

**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)	<u>Case No. TT-2002-1136</u>
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