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

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| **In the matter of the tariff filing of Sprint** | ) | |
| **Missouri, Inc. d/b/a Sprint to increase the** | ) | **Case No. TT-2002-447** |
| **Residential and business monthly rate for** | ) | **Tariff No. 200200766** |
| **The Metropolitan Calling Area (MCA) Plan** | ) | |

**APPLICATION AND MOTION FOR REHEARING**
**OF SPRINT MISSOURI, INC.**

COMES NOW Sprint Missouri, Inc. ("Sprint") pursuant to Section 386.500 RSMo and for its Application for Rehearing in the above captioned case states as follows:

1. On March 13, 2002 Sprint filed revised tariff pages to increase the residential and business monthly rate for the Metropolitan Calling Area Plan to an amount at or below the maximum allowable price approved previously for Sprint by the Missouri Public Service Commission ("Commission").

2. On October 17, 2002 the Commission issued its Report and Order in Commission Case No. TT-2002-447 ("Order") and rejected Sprint's proposed tariff filing numbered 200200766. The Commission rejected Sprint's tariff primarily on the grounds that it found the Price Cap Statute, 392.245.11 RSMo, to require that price cap companies must establish their rates for nonbasic services at the maximum allowable prices filed by the companies. Order, p. 7. The Commission found that companies must annually use or lose their ability to raise actual rates to the 8% cap increases allowed for in the statute. Id. In essence, the Commission found that "Sprint's attempt to 'bank' increases violates the Price Cap Statute." Id. Second, the Commission cautions that the Order does not rule on whether a price cap company is entitled to increase prices by up to a eight

percent a year, but declares that the introductory language of the Price Cap Statute in 392.245.1 RSMo is ambiguous and that rates set according to the Price Cap Statute may not be presumptively just, reasonable and lawful. Order, p. 8.

3. Sprint submits that the Commission has erred as a matter of law in both respects. The Price Cap Statute is not ambiguous. Rate changes made according to the explicit terms of the Price Cap Statute are presumptively valid, just, and reasonable. Moreover, the plain language of the statute compels the conclusion that Sprint should be allowed to bank the increases of maximum allowable prices for a period of time and then have the flexibility to increase actual rates up to the approved maximum allowable prices. The Commission takes too narrow of a view of the statute and contrary to Missouri law renders portions of the Price Cap Statute meaningless. Sprint has set out its positions on these issues before the Commission, *inter alia,* in these filings: (1) a Motion for Reconsideration of Commission Order Suspending Tariff and Scheduling a Pre-hearing filed on April 16, 2002; (2) a Brief filed on April 29, 2002; (3) an August 12, 2002 on the record presentation to the Commission; (4) a Supplemental Brief filed on August 20, 2002; and (5) Reply Comments to Office of Public Counsel's Additional Response filed on October 1, 2002. Sprint incorporates its arguments in those papers and in the on the record presentation here.

4. Sprint requests that the Commission grant rehearing in Case No. TT-2002-447 because the Report and Order is unlawful and/or unreasonable on the following grounds:

a. The Commission erred as a matter of law in rejecting Sprint's proposed tariff for non-basic telecommunication services on the ground that Section 392.245.11 RSMo limits actual price increases to eight percent annually. Sprint's proposed tariff set its rates at or below the maximum allowable prices as authorized by Section 392.245.11 RSMo. The Commission unreasonably

interprets the Price Cap Statute. The statute clearly contemplates that actual rates can be set at levels less than the maximum allowable price. While the Commission focuses its attention solely on one sentence of the statute calling for rates to be set at the maximum allowable prices, the remainder of Section 392.245.11 contemplates that price cap carriers can set actual rates at or below the maximum allowable prices. For nonbasic services, like the MCA services in Sprint's tariff filing, Section 392.245.11 clearly establishes that an ILEC "may change the **rates** for its services, consistent with the provisions of section 392.200, but not to exceed the **maximum allowable prices,** by filing tariffs which shall be approved by the commission within thirty days, provided that any such **rate** is not in excess of the **maximum allowable price** established for such service under this section." Section 392.245.11 RSMo (emphasis added).[1] The statute is clear. Actual rates do not have to mirror the maximum allowable price. Such a reading, which gives a price cap company the flexibility to not raise its actual rates every year to the maximum allowable price, gives meaning to all provisions of the statute. There is no other reasonable explanation as to why the legislature introduced the separate concepts of **rates** and **maximum allowable prices**. Actual rates can be at or below the maximum allowable price. Commissioner Murray's dissent aptly describes the appropriate reading of the statutory language. "Thus, the statute allows a price cap company to annually increase by up to eight percent the maximum allowable price, or ceiling, for a nonbasic service, and then allows the price cap company to set the actual rate to be charged at an amount up to but not in excess of that ceiling.

[1] See also Section 392.245.4(5) of the Price Cap Statute where the Legislature gave price cap companies the ability to change the rates for exchange access and basic local services by an amount "not to exceed the maximum allowable prices." Thus, rates for these services along with the rates for the non basic services regulated by Section 392.245.11 can be set at a level at or below the maximum allowable price. Moreover, the reference to Section 392.200 does not require that the Commission make a separate just and reasonable determination regarding rates according to Section 392.200.1. Instead, the reference is to the entirety of Section 392.200, which, in general, prohibits discrimination and promotes competition. See, Sprint Missouri, Inc. Brief filed April 29, 2002, p. 10, f.n. 2.

Sprint's proposed tariff sets its new rates at amounts at or below the 'maximum allowable prices' in conformity with Section 392.245." Dissenting Opinion of Commissioner Connie Murray, p. 2. The Commission erred by ignoring the express statutory language and ruling that actual rates for non-basic services can be increased only eight percent annually.[2]

b. The Commission erred as a matter of law in rejecting Sprint's proposed tariff for the reason that the intent of Section 392.245 RSMo is to allow flexibility to price cap telecommunications companies so long as the rate charged does not exceed the maximum allowable price. Sprint agrees with Commissioner Murray's dissent on this point too. As explained above, the statute clearly sets out the separate concepts of actual rates and maximum allowable prices. Consumer interest is protected by allowing price cap companies pricing flexibility to offer services at rates below the maximum allowable price. "The legislature gave price cap companies the option to set their actual rates ***below*** the maximum allowable price. Consumer interest is protected by not forcing providers to increase their rates by a full 8% per year in order to preserve the maximum allowable price." Dissenting Opinion of Commissioner Connie Murray, p. 2. (Emphasis in original Opinion). The Commission erred in requiring price cap companies to "use or lose" the pricing flexibility granted in the statute. Order, p. 7. Consumer interests and a fair reading of the statute compel an opposite conclusion. As a matter of law, the Commission erred in prohibiting Sprint from setting its actual rates at any level at or below the maximum allowable prices.

c. The Commission's Report and Order rejecting Sprint's tariff is unlawful and exceeds the jurisdiction of the Commission to enforce the requirements of Section 392.200 RSMo that "[a]ll charges made....shall be just and reasonable" for the reason that Section 392.245.1 RSMo states in

[2] See, e.g. , Sprint Missouri, Inc. Brief filed April 29, 2002, pp. 1-10

pertinent part that "[t]he Commission shall have the authority to ensure that rates...for telecommunications services are just, reasonable and lawful by employing price cap regulation". The Commission wrongly states that the Price Cap Statute is ambiguous. "It could mean that price-cap regulated rates are, by definition, 'just, reasonable and lawful.' Or it could simply serve to introduce the subject matter and purpose of the Price Cap Statute." Order, p. 8. The Price Cap Statute is not ambiguous. The language clearly provides that the "commission shall have the authority to ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful **by employing price cap regulation.**" Section 392.245.1 RSMo The legislature defined price cap regulation as the establishment of "maximum allowable prices for telecommunications services" offered by an ILEC. Id. It is instructive that the legislature did not define price cap regulation by referring to actual rates charged for the service. Instead, price cap regulation is defined in terms of setting the maximum allowable prices and price cap companies are then given the flexibility by statute to set actual rates at or below the maximum allowable prices. Indeed the Commission already approved the maximum allowable prices to which Sprint seeks to increase its actual rates. Therefore, by applying the Price Cap Statute and setting maximum allowable prices, the Commission satisfies its obligation to ensure that rates are just and reasonable. Price cap companies that set their actual rates at or below the maximum allowable prices are presumed to have set just, reasonable and lawful rates. Commissioner Murray's dissent again is instructive. "The just and reasonable requirement of Section 392.200.1 does not, however, impact Commission decisions under the Price Cap Statute as that statute explicitly addresses just and reasonable rates. ... In applying the Price Cap Statute, the Commission satisfies its obligation to ensure that rates are just and reasonable." Dissenting Opinion of Commissioner Connie Murray, p. 3.

By approving the maximum allowable prices and allowing the price cap company to set actual rates at or below the maximum allowable price, the Commission will be establishing just and reasonable rates. No other inquiry is necessary or lawful.

d. The Commission's Report and Order rejecting Sprint's tariff is unlawful and exceeds the jurisdiction of the Commission because the Commission has only those powers conferred by statute and cannot lawfully apply its general regulatory power to enforce just and reasonable rates under Section 392.200 RSMo to negate the specific provisions of Section 392.245 RSMo applicable to price cap companies. The specific just, reasonable and lawful language found in the Price Cap Statute passed in 1996 replaces the Commission's general authority to regulate prices under Section 392.200.1 established in 1939.[3] *City of Kirkwood v. Leslie Allen*, 399 S.W.2d 30 (Mo. 1966). In addition, the plain language of the Price Cap Statute contemplates that rates established under the Price Cap Statute are set under different parameters than those set under the Commission's general ratemaking authority found in Section 392.200.1[4]. Any other reading eviscerates Section 392.245 and renders it meaningless. The specific authority granted the Commission in the Price Cap Statute supercedes the Commission's general authority to supervise rates.

[3] See, Supplemental Sprint Missouri, Inc. Brief filed August 20, 2002, pp. 1-7.
[4] Id., at pp. 1-3.

WHEREFORE, for the reasons set forth herein and the cited filings and on-the-record presentation, the Commission's decision is unjust, unlawful and unreasonable and Sprint respectfully requests that the Commission grant rehearing of its Report and Order rejecting Sprint's tariff pursuant to Section 386.500 RSMo.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

Copies of the foregoing were served on the following parties by first-class/electronic/facsimile mail, the 25th day of October, 2002.

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