

Service Copy

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

FILED

SEP 10 2002

DEBORAH M. CHESHIRE
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

State of Missouri ex rel Acting Public Counsel
John B. Coffman,

Relator,

vs.

Public Service Commission of the State of
Missouri, a state agency, and its members Kelvin
Simmons, Connie Murray, Sheila Lumpe,
Steve Gaw, and Bryan Forbis in their official
capacity

Respondents.

Case No. 02CV325337

Division II

FILED

SEP 27 2002

Missouri Public
Service Commission

WRIT OF REVIEW

RECEIVED
SEP 19 2002
COLE COUNTY
SHERIFF'S OFFICE

TO: THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Acting Public Counsel John B. Coffman (Public Counsel), having filed a Petition for Writ of Review of the Commission's actions and decisions concerning Commission Case No. TT-2002-1136, and the Court being informed in the premises,

IT IS ORDERED AND ADJUDGED by the undersigned Judge of the Circuit Court that the Public Service Commission of Missouri certify fully, and return to the Circuit Court of Cole County, Missouri (19th Judicial Circuit), within thirty (30) days of the issuance of this Writ, a full, true and complete copy of the record in Case No. TT-2002-1136, including without limitation, all motions and responses thereto, all orders issued therein, and all other records the Respondent considered in said cases, to the end that the Circuit Court of Cole County may determine the lawfulness and reasonableness of the Commissioners' actions and decisions and orders therein.

IN WITNESS WHEREOF, I have hereunto signed this Writ on this 16th day of
September, 2002.

STATE OF MISSOURI
COUNTY OF COLE } ss

I, DEBORAH M. CHESHIRE, Clerk of the Circuit Court of Cole County, Missouri,
hereby certify that the above and foregoing is a full true and correct copy of

Writ of Review

JUDGE

as fully as the same remains of record in my said office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the
seal of my said office this 19th day of Sept 2002

DEBORAH M. CHESHIRE, Clerk

Deborah M. Cheshire
Deputy Clerk

RECEIVED⁵

SEP 26 2002

Records
Public Service Commission

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

FILED

SEP 10 2002

DEBORAH M. CHESHIRE
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

State of Missouri ex rel Acting Public Counsel)
John Coffman,)
)
Relator,)
)
vs.)
)
Public Service Commission of the State of)
Missouri, a state agency, and its members Kelvin)
Simmons, Connie Murray, Sheila Lumpe,)
Steve Gaw, and Bryan Forbis)
)
in their official capacity,)
)
Respondents.)

Case No. 02CV32537
Division II

PETITION FOR WRIT OF REVIEW

COMES NOW Relator Acting Public Counsel John Coffman ("Public Counsel") of the State of Missouri and pursuant to Section 386.510, RSMo. 1994, states the following to the Court as the Office of the Public Counsel's Petition For Writ of Review of the Public Service Commission of the State of Missouri's Order Approving Tariff dated July 23, 2002 and effective July 31, 2002 in *In the Matter of Sprint Communications Company, L.P.'s Proposed Tariff to Introduce an In-state Access Recovery Charge and Make Miscellaneous Text Changes* (Case No. TT-2002-1136) that denied Office of the Public Counsel's motion brought pursuant to Sections 392.200, 392.230.3, 386.250, 392.186, 386.320, 386.330, and 386.710, RSMo. 2000 to suspend Sprint Communications Company, L.P.'s proposed tariff to impose an in-state connection

fee and surcharge of \$1.99 per month to certain residential customers that are presubscribed to Sprint toll service. Sprint Communications Company, L. P. introduced and established a \$1.99 monthly service charge known as an "In-State Access Recovery" charge for all "Dial 1 Sprint" account customers who are presubscribed to Sprint for long distance toll service and do not have local service provided by "a Sprint company."

1. Relator Acting Public Counsel John Coffman is an officer of the State of Missouri and pursuant to the statutory authority in Sections 386.700 and 386.710, RSMo. represents the public in all proceedings before the Public Service Commission and on appeal before the courts.

2. The Public Service Commission is a state administrative agency with the power and duty to regulate public utilities, including telecommunications companies under Chapters 386 and 397, RSMo. 1996 (as amended). Respondents Kelvin Simmons, Sheila Lumpe, Connie Murray, Steve Gaw and Bryan Forbis are the duly appointed and acting Commissioners of the Public Service Commission and are sued in their official capacity and collectively comprise the current Commission. The Respondents' principle office is located in Jefferson City, Cole County, Missouri.

Sprint Communications Company, L.P. is a certified competitive interexchange telecommunications company that provides interstate and intrastate toll service to Missouri customers. Sprint filed its tariff on May 30, 2002 with an effective date of July 1, 2002 to establish a \$1.99 monthly service charge to certain residential customers that are presubscribed to Sprint toll service. Sprint Communications Company, L. P. proposed this \$1.99 monthly service charge known as an "In-State Access Recovery " charge for

all "Dial 1 Sprint" account customers who are presubscribed to Sprint for long distance toll service and do not have local service provided by "a Sprint company."

3. On June 13, 2002, the Office of the Public Counsel filed a motion to suspend the tariff and requesting evidentiary and public hearings. (A copy of the motion is attached hereto and incorporated herein as Exhibit A.)

4. On June 27, 2002, the PSC suspended the tariff for 30 days.

5. The PSC issued its Order Approving Tariff dated July 23, 2002 and effective July 31, 2002 that denied Office of the Public Counsel's motion and approved the tariff. (A copy of the Order is attached hereto and incorporated herein by reference as Exhibit B.)

6. On July 26, 2002, pursuant to Section 386.500, RSMo. and 4 CSR 240-2.160, Public Counsel timely filed a motion for rehearing that set forth the reasons that warranted a rehearing. (A copy of the motion for rehearing is attached hereto and incorporated herein by reference as Exhibit C.)

7. On August 13, 2002, the PSC issued its order denying Public Counsel's motion for rehearing. (A copy of this order denying rehearing is attached hereto and incorporated herein by reference as Exhibit D.)

8. The order is unlawful, unjust, and unreasonable and is arbitrary, capricious, unsupported by substantial and competent evidence, and is against the weight of the evidence considering the whole record, is in violation of constitutional provisions of due process, is unauthorized by law, made upon an unlawful procedure and without a fair trial, and constitutes an abuse of discretion, all as more specifically and particularly described in this motion.

9. The PSC's order approves a new charge that is a discriminatory rate increase for certain Missouri customers who subscribe to Sprint long distance services. The effect of the order is to increase the effective price per minute for a Missouri customer so that the Missouri customer pays more per minute for toll service (interstate) than a Sprint customer in another state where this access recovery fee is not charged or charged at a lower rate. This violates Section 254 (g) of the Federal Telecommunications Act of 1996.

10. Section 254 (g) of the Federal Telecommunications Act of 1996 and FCC Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61 (August 7, 1996) (11 FCC Rcd 9564) requires interexchange carriers such as AT&T to "provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State . . . to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers." (para.80). Approval of the \$1.99 Missouri surcharge is discriminatory in that this surcharge is not levied on similarly situated customers in some states and the amount levied is less in other states. According to Sprint's website, the In-state Access Recovery is now only applicable in the following states in the following amounts: AR \$1.99/mo; CO \$1.30/mo; GA \$0.87/mo; KY \$1.98/mo; MA \$1.01/mo; MI \$0.57/mo; NY \$1.76/mo.

11. Sprint's new charge approved by the PSC bears no relationship to its stated purpose to recover the access charges Sprint pays to the local telephone company

to utilize its local phone lines. In addition, Missouri Sprint customers that subscribe to Sprint local service can also cause Sprint Communication Co., L.P. (Sprint Long Distance) to incur access fees for termination of toll calls to non-Sprint exchanges. Yet these customers are exempt from the surcharge. The charge is applied to Missouri accounts without regard to the amount of long distance toll the customer uses. If the customer is presubscribed to Sprint and makes no toll calls during a month, the customer still is charged \$1.99. A customer with \$10,000 in toll calls will be charged \$1.99. Each customer pays the same amount no matter how many toll calls are made and no matter how long the calls are. Customers who make few, if any, long distance and local toll calls are treated as if they are huge business concerns, such as Hallmark or Boeing, or have a substantial long distance or even international call operations.

The same \$1.99 fee is applied to each account without differentiating between in-state toll calls and interstate toll calls, interLATA calls and IntraLata calls, domestic or international calls and the different access rate structure involved. If a presubscribed Sprint Long Distance customer has MCA service for the local calling scope (to avoid toll calls), Sprint does not incur access charges on those MCA calls. Sprint will just the same bill those customers for costs that Sprint has avoided by the customer paying for MCA service.

12. Approval of this access recovery charge is just another example of how the telecommunications industry uses indirect means to confuse the consumer and to hide increases and the true cost of the service to customer by a special surcharge. The source of this surcharge or separate charge is the current rate structure with the particular existing rate element carved out for separate treatment.

13. The tariff violates Section 392.200, RSMo 2000 by its adverse discriminatory effect on Missouri customers as it unreasonably applies a charge whose purpose is to recover access costs paid by the company on customers that have little or no toll usage. The same charge is made for all accounts, with or without actual toll calls billed. It is also applied in a flat rate without regard to the type, amount and duration of toll calls and the resultant access charges incurred by the company, if any. The charge results in an unreasonable and prejudicial disadvantage for a class of Sprint presubscribed customers that have a low amount or no toll calling while customers with considerable toll calling are given an undue and unreasonable preference and advantage by paying the same amount per month .

14. Section 392.200.3 RSMo provides: "No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever except that telecommunications messages may be classified into such classes as are just and reasonable, and different rates may be charged for the different classes of messages."

15. Section 392.200, RSMo 2000, subsection 2 provides in pertinent part: "No telecommunications company shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to telecommunications or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to

telecommunications under the same or substantially the same circumstances and conditions.”

16. The order approving the tariff results in an unreasonable and unjust rate. The tariff assesses a surcharge to recover access charges each month conditioned on a flat fee of \$1.99 per account basis. The surcharge is assessed even if a customer makes no toll calls or any calls and is just a presubscribed customer. In addition to a minimum monthly charge, the customer is billed an additional \$1.99 for being a Sprint customer.

17. The PSC has failed to have Sprint disclose the justification and basis for singling out these customers for discriminatory treatment and extra charges. The order also fails to set forth the justification for this discriminatory treatment. Public Counsel’s investigation of Sprint’s website provided little information on the new access recovery charge other than to note it is to recover the fee local telephone companies charge Sprint for the use of the local network in completing a toll call.

Access charges have a long history and the interexchange carriers have incorporated this cost factor and element into their rates. The competitive marketplace determines to what extent the carrier will seek to recover all or any part of those costs in its rates. By separating this cost element from the normal rate structure, Sprint distorts the competitive toll rate structure. It also seeks to recover this cost twice and without regard to customer actual usage or costs by charging a separate, additional surcharge to customers for access costs.

18. Section 392.200. 1, RSMo provides:

Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. **All charges made and demanded by any telecommunications company for any service rendered or to be rendered in**

connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for any such service or in connection therewith or in excess of that allowed by law or by order or decision of the commission is prohibited and declared to be unlawful. (emphasis supplied)

19. Section 392.185, RSMo provides in part:

The provisions of this chapter shall be construed to:

(4) Ensure that customers pay only reasonable charges for telecommunications service;

(6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest[.]

20. The PSC's approval of Sprint's separate and distinct additional charge is in reality a rate increase. This flat rate charge unfairly inflates the per minute rate charged by Sprint and hides the true cost to the consumer in a list of separate charges. The resulting effective rates are unreasonable and unjust.

21. The Commission failed to consider relevant and material issues of fact and misinterpreted the law when it failed to consider and determine that the tariff violated Section 254 (g) of the Federal Telecommunications Act of 1996 and FCC Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61 (August 7, 1996) (11 FCC Rcd 9564). It discriminates against Missouri customers as compared to customers in other states in violation of Section 254 (g) of the Federal Telecommunications Act of 1996. Sprint and other interexchange carriers must "provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State . . . to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and

interstate interexchange services at rates no higher than those paid by urban subscribers." (Report and Order, para.80). This access recovery charge is applied to all 1+ presubscribed customers without regard to whether calls are interstate or intrastate. Application to interstate calls effectively prices Missouri interstate calls higher than other state calls that are not assessed an instate access recovery charge or are assessed a charge lower than \$1.99. The Commission's decision does not consider or address this significant objection to the tariff based on federal law.

22. The Commission failed to consider relevant and material matters of fact and misinterpreted and misconstrued the law in its decision when it held that the access recovery charge was just and reasonable when there was no evidence adduced how the charge bears a reasonable relationship to its stated purpose to recover access charges on intrastate calls paid to local telephone companies to use their local phone lines. Without a showing of this nexus between the purpose and the application and amount of the access recovery charge to Missouri customers, the Commission cannot properly determine whether or not the charge as applied is just, reasonable, and nondiscriminatory.

23. The Commission failed to consider relevant and material matters of fact and misinterpreted and misapplied the law in its decision when it held that the access recovery charge was just and reasonable. There is no evidence in the record to support that holding. The flat rated charge distorts the true cost of service to the consumer by using an indirect means to raise rates (and recover a cost of doing business) via a surcharge on a cost element that is already part of the existing per minute rate. The access recovery charge increased the effective price paid per minute by Sprint customers affected by this tariff. The Commission failed to look at the impact of the access

recovery surcharge and the resultant effective price as an indicator of the discriminatory impact of the proposed tariff.

24. The Commission failed to consider relevant and material matters of fact and misinterpreted and misapplied the law in its decision when it held that the access recovery charge was just and reasonable even though this flat rate surcharge is applied to customers with little or no usage of in-state long distance service who pay the same charge as high volume users with significant number and minutes of in-state calling. This results in an undue and unreasonable preference and advantage to those high volume customers and an unreasonable prejudice and disadvantage to low volume users of in-state calling, all in violation of Sections 392.220.2 and .3, RSMo.

25. The Commission failed to consider relevant and material matters of fact and misinterpreted and misapplied the law in its decision when it held that the access recovery charge was just and reasonable when it relied upon a related, but separate and distinct promotional tariff (No. 200201106) as providing specific exemptions and additional terms and conditions for Sprint's In-State Access Recovery Charge. The decision fails to consider that the general and permanent Recovery Charge Tariff cannot in its approved form stand on its own. The intent and purpose of the tariff system is to provide notice to customers and to the public of the price, terms, and conditions of the service offered by the carrier. The tariff is also the legal authority for the carrier to impose the charges on the customers. With these elementary purposes in mind, this tariff creating a new charge must define the scope of the charge and how it operates and the full terms and conditions. The public is mislead and the authority to levy the charge is inadequate if the tariff omits key terms and conditions of the permanent offering. The

tariff, as approved, is vague and incomplete because the only way to determine the operative terms and conditions of the permanent tariff is to resort to reference to matters outside of that tariff. The Commission relies on the temporary promotional tariff to provide the exemptions that were an element of the finding that the tariff is just and reasonable. The promotional tariff's purpose and intent is to offer an incentive to customers to become a subscriber to the company and the service offering. This promotion will expire when the time for the promotional offering expires on December 31, 2002. The Commission improperly relied upon this temporary promotional tariff to provide the key terms and conditions of the permanent surcharge. The permanent and promotional tariffs are separate and distinct both as to duration and purpose. When the promotional tariff expires, it changes the scope, terms, and conditions of the permanent in-state access recovery charge. These terms will expire by a date certain without action by Sprint or the Commission. Those customers exempt under the promotional tariff will then be assessed the access recovery charge effective January 1, 2003. Therefore, the Commission erred in approving this permanent tariff that is defined and completed only by the terms of the promotional tariff.

26. As a result of the Commission's improper reliance upon the promotional tariff to provide the exemptions that the Commission believes makes the permanent tariff reasonable and just, the Commission has approved the permanent tariff that does not exempt Life Line Link up customers, customers with no long distance charges or de minimus charges, or customers with only interstate toll charges. This omission from the permanent tariff makes it discriminatory, unreasonable, and unjust in that customers in low income programs and customers who do not cause Sprint to incur in-state access

charges or little usage still bear the burden of the access cost recovery. These customers are making a disproportionate contribution to the cost recovery. Assessing low-income customers on Lifeline and Link-Up programs defeats the public policy goals embodied in Universal Service legislation that minimizes the cost to connect to the network and maintain service. Therefore, the tariff is contrary to the public interest.

27. The Commission failed to consider relevant and material matters of fact and misinterpreted and misapplied the law in its decision when it held that the access recovery charge was just and reasonable when the tariff unreasonably exempts Sprint local customers. The stated reason for the tariff is to recover in-state access costs incurred by Sprint. Although Sprint local customers can cause Sprint to incur access costs by calls to non-Sprint local customers, this class of customers is granted a total exemption that is unreasonable and discriminatory. This exemption shifts the burden of recovering access costs solely to other customers even though Sprint local customers contribute to Sprint's access cost burden.

28. The Commission failed to consider relevant and material matters of fact and misinterpreted and misapplied the law in its order when it held that the access recovery charge was just and reasonable since the tariff applies a flat rate non-usage sensitive charge to recover a cost paid by the company (access charges) that are incurred on a usage sensitive basis. High volume users pay the same as non-traffic generating customers or customers with very low number of calls and minutes of use. Low volume users are paying a disproportionate share of the access cost recovery when their usage has no bearing on the amount of recovery these customers are expected to contribute. The PSC's order fails to address or consider this unlawful and unreasonable discrimination.

The order does not state how and in what manner this discriminatory method of assessing a cost recovery charge is reasonable and proper and in the public interest. There was no showing that this discrimination and the recovery of these costs in this manner is based upon reasonable and fair conditions which equitably and logically justify this tariffed rate. *State ex rel. DePaul Hospital School of Nursing v. PSC*, 464 SW2d 737 (Mo App 1970).

29. The Commission failed to consider relevant and material matters of fact and misinterpreted and misapplied the law in its decision when it indicates that because of the number of competitors for long distance service, protection of the consumer is left to the marketplace. The order justifies its "hands off" policy on grounds that consumers can avoid the surcharge by changing carriers. This presupposes that unjust and unreasonable and unlawful charges are acceptable so long as the customer can go to another carrier for its long distance service. This assumption does violence to the PSC's statutory duty to serve the public interest under Section 392.185 (4) and (6), RSMo to protect the consumer. The Commission cannot ignore its duty in Section 392.185 (4) to "Ensure that customers pay only reasonable charges for telecommunications service" by stating that it need not review the charges since customers can go somewhere else. Likewise, the Commission cannot completely delegate to competition the protection of consumers when the emphasis of Section 392.185 (6) is to allow competition to "function as a substitute for regulation when consistent with the protection of the ratepayers and otherwise consistent with the public interest." The key here is that protection of ratepayers and the promotion of the public interest is paramount to the functioning of competition. The protection offered by "full and fair competition" occurs only when

there is widespread knowledge and information readily available for consumers to investigate alternatives and understand the price and service variations offered by the firms in the marketplace. Customers may not change carriers for a variety of reasons, including, but not limited to, the high costs in time and knowledge required to search for alternatives and the consumer's awareness, education, commercial or purchasing sophistication, health, ability, and intelligence or mental capacity. The statute does not exempt these ratepayers from protection from unreasonable and unjust pricing schemes.

30. The order of the Commission failed to make adequate findings of fact and conclusions of law. The order in this case does not inform a reviewing court of the basic findings on which the Commission's ultimate findings rest. The conclusory nature of the order is insufficient to show the basis of the decision. The order must contain unequivocal, affirmative findings of fact so that a reviewing court is able to determine whether the order is supported by substantial and competent evidence without combing the PSC's evidentiary record. *Noranda Aluminum, Inc. v. PSC*, 24 S.W.3d 342, 245-6 (Mo. App. 2000).

31. The Commission failed to consider material issues of fact and misinterpreted and misapplied the law and acted unlawfully, unjustly, and unreasonably and abused its discretion when the Commission failed to make adequate findings of fact and conclusions of law based on competent and substantial evidence on the whole record in that the PSC disregarded evidence of violations of Section 392.200 and failed to consider the entire record and unreasonably limited its jurisdiction, authority and duty to review the tariff to a facial review of technical compliance with Section 392.500 relating

to increasing a rate by filing of tariff with the PSC and notifying customers 10 days before the effective date.

WHEREFORE, Public Counsel asks the Circuit Court to set aside the Order of the PSC in this case approving the tariff and denying Public Counsel's motion to suspend and requesting evidentiary and public hearings and direct the PSC to rehear the case and suspend Sprint's tariff establishing a instate connection fee and to hold an evidentiary hearing prior to making any determination and to issue an order accompanied by adequate and proper findings of fact and conclusions of law and for such further and additional relief as the court deems necessary and appropriate.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY: 

Michael F. Dandino (24590)

Senior Public Counsel

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed via certified mail to counsel for Sprint Communications Company L.P. and hand-delivered to counsel for Respondents this 11th day of September, 2002.

David Meyer
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Lisa Creighton Hendricks
Sprint Communications Company, L.P.
6450 Sprint Parkway
MAILSTOP: KSOPHN0212-2A253
Overland Park, KS 66251



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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

JUN 13 2002

Missouri Public
Service Commission

In Re the matter of Sprint Communications)
Company, L. P.'s proposed tariff to)
introduce an in-state access recovery)
charge and make miscellaneous text changes)

Case No. _____
Tariff No. 200201020

**OFFICE OF THE PUBLIC COUNSEL'S MOTION TO SUSPEND
TARIFF AND FOR EVIDENTIARY AND PUBLIC HEARINGS**

COMES NOW the Office of the Public Counsel (Public Counsel) and respectfully moves the Public Service Commission of Missouri to make and enter its order suspending the proposed tariff of Sprint Communications Company, L. P. introducing and establishing a \$1.99 monthly service charge known as an "In-State Access Recovery" charge for all "Dial 1 Sprint" account customers who are presubscribed to Sprint for long distance toll service and do not have local service provided by "a Sprint company."

Public Counsel suggests that this new charge is a discriminatory rate increase for certain Missouri customers who subscribe to Sprint long distance services. The effect of the charge is to increase the effective price per minute for a Missouri customer so that the Missouri customer pays more per minute for toll service (interstate) than a Sprint customer in another state where this access recovery fee is not charged or charged at a lower rate. This violates Section 254 (g) of the Federal Telecommunications Act of 1996.

Section 254 (g) of the Federal Telecommunications Act of 1996 and FCC Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61 (August 7, 1996) (11 FCC Rcd 9564) requires interexchange carriers

such as AT&T to "provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State . . . to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers." (para.80). The \$1.99 Missouri surcharge is discriminatory in that this surcharge is not levied on similarly situated customers in some states and the amount levied is less in other states. According to Sprint's website, the In-state Access Recovery is now only applicable in the following states in the following amounts: AR \$1.99/mo; CO \$1.30/mo; GA \$0.87/mo; KY \$1.98/mo; MA \$1.01/mo; MI \$0.57/mo; NY \$1.76/mo.

Sprint's proposed charge bears no relationship to its stated purpose to recover the access charges Sprint pays to the local telephone company to utilize its local phone lines. In addition, Missouri Sprint customers that subscribe to Sprint local service can also cause Sprint Communication Co., L.P. (Sprint Long Distance) to incur access fees for termination of toll calls to nonSprint exchanges. Yet these customers are exempt from the surcharge. The charge is applied to Missouri accounts without regard to the amount of long distance toll the customer uses. If the customer is presubscribed to Sprint and makes no toll calls during a month, the customer still is charged \$1.99. A customer with \$10,000 in toll calls will be charged \$1.99. Each customer pays the same amount no matter how many toll calls are made and no matter how long the calls are. Customers who make few, if any, long distance and local toll calls are treated as if they are huge business concerns, such as Hallmark or Boeing, or have a substantial long distance or even international call operations.

The same \$1.99 fee is applied to each account without differentiating between in-state toll calls and interstate toll calls, InterLata calls and IntraLata calls, domestic or international calls and the different access rate structure involved. If a presubscribed Sprint Long Distance customer has MCA service for the local calling scope (to avoid toll calls), Sprint does not incur access charges on those MCA calls. Sprint will just the same bill those customers for costs that Sprint has avoided by the customer paying for MCA service.

This access recovery charge is just another example of how the telecommunications industry tends to use indirect means to confuse the consumer and to hide increases and the true cost of the service to customer by a special surcharge. The source of this surcharge or separate charge is the current rate structure with the particular existing rate element carved out for separate treatment. Sprint has already played this special surcharge scheme when it began to levy and collect a separate Carrier Property Tax charge of 1.08% of the customer's monthly recurring and usage based charges. Normally, property taxes paid by the company are part of a rate for service.

Sprint is following the same path blazed by AT&T with its In-state Connection Fee approved in TT 2001-129. Public Counsel has appealed this Commission decision to the Circuit Court. The hole in the dam created by the AT&T ruling now starts as a trickle, no doubt will become a steady stream of similar filings, and then any restraint on such surcharges and separate charges will be breached and the consumer will face a deluge of surcharges.

The tariff violates Section 392.200, RSMo 2000 by its adverse discriminatory effect on Missouri customers as it unreasonably applies a charge whose purpose is to

recover access costs paid by the company on customers that have little or no toll usage. The same charge is made for all accounts, with or without actual toll calls billed. It is also applied in a flat rate without regard to the type, amount and duration of toll calls and the resultant access charges incurred by the company, if any. The charge results in an unreasonable and prejudicial disadvantage for a class of Sprint presubscribed customers that have a low amount or no toll calling while customers with considerable toll calling are given an undue and unreasonable preference and advantage by paying the same amount per month.

Section 392.200.3 RSMo provides: "No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever except that telecommunications messages may be classified into such classes as are just and reasonable, and different rates may be charged for the different classes of messages."

Section 392.200, RSMo 2000, subsection 2 provides in pertinent part: "No telecommunications company shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to telecommunications or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to telecommunications under the same or substantially the same circumstances and conditions."

The proposed tariff results in an unreasonable and unjust rate. The tariff assesses a surcharge to recover access charges each month conditioned on a flat fee of \$1.99 per account basis. The surcharge can be assessed even if a customer makes no toll calls or any calls and is just a presubscribed customer. In addition to a minimum monthly charge, the customer is billed an additional \$1.99 for being a Sprint customer.

Sprint has failed to disclose the justification and basis for singling out these customers for discriminatory treatment and extra charges. Public Counsel's investigation of Sprint's website provides little information on the new access recovery charge other than to note it is to recover the fee local telephone companies charge Sprint for the use of the local network in completing a toll call.

Access charges have a long history and the interexchange carriers have incorporated this cost factor and element into their rates. The competitive marketplace determines to what extent the carrier will seek to recover all or any part of those costs in its rates. By separating this cost element from the normal rate structure, Sprint distorts the competitive toll rate structure. It also seeks to recover this cost twice and without regard to customer actual usage or costs by charging a separate, additional surcharge to customers for access costs.

Section 392.200. 1, RSMo provides:

Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. **All charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the commission.** Every unjust or unreasonable charge made or demanded for any such service or in connection therewith or in excess of that allowed by law or by order or decision of the commission is prohibited and declared to be unlawful. (emphasis supplied)

Section 392.185, RSMo provides in part:

The provisions of this chapter shall be construed to:

(4) Ensure that customers pay only reasonable charges for telecommunications

service;

(6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest[.]

Sprint's separate and distinct additional charge is in reality merely a rate increase dressed in different terminology. This flat rate charge unfairly inflates the per minute rate charged by Sprint and hides the true cost to the consumer in a list of separate charges. The resulting effective rates are unreasonable and unjust.

Commission's jurisdiction for review and suspension

Public Counsel suggests that Sections 392.200, and 392.185, RSMo 2000 provide the statutory basis for the PSC to review and suspend this tariff. In addition, the PSC has broad power to protect consumers even if the telecommunications provider is a competitive company and is providing a competitive service. Section 392.185, RSMo. The Commission's oversight and authority to suspend is an essential power of the PSC to carryout the legislative purpose of Chapters 386 and 392, RSMo.

In Case No. TO-99- 596, *In re Competitive Local Exchange Telecommunication Companies*, June 13, 2000, the Commission set out the scope of its jurisdiction and duty:

"In construing Chapter 392, including Section 392.361.3, the Commission must be mindful of the contents of Section 392.185, RSMo Supp. 1999, which has been set out in part above. In addition to reasonable prices and the protection of ratepayers, that section provides that the purpose of the chapter is to "[p]errnit flexible regulation of competitive telecommunications companies and competitive telecommunications services[.]" Section 392.185(5), RSMo Supp. 1999.

Additionally, Section 392.200.4(2), RSMo Supp. 1999, declares that "[i]t is the intent of this act to bring the benefits of competition to all customers[.]"

The offer of competitive services does not mean that customers are fair game for unreasonable and unjust rates. Here Sprint introduces a fee under the guise of a non-usage sensitive surcharge for the recovery of access rates paid by the company on a usage sensitive basis. The surcharge increases the effective rates for Sprint long distance service on a selective basis. The public interest is not served by allowing such surcharges to go into effect without an examination into whether such rates and surcharges are proper, reasonable, and just or are discriminatory.

For the foregoing reasons, Public Counsel asks the PSC to suspend the tariff and set this matter for an evidentiary hearing. In addition, Public Counsel asks the PSC to hold a public hearing on this proposed tariff given the broad impact this tariff has on so many Missouri toll customers in many parts of the state.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY:



Michael F. Dandino (Bar No. 24590)
Senior Public Counsel
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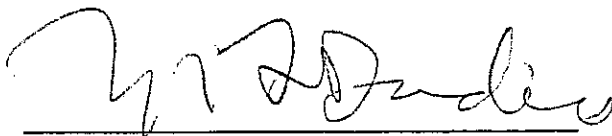
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed or hand delivered this 13th day of June, 2002 to the following:

General Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

John Van Eschen
Missouri Public Service Commission
P. O. Box 360
Jefferson City, O 65102

Lisa Creighton Hendricks
Sprint
6450 Sprint Parkway, Bldg. 14
MAILSTOP: KSOPHN0212-2A253
Overland Park, KS 66251





Lisa Padilla
State Tariff Analyst
6450 Sprint Parkway
Overland Park, KS 66251
MS: KSOPHN0304-3B354
Voice: 913-315-9370
800 Voice: 866-727-4350
Fax: 913-315-0763

3063

200601020

VIA AIRBORNE EXPRESS

May 30, 2002

Mr. Dale Hardy Roberts
Secretary of the Public Service Commission
Missouri Public Service Commission
200 Madison Street, Suite 360
Jefferson City, MO 65102-0360

Dear Mr. Roberts:

Please find enclosed for filing the original and eight copies of revisions to Sprint's P.S.C. Mo. No. 2. The following tariff pages are being issued:

1st Revised Page 68.12
3rd Revised Page A-44.6
2nd Revised Page A-44.9
Original Page A-44.9.1
3rd Revised Page A-44.10
1st Revised Page A-44.10.1
1st Revised Page A-44.10.2
1st Revised Page A-44.10.3
1st Revised Page A-44.11
1st Revised Page A-44.12
2nd Revised Page A-44.13
2nd Revised Page A-44.14
3rd Revised Page A-44.15
Original Page A-44.16

The purpose of this filing is to introduce the following:

- Introduce In-State Access Recovery Charge
- Make miscellaneous text changes

Customers were noticed of this increase via direct mail. A copy of the notice is enclosed for your convenience.

Mr. Dale Hardy Roberts
Secretary of the Public Service Commission
Missouri Public Service Commission
Page 2
May 30, 2002

Sprint respectfully requests this tariff filing to become effective July 1, 2002.

If you have any questions, please do not hesitate to call me toll free at (866) 727-4350 or at (913) 315-9370.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa Padilla".

Lisa Padilla
State Tariff Analyst - External Affairs

Enclosures

MO 02-47

**SPRINT
TERMS AND CONDITIONS
OF SERVICE AND
RATE CHANGES**



of the Services is applied against the MUC. If the charges for your monthly usage are less than the MUC, you must pay the entire amount of the MUC. To the extent charges for your usage exceed the MUC, you will be required to pay the additional charges according to your calling plan.

Monthly Recurring Charge (MRC) – a charge for Services for which you are invoiced and that you must pay each month.

Pay-Per-Call Services – those telecommunications services in which the called party assesses the calling party a charge that is not dependent on the existence of a presubscription relationship and for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call.

Premises – a building or buildings on contiguous property (except railroad rights-of-way, etc.).

Public/Semi-Public Payphone – a coin operated or coinless telephone that is generally available for public use in the U.S. Mainland, Hawaii, Puerto Rico and the U.S. Virgin Islands. These telephones can be owned by local telephone companies, interexchange carriers and/or private Customers. Calls from coinless telephones must use an alternate billing method such as calling card, commercial credit card, third number or collect.

Services – the state-to-state and international telecommunications service offerings provided by Sprint and purchased by you. Services do not include Sprint PCS® services, which are governed by separate terms and conditions.

Service Matrix – describes the Service and associated rates, terms and conditions applicable to the specific residential Sprint Service offering. These matrices may be found at www.sprint.com/ratesandconditions under rates for residential services.

State-to-State Calling – Dial-1 and Operator state-to-state services are available to Customers in the U.S. Mainland, Hawaii, Puerto Rico and the U.S. Virgin Islands. FONCARD state-to-state service is available from the U.S. Mainland, Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam and CNMI. State-to-state calls may terminate to the U.S. Mainland, Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam and CNMI, unless otherwise specified in the product.

Changes to Rates, Terms and Conditions

Current state-specific gross receipts tax rates and rates to fund state-specific universal service programs have been removed from Section 4. You may find these rates on Sprint's website or you may call Customer Service.

See Section 8 for Sprint's revised Dispute Resolution process.

Effective July 8, 2002, the Carrier Universal Service Charge (CUSC) will increase from 9.9% to 11.3%.

Effective July 8, 2002, the surcharge for interstate directory assistance will be \$2.49 per listing.

Effective July 8, 2002, international per minute rates for direct dial calls on Sprint's Basic Service plans or on domestic optional calling plans, including Sprint 500™ and Sprint 1000™ plans, Sprint Nickel™ and Sprint 7 Cent™ plans, Sprint Sense® plans, Sprint Solutions™ plans, Sprint Select™ plans and Sprint Fundamentals™ plans will increase by 10%.

Effective July 8, 2002, the surcharge that applies to calls made from your home phone to foreign mobile phones has been revised for certain countries. Further, this surcharge has been added for certain additional countries. For specific country rate information, visit our website at www.sprint.com/mobile or contact Customer Service.

If you have questions about your current plan or wish to review your rates, please visit our website at www.sprint.com/ratesandconditions. The new rates will be posted there on or before June 22, 2002. You may also call Customer Service for additional information.

For customers residing in the state of Missouri, your Sprint long-distance invoice will increase by \$1.99, due to a new monthly charge called In-State Access Recovery. This charge is based on the access charges that Sprint pays to the local phone company to utilize its local phone lines. This charge will be applied beginning on invoices dated July, 2002.

Title	Original	46.7	Original	80.4.1	Original	89.41	3rd
1.1	* 103rd	46.8	Original	80.5	Original	89.42	1st
1	12th	47	5th	80.6	1st	89.43	2nd
2	Original	48	15th	80.7	2nd	89.44	1st
3	1st	48.1	11th	80.8	3rd	89.45	1st
4	Original	48.2	6th	80.8.1	2nd	89.46	Original
5	1st	48.3	2nd	80.8.2	1st	89.47	Original
6	1st	49	2nd	80.9	3rd	89.48	Original
7	1st	49.1	1st	80.9.1	1st	89.49	1st
8	1st	49.2	4th	80.9.2	Original	89.50	Original
9	2nd	49.2.1	2nd	80.10	3rd	89.51	1st
9.1	Original	49.2.2	1st	80.11	3rd	89.52	1st
10	3rd	49.3	3rd	80.12	Original	89.53	1st
10.1	2nd	49.4	Original	80.13	2nd	89.54	1st
11	4th	49.5	Original	80.14	2nd	89.55	Original
12	3rd	49.6	Original	80.15	Original	89.56	2nd
13	Original	49.7	Original	80.16	Original	89.57	1st
14	Original	50	4th	80.17	Original	89.58	2nd
15	Original	51	3rd	80.18	Original	89.59	1st
16	1st	52	3rd	80.19	Original	89.60	1st
17	1st	53	1st	81	7th	89.61	Original
18	1st	54	1st	82	7th	89.62	Original
18.1	4th	55	1st	83	5th	89.63	Original
18.2	4th	55.1	Original	84	9th	89.64	Original
19	4th	56	2nd	85	5th	89.65	3rd
20	9th	57	Original	86	3rd	89.66	Original
20.1	1st	58	Original	87	3rd	89.67	3rd
21	12th	59	1st	88	3rd	89.68	3rd
21.01	4th	60	1st	89	6th	89.69	Original
21.1	3rd	61	Original	89.1	1st	89.70	1st
22	2nd	62	3rd	89.2	3rd	89.71	Original
23	Original	63	5th	89.3	4th	89.72	Original
24	5th	64	6th	89.4	3rd	89.73	Original
25	Original	65	5th	89.5	2nd	89.74	1st
25.1	1st	66	26th	89.6	2nd	89.75	1st
26	Original	66.1	Original	89.7	2nd	89.76	2nd
27	6th	67	5th	89.8	2nd	89.77	1st
28	Original	67.1	1st	89.9	3rd	89.78	1st
29	4th	68	4th	89.10	2nd	89.79	2nd
29.1	2nd	68.1	1st	89.11	2nd	89.80	Original
30	1st	68.2	3rd	89.12	5th	89.81	5th
31	8th	68.3	Original	89.13	1st	89.82	3rd
31.1	2nd	68.4	Original	89.14	3rd	89.83	2nd
32	3rd	68.5	4th	89.15	3rd	89.84	2nd
32.1	7th	68.6	Original	89.16	3rd	89.85	Original
33	Original	68.7	1st	89.17	Original	89.86	Original
34	Original	68.8	Original	89.18	3rd	89.87	Original
35	Original	68.9	Original	89.19	Original		
36	Original	68.10	Original	89.20	3rd		
36.1	3rd	68.11	3rd	89.21	Original		
36.2	2nd	68.12	* 1st	89.22	Original		
37	1st	69	1st	89.23	Original		
38	Original	70	1st	89.24	Original		
39	Original	71	1st	89.25	Original		
40	Original	72	1st	89.26	Original		
41	Original	73	Original	89.27	Original		
42	Original	74	Original	89.28	Original		
43	5th	75	Original	89.29	2nd		
43.1	1st	76	Original	89.30	1st		
43.2	4th	77	1st	89.31	4th		
44	2nd	78	Original	89.32	Original		
45	5th	79	8th	89.33	Original		
46	7th	79.1	1st	89.34	Original		
46.1	9th	79.2	2nd	89.35	Original		
46.2	8th	80	3rd	89.36	Original		
46.3	1st	80.1	2nd	89.37	1st		
46.4	1st	80.2	1st	89.38	1st		
46.5	1st	80.3	7th	89.39	1st		
46.6	Original	80.4	5th	89.40	1st		

ISSUED:
05-30-02

Margaret R. Prendergast
Senior Manager - State Tariffs
6450 Sprint Parkway
Overland Park, Kansas 66251

EFFECTIVE:
07-01-02

89.88	Original	A-6.1.7	2nd	A-27	2nd	A-49.1	Original	A-91	1st
89.89	2nd	A-6.1.8	1st	A-28	2nd	A-49.2	2nd	A-92	1st
89.90	Original	A-6.1.9	1st	A-29	2nd	A-49.2	2nd	A-92.1	2nd
89.91	1st	A-6.1.10	Original	A-30	1st	A-50	Original	A-92.1.1	1st
89.92	Original	A-6.1.11	2nd	A-31	3rd	A-51	1st	A-92.1.2	1st
89.93	Original	A-6.1.12	Original	A-31.1	1st	A-52	Original	A-92.2	2nd
89.94	3rd	A-6.2	Original	A-32	Original	A-53	Original	A-92.3	2nd
89.95	1st	A-6.3	Original	A-33	Original	A-54	Original	A-92.4	Original
89.96	1st	A-6.4	Original	A-34	Original	A-55	Original	A-92.5	Original
89.97	Original	A-6.5	Original	A-35	8th	A-56	Original	A-93	3rd
89.98	3rd	A-6.6	Original	A-36	17th	A-57	1st	A-94	2nd
89.99	2nd	A-6.7	3rd	A-37	6th	A-58	1st	A-94.1	2nd
89.100	2nd	A-6.7.1	Original	A-38	11th	A-59	1st	A-95	3rd
89.101	2nd	A-6.8	3rd	A-38.1	3rd	A-60	Original	A-95.1	2nd
89.102	2nd	A-6.9	1st	A-39	3rd	A-61	2nd	A-95.2	2nd
89.103	3rd	A-6.9.1	Original	A-40	4th	A-62	Original	A-95.3	1st
89.104	3rd	A-6.9.2	Original	A-41	2nd	A-63	Original	A-95.4	1st
89.105	3rd	A-6.10	1st	A-42	13th	A-64	2nd	A-95.5	1st
89.106	Original	A-6.11	2nd	A-43	11th	A-65	2nd	A-95.6	1st
89.107	2nd	A-6.12	2nd	A-43.1	6th	A-66	2nd	A-95.7	1st
89.108	1st	A-6.12.1	1st	A-43.2	7th	A-67	3rd	A-95.8	1st
89.109	1st	A-6.12.2	1st	A-43.3	3rd	A-67.1	1st	A-95.9	1st
89.110	2nd	A-6.12.3	1st	A-43.4	2nd	A-68	1st	A-95.10	1st
89.111	1st	A-7	1st	A-43.5	5th	A-69	Original	A-95.11	1st
89.112	Original	A-8	1st	A-43.6	1st	A-70	1st	A-95.12	1st
89.113	1st	A-9	1st	A-43.7	3rd	A-71	8th	A-96	Original
89.114	1st	A-10	1st	A-43.7.1	Original	A-71.1	7th	A-97	1st
89.115	Original	A-11	1st	A-43.8	5th	A-71.2	Original	A-98	1st
89.116	1st	A-12	3rd	A-43.9	3rd	A-72	7th		
89.117	Original	A-13	1st	A-43.10	5th	A-72.1	7th		
89.118	1st	A-14	4th	A-43.11	2nd	A-72.2	Original		
89.119	2nd	A-15	1st	A-43.12	2nd	A-73	5th		
89.120	1st	A-16	3rd	A-43.13	4th	A-73.1	4th		
89.121	Original	A-16.1	4th	A-43.13.1	Original	A-74	6th		
89.122	1st	A-16.2	Original	A-43.14	1st	A-74.1	12th		
89.123	1st	A-17	1st	A-43.15	Original	A-74.1.1	2nd		
90	1st	A-18	Original	A-43.16	Original	A-74.1.2	Original		
A-1	11th	A-19	Original	A-43.17	1st	A-74.2	1st		
A-2	8th	A-20	Original	A-43.18	1st	A-75	12th		
A-2.1	3rd	A-21	Original	A-43.18.1	Original	A-76	10th		
A-2.2	2nd	A-22	2nd	A-43.18.2	Original	A-77	7th		
A-2.3	5th	A-23	2nd	A-44	1st	A-78	12th		
A-2.4	2nd	A-23.1	1st	A-44.1	3rd	A-79	4th		
A-2.5	1st	A-23.2	Original	A-44.2	15th	A-80	2nd		
A-2.6	4th	A-23.3	Original	A-44.2.1	2nd	A-81	2nd		
A-2.7	1st	A-23.4	Original	A-44.3	5th	A-82	6th		
A-2.8	2nd	A-23.5	1st	A-44.4	1st	A-83	2nd		
A-2.9	4th	A-23.6	Original	A-44.5	1st	A-84	2nd		
A-2.10	2nd	A-23.7	Original	A-44.6	* 3rd	A-85	3rd		
A-2.11	Original	A-23.8	Original	A-44.7	Original	A-85.1	1st		
A-2.12	Original	A-23.9	Original	A-44.8	Original	A-85.2	4th		
A-2.13	Original	A-23.10	Original	A-44.9	* 2nd	A-85.3	3rd		
A-2.14	Original	A-23.11	1st	A-44.9.1	* Original	A-85.4	1st		
A-2.15	Original	A-23.12	1st	A-44.10	* 3rd	A-86	2nd		
A-2.16	Original	A-23.13	1st	A-44.10.1	* 1st	A-86.1	Original		
A-3	5th	A-23.14	1st	A-44.10.2	* 1st	A-87	Original		
A-4	5th	A-23.15	1st	A-44.10.3	* 1st	A-88	Original		
A-5	10th	A-23.16	1st	A-44.11	* 1st	A-89	6th		
A-5.1	7th	A-26	2nd	A-44.12	* 1st	A-90	4th		
A-6	8th	A-27	2nd	A-44.13	* 2nd	A-90.1	3rd		
A-6.1	9th	A-28	2nd	A-44.14	* 2nd	A-90.2	4th		
A-6.1.1	2nd	A-29	2nd	A-44.15	* 3rd	A-90.3	1st		
A-6.1.2	5th	A-30	1st	A-44.16	* Original	A-90.4	1st		
A-6.1.2.1	3rd	A-31	3rd	A-45	5th	A-90.5	1st		
A-6.1.2.2	1st	A-31.1	Original	A-46	3rd	A-90.6	1st		
A-6.1.3	3rd	A-32	Original	A-47	3rd	A-90.7	1st		
A-6.1.4	1st	A-33	Original	A-48	5th	A-90.8	1st		
A-6.1.5	2nd	A-26	2nd	A-49	3rd	A-90.9	1st		
A-6.1.6	1st								

ISSUED:
05-30-02

Margaret R. Prendergast
Senior Manager - State Tariffs
6450 Sprint Parkway
Overland Park, Kansas 66251

EFFECTIVE:
07-01-02

INTERCITY TELECOMMUNICATIONS SERVICES

4. SERVICE AND RATE DESCRIPTION (Continued).28 SPRINT VOICE COMMANDSM For Your Home Phone.1 Description

SPRINT VOICE COMMANDSM For Your Home Phone is a voice activated dialing application which provides consumers a web based solution for voice dialing contacts and accessing and storing a personal address book. Customers must be presubscribed to Sprint Long Distance Service.

To access this service, a customer must first dial an access code. After accessing the service, customers can place these calls by speaking the number or destination/name from the customer's personal directory. The system will repeat the number or name/destination to the customer, for confirmation, and will then place the call to the selected destination.

.2 Use of Service

Once the customer says a number, name or destination, the system will activate and dial the appropriate telephone number. This service is only available where technically feasible. See Section 6.20.1 for applicable rates.

.29 In-State Access Recovery Charge

Services provided pursuant to this tariff are subject to an In-State Access Recovery charge. The In-State Access Recovery charge will be assessed monthly on all Dial 1 Sprint accounts for which local service is not provided by a Sprint company. This charge is based on access fees that Sprint pays to local phone companies. See Section 6.21.1 for the applicable charge.

(N)

(N)

ISSUED:
05-30-02

Margaret R. Prendergast
Senior Manager - State Tariffs
6450 Sprint Parkway
Overland Park, Kansas 66251

EFFECTIVE:
07-01-02

INTERCITY TELECOMMUNICATIONS SERVICES

RATE SCHEDULE (Continued)6. Miscellaneous Services (Continued).20 SPRINT VOICE COMMANDSM For Your Home Phone

The following rates and Monthly Recurring Charge apply.

- | | | |
|----|---------------------------------|--------|
| .1 | <u>Monthly Recurring Charge</u> | \$9.00 |
| .2 | <u>Directory Services:</u> | |
| | First Two Numbers | \$1.25 |
| | Each Additional Number | \$.50 |
| .3 | <u>Toll Usage</u> | |

The subscriber is responsible for all applicable long distance charges.

.21 In-State Access Recovery Charge

The In-State Access Recovery charge will be assessed monthly on all Dial 1 Sprint accounts for which local service is not provided by a Sprint company.

- | | | |
|----|---------------------------------|--------|
| .1 | <u>Monthly Recurring Charge</u> | \$1.99 |
|----|---------------------------------|--------|

(N)

(N)

ISSUED:
05-30-02

Margaret R. Prendergast
Senior Manager - State Tariffs
6450 Sprint Parkway
Overland Park, Kansas 66251

EFFECTIVE:
07-01-02

INTERCITY TELECOMMUNICATIONS SERVICES

RATE SCHEDULE (Continued)6. Miscellaneous Services (Continued)23 Residential Toll Free (RTF)

(Z)

All calls are billed in 60 second increments. Fractional minutes are rounded up to the next minute.

.1 Pricing Options.1 Option A.1 Per-Minute Usage Rates

Peak	\$.2500
Off-Peak	\$.1000

.2 Monthly Service Charge

A customer pays a monthly service charge of \$3.00. This charge will be waived if a customer's total monthly Residential Toll Free usage reaches or exceeds \$20.00.

.3 Per-Month Call Waiver

15 interstate and/or intrastate calls 30 seconds or less

.4 Personal Identification Number (PIN)

See Section 6.23.2

(Z)

(M)

(M)

(M) Material previously appearing on this page is now located on Original Page A-44.9.1.

ISSUED:
05-30-02

Margaret R. Prendergast
Senior Manager - State Tariffs
6450 Sprint Parkway
Overland Park, Kansas 66251

EFFECTIVE:
07-01-02

INTERCITY TELECOMMUNICATIONS SERVICES

RATE SCHEDULE (Continued)6. Miscellaneous Services (Continued)

(M)

.23 Residential Toll Free (RTF) (Continued)

(Z)

All calls are billed in 60 second increments. Fractional minutes are rounded up to the next minute.

.1 Pricing Options (Continued).2 Option B*.1 Usage Rate

Per Minute Rate \$.20

.2 Monthly Service Charge

A customer pays a monthly service charge of \$3.00. This charge will be waived if a customer's total monthly Residential Toll Free usage reaches or exceeds \$20.00.

.3 Per Month Call Waiver

15 interstate and/or intrastate calls 30 seconds or less.

.4 Personal Identification Number (PIN)

See Section 6.23.2

(Z)

* Effective January 15, 2001, Residential Toll Free Option B will no longer be available to new customers.

(M)

(M) Material appearing on this page was previously located on 1st Revised Page A-44.9.

ISSUED:
05-30-02

Margaret R. Prendergast
Senior Manager -State Tariffs
6450 Sprint Parkway
Overland Park, Kansas 66251

EFFECTIVE:
07-01-02

INTERCITY TELECOMMUNICATIONS SERVICES

RATE SCHEDULE (Continued)6. Miscellaneous Services (Continued).23 Residential Toll Free (RTF) (Continued)

(Z)

.1 Pricing Options (continued).3 Option C**

Option C is only available where Toll Free Plus PIN functionality is offered. Option C is not available on a stand-alone basis, except for customers who formerly were subscribers to Sprint 1000 or Sprint Sense AnyTime's Optional FONCARD Rate and Toll Free Rate with SCW Calling Plan Option.

.1 Usage Rate

Per-Minute Rate \$.30

.2 Per-Month Call Waiver

15 interstate and/or intrastate calls 30 seconds or less

** Effective January 15, 2001, Residential Toll Free Option C will no longer be available to new customers.

ISSUED:
05-30-02

Margaret R. Prendergast
Senior Manager - State Tariffs
6450 Sprint Parkway
Overland Park, Kansas 66251

EFFECTIVE:
07-01-02

INTERCITY TELECOMMUNICATIONS SERVICES

RATE SCHEDULE (Continued)6. Miscellaneous Services (Continued).23 Residential Toll Free (RTF) (Continued)

(Z)

.1 Pricing Options (continued).4 Option D

Rate periods are as follows: Peak 7 a.m. to 7 p.m., Monday through Friday;
Off-Peak 7 p.m. to 7 a.m., Monday through Friday and all hours Saturday
and Sunday.

.1 Per-Minute Usage Rates

Peak	\$.40
Off-Peak	\$.10

.2 Per-Month Call Waiver

15 interstate and/or intrastate calls 30 seconds or less

.3 Personal Identification Number (PIN)

See Section 6.23.2

(Z)

ISSUED:
05-30-02

Margaret R. Prendergast
Senior Manager - State Tariffs
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Overland Park, Kansas 66251

EFFECTIVE:
07-01-02

INTERCITY TELECOMMUNICATIONS SERVICES

RATE SCHEDULE (Continued)6. Miscellaneous Services (Continued).23 Residential Toll Free (RTF) (Continued)

(Z)

.1 Pricing Options (continued).5 Option E

The Per-Month Call Waiver does not apply to this option.

.1 Per-Minute Usage Rates

Per-Minute Rate \$0.20

.2 Monthly Recurring Charge

A customer pays a monthly recurring charge of \$3.00. This charge will be waived if a customer's total monthly Residential Toll Free usage reaches or exceeds \$20.00.

.3 Personal Identification Number (PIN)

A customer who signs up for this service will be given a four digit personal identification number (PIN) along with the customer's toll free number. After dialing the customer's toll free number, callers will be prompted to dial the four digit PIN before the call can be completed.

.6 Option F

The Personal Identification Number does not apply to this option.

.1 Per-Minute Usage Rates

Per-Minute Rate \$0.20

.2 Monthly Recurring Charge

A customer pays a monthly recurring charge of \$4.00. This charge will be waived if a customer's total monthly Residential Toll Free usage reaches or exceeds \$20.00.

.3 Per-Month Call Waiver

5 interstate and/or intrastate calls 30 seconds or less

ISSUED:
05-30-02

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Overland Park, Kansas 66251

EFFECTIVE:
07-01-02

INTERCITY TELECOMMUNICATIONS SERVICES

RATE SCHEDULE (Continued)6. Miscellaneous Services (Continued).23 Residential Toll Free (RTF) (Continued)

(Z)

.2 Toll Free Dialing Requirements.1 PIN

The PIN monthly recurring charge applies in addition to the monthly recurring charge associated with a customer's underlying account.

.1 Monthly Recurring Charge.1 Toll Free Plus PIN

Per Month Charge	\$0.00
------------------	--------

.2 Toll Free Without PIN

Per Month Charge	\$1.00
------------------	--------

ISSUED:
05-30-02

Margaret R. Prendergast
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EFFECTIVE:
07-01-02

INTERCITY TELECOMMUNICATIONS SERVICES

RATE SCHEDULE (Continued)6. Miscellaneous Services (Continued).24 Sprint Rewards Program

(Z)

Qualifying Sprint charges will be rounded up to the next whole dollar when the total monthly charges include a fractional dollar of \$0.50 or more, and will be rounded down to the next whole dollar when the monthly charge includes a fractional dollar of \$0.49 or less. Members will begin earning points beginning with the first full billing cycle following enrollment.

In addition to earning rewards points for every dollar of Sprint qualifying charges the customer receives the following:

- (1) Members will receive 2,000 points upon enrollment.
- (2) Once a member has redeemed its rewards points for the first time, member will receive 2,000 points.
- (3) Members automatically will receive 10,000 points after 12 months in the program.
- (4) Certain members of other Sprint programs who exceed the \$50 or more threshold may be eligible to receive 1500 bonus points on a quarterly basis while members of this program.
- (5) Certain members of other Sprint programs who meet the requirement of (4) above and who have more than one qualifying service may be eligible to receive 1000 bonus points, per qualifying service, per quarter, on a maximum of six qualifying services while members of this program.

ISSUED:
05-30-02

Margaret R. Prendergast
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EFFECTIVE:
07-01-02

INTERCITY TELECOMMUNICATIONS SERVICES

RATE SCHEDULE (Continued)

6. Miscellaneous Services (Continued)

.25 Business StandAlone FÖNCARD

(Z)

Calls are billed in one-minute increments. Fractional minutes are rounded up to the next minute.

Per-Minute Rate: \$.27

ISSUED:
05-30-02

Margaret R. Prendergast
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6450 Sprint Parkway
Overland Park, Kansas 66251

EFFECTIVE:
07-01-02

INTERCITY TELECOMMUNICATIONS SERVICES

RATE SCHEDULE (Continued)

6. Miscellaneous Services (Continued)

.26 PublicFON Service

(Z)

Rate periods for customers are set forth in section 3.14.1.2.

.1 Per-Minute Usage Rate*

Per-Minute rate: \$.50

* Each fractional call is rounded up to the next minute.

ISSUED:
05-30-02

Margaret R. Prendergast
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Overland Park, Kansas 66251

EFFECTIVE:
07-01-02

INTERCITY TELECOMMUNICATIONS SERVICES

RATE SCHEDULE (Continued)6. Miscellaneous Services (Continued).26 PublicFON Service (Continued)

(Z)

.1 Call Placement Charges

.1	Station-to-Station*	\$4.99	
.2	Person-to-Person*	\$9.49	
.3	Station-to-Station Collect	\$4.99	
.4	Person-to-Person Collect	\$9.49	
.5	Station-to-Station Third Party	\$4.99	
.6	Person-to-Person Third Party	\$9.49	
.7	LEC Calling Card Station-to-Station**		
	.1 Customer Dialed	\$4.99	
	.2 Operator Dialed	\$4.99	
.8	LEC Calling Card Person-to-Person**	\$9.49	
.9	Operator Dialed Surcharge***	\$.50	
*.10	Busy Line Verification		See Section 6.2.1
*.11	Emergency Interruption***		See Section 6.2.1

* Not applicable to coin sent-paid calls placed from pay telephones.

** Sprint accepts only cards which it can identify as valid.

*** Applies in addition to all Station-to-Station and Person-to-Person Operator Service charges when the customer has the ability to dial all the digits necessary for call completion but dials instead "0", "00-", or 1010XXX + "0" to reach the Sprint operator to have the operator complete the call or defaults to an operator for assistance while using a toll free collect service. The surcharge will be applied to all Operator Service calls completed by an operator except for: 1) calls which cannot be completed by the customer due to equipment failure or trouble on the Sprint network; 2) when a FONCARD is used, or 3) when a LEC Calling Card is used from a PublicFON location. Usage and Call Placement Charges for calls placed from Pay Telephones appear on the customer's LEC bill.

**** The Busy Line Verification charge applies when Sprint provides operator assistance to determine if there is an ongoing conversation at a called station. The Emergency Interruption surcharge applies in addition to the Busy Line Verification charge when Sprint provides operator assistance to interrupt an ongoing conversation, regardless of whether the interruption is successful.

ISSUED:
05-30-02Margaret R. Prendergast
Senior Manager -State Tariffs
6450 Sprint Parkway
Overland Park, Kansas 66251EFFECTIVE:
07-01-02

INTERCITY TELECOMMUNICATIONS SERVICES

RATE SCHEDULE (Continued)6. Miscellaneous Services (Continued).27 Sprint FONCARD-Military Plan

(Z)

The following connection fee and per minute usage rate apply.

.1 Connection Fee

Per-Call Charge \$0.99

.2 Usage Rate

Rate Per Minute \$0.25

NOTE: If a Sprint Operator assists in call placement, then the applicable Operator Service Call Placement Charge and usage rates will apply in lieu of the FONCARD connection fee and per minute usage rate.

.28 Sprint FONCARD-Military Plan II

(Z)

The following per-minute usage rate applies. No connection fee applies.

.1 Usage Rate

Rate Per Minute \$0.25

.2 Monthly Recurring Charge \$3.00

NOTE: If a Sprint Operator assists in call placement, then the applicable Operator Service Call Placement Charge and usage rates will apply in lieu of the FONCARD connection fee and per minute usage rate.

(M)

(M)

(M) Material previously appearing on this page is now located on Original Page A-44.16.

ISSUED:
05-30-02Margaret R. Prendergast
Senior Manager -State Tariffs
6450 Sprint Parkway
Overland Park, Kansas 66251EFFECTIVE:
07-01-02

INTERCITY TELECOMMUNICATIONS SERVICES

RATE SCHEDULE (Continued)6. Miscellaneous Services (Continued).29 Sprint FONCARD Upgrade

All rates are billed in 60 second increments with each fractional minute rounded up to the next full minute.

The following per minute usage rate and monthly recurring charge applies. No per call surcharge applies.

.1 Usage Rate

Rate Per Minute \$0.25

.2 Monthly Recurring Charge \$1.00

NOTE: If a Sprint Operator assists in call placement, then the applicable Operator Service Call Placement Charge and usage rates will apply in lieu of the FONCARD connection fee and per minute usage rate.

(M)

(Z)

(M)

(M) Material appearing on this page was previously located on 2nd Revised Page A-44.15.

ISSUED:
05-30-02

Margaret R. Prendergast
Senior Manager - State Tariffs
6450 Sprint Parkway
Overland Park, Kansas 66251

EFFECTIVE:
07-01-02

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office in
Jefferson City on the 23rd day
of June, 2002.

In the Matter of Sprint Communications Company, L.P.'s)
Proposed Tariff to Introduce an In-state Access Recovery) **Case No. TT-2002-1136**
Charge and Make Miscellaneous Text Changes.) Tariff No. 200201020

ORDER APPROVING TARIFF

Syllabus: This order approves the proposed tariff sheets filed by Sprint Communications Company, L.P., and denies the Office of the Public Counsel's Motion to Suspend Tariff and for Evidentiary and Public Hearings.

On May 31, 2002, Sprint submitted proposed tariff sheets.¹ The proposed tariff sheets were designed, according to the cover letter, to introduce an "In-State Access Recovery Charge" and to "make miscellaneous text changes." A copy of the notice Sprint sent to its customers was attached. Sprint requested that the tariff become effective on July 1, 2002.

On June 13, 2002, the Office of the Public Counsel filed its motion to suspend the proposed tariff sheets. In addition, the Public Counsel requested that the Commission hold both an evidentiary hearing and set the matter for local public hearings. The motion made several allegations that the tariff revision was not "just and reasonable" and that the proposed new charge would be discriminatory. Public Counsel stated that the proposed

¹ Tariff No. 200201020.

tariff is similar to the tariff filed by AT&T Communications of the Southwest, Inc., in Case No. TT-2002-129.²

On June 18, 2002, the Commission ordered that any party wishing to respond to Public Counsel's motion should do so no later than June 21, 2002. On June 21, 2002, Sprint and the Staff of the Missouri Public Service Commission each filed a response.

Staff recommended that the Commission approve the tariff. Staff argues that as a competitive company, Sprint must comply with Section 392.500(2), RSMo, which authorizes rate increases with a tariff filing and notice to customers at least ten days prior to the increase. Staff stated that, in its opinion, Sprint has complied with Section 392.500(2). Staff also stated its opinion that the statutes permit the Commission to give less scrutiny³ to the treatment of competitive companies than it does to fully regulated entities because the statutes provide for "full and fair competition to function as a substitute for regulation"⁴ Staff states that in its opinion, it is not necessary for the Commission to impose additional regulation for this particular charge.

In addition, Staff states that more than 500 companies hold certificates to provide long distance service in Missouri. Thus, Staff points out that Sprint's customers may choose to switch long distance carriers and, thereby, allow the competitive marketplace to regulate the charges.

² *In the Matter of AT&T Communications of the Southwest, Inc.'s Proposed Tariff to Establish a Monthly Instate Connection Fee and Surcharge.*

³ Section 392.185, RSMo 2000.

⁴ Section 392.185.5, RSMo 2000.

Finally, Staff argues that Sprint's tariff filing is similar to AT&T's tariff approved by the Commission.⁵ Staff observes that monthly-recurring charges and surcharges are common in the industry, and Staff suggests that Sprint should not have different treatment based on this tariff filing.

Sprint filed its response on June 21, 2002. In its response, Sprint argues that it has complied with the requirements of Section 392.500(2) in that it filed the proposed tariff and gave the appropriate notice to its customers. Sprint argues that its tariff should be approved for the same reasons that the AT&T tariff was approved in Case No. TT-2002-129. Sprint states that none of the exceptions to Section 392.500(2) apply and therefore, the Commission should approve its tariff and deny Public Counsel's motion. Sprint notes that it has proposed a promotional tariff that exempts "zero volume users."⁶

The Commission, seeking additional information, suspended the tariff until July 31, 2002, and directed its Staff to answer certain questions. On July 12, 2002, Staff filed responses to the Commission questions. On that same date, Sprint also filed answers to the Commission's questions. Public Counsel filed a reply on July 19, 2002.

Sprint and Staff explained the differences between Sprint's proposed tariff and that of AT&T in case No. TT-2002-129. The major differences are that AT&T's tariff exempts customers from the charge where those customers are being billed less than one dollar for the month. Sprint's tariff, by comparison, exempts customers who have no charges for long distance usage in a month. This exemption is accomplished by the promotional tariff and will only remain in effect until December 31, 2002, unless extended.

⁵ Case No. TT-2002-129.

⁶ Tariff No. 200201106, proposed effective date July 1, 2002.

The promotional tariffs filed by Sprint would also exempt its New and Existing Sprint Standard Weekends® and Sprint Standard Weekends® Option B customers. Finally, AT&T's monthly charge is \$1.95, while Sprint's monthly charge is \$1.99.

The Commission granted Sprint competitive status as a provider of competitive telecommunications service in Case No. TO-88-142.⁷ A proposed tariff that increases rates or charges of a competitive telecommunications company is governed by Section 392.500(2). The statute allows the proposed tariff increasing rates or charges to go into effect only after the proposed tariff has been filed with the Commission and the affected customers are given at least ten days' notice. The Commission finds that Sprint has complied with the technical requirements of Section 392.500(2).

Public Counsel relies on the argument that Section 392.200 also governs the setting of rates, even for a competitive company. Section 392.200 provides that: (1) a proposed tariff be just and reasonable; (2) except for promotions and where otherwise authorized, prices should not be discriminatory; (3) undue or unreasonable preference or advantage may not be given to any customer; (4) geographic deaveraging of rates may not occur; and (5) the company may not violate its duty to transmit without delay the messages of other telephone companies. Public Counsel argues that the proposed rate is not just and reasonable and that it is discriminatory by giving preference to customers who subscribe to both Sprint's local and long distance services.

In interpreting the various provisions of Chapter 392, the Commission turns to the purposes of the chapter as specified in Section 392.185. That section states in part:

⁷ *In the Matter of the Investigation for the Purpose of Determining the Classification of the Services Provided by Interexchange Telecommunications Companies Within the State of Missouri*, 30 Mo. P.S.C. (N.S.) 16 (Sept. 15, 1989).

The provisions of this chapter shall be construed to:

* * *

(4) Ensure that customers pay only reasonable charges for telecommunications service;

(5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;

(6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;

* * *

It is the Commission's task to balance these purposes.

The Commission has reviewed all the relevant factors surrounding this proposed charge including Sprint's tariff submission, the motion to suspend, Staff's recommendation, and the various other responsive pleadings. Because Sprint's proposed rate increase of \$1.99 applies only to a competitive service, consumers are free to obtain service from an alternative provider if they object to the rate. Considering the competitive climate in which this service is offered, the Commission finds that the allowing full and fair competition to substitute as regulation will ensure that consumers pay only reasonable rates. Staff stated that it found Sprint's exemption of the charge for Sprint's local service customers to be a concern, however, Staff did not believe Sprint should be treated differently than other carriers similarly situated. Staff also noted that monthly recurring charges and surcharges are common in the telecommunications industry. Sprint cites several instances where "the Commission has routinely approved . . . [or allowed to become effective] interexchange tariffs that offer discounts or that waive various charges to customers who purchase local

service from the same company.”⁸ Thus, the Commission finds that this charge does not provide any “undue or unreasonable preference or advantage” to any customer.

It is unusual for the Commission to scrutinize the rate structure of competitive long distance service providers other than to determine compliance with Section 392.500. The statutes clearly set out that competition should act as a substitute for regulation. Customers are free to switch providers if they find the access charge unreasonable. Even Public Counsel states, “[t]he competitive marketplace determines to what extent the carrier will seek to recover all or any part of . . . [access charges] in its rates.”⁹ The Commission finds that Sprint should not be treated any differently than other carriers similarly situated. The Commission determines that the proposed tariff is just and reasonable and should be approved. Therefore, the Commission will deny the motion for suspension and approve the tariff sheets.

IT IS THEREFORE ORDERED:

1. That the motion filed by the Office of the Public Counsel on June 13, 2002, to suspend the tariff filed by Sprint Communication Company, L.P., on May 31, 2002, is denied.

2. That the tariff filed by Sprint Communication Company, L.P., on May 31, 2002, is approved, to become effective on July 31, 2002. The approved tariff sheets are:

P.S.C. Mo. Tariff No. 2

1st Revised Page 68.12, Cancels Original Page 68.12
3rd Revised Page A-44.6, Cancels 2nd Revised Page A-44.6
2nd Revised Page A-44.9, Cancels 1st Revised Page A-44.9
Original Page A-44.9.1

⁸ Sprint Communications Company, L.P.’s Response to Order Directing Filing, filed July 12, 2002, page 4.

⁹ *Office of the Public Counsel’s Motion to Suspend Tariff and for Evidentiary and Public Hearings*, filed June 13, 2002, page 5.

3rd Revised Page A-44.10, Cancels 2nd Revised Page A-44.10
1st Revised Page A-44.10.1, Cancels Original Page A-44.10.1
1st Revised Page A-44.10.2, Cancels Original Page A-44.10.2
1st Revised Page A-44.10.3, Cancels Original Page A-44.10.3
1st Revised Page A-44.11, Cancels Original Page A-44.11
1st Revised Page A-44.12, Cancels Original Page A-44.12
2nd Revised Page A-44.13, Cancels 1st Revised Page A-44.13
2nd Revised Page A-44.14, Cancels 1st Revised Page A-44.14
3rd Revised Page A-44.15, Cancels 2nd Revised Page A-44.15
Original Page A-44.16

3. That this order will become effective on July 31, 2002.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Simmons, Ch., Murray, Lumpe,
and Forbis, CC., concur.
Gaw, C., dissents.

Dippell, Senior Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 23rd day of July 2002 .



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

July 23, 2002

CASE NO: TT-2002-1136

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Lisa Creighton Hendricks
Sprint Communications Company, L.P.
6450 Sprint Parkway, Bldg. 14
Overland Park, KS 66251

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

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

In Re the matter of Sprint Communications)	
Company, L. P.'s proposed tariff to)	Case No. TT-2002-1136
introduce an in-state access recovery)	Tariff No. 200201020
charge and make miscellaneous text changes)	

OFFICE OF THE PUBLIC COUNSEL'S MOTION FOR REHEARING

COMES NOW the Office of the Public Counsel (Public Counsel) and pursuant to Section 386.500, RSMo. and 4 CSR 240-2.160, specifically sets forth the reasons warranting a rehearing and respectfully moves the Missouri Public Service Commission (Commission) to grant rehearing of its Order Approving Tariff dated July 23, 2002 and effective July 31, 2002 that denied Office of the Public Counsel's motion brought pursuant to Sections 392.200 and 392.185, RSMo. 2000 and Section 254 (g) of the Federal Telecommunications Act of 1996 to suspend Sprint's proposed tariff to introduce an in-state access recovery charge and approved the tariff.

Public Counsel requests rehearing because the decision is unlawful, unjust, and unreasonable and is arbitrary, capricious, unsupported by substantial and competent evidence, and is against the weight of the evidence considering the whole record, is in violation of constitutional provisions of due process, is unauthorized by law, made upon an unlawful procedure and without a fair trial, and constitutes an abuse of discretion, all as more specifically and particularly described in this motion.

1. The Commission overlooked relevant and material issues of law and fact when it failed to consider and determine that the tariff violated Section 254 (g) of the Federal Telecommunications Act of 1996 and FCC Report and Order, *Policy and Rules*

Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61 (August 7, 1996) (11 FCC Rcd 9564). It discriminates against Missouri customers as compared to customers in other states in violation of Section 254 (g) of the Federal Telecommunications Act of 1996. Sprint and other interexchange carriers must "provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State . . . to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers." (Report and Order, para.80). This access recovery charge is applied to all 1+ presubscribed customers without regard to whether calls are interstate or intrastate. Application to interstate calls effectively prices Missouri interstate calls higher than other state calls that are not assessed an instate access recovery charge or are assessed a charge lower than \$1.99. The Commission's decision does not consider or address this significant objection to the tariff based on federal law.

2. Public Counsel suggests that the Commission overlooked relevant and material matters of fact and law in its decision when it held that the access recovery charge was just and reasonable when there was no evidence adduced how the charge bears a reasonable relationship to its stated purpose to recover access charges on intrastate calls paid to local telephone companies to use their local phone lines. Without a showing of this nexus between the purpose and the application and amount of the access recovery charge to Missouri customers, the Commission cannot properly determine whether or not the charge as applied is just, reasonable, and nondiscriminatory.

3. Public Counsel suggests that the Commission overlooked relevant and material matters of fact and law in its decision when it held that the access recovery charge was just and reasonable. There is no evidence in the record to support that holding. The flat rated charge distorts the true cost of service to the consumer by using an indirect means to raise rates (and recover a cost of doing business) via a surcharge on a cost element that is already part of the existing per minute rate. The access recovery charge increased the effective price paid per minute by Sprint customers affected by this tariff. The Commission failed to look at the impact of the access recovery surcharge and the resultant effective price as an indicator of the discriminatory impact of the proposed tariff.

4. Public Counsel suggests that the Commission overlooked relevant and material matters of fact and law in its decision when it held that the access recovery charge was just and reasonable even though this flat rate surcharge is applied to customers with little or no usage of in-state long distance service who pay the same charge as high volume users with significant number and minutes of in-state calling. This results in an undue and unreasonable preference and advantage to those high volume customers and an unreasonable prejudice and disadvantage to low volume users of in-state calling, all in violation of Sections 392.220.2 and .3, RSMo.

5. Public Counsel suggests that the Commission overlooked relevant and material matters of fact and law in its decision when it held that the access recovery charge was just and reasonable when it relied upon a related, but separate and distinct promotional tariff (No. 200201106) as providing specific exemptions and additional terms and conditions for Sprint's In-State Access Recovery Charge. The decision fails to

consider that the general and permanent Recovery Charge Tariff cannot in its approved form stand on its own. The intent and purpose of the tariff system is to provide notice to customers and to the public of the price, terms, and conditions of the service offered by the carrier. The tariff is also the legal authority for the carrier to impose the charges on the customers. With these elementary purposes in mind, this tariff creating a new charge must define the scope of the charge and how it operates and the full terms and conditions. The public is misled and the authority to levy the charge is inadequate if the tariff omits key terms and conditions of the permanent offering. The tariff, as approved, is vague and incomplete because the only way to determine the operative terms and conditions of the permanent tariff is to resort to reference to matters outside of that tariff. The Commission relies on the temporary promotional tariff to provide the exemptions that were an element of the finding that the tariff is just and reasonable. The promotional tariff's purpose and intent is to offer an incentive to customers to become a subscriber to the company and the service offering. This promotion will expire when the time for the promotional offering expires on December 31, 2002. The Commission improperly relies upon this temporary promotional tariff to provide the key terms and conditions of the permanent surcharge. The permanent and promotional tariffs are separate and distinct both as to duration and purpose. When the promotional tariff expires, it changes the scope, terms, and conditions of the permanent interstate access recovery charge. These terms will expire by a date certain without action by Sprint or the Commission. Those customers exempt under the promotional tariff will then be assessed the access recovery charge effective January 1, 2003. Therefore, the Commission erred in approving this permanent tariff that is defined and completed only by the terms of the promotional tariff.

6. As a result of the Commission's improper reliance upon the promotional tariff to provide the exemptions that the Commission believes makes the permanent tariff reasonable and just, the Commission has approved the permanent tariff that does not exempt Life Line Link up customers, customers with no long distance charges or de minimus charges, or customers with only interstate toll charges. This omission from the permanent tariff makes it discriminatory, unreasonable, and unjust in that customers in low income programs and customers who do not cause Sprint to incur instate access charges or little usage still bear the burden of the access cost recovery. These customers are making a disproportionate contribution to the cost recovery. Assessing low-income customers on Lifeline and Link-Up programs defeats the public policy goals embodied in Universal Service legislation that minimizes the cost to connect to the network and maintain service. Therefore, the tariff is contrary to the public interest.

7. The Commission overlooked relevant and material matters of fact and law in its decision when it held that the access recovery charge was just and reasonable when the tariff unreasonably exempts Sprint local customers. The stated reason for the tariff is to recover in-state access costs incurred by Sprint. Although Sprint local customers can cause Sprint to incur access costs by calls to non-Sprint local customers, this class of customers is granted a total exemption that is unreasonable and discriminatory. This exemption shifts the burden of recovering access costs solely to other customers even though Sprint local customers contribute to Sprint's access cost burden.

8. The Commission overlooked relevant and material matters of fact and law in its order when it held that the access recovery charge was just and reasonable since the tariff applies a flat rate non-usage sensitive charge to recover a cost paid by the company.

(access charges) that are incurred on a usage sensitive basis. High volume users pay the same as non traffic generating customers or customers with very low number of calls and minutes of use. Low volume users are paying a disproportionate share of the access cost recovery when their usage has no bearing on the amount of recovery these customers are expected to contribute. The PSC's order fails to address or consider this unlawful and unreasonable discrimination. The order does not state how and in what manner this discriminatory method of assessing a cost recovery charge is reasonable and proper and in the public interest. There was no showing that this discrimination and the recovery of these costs in this manner is based upon reasonable and fair conditions which equitably and logically justify this tariffed rate. *State ex rel. DePaul Hospital School of Nursing v. PSC*, 464 SW2d 737 (Mo App 1970).

9. The Commission overlooked relevant and material matters of fact and law in its decision when it indicates that because of the number of competitors for long distance service, protection of the consumer is left to the marketplace. The order justifies its "hands off" policy on grounds that consumers can avoid the surcharge by changing carriers. This presupposes that unjust and unreasonable and unlawful charges are acceptable so long as the customer can go to another carrier for its long distance service. This assumption does violence to the PSC's statutory duty to serve the public interest under Section 392.185 (4) and (6), RSMo to protect the consumer. The Commission cannot ignore its duty in Section 392.185 (4) to "Ensure that customers pay only reasonable charges for telecommunications service" by stating that it need not review the charges since customers can go somewhere else. Likewise, the Commission cannot completely delegate to competition the protection of consumers when the emphasis of

Section 392.185 (6) is to allow competition to “function as a substitute for regulation when consistent with the protection of the ratepayers and otherwise consistent with the public interest.” The key here is that protection of ratepayers and the promotion of the public interest is paramount to the functioning of competition. The protection offered by “full and fair competition” occurs only when there is widespread knowledge and information readily available for consumers to investigate alternatives and understand the price and service variations offered by the firms in the marketplace. Customers may not change carriers for a variety of reasons, including, but not limited to, the high costs in time and knowledge required to search for alternatives and the consumer’s awareness, education, commercial or purchasing sophistication, health, ability, and intelligence or mental capacity. The statute does not exempt these ratepayers from protection from unreasonable and unjust pricing schemes.

10. The order of the Commission failed to make adequate findings of fact and conclusions of law. The order in this case does not inform a reviewing court of the basic findings on which the Commission’s ultimate findings rest. The conclusory nature of the order is insufficient to show the basis of the decision. The order must contain unequivocal, affirmative findings of fact so that a reviewing court is able to determine whether the order is supported by substantial and competent evidence without combing the PSC’s evidentiary record. *Noranda Aluminum, Inc. v. PSC*, 24 S.W.3d 342, 245-6 (Mo. App. 2000).

For the foregoing reasons, Public Counsel asks the Commission to rehear the case and further suspend Sprint’s tariff and conduct an evidentiary hearing to determine whether the tariff is lawful, just and reasonable and whether it complies with Section 254

(g) of the Federal Telecommunications Act of 1996, and is not otherwise discriminatory and contrary to the public interest and for such further and additional relief as may be necessary.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY: 

Michael F. Dandino (Bar No. 24590)
Senior Public Counsel
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Jefferson City, MO 65102
Telephone: (573) 751-5559
Facsimile: (573) 751-5562
E-mail: mdandino@mail.state.mo.us

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed or hand delivered this 26th day of July, 2002 to the following:

Missouri Public Service Commission
David Meyer General Counsel's Office
P. O. Box 360
Jefferson City MO 55102

Lisa Creighton Hendricks
Sprint
6450 Sprint Parkway, Bldg.14
MailStop: KSOPHN0212-2A253
Overland Park, KS 66251
Attorney for Sprint

A handwritten signature in dark ink, appearing to read "David Meyer", is written over a horizontal line.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 13th day
of August, 2002.

In the Matter of Sprint Communications Company, L.P.'s)
Proposed Tariff to Introduce an In-state Access Recovery) **Case No. TT-2002-1136**
Charge and Make Miscellaneous Text Changes.) Tariff No. 200201020

ORDER DENYING APPLICATION FOR REHEARING

Syllabus: This order denies the Office of the Public Counsel's Motion for Rehearing.

On July 23, 2002, the Missouri Public Service Commission issued an order approving Sprint Communications Company, L.P.'s tariff. The order became effective on July 31, 2001. On July 26, 2002, the Office of the Public Counsel filed a motion for rehearing.

The Commission shall grant an application for rehearing if "in its judgment sufficient reason therefor be made to appear."¹ The arguments raised by Public Counsel simply restate the arguments that it previously presented to the Commission and which were rejected in the Commission's order approving the tariff. In the judgment of the Commission, Public Counsel has failed to establish sufficient reason to grant its motion for rehearing.

¹ Section 386.500, RSMo 2000.

IT IS THEREFORE ORDERED:

1. That the motion for rehearing filed by the Office of the Public Counsel is denied.
2. That this order shall become effective on August 13, 2002.

BY THE COMMISSION



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Simmons, Ch., Murray, Lumpe,
and Forbis, CC., concur.
Gaw, C., dissents.

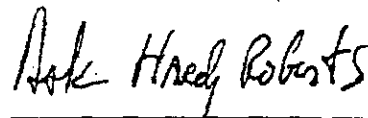
Dippell, Senior Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 13th day of August 2002 .



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
August 13, 2002**

CASE NO: TT-2002-1136

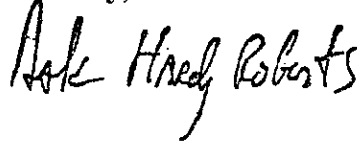
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Lisa Creighton Hendricks
Sprint Communications Company, L.P.
6450 Sprint Parkway, Bldg. 14
Overland Park, KS 66251

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive style with a large initial "D" and "H".

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

