

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

Staff of the Public Service Commission of the State	)	
of Missouri,	)	
	)	
Complainant,	)	
v.	)	Case No. TC-2007-0415
	)	
Sprint Communications Company, L.P.,	)	
	)	
Respondent.	)	

**MOTION FOR SUMMARY DETERMINATION**

COMES NOW Counsel for the Staff of the Missouri Public Service Commission (Staff) and pursuant to Commission Rule 4 CSR 240-2.117(2) moves the Commission for Summary Determination against Respondent Sprint Communications Company, L.P. (Sprint).

Respectfully submitted,

**/s/ Blane Baker**

Blane Baker, Mo. Bar No. 58454  
Legal Counsel

Jennifer Heintz, Mo. Bar No. 57128  
Assistant General Counsel

Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-8701 (Telephone)  
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[blane.baker@psc.mo.gov](mailto:blane.baker@psc.mo.gov)  
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**ATTORNEYS FOR THE STAFF OF THE  
MISSOURI PUBLIC SERVICE  
COMMISSION**

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 31<sup>st</sup> day of August, 2007.

/s/ Blane Baker

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

Staff of the Public Service Commission of the State	)	
of Missouri,	)	
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Complainant,	)	
v.	)	Case No. TC-2007-0415
	)	
Sprint Communications Company, L.P.,	)	
	)	
Respondent.	)	

**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF STAFF'S MOTION FOR  
SUMMARY DETERMINATION**

COMES NOW Counsel for the Staff of the Missouri Public Service Commission (Staff) and pursuant to Commission Rule 4 CSR 240-2.117(2) respectfully states as follows:

1. On April 23, 2007, Staff filed a Complaint against Sprint Communications Company, L.P. (Sprint). (The Complaint is attached hereto as Exhibit A)

2. The Complaint filed by Staff requested that the Missouri Public Service Commission (Commission) find that Sprint failed to file Quarterly Quality of Service ("QQoS") Reports pursuant to Commission Rule 4 CSR 240-3.550(5).

3. The Complaint also stated that the QQoS reports submitted by Sprint for 2006 do not comply with the requirements of 4 CSR 240-3.550(5).

4. Sprint filed its Answer, Motion to Dismiss and in the Alternative Request for Waiver of Sprint Communications Company, L.P. on June 22, 2007. (Sprint's Answer is attached hereto as Exhibit B)

5. Sprint is a telecommunications company certificated to provide basic local telecommunications service in Missouri by the Missouri Public Service Commission in

certificate case No. TA-97-269. (See Exhibit A, paragraph 3; and Exhibit B, paragraph 3)

6. Sprint provides basic local service to 46 business customers in Missouri. (See Sprint Communications Company L.P.'s Responses to Complainant's First Set of Interrogatories attached hereto as Exhibit C, paragraph 1)

7. Sprint provides basic local telephone service to 184 access lines to their 46 customers in Missouri. (Exhibit C, paragraph 2)

8. Sprint provides basic local telephone service in Missouri in the following localities:

- a. Creve Coeur
- b. St. Louis
- c. Ladue
- d. Oakville
- e. Sappington
- f. Mehlville
- g. Kirkwood
- h. Manchester
- i. Chesterfield
- j. St. Charles

(Exhibit C, paragraph 4)

9. Sprint filed QoS reports for 2006 on April 3, 2007. (Exhibit B, paragraph 6)

10. Sprint filed updated QoS reports on May 24, 2007. (Exhibit B, paragraph 6)

11. Sprint has filed QoS reports for the first and second quarters of 2007.

12. The QoS reports submitted by Sprint do not contain Missouri-specific data in

the following categories:

- a. Operator Assisted Calls
- b. Customer Assisted Calls
- c. Customer Trouble Report Rate
- d. Clearing time on Out of Service Trouble
- e. Repair Commitments Met

(See Staff Affidavit, attached hereto as Exhibit D)

13. Sprint has stated that it is not technically feasible to collect certain categories of data on a Missouri specific basis. (Exhibit B, page 3, paragraph 3)

14. Sprint has not prepared a cost estimation for the isolation of Missouri specific data for its QoS reports. (Exhibit C, paragraph 5)

15. Sprint has not prepared a feasibility study to assess the technical feasibility of isolating Missouri-specific data for its QoS reports. (Exhibit C, paragraph 6)

16. Sprint is no longer marketing the service tracked by its QoS reports to new customers. (Exhibit B, page 4, line 1)

17. Sprint intends to continue offering this service to its existing customers. (Exhibit B, page 4, lines 2-3)

WHEREFORE, the Staff respectfully requests the Commission to adopt the foregoing undisputed facts and to grant Staff's Motion for Summary Determination pursuant to Commission Rule 4 CSR 240-2.117.

Respectfully submitted,

**/s/ Blane Baker**

Blane Baker, Mo. Bar No. 58454  
Legal Counsel

Jennifer Heintz, Mo. Bar No. 57128  
Assistant General Counsel

Missouri Public Service Commission  
P. O. Box 360  
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**ATTORNEYS FOR THE STAFF OF THE  
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**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 31<sup>st</sup> day of August, 2007.

**/s/ Blane Baker**

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Staff of the Public Service Commission of the State )  
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Complainant, )  
v. )  
 )  
Sprint Communications Company, L.P., )  
 )  
Respondent. )

Case No. TC-2007- 0415

**COMPLAINT**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), pursuant to section 386.390.1 RSMo. 2000 and Commission Rule 4 CSR 240-2.070 and for its complaint against Sprint Communications Company, LP (Sprint), states:

1. Section 386.390.1 RSMo. provides that a "[c]omplaint may be made by the commission of its own motion, ... or by...any...person...by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility..., in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission [.]"

2. Commission Rule 4 CSR 240-2.070(1) provides that the "commission staff through the general counsel" may file a complaint.

3. Sprint is a telecommunications company certificated to provide basic local telecommunications service in Missouri by the Missouri Public Service Commission in certificate case No. TA-97-269, and is a telecommunications company as defined by section 386.020 (51) RSMo. Supp. 2005.

4. Sprint's business address is 6200 Sprint Parkway, Overland Park, Kansas, 66251.

5. The registered agent for Sprint in Missouri is Prentice-Hall Corp. System, 221 Bolivar Street, Jefferson City, Missouri, 65101.

6. Sprint is offering and providing basic local exchange telecommunications service in Missouri, in the exchanges serviced by Southwestern Bell Telephone Company, LP d/b/a AT&T Missouri, CenturyTel of Missouri LLC and Spectra Communications Group, LLC d/b/a CenturyTel.

7. Commission Rule 4 CSR 240-3.550(5), requires that each company which provides basic local telecommunications service is required to "file with the commission no later than forty-five days following the end of each quarter a report, referred to as the quarterly report [or Quarterly Quality of Service Report], of the quality of the telephone service provided to its customers."

8. Sprint filed its quarterly quality of service reports for 2006 on April 3, 2007. Sprint has not filed the remainder of its delinquent quarterly quality of service reports.

9. The reports submitted by Sprint on April 3, 2007 do not comply with 4 CSR 240-3.550(5) in that the data provided in the reports does not comply with the requirements of the rule.

10. Section 386.570(1) RSMo. provides:

Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

11. Section 386.570(2) RSMo. provides:

Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.



12. Section 386.600 RSMo. provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

13. The Missouri courts have imposed a duty upon the Public Service Commission to first determine matters within its jurisdiction before proceeding to those courts. As a result, "[t]he courts have ruled that the [Commission] cannot act only on the information of its staff to authorize the filing of a penalty action in circuit court; it can authorize a penalty action only after a contested hearing." *State ex rel Sure-way Transp., Inc. v. Division of Transp., Dept. of Economic Development, State of Mo.*, 836 S.W.2d 23, 27 (Mo.App. W.D. 1992).

WHEREFORE, the Staff requests that the Commission:

a) find that Sprint Communications Company, LP, has failed to file Quarterly Quality of Service Reports pursuant to Commission Rule 4 CSR 240-3.550(5) for every quarter applicable, and

b) find that the quarterly quality of service reports submitted for 2006 do not comply with the requirements of 4 CSR 240-3.550(5), and

c) authorize the General Counsel of the Commission to bring an action in Circuit Court to recover from Sprint Communications Company, LP, the maximum statutory forfeiture allowed by section 386.570 RSMo. for each separate, distinct, and continuing violation.

Respectfully submitted,

/s/ Jennifer Heintz  
Jennifer Heintz  
Assistant General Counsel  
Missouri Bar No. 57128

/s/ Blane Baker  
Blane Baker  
Legal Counsel  
Missouri Bar No. 58454

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**BEFORE THE PUBLIC SERVICE COMMISSION OF THE  
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Staff of the Public Service Commission,	)	
Of the State of Missouri,	)	
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Complainant,	)	
	)	<b><u>Case No. TC-2007-0415</u></b>
v.	)	
	)	
Sprint Communications Company , L.P.,	)	
	)	
Respondent.	)	

**ANSWER, MOTION TO DISMISS AND IN THE ALTERNATIVE REQUEST  
FOR WAIVER OF SPRINT COMMUNICATIONS COMPANY L.P.**

COMES NOW Sprint Communications Company L.P., d/b/a Sprint ("Sprint") and files its Answer, Motion to Dismiss and in the alternative Request for Waiver to the Complaint filed by the Staff of the Missouri Public Service Commission on April 23, 2007 ("Complaint") with the Missouri Public Service Commission. In an Order dated May 22, 2007, the Commission granted Sprint's request to respond to the Complaint no later than June 25, 2007. Sprint responds to the Complaint as follows:

1. Sprint admits that the language in paragraph 1 of the Complaint appears in Section 386.390.1. Sprint denies all other allegations contained in paragraph 1.
2. Sprint admits that the language quoted is contained in Commission Rule 4 CSR 240-2.070(1). Sprint denies all other allegations contained in paragraph 2.
3. Sprint admits the allegations in paragraphs 3 through 5.

4. Regarding the allegations in paragraph 6, Sprint admits that it is offering basic local telecommunications services on a retail basis in certain AT&T Missouri exchanges. Sprint denies all other allegations in paragraph 6.
5. Sprint admits that the language contained in paragraph 7 appears in the cited rule. Sprint denies all other allegations in paragraph 7.
6. In response to the allegations contained in paragraph 8, Sprint admits that it filed quality of service reports for 2006 on April 3, 2007. Further answering the allegations in paragraph 8, Sprint provided updated quality of service reports on May 24, 2007 to the Missouri Staff. The updated reports included all of the reports for 2006 and the first quarter report for 2007. The updated reports also include information that addresses several of the questions posed by Staff to the reports submitted on April 3, 2007. After further investigation, Sprint has determined that it can provide Missouri specific information on a going forward basis for the categories of "Installation Commitments" and "Held Service Orders". Sprint denies all other allegations in paragraph 8.
7. Sprint denies the allegations contained in paragraph 9.
8. In response to the allegations contained in paragraphs 10, 11 and 12, Sprint admits that the quoted language appears in the cited Missouri statutes. Sprint denies all other allegations in paragraphs 10, 11 and 12.
9. In response to the allegations contained in paragraph 13, the language from the cited case speaks for itself and requires no response. Sprint denies all of the remaining allegations in paragraph 13 including all of the requests for relief following the "WHEREFORE" clause.

## **AFFIRMATIVE DEFENSES AND MOTION TO DISMISS**

1. The Complaint fails to state a claim upon which relief can be granted. Sprint has filed the requested reports for 2006 and the first quarter of 2007 and complies with the Commission's service quality reporting rules including 4 CSR 240-3.550. As such, Sprint has filed the required reports and complies with the requirements of 4 CSR 240-3.550.
2. The Complaint fails to state a claim upon which relief can be granted as it violates the requirement in 4 CSR 240-2.070(5)(E) that the complaint contain a statement as to whether the complainant has directly contacted the person, corporation, or public utility about which complaint is being made. No statement regarding directly contacting Sprint is contained in the complaint. The Complaint must be dismissed for failure to comply with 4 CSR 240-2.070(5)(E).
3. It is not technically feasible for Sprint to collect certain categories of the data requested in the reports on a Missouri specific basis. Sprint contends that the service quality reports it submitted on May 24, 2007 complies with the applicable Missouri rules. To the extent that Staff contends that the reports do not comply with the rule due to the submission of reports that contain nationwide data, Sprint relies upon the technical feasibility exception contained in 4 CSR 240-32.080(1) where the Commission's rules acknowledge that a "company may find it is not technically feasible to collect data for some categories." Sprint's systems do not measure many of the service quality objectives on a Missouri specific basis. After further investigation though, Sprint has determined that it can provide Missouri specific information on a going forward basis for the categories of "Installation Commitments" and "Held Service Orders". Sprint has very

few basic local exchange service customers in Missouri and is not accepting new customers as it is deemphasizing that product offering. While Sprint is committed to serving its remaining customers in Missouri for this service, it is not technically feasible to invest in the back-office systems, program hours and staff to produce service quality reports that track the data on a Missouri specific basis for additional categories.

### **REQUEST FOR WAIVER**

1. If it is determined that Sprint has not complied with the service quality reporting rules (which Sprint disputes), Sprint requests that the Commission grant it a waiver from 4 CSR 240-3.550 pursuant to 4 CSR 240-2.015. That rule states that “[a] rule in this chapter may be waived by the commission for good cause.” Good cause exists for the commission to waive enforcement of rule 4 CSR 240-3.550 upon Sprint. Sprint’s systems do not measure many of the service quality objectives on a Missouri specific basis. After further investigation though, Sprint has determined that it can provide Missouri specific information on a going forward basis for the categories of “Installation Commitments” and “Held Service Orders”. Sprint has very few basic local exchange service customers in Missouri and is not accepting new customers as it is deemphasizing that product offering. While Sprint is committed to serving its remaining customers in Missouri for this service, it is not feasible to invest in the back-office systems, program hours and staff to produce service quality reports that track the data on Missouri specific basis for additional categories. Investment in the resources to comply with the rule is cost prohibitive in an environment where Sprint is servicing very few customers and does not intend to add any new basic local exchange service customers on a retail basis.

Therefore, good cause exists for the Commission to waive the enforcement of 4 CSR 240-3.550.

WHEREFORE Sprint has fully answered the Complaint and respectfully requests:

- (a) the Commission to dismiss the Complaint for the reasons provided above for failure to state a claim upon which relief can be granted;
- (b) or, in the alternative for good cause shown, the Commission should waive the enforcement of 4 CSR 240-3.550 pursuant to 4 CSR 240-2.015; and
- (c) that it be granted any additional relief deemed reasonable by the Commission.

Respectfully submitted on June 22, 2007.



Kenneth Schiffman, MO Bar # 42287  
Sprint Nextel Corporation  
6450 Sprint Parkway  
Overland Park, KS 66251  
Telephone: (913) 315-9783  
Facsimile: (913) 523-9827  
kenneth.schifman@sprint.com

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 22<sup>nd</sup> day of June, 2007, a copy of the above and foregoing Answer, Motion to Dismiss and in the Alternative Request for Waiver of Sprint Communications Company L.P., was served via U.S. Mail, postage paid and or email/facsimile to each of the following parties:

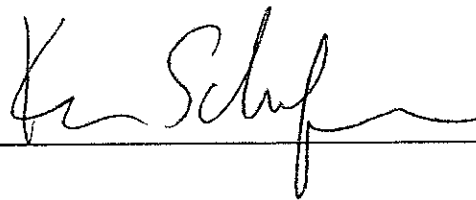
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Legal Counsel  
Attorney for the Staff of the Missouri  
Public Service Commission  
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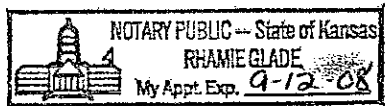


## VERIFICATION

I, Kenneth Schiffman, an attorney and duly authorized representative of Sprint hereby verify and affirm that I have read the foregoing Answer, and verify that the statements contained therein are true and correct to the best of my information and belief.

Kenn Schiffman  
Kenneth Schiffman

Subscribed and sworn to before me on this 22<sup>nd</sup> day of June, 2007.



Rhame Glade  
Notary Public

My Appointment Expires: 9-12-08

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

Staff of the Public Service Commission of the	)	
State of Missouri,	)	
	)	
Complainant,	)	
v.	)	Case No. TC-2007-0415
	)	
Sprint Communications Company, L.P.,	)	
	)	
Respondent.	)	

**SPRINT COMMUNICATIONS COMPANY L.P.'S RESPONSES TO  
COMPLAINANT'S FIRST SET OF INTERROGATORIES**

Sprint Communications Company L.P. ("Sprint") hereby responds to  
Complainant's First Set of Interrogatories.

**1. Please state the number of customers to whom Sprint Communications Company (Sprint) provides basic local telephone service in Missouri.**

Sprint Response:  
As of July 2007, Sprint provided basic local service to 46 business customers in Missouri.  
No basic local telephone service is being provided to consumers.

**2. Please provide the total number of lines to which Sprint provides basic local telephone service in Missouri.**

Sprint Response:  
As of July 2007, Sprint provided basic local telephone service to 184 access line in Missouri. As indicated in Response #1, these are all business access lines.

**3. Please identify when Sprint stopped promoting its basic local telephone service to new customers in Missouri.**

Sprint Response:  
Sprint officially notified its sales force on December 1, 2006, to stop the promotion of this service offering.

**4. Please identify the calling areas in Missouri where Sprint provides basic local telephone service.**

Sprint Response:

The following list of localities identifies the Missouri areas where Sprint provides basic local telephone service:

CREVECOEUR  
ST LOUIS  
LADUE  
CREVECOEUR  
OAKVILLE  
SAPPINGTON  
MEHLVILLE  
KIRKWOOD  
MANCHESTER  
CHESTERFEILD  
ST CHARLES

**5. Has Sprint prepared a cost estimate for isolation of Missouri-specific data for its quarterly quality of service reports? If such an estimate has been prepared, please state the basis of the estimate and provide a copy of the estimate.**

Sprint Response:

Sprint objects to this question to the extent that it assumes that Missouri-specific data for its quarterly quality of service reports is necessary to comply with the rules. Notwithstanding that objection, Sprint has not prepared a cost estimation to date for the isolation of Missouri-specific data for its quarterly quality of service reports. Sprint will update this response if such an estimate is developed. Further responding to this question, Sprint has reviewed its systems and the fields populated for trouble tickets and is now able to isolate trouble ticket reports, clearing time out of service, and repair commitments met to Missouri markets for its local service offering for 2007. Sprint will revise its 1Q and 2Q 2007 service quality reports and submit them as soon as possible.

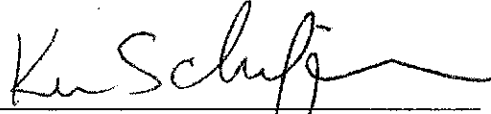
**6. Has Sprint prepared a feasibility study to assess the technical feasibility of isolating Missouri-specific data for its quarterly quality of service reports? If such a study has been prepared, please explain the methodology used in the feasibility study and provide a copy of the study.**

Sprint Response:

Sprint objects to this question to the extent that it assumes that Missouri-specific data for its quarterly quality of service reports is necessary to comply with the rules. Notwithstanding that objection, Sprint has not prepared a feasibility study to assess the technical feasibility of isolating Missouri-specific data for its quarterly quality of service

reports. Sprint will update this response if such a feasibility study is developed. Further responding to this question, Sprint has reviewed its systems and the fields populated for trouble tickets and is now able to isolate trouble ticket reports, clearing time out of service, and repair commitments met to Missouri markets for its local service offering for 2007. Sprint will revise its 1Q and 2Q 2007 service quality reports and submit them as soon as possible.

Respectfully submitted 8/22, 2007.



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Telephone: (913) 315-9783  
Facsimile: (913) 523-9827  
kenneth.schifman@sprint.com

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 22<sup>nd</sup> day of Aug, 2007, a copy of the above and foregoing Responses to Complainants First Set of Interrogatories was served via U.S. Mail, postage paid and or email/facsimile to each of the following parties:

General Counsel  
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Legal Counsel  
Attorney for the Staff of the Missouri  
Public Service Commission

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blane.baker@psc.mo.gov

Rhame Glade

## VERIFICATION

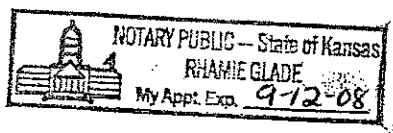
I, Kenneth Schiffman, an attorney and duly authorized representative of Sprint hereby verify and affirm that I have read the foregoing Responses to Complainants First Set of Interrogatories, and verify that the statements contained therein are true and correct to the best of my information and belief.

Kenneth Schiffman  
Kenneth Schiffman

Subscribed and sworn to before me on this 22 day of August, 2007.

Rhame Glade  
Notary Public

My Appointment Expires: 9-12-08



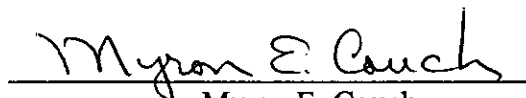
**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

**AFFIDAVIT OF MYRON E. COUCH**

STATE OF MISSOURI     )  
                                      ) ss  
COUNTY OF COLE     )

Myron E. Couch, of lawful age, and having reviewed the Quarterly Quality of Service Reports submitted by Sprint Communications Company, L.P., on his oath states: to the best of his knowledge and belief, that Sprint Communications Company, L.P. has not provided Missouri specific data in its Quarterly Quality of Service Reports in the following categories:

- a. Operator Assisted Calls
- b. Customer Assisted Calls
- c. Customer Trouble Report Rate
- d. Clearing time on Out of Service Trouble
- e. Repair Commitments Met

  
Myron E. Couch

Subscribed and sworn to before me this 28<sup>th</sup> day of August, 2007.



SUSAN L. SUNDERMEYER  
My Commission Expires  
September 21, 2010  
Callaway County  
Commission #06942086

  
Notary Public

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

Staff of the Public Service Commission of the State	)	
of Missouri,	)	
	)	
Complainant,	)	
v.	)	Case No. TC-2007-0415
	)	
Sprint Communications Company, L.P.,	)	
	)	
Respondent.	)	

**STAFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS  
MOTION FOR SUMMARY DETERMINATION**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its memorandum of law in support of its Motion for Summary Determination states as follows:

Sprint is a telecommunications company certificated to provide basic local telecommunications service in Missouri by the Missouri Public Service Commission in certificate case No. TA-97-269, and is a telecommunications company as defined by section 386.020(51) RSMo. Supp. 2005.

Commission Rule 4 CSR 240-3.550(5) requires that each company which provides basic local telecommunications service is required to "file with the commission no later than forty-five days following the end of each quarter a report, referred to as the quarterly report [or Quarterly Quality of Service Report, "QQoS"], of the quality of the telephone service provided to its customers." The reports submitted by Sprint on April 3, 2007, and updated thereafter on May 24, 2007, do not comply with 4 CSR 240-3.550(5).

**THE STANDARD FOR SUMMARY DETERMINATION**

Pursuant to 4 CSR 240-2.117, summary determination may be granted if the pleadings, testimony, discovery, affidavits, and memoranda on file show that no genuine issue of material



fact exists and that any party is entitled to judgment as a matter of law, and the commission determines that it is in the public interest. Summary determination, as it is defined in 4 CSR 240-2.117, is substantially similar to summary judgment as defined in Rule 74.04 of the Missouri Rules of Civil Procedure. 4 CSR 240-2.117 additionally requires that the Commission make a determination that the grant of summary disposition is in the public interest.

Courts have stated that the purpose of summary judgment, under rule 74.04, “. . . is to identify cases (1) in which there is no genuine dispute as to the facts and (2) the facts as admitted show a legal right to judgment for the movant.” *ITT Commercial Finance Corp. v. Mid-American Marine Supply Corp.*, 854 S.W.2d 371, 380 (Mo. 1993). The Staff, as the complainant, is entitled to summary determination once it shows “that there is no genuine dispute as to those material facts upon which the claimant would have had the burden of persuasion at trial,” *Id.* at 381, and that the determination is in the public interest pursuant to 4 CSR 240-2.117. A genuine issue of fact is one that is “real and substantial . . . consisting not merely of conjecture, theory and possibilities.” *Id.* at 378. Furthermore, when the non-moving party claims an affirmative defense, the claimant must establish that the affirmative defense fails as a matter of law for summary determination to be granted. *Id.* at 381. However, Sprint would have the burden of proof as to its affirmative defenses at hearing. *Id.*

**A. THE QQOS REPORTS SUBMITTED BY SPRINT DO NOT  
COMPLY WITH 4 CSR 240-3.550(5) BECAUSE THE DATA  
CONTAINED IN THE REPORTS IS NOT SPECIFIC TO  
MISSOURI**

In its complaint, Staff asserts that Sprint has failed to file QQoS reports that are compliant with 4 CSR 240-3.550(5). Specifically, the QQoS reports do not reflect Missouri specific data for the following areas: Operator assisted calls, customer assisted calls, customer trouble report rate, clearing time on out of service trouble, and repair commitments met. (See

Staff Affidavit, attached hereto as exhibit D). As a Missouri agency, the PSC has jurisdiction only over the actions of Missouri utilities within Missouri. The reports submitted by Sprint do not allow Staff to isolate Sprint's service to its Missouri customers to ascertain whether Sprint is meeting the quality of service standards applicable to Missouri utilities. By failing to file QQoS reports containing Missouri specific data in the foregoing areas, Sprint is in violation of 4 CSR 240-3.550(5).

**B. SPRINT HAS NOT ADDUCED ANY EVIDENCE SHOWING THAT PROVIDING MISSOURI-SPECIFIC INFORMATION IN ITS QQOS REPORTS IS TECHNICALLY INFEASIBLE**

Sprint confirmed that the QQoS reports contain non-Missouri-specific data when stating in its Answer, "[i]t is not technically feasible for Sprint to collect certain categories of the data requested in the reports on a Missouri specific basis." (Exhibit B, page 3, paragraph 3) Sprint's claim that it is not technically feasible does not remove their duty to provide to the Commission QQoS reports that satisfy 4 CSR 240-3.550(5), particularly in the absence of evidence supporting that claim. Moreover, in their responses to discovery, Sprint stated that it has not prepared a feasibility study to assess the technical feasibility of isolating Missouri specific data for its QQoS reports. (Exhibit C, paragraph 6) Sprint also admitted that they have not prepared a cost study to assess the costs that might be associated with isolating Missouri specific data for its QQoS reports. (Exhibit C, paragraph 5) Sprint has not provided any documentation or other evidence to support their claim that providing Missouri specific data is not technically feasible.

**C. SUMMARY DETERMINATION IS IN THE PUBLIC INTEREST BECAUSE SPRINT, AS A COMPETITIVE COMPANY, SHOULD NOT BE ALLOWED A COMPETITIVE ADVANTAGE OVER OTHER COMPETITIVE COMPANIES WHO MUST PROVIDE MISSOURI-SPECIFIC DATA ON QQOS REPORTS.**

4 CSR 240-2.117 requires that for summary determination to be granted, it must be

found to be in the public interest. Summary determination is in the public interest in this case because Sprint is a competitive company, and as such, should not be allowed to gain an unfair competitive advantage over other competitive companies in the same market, who must provide QQoS reports containing Missouri-specific data. Allowing a company to circumvent the requirements of a rule that other similarly-situated companies must follow is not in the interest of those similarly-situated companies or Missouri rate-payers. Sprint, as a company with the benefit of gaining revenue from Missouri customers, should not be excused from the burdens faced by other companies serving Missouri rate-payers.

WHEREFORE, the Staff respectfully submits this memorandum in support of its Motion for Summary Determination and requests that the Commission grant Staff's Motion for Summary Determination pursuant to Commission Rule 4 CSR 240-2.117.

Respectfully submitted,

**/s/ Blane Baker**

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**ATTORNEYS FOR THE STAFF OF THE  
MISSOURI PUBLIC SERVICE  
COMMISSION**

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 31<sup>st</sup> day of August, 2007.

/s/ Blane Baker