

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office in
Jefferson City on the 10th day
of December, 2002.

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| In the Matter of the Tariff Filing of Sprint Missouri, Inc., d/b/a Sprint to Modify Rates in Accordance with Sprint's Price Cap Regulation Pursuant to Section 392.245, RSMo 2000. |))) | <u>Case No. IT-2003-0166</u> Tariff No. JI-2003-0998 |
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ORDER REGARDING TARIFF

On October 25, 2002, Sprint Missouri, Inc., d/b/a Sprint, filed a proposed tariff revising the company's General Exchange tariff. At the same time, Sprint filed revisions to the following tariffs: Message Telecommunications Service (Case No. IT-2003-0167); Private Line Service (Case No. IT-2003-0168); and WATS (Case No. IT-2003-0169); and Access Service (Case No. IT-2003-0170). The proposed tariffs bear an effective date of December 11, 2002.

On November 5, 2002, the Office of the Public Counsel filed a motion requesting that the Commission suspend the tariff and schedule a hearing in this matter. Public Counsel argues that a hearing is necessary to determine whether or not the proposed maximum allowable prices of non-basic services and adjustments made to rates comply with Section 392.245.11, RSMo¹ and the Commission's October 17, 2002 decision in *In the Matter of the Tariff Filing of Sprint Missouri, Inc. d/b/a Sprint to Increase the Residential and Business Monthly Rate for the Metropolitan Calling Area (MCA) Plan*, Case

¹ Although Public Counsel initially cites Section 342.245, it appears that Public Counsel is referring to Section 392.245.

No. TT-2002-447. Public Counsel also states that suspension and a hearing is necessary to review the proposed adjustment of switched access rates and rebalancing of local rates under Section 392.245.9, RSMo. Public Counsel alleges that the adjustments and rebalancing are not supported by competent and substantial evidence of a properly constructed cost study and were not conducted pursuant to any investigation by the Missouri Public Service Commission as required by Section 392.245

On November 8, 2002, Sprint filed its response to Public Counsel's motion to suspend. Sprint claims that Public Counsel's motion is without merit and should be denied. Sprint states that it has satisfied all statutory obligations related to its tariff change requests. Sprint argues that as a Price Cap company, Sprint's tariff modifies rates in accordance with the Price Cap statute, Section 392.245, RSMo. Sprint indicates that its filing proposes to adjust its basic rates by the change in the CPI-TS as required by 392.245.4; updates its maximum allowable prices for non-basic services and adjusts certain rates as allowed by 392.245.11 and adjusts certain switched access rates and rebalances local rates in accordance with the provisions of Section 392.245.9

Sprint notes that Public Counsel claims that the Company's rate rebalancing is not supported by appropriate cost studies and that Section 392.245.9 requires the PSC to conduct an investigation. Sprint points out that Public Counsel's argument is the same one that it made last year in Sprint's 2001 annual price cap case, TR-2001-251, and that the Commission rejected the argument at that time. Sprint states that in that case, the Commission ruled that Sprint meets or exceeds the simple mathematical formula contained in the statute and that ample supporting cost material was provided and reviewed. The Cole County Circuit Court affirmed the Commission's order in Case No. 02CV323112

Sprint also notes that Public Counsel requests an evidentiary hearing to examine whether Sprint's proposed maximum allowable prices for non-basic services are compliant statute and prior Commission orders. Sprint argues that a calculator is all that is needed to make this determination and that evidentiary hearings would be an unnecessary unwarranted delay that would needlessly expend Commission and company resources. Sprint also states that the Commission's order in the MCA Plan case, Case No. TT-2002-447, has no effect on this tariff filings. Sprint indicates that the issue in Case No. TT-2002-447 was whether statutes allow price regulated companies to "bank" increases in maximum allowable rates from one year to the next or if companies have to "use-it-or-lose it" in regards to the annual eight percent increase. Sprint notes that the Commission ruled that "the statute provides a 'use it or lost it' price cap mechanism. Sprint states that its current tariff revisions do not include any increase that exceeds eight percent, and therefore, the "banking" argument is not relevant. Sprint also indicates that its tariff filings do not propose adjustments to the actual rate for MCA service.

Staff filed a response to the motion to suspend on November 14, 2002. Like Sprint, Staff noted that in Case No. TR-2001-251, the Commission found that Sprint meets or exceeds the simply mathematical formula found in the statute and that ample supporting cost material was provided and reviewed. Staff notes that the Commission's order in Case No. TR-2001-251 has been affirmed by the Cole County Circuit Court, and although on appeal to the Western District Court of Appeals, the Commission's order has not been stayed and remains in force. Staff states that the supporting cost studies were before the Commission in TR-2001-251, and that the Commission made its initial determination under Section 392.245.9 at that time and need not revisit it in this case. Staff requested that it be

allowed additional time to complete its review of the proposed tariff and file its recommendation

On November 26, 2002, Staff filed its Memorandum and Recommendation. Staff recommends that the Commission approve the proposed tariffs in Case Nos. IT-2003-0166, IT-2003-0167 IT-2003-0168, IT-2003-0169, and IT-2003-0170. Staff states that it has reviewed the rebalancing adjustments and finds them consistent with Sections 392.245.8 and 392.245.9, RSMo. Staff also notes that it has reviewed the CPI-TS adjustments and finds them consistent with Section 392.245.4, RSMo. Staff further explains that Sprint proposes to increase many of its maximum allowable prices for non-basic services by eight percent or less; however, the company is proposing to only increase selected, non-basic rates by the eight percent or less. Staff notes that Sprint has increased the maximum allowable price for certain Metropolitan Calling Area (MCA) services, but has not increased any MCA rates. Staff again indicates that it has reviewed the adjustments and has found that they are consistent with Section 392.245.11

On December 5, 2002, the Commission issued an order directing Staff and Sprint to file additional pleadings clarifying the changes being made to MCA service in Sprint's proposed tariff. On December 9, 2002, Sprint filed a pleading indicating that it was withdrawing Section 50, the portion of the tariff that proposes to adjust the maximum allowable prices for MCA services. Staff filed its response to the Commission's Order Directing Filing on December 9, 2002

On December 10, 2002, Public Counsel filed a supplemental pleading countering the arguments of Sprint and Staff and more fully developing Public Counsel's position as to why it believes that the tariffs should be suspended. Also on December 10, 2002, Sprint

filed a Motion to Strike Office of the Public Counsel's Response To Staff and Sprint's Supplemental Pleadings. Sprint notes that Public Counsel moved to suspend Sprint's tariffs on November 5, 2002. Sprint filed its response to the motion to suspend on November 8, 2002.² Public Counsel did not file a reply within the ten-day period found in Commission Rule 4 CSR 240-2.080.16. Sprint notes that on December 5, 2002, the Commission issued an order directing the parties to respond to a specific question regarding the MCA Plan. Sprint indicates that Public Counsel's December 10th pleading goes far beyond the scope of the Commission's Order Directing Filing, and instead addresses topics such as an alleged misapplication of the CPI increase, re-argument of the application of the rebalancing formula, re-argument of Public Counsel's request for hearing of Sprint's 2001 Price Cap filing, re-argument of costing and application of the Price-Cap formula for both the 2001 and 2002 Price Cap filings, and re-argument of Public Counsel's request for public hearings. Sprint requests that the Commission strike Public Counsel's pleading in that it goes beyond the scope of the Commission's Order Directing Filing and is a belated attempt to file a reply pleading after the deadline for doing so.

The Commission finds that Public Counsel's December 10 filing goes far beyond the scope of the Commission's December 5, 2002, order and is an untimely response to the November 5, 14, and 26 filings of Sprint and Staff. Therefore, the Commission will grant Sprint's Motion to Strike.

The Commission has reviewed the proposed tariff, tariff file number JI-2003-0998, and the parties' filings. The Commission finds that the proposed

² Although the dates of Staff's pleadings are not noted in Sprint's Motion to Strike, Staff filed a response to the motion to suspend on November 14, 2002. Staff then filed its Recommendation and Memorandum on November 26, 2002.

adjustments comply with Section 392.245. The Commission also notes that Case No. TT-2002-447 addressed the issue of "banking" and is not applicable to this case. Furthermore, the Commission determines that, as discussed in Case No. TT-2001-251 Sprint's cost studies meet the statutory requirements and the company's calculations for non-basic services pass the statutory mathematical test. The Commission finds that the proposed tariff should be approved; however, the Commission notes that the tariffs bear an effective date of December 11, 2002, just one day following the issuance of this order. Therefore, the Commission will briefly suspend the tariffs in order to allow a longer period between the issuance of this order and the effective date of the tariffs.

IT IS THEREFORE ORDERED:

1 That effective December 11, 2002, the proposed tariff sheets (Tariff No. JI-2003-0998), filed by Sprint Missouri, Inc., d/b/a Sprint, on October 25, 2002, and amended on November 6, 2002, November 21, 2002, December 6, 2002, and December 9, 2002, are suspended for a period of seven days, until December 18, 2002.

2 That the proposed tariff sheets (Tariff No. JI-2003-0998), filed by Sprint Missouri, Inc., d/b/a Sprint, on October 25, 2002, and amended on November 21, 2002, are approved to become effective on December 18, 2002.

3 That the Motion to Strike Office of the Public Counsel's Response to Staff and Sprint's Supplemental Pleadings, filed on December 10, 2002, by Sprint Missouri, Inc. d/b/a Sprint, is granted.

4. That except for Ordered Paragraph No. 1, this order shall become effective on December 18, 2002.

BY THE COMMISSION

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Ruth, Senior Regulatory Law Judge

