

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

In the Matter of the Tariff of Sprint)
Missouri, Inc. d/b/a/ Sprint to increase the)
Rate for the Metropolitan Calling Area Plan)

Case No. IT-2003-0292
Tariff No. JI-2003-1401

**SPRINT'S RESPONSE TO
OFFICE OF PUBLIC COUNSEL'S
MOTION FOR REHEARING**

COMES NOW Sprint Missouri, Inc. and hereby files its Response to the Office of Public Counsel's ("OPC") Motion for Rehearing in the above mentioned case. Sprint submits that (a) the OPC presents no new arguments that the Commission has not previously thoroughly considered; (b) the OPC stated on the record that evidentiary hearings are not warranted in this case; (c) the OPC (along with all other parties) informed the Commission that there were no facts in dispute; and (d) the administrative law judge specifically instructed the parties to file their stipulated findings of fact in accordance with the Western District Court of Appeals practice. Based on these points, Sprint urges the Commission to deny OPC's request for a rehearing. In support of its Response, Sprint states as follows:

1. On January 28, 2003, Sprint Missouri, Inc. d/b/a Sprint filed a tariff sheet to increase the residential and business monthly rate for the Metropolitan Calling Area (MCA) Plan. In order to further investigate the proposed tariff, in an order issued February 20, 2003, the Commission suspended Sprint's proposed increases for "a period of 120 days plus six months" or until November 28, 2003.

2. In an Order dated February 27, 2003, the Commission ordered a pre-hearing in this case. Specifically, the Commission Ordered stated:

At the pre-hearing conference, the parties or their representatives should be prepared to discuss the nature of any discovery each will conduct and the interval necessary for its completion; the number of witnesses each expects to call at hearing; the number and nature of any exhibits each expects to offer at hearing; and the anticipated length of the hearing. The parties or their representatives should also be prepared to discuss the current status of settlement negotiations. It is expected that the pre-hearing conference will provide an opportunity for the parties to further pursue settlement discussions.

The parties shall jointly file a proposed procedural schedule. The proposed procedural schedule shall establish dates for the filing of a list of the issues to be determined by the Commission and statements by the parties of their position on each such issue. The proposed procedural schedule shall also include a date for the filing of a list of the witnesses to be called on each day of hearing, the order in which they shall appear and the order of cross-examination agreed upon by the parties. The proposed procedural schedule shall also establish dates for the hearing of this matter.

3. A pre-hearing was held in this matter on March 13, 2003, and the following procedural schedule was developed:

Initial Briefs and Stipulated Facts:	April 11, 2003
Reply Briefs by Opponents of Tariff:	May 2, 2003
Response Briefs by Supporters of Tariff	May 16, 2003

At the pre-hearing conference, the parties explicitly stated that evidentiary hearings were not warranted in this case:

JUDGE THOMPSON: Okay. You're supposed to tell me about the discovery, the number of witnesses, how long the hearing's going to be. I bet you're not really prepared to talk about that stuff, are you?

MS. HENDRICKS: Well, I have something I can say on that topic. I believe this issue -- and we haven't had a chance to confer among the parties, but this is strictly a legal issue involved in this case, and I don't think that discovery is needed or a hearing in that it can be decided on Briefs and pleadings.

JUDGE THOMPSON: Would this be whether or not the metropolitan calling area plan is subject to the 8 percent increase under the price cap statute?

MS. HENDRICKS: Yes, your Honor.

JUDGE THOMPSON: Okay. Does anyone else have any comments on that?

MR. DANDINO: I would agree. I think we just need a very -- probably very simple statement of facts, you know, who we are and what the rates are and that, and then, you know, whether it's Briefs or cross Motions for Summary Judgment, whatever.

JUDGE THOMPSON: Okay. Marc.

MR. POSTON: The Staff, we find that acceptable.

JUDGE THOMPSON: So are we going to have a stipulated set of facts, is that what I see emerging here?

MS. HENDRICKS: I anticipate we can stipulate to facts.

MR. DANDINO: Oh, yes. I don't think any of the facts are in dispute.

JUDGE THOMPSON: I assume you've been following the Western District and its practice of sending Commission decisions back for inadequate findings of fact. So I hope you will make your stipulated facts adequate.

4. On April 11, 2003, OPC, along with all other parties to this case, jointly filed the stipulated findings of fact in this case. The case was briefed according to the agreed to schedule.

5. On November 4, 2003, the Commission approved Sprint's proposed tariff adjustments.

6. The OPC filed its Motion for rehearing on November 13, 2003. OPC makes multiple arguments but they generally fall into the following three primary categories: (1) the Commission failed to make adequate findings of fact or conclusions

of law; (2) the Commission mischaracterized the OPC's position, and (3) the Commission's Order lacked evidentiary support. Sprint will address each OPC argument.

7. The OPC's first general argument deals with the findings of fact and conclusions of law. The OPC is simply wrong to suggest any level of inadequacy. On April 11, 2003, the OPC joined the other parties in filing stipulated findings of fact. In fact, OPC's counsel noted during the pre-hearing conference that there were no disputed findings of fact (see transcript above). The Commission's final order contained these stipulated facts as well as the Commission's conclusions of law.

8. Contrary to the primary case upon which OPC relies to argue that the findings are insufficient *AT&T Communications of the Southwest Inc, et al v. PSC*, 62 S.W. 3d 545 (Mo App. 2001) , the order in this case more than satisfies any finding requirements. In *AT&T Communications*, the parties had stipulated to the facts, but went ahead with a hearing. Therefore, it was a contested case and the requirements to issue detailed findings under Section 536.090 RSMo applied. In its order in the AT&T case, the Commission only stated that the parties had stipulated to the facts, *not what the stipulated facts were*. Based on this, the court held that the conclusion of facts were non-existent. As the Commission stated all the stipulated facts in this non contested case, the AT&T case is not applicable.

9. Further, because the facts in this case were not contested, as no hearing was conducted, there is no need for detailed findings even if Section 536.090 RSMo applied. "[W]here the critical facts are undisputed, there is no need for the reviewing court to weigh the facts independently." *Morton v. Brenner*, 842 S.W.2d 538, 540 (Mo. banc 1992). Since the court need not review the agency's reliance on uncontested facts,

the requirement for written findings becomes less important, if not wholly irrelevant. Thus, *State ex rel. National Advertising Co. v. State Highway Comm'n*, 624 S.W.2d 453 (Mo. App. W.D. 1981) rejected a claim that factual findings were inadequate, in a case where the challenger had stipulated to the operative facts before the agency:

The contention is both incorrect as well as anomalous. The *entire* case was given to the administrative examiner on stipulated evidence. The parties expressly reserved to themselves only the prerogative "to assert legal contentions based thereon [the stipulated record]." * * * The usual requirement that findings of fact and conclusions of law accompany the administrative decision in a contested case incident to judicial review does not apply in a case "disposed of by stipulation." In such a case, the facts as agreed upon suffice for judicial review.

Id. at 460 (emphasis original).

Therefore, the OPC's arguments with respect to the adequacy of the facts do not present a basis for rehearing.

10. The OPC's second argument that the Commission's November 4, Order mischaracterized its position is not grounds for a rehearing. OPC stated its position in its Reply Brief. In addition, the OPC filed a Supplemental Reply Brief on May 6th to further advance its position. The OPC makes absolutely no new arguments in its Motion for Rehearing that this Commission has not thoroughly considered since suspending the tariff in February.

11. The OPC's final main argument relates to evidentiary hearings. First and foremost, evidentiary hearings are not required. There is no statutory language or due

process right that would entitled OPC to a hearing. Furthermore, as reflected from the excerpts of the Pre-hearing, OPC was offered the opportunity for a hearing and turned it down. Therefore, OPC has basis to claim that the Commission had to conduct an evidentiary hearing.

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

Respectfully submitted,

Sprint


Lisa Creighton Hendricks - MO Bar #42194
6450 Sprint Pkwy
Mail Stop: KSOPHN0212-2A253
Overland Park, KS 66251
Voice: 913-315-9363 Fax: 913-523-9829
Lisa.c.creightonhendricks@mail.sprint.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing was mailed, postage prepaid, to the parties listed below, this 24th day of November, 2003.

Office of Public Counsel
P. O. Box 7800
Jefferson City, MO 65102
mdandino@ded.state.mo.us

Paul G. Lane
Leo J. Bub
Mary B. MacDonald
Southwestern Bell Telephone Company
L.P. d/b/a/ SBC Mo.
One SBC Center Room 3516
St. Louis, Mo. 63101

Marc Poston
Staff of the Missouri Public Service
Commission
P. O. Box 360
Jefferson City, MO 65102
whaas01@mail.state.mo.us



Lisa Creighton Hendricks