

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

In the Matter of Southwestern Bell Telephone	)	
Company, d/b/a SBC Missouri's Proposed Revised	)	
Tariff Sheet Intended to Increase by Eight Percent	)	<b><u>Case No. IT-2004-0015</u></b>
the Rates for Line Status Verification and Busy Line	)	<b><u>Tariff No. JI-2003-2141</u></b>
Interrupt as Authorized by Section 392.245, RSMo,	)	
the Price Cap Statute	)	

**BRIEF OF SPRINT MISSOURI, INC.**

COMES NOW Sprint Missouri, Inc. d/b/a Sprint ("Sprint") and for its brief in this case states as follows:

**INTRODUCTION**

This case focuses on Southwestern Bell Telephone Company's d/b/a/ SBC Missouri ("SBC-MO") intention to raise its actual prices for Line Status Verification and Busy Line Interrupt services to levels that are equal to, or less than, the maximum allowable price allowed by the Missouri Price Cap Statute, Section 392.245 RSMo. While SBC-MO's proposed prices are clearly lawful as they are authorized by the Price Cap Statute, the Commission suspended SBC-MO's tariff sheets containing the lawful prices, and set a hearing date, to determine how the Missouri Price Cap Statute impacts the Commission's general authority to establish just and reasonable rates.

The answer to this question is that the Missouri Price Cap Statute limits the Commission's authority. The statute specifically states that by employing the Price Cap Statute, the Commission satisfies its obligation for setting just and reasonable prices. Further, the statute provides a precise pricing formula for non-basic services, such as Line Status Verification and

Busy line Interrupt. Therefore, as SBC-MO's requested price adjustments fall within the formula provided by the Missouri Price Cap Statute, they are just and reasonable and should be approved.

**JUST AND REASONABLE PRICES FOR PRICE CAP COMPANIES ARE SET  
ACCORDING TO THE AUTHORITY FOUND IN § 392.245 RSMO**

Section 392.245 RSMo<sup>1</sup> controls the manner in which just and reasonable rates are established for price cap companies. The Price Cap Statute explicitly provides: "[t]he commission shall have the authority to ensure that rates, charges, tolls and rental for telecommunications services *are just, reasonable and lawful by employing price cap regulation\*\*\*.*" (Emphasis added). Within the statute is a formula to establish a price cap for non-basic services. Non-basic services are defined by statute and included all service except the basic access line and exchange access services. See Section 386.020.34 RSMo. It is undisputed in this case that Line Status and Busy Line Interrupt services are non-basic services.

This pricing formula for non-basic services establishes a maximum allowable price and allows it to increase annually by eight percent. The maximum allowable price builds upon the Commission's work in setting just and reasonable rates prior to a company entering a price cap. According to the Statute, existing rates serve as the initial cap, and from there the companies are allowed predictable pricing flexibility for non-basic services while limiting a price cap company's opportunity to raise basic rates. In doing this, the Legislators provided a pricing structure that continues to provide just and reasonable rates.

The Price Cap Statute applies only to a specific group of companies – those that face a certified alternative provider in their territory. As a specific statute, and under its language,

---

<sup>1</sup> Hereinafter also referred to as the "Price Cap Statute"

its application is not bound by general statutes addressing the same subject. Missouri case law clearly establishes that when a statute specifically addresses a requirement, the language of that specific statute will prevail over the general statute. *City of Kirkwood v. Leslie Allen*, 399 S.W 2d 30 (Mo. 1966); *City of Springfield v. Forrest Smith*, 125 S.W 2d 883 (Mo. 1939). In this case, the general statute addressing reasonable prices, Section 392.200.1 RSMo was originally passed in 1939 and generally applies to all telecommunications companies. Section 392.200.1 RSMo requires that all charges for any services rendered by telecommunications companies shall be just and reasonable. The Missouri Price Cap Statute was passed in 1996 and applies specifically to Price Cap companies. Further, as noted above, section 392.245.1 of the Price Cap Statute states that "[t]he commission shall have the authority to ensure that rates, charges, tolls and rental for telecommunications services *are just, reasonable and lawful by employing price cap regulation\*\*\*.*" (Emphasis added). Therefore, the provisions of the price cap statute prevail over the general provision of Section 392.200.1 RSMo and the Commission's decisions regarding rates for price cap companies must comply with Section 392.245 RSMo.

Second, the language of the Missouri Price Cap Statute reinforces the conclusion that Section 392.200.1 does not apply to price cap companies. Pursuant to subsection 5 of the Price Cap Statute, price cap companies can move out of price regulation upon a finding that effective competition exists for a given service. Under this subsection, companies can also be pulled back into regulation under the Price Cap Statute. In addressing the Commission's authority in the event that a company comes back under the Price Cap Statute, the legislators have stated that companies will remain under price cap and the maximum allowable prices set forth in subsection (4) and (11) and **only Section 392.200 (4)(c)(2)** will continue to apply.

Subsection (4) and (11) provide the specific pricing formulas. Further, Section 392.200(4)(c)(2) addresses the prohibition against discrimination between similarly situated customers. Therefore, the legislator clearly intended the maximum allowable price under the Price Cap Statute be set only in reference to the just and reasonable price formulas provided in the Price Cap Statute – not pursuant to the Commission's general authority provided in 392.200.1 RSMo.

Not only does the language of the Price Cap Statute itself clarify which portions of Section 392.200 apply to price cap companies, but the language makes it impossible to apply Section 392.200.1 to price cap companies as it excludes such companies from the very mechanism through which the Commission enforces just and reasonable rates. Section 392.245.7 RSMo of the Price Cap Statute states: A company regulated under this **section shall not be subject to regulation under subsection 1 of 392.240.** (Emphasis added). Subsection 1 of 392.240 addresses the ability of the Commission to review rates and set new rates if the Commission determines that any rates offered by telecommunications companies are unjust and unreasonable.<sup>2</sup> As the Commission stated in an earlier case "Section 392.240 grants the Commission authority over the rates and charges that are charged and collected by telecommunications companies operating in Missouri."<sup>3</sup> The fact that price cap companies are exempted from this authority clearly indicates that the Commission should evaluate requests to increase rates of price cap companies based only on the criteria set out in the Price

---

<sup>2</sup> Section 392.240 has two additional subsections. However, they address rules, regulations and practices of telecommunications companies and physical connections.

<sup>3</sup> Report and order, *In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996*, Case No. TO-99-483, September 7, 2000, Conclusions of Law, State Law at page 27.

Cap Statute. The Price Cap Statute does not allow an exercise of authority under Section 392.240.1 to override the pricing flexibility it provides.

Finally, additional language of the Price Cap Statute leaves no doubt that only the terms of the Price Cap Statute are to guide the Commission's determination regarding compliance with the maximum allowable price provision. By way of example, Section 392.245.3 RSMo states: "...except as otherwise provided in this statute, the maximum allowable prices for a company under section 1 **shall be** those in effect on December 31 of the year proceeding..." (Emphasis added). Section 392.245.4(b)(2) states "... the commission **shall approve a change** to the maximum allowable price **filed pursuant to paragraph (a) of subdivision (1) of this section within 45 days of filing of notice by the local exchange company...**" (Emphasis added). Sections 392.245.4.5 and 11 RSMo provide that the Commission shall approve rates for services **provided that any such rate is not in excess of the maximum allowable prices established for such services under this section.**" Therefore, the Price Cap Statute does not confer Commission authority to make further determinations with respect to rate increases, if such increases are consistent with the maximum allowable price provisions of the Price Cap Statute.

It is clear that the Price Cap Statute contains mandatory language that impacts the Commission's authority. The clear and unambiguous language of the statute that establishes what maximum allowable rates **shall** be. The use of the word shall is imperative when entities are granted rights dependent on the Commission's action. *See State ex rel Springfield Warehouse and Transfer Company and Sur-way Lines, Inc. v. PSC* 225 SW 2d 792 (Mo. App. 1949). Further, the origin and powers of the Public Service Commission are purely statutory, and it has no authority save that given it by statute. *See State ex rel Beaufort Transfer*

*Company v. PSC*, 593 S.W 2d 241 (Mo. App 1979). The Commission has no power to adopt a rule, or follow a practice, which results in nullifying the expressed will of the Legislature. *See State ex rel Springfield Warehouse and Transfer Company and Sur-way Lines, Inc. v. PSC* 225 SW 2d 792 (Mo. App. 1949). Therefore, the limitations provided in the Price Cap Statute must be respected.

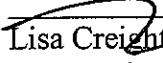
The fact that a price cap statute would limit a state commission's general rate making authority over non-basic prices is not surprising. In return for the pricing flexibility for non-basic service, SBC-MO and other price cap companies have agreed that prices for basic services will be unchanged, except as otherwise provided under the Price Cap Statute. Therefore, outside of rate re-balancing, the prices for basic services will only change to reflect movement in objective economic measurements, such as the telephone service component of the consumer price index (CPI-TS) or the Gross Domestic Product Price Index (GDPPI). SBC-MO and other price cap companies assume the full risk that to the extent they are adversely impacted by factors not reflected in the CPI-TS (such as loss of access lines), SBC-MO will not be able to recover its losses. However, in exchange for assuming this risk with respect to basic services, the Price Cap Statute gives SBC-MO greater pricing flexibility for non-basic services. In fact, since SBC became subject to Price Cap regulation, its basic rates have declined in all but one year and its current rates are lower than when entering Price Cap.

### **CONCLUSION**

Based on the above, it is abundantly clear that the provisions of the Price Cap Statute govern the Commission's determinations in this case. The Price Cap Statute provides a formula for just, reasonable and lawful prices. The determination for the Commission is limited to ascertaining if the formula provided in the Price Cap Statute has been followed. In other words,

is the request for price increase with the eight percent allowed for non-basic services. The answer to that question is yes. Therefore, there is no need for a hearing in this case and SBC's tariff should be approved.

Respectfully submitted,  
**Sprint**

  
Lisa Creighton Hendricks - MO Bar #42194  
6450 Sprint Pkwy, Disney A  
KSOPHN0212-2A253  
Overland Park, KS 66251  
Voice: 913-315-9363 Fax: 913-523-9769  
Lisa.c.creightonhendricks@mail.sprint.com

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the above and foregoing was served on each of the following parties by first-class/electronic/facsimile mail, this 15th day of September, 2003.

Michael Dandino  
Office of Public Counsel  
P. O. Box 7800  
Jefferson City, Missouri 65102

Paul G. Lane  
Anthony R. Conroy  
Leo J. Bub/ Mary B. MacDonald  
SBC Missouri  
One SBC Center Room 3516  
St. Louis, Missouri 63101

Dana K. Joyce  
General Counsel  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, Missouri 65102

James M. Fischer  
Larry W. Dority  
Fischer & Dority, P.C.  
101 Madison, Suite 400  
Jefferson City, MO 65101

  
\_\_\_\_\_  
Lisa Creighton Hendricks