and reasonable; (2) customers do not pay the same amount for the same service given other customers; (3) undue or unreasonable preference is given any customer; (4) geographic deaveraging of rates occur and (5) the company violates its duty to transmit without delay the messages of other telephone companies. None of the exceptions apply in this case and Sprint's proposed tariff should be approved. Section 392.200 RSMo (2000).

As mentioned in the introduction, the Commission has already decided that Sprint's proposed tariff revision is lawful and can be approved without a hearing pursuant to Section 392.500(2) RSMo. The Commission made this decision in Case No. TT-2002-129. In that case, the Commission approved an In-State Access Recovery Fee proposed by AT&T in the amount of \$1.95 that is assessed on a monthly basis. As in this case, in Case No TT-2002-129, OPC filed a *Motion to Suspend Tariff and for Evidentiary and Public Hearing* in which OPC requested an evidentiary hearing asserting that AT&T's proposed charge was discriminatory

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<sup>2</sup> *In the Matter of AT&T Communications of the Southwest, Inc.'s Proposed Tariff to Establish a Monthly Instate Connection Fee and Surcharge, Case No. TT-2002-129, Order Approving Tariff, December 13, 2001.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

and not cost based.<sup>5</sup> In denying OPC's motion, the Commission found that "(b)ecause AT&T's proposed rate increase of \$1.95 applies only to a competitive service, consumers are free to obtain service from an alternative provider if they object to the rate" and that AT&T's notice complied with Section 392.500 (2) RSMo. Further, the Commission concluded as a matter of law, AT&T's In-State Access Recovery Charge should be approved as there were no exceptions under Section 392.200.<sup>6</sup> The same conclusions must be reached in this case in which Sprint seeks approval of the same in-state access recovery charge.<sup>7</sup>

In this case, as in the AT&T case:

- (a) Sprint has been granted status as a competitive telecommunications service provider in Case No. TA-96-424.
- (b) The services provided by Sprint are competitive.
- (c) Sprint has provided the Commission and the Staff a copy of the notification that will be sent to customers ten (10) days prior to the implementation of the In-State Access Recovery Charge.
- (d) Sprint has complied with the requirements of Section 392.500 RSMo (2000), and there is nothing about the proposed tariff filing that is contrary to Section 392.200 RSMo (2000).

OPC has **not** challenged the fact that Sprint is a competitive company nor that Sprint's notice is adequate. However, as it did in the AT&T case, OPC has attempted to raise an issue about compliance with Section 392.200 by arguing that Sprint's decision to use a flat rate structure instead of a usage sensitive structure creates preferential treatment for high volume customers. However, many long distance carriers have approved tariffs under which they have

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<sup>5</sup> Missouri Public Service Commission Case No. TT-2002-129, Office of Public Counsel's Motion to Suspend Tariff and for Evidentiary and Public Hearings, filed with the Commission on September 4, 2001.

<sup>6</sup> Missouri Public Service Commission Case No. TT-2002-129, Order Approving Tariff, issued by the Commission on December 13, 2001.

<sup>7</sup> The only factual difference between AT&T's tariffed in-state access recovery charge and Sprint's proposed in-state access recovery is that Sprint did not waive the charge for zero volume customers. Interestingly, OPC claimed that the low volume waiver was discriminatory in challenging AT&T's tariff revision. However, OPC now claims that Sprint tariff is discriminatory for not having such a waiver. Furthermore, Sprint will be exempting zero volume users pursuant to a promotion filed June 21, 2002.

flat fees in addition to usage sensitive charges. In fact, all of Sprint's long distance plans, with the exception of one recently filed plan, have a flat monthly recurring charge. Furthermore, AT&T's In-State Access Recovery Charge is a flat fee and is not usage sensitive.<sup>8</sup> Therefore, as with the AT&T tariff, there is nothing about Sprint's proposed tariff revision that is contrary to Section 392.200 RSMo (2000).

Sprint is a competitive telecommunications company offering competitive long distance service. Any customer that wishes, can choose another long distance carrier. Indeed, in its motion, OPC recognizes this when it states: "[t]he competitive marketplace determines to what extent the carrier will seek to recover all or part of those costs in its rates." Ironically, OPC is attempting to defy its own arguments by seeking to have rate regulation asserted for competitive services provided by competitive providers.

The most notable aspect of OPC's motion is what it has failed to do – it has failed to distinguish Sprint's proposed In-State Access Recovery Charge from AT&T's approved In-State Access Recovery Fee. Alternatively, OPC acknowledges their inability to distinguish the two when it states "Sprint is following the same path blazed by AT&T with its In-State Connection Fee approved in TT-2002-129." Therefore, there is no reason to suspend Sprint's tariff, much less conduct an evidentiary hearing as both parties contend the issues in this case are the same issues decided by the Commission in TT-2002-129. As in case TT-2002-129, OPC's motion to suspend Sprint's tariff should be denied.


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<sup>8</sup> Additionally, it should be noted that AT&T's approved tariff waives the access recovery fee for AT&T's local customers. See Section 1.2.18.B on Sheet 7 of AT&T's P.S.C. Mo No. 15. (of AT&T's tariff). As AT&T pointed out in pleadings filed in Case No. TT-2002-129, the Commission has previously approved interexchange tariffs that offer waivers of various charges to customer who also purchase local service from the same company. See ( Need citation to Birch Telecom of Missouri tariff).

### CONCLUSION

WHEREFORE, for the above reasons, Sprint respectfully requests the Commission deny the Office of Public Counsel's Motion and approve Sprint's proposed tariff revision pursuant to Section 392.500(2) RSMo (2000).

Respectfully submitted,  
**Sprint**

  
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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing was mailed, postage prepaid, to the parties listed below, this 21st day of June, 2002.

  
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