# BEFORE THE PUBLIC SERVICE COMMISSION
# OF THE 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 residential and business monthly rate for the Metropolitan Calling Area (MCA) Plan. | ) ) ) ) | Case No. TT-2002-447<br>Tariff No. 200200766 |

## OFFICE OF THE PUBLIC COUNSEL'S ADDITIONAL SUGGESTIONS AFTER PREHEARING CONFERENCE

COMES NOW the Office of the Public Counsel and respectfully suggests that the Missouri Public Service Commission focus on the following points when it considers whether to reject or approve Sprint's MCA rate increases or, in the alternative, continues to suspend the tariffs and set the matter for an evidentiary hearing.

1. Both Sprint and the Staff asks the PSC to ignore its decision setting a price cap on MCA service in *In the Matter of an Investigation for the Purposes 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*, TO-99-483, September 7, 2000. The Commission was clear and unequivocal when it found that the current MCA rates were just and reasonable: "The rates set in 1992 were found to be just and reasonable and were not based on cost to the carriers; thus those rates are still a just and reasonable cap on the price of MCA service to consumers." (Emphasis added). It was equally clear and unequivocal when it further declared that it would be reasonable, necessary and in the public interest to place a cap on MCA rates "to protect consumers from price increases."

2. Sprint and the Staff argue that the PSC did not mean that this MCA price lid applies to Sprint and other price cap companies. To that end they point to the following language in the Report and Order in TO-99-483:

> The Commission also finds that it is in the public interest to allow ILECs to exercise the full pricing flexibility that they are statutorily entitled to have. The Commission determines that ILECs are allowed to change their MCA service charges in response to competition brought on by flexible pricing of MCA service by CLECs, subject to statutes and other safeguards against predatory pricing. For price cap companies, that means that pricing flexibility subject to maximum allowable prices under Section 392.245, RSMo. For rate-of-return companies, that means pricing flexibility subject to total earning limitations under Sections 2.220-240, RSMo.

But both Sprint and the Staff overlook and give no effect the very next paragraph in the Order:

> **However, while the Commission finds that both the ILECs and the CLECs should be given flexibility to set rates lower than the rates set out in Case No. TO-92-306, the evidence also suggested that it would be reasonable, necessary and in the public interest to place a cap on those rates to protect consumers from price increases.** The rates set in 1992 were found to be just and reasonable and were not based on cost to the carriers; thus, those rates are still a just and reasonable cap on the price of MCA service to consumers. (Emphasis added)

The decision can have but one reasonable interpretation: the price cap companies have full authority to take advantage of the price flexibility to meet competition by reducing rates, but, for the protection of the public and to prevent price increases that would reduce the value of the MCA, the price cap companies like, all companies, cannot increase the current MCA rate lid.

3. Sprint goes even further in maintaining that the PSC exceeded its statutory authority setting MCA price lids that apply to price cap companies. Sprint argues that once the PSC grants price cap status to ensure just and reasonable rates, the PSC no longer can review or regulate price cap companies prices in any way. The Commission retains statutory jurisdiction over all telecommunications companies, be they rate of return, price cap, or competitive companies offering competitive services. 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)

The Commission has broad jurisdiction over telecommunications services, activities, and rates pursuant to Section 392.185, RSMo 2000. The Commission has affirmed this broad jurisdiction. *In the Matter of the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri*, Case No. TO-99-596 (June 1, 2000). Sprint's contention that the PSC lost its jurisdiction to set a price cap for MCA service and that its decision setting current MCA rates as the MCA price cap for all telecommunications companies is *ultra vires* has no basis in law or fact.

4. Even if the MCA price cap ordered in TO-99-483 did not apply here, Sprint's increases in MCA rates are beyond the level authorized by Section 392.245.11, RSMo. It would totally defeat the legislative purpose to prevent rate increases in excess

of 8% per year to allow Sprint to "bank" increases and then use all or part of them at its discretion. The legislative system is defeated if Sprint is allowed to create hypothetical rates that are implemented until some other future time. Section 392.245.11 clearly provides that the rates must be established for the rates to become the maximum available price: " *Thereafter, the maximum allowable prices for nonbasic telecommunications services of an incumbent local exchange telecommunications company may be annually increased by up to eight percent for each of the following twelve-month periods upon providing notice to the commission* ***and filing tariffs establishing the rates for such services in such exchanges at such maximum allowable prices.*** ..." (Emphasis supplied). Each year, Sprint is allowed an 8% increase for nonbasic services. It may adopt all or part of that 8% each year. It notifies the PSC and files the tariff to establish the rate for that nonbasic service at 8% or any part of an 8% increase. The new rate can be the 8% maximum allowable price or lesser amount. Once the rate is established it becomes the maximum allowable rate for the following 12-month period. The next year, Sprint can increase this rate by up to 8% or any part of that 8%. If it only increased the actual rate 4% in the prior year, Sprint is still limited to an 8% increase in the subsequent year and cannot tack on the prior year's 4% increase it had waived.

5. Sprint is trying to increase rates indirectly by more than 8% per year when it is prohibited by Section 392.245.11, RSMo from doing it directly. It has come up with this phantom maximum allowable price schedule that only becomes real when it files a tariff in a later year. When the phantom schedule was established, it did not affect any consumer and was not applied to any customer; it had no effect and had no immediate and real consequence. Only when it is finally applied with this tariff does the issue and

controversy of the legality and appropriateness of this rate process become ripe for Commission action.

6. For these reasons and the reasons Public Counsel previously suggested to the Commission in this case, the PSC should reject these MCA rate increases or, in the alternative, continue the suspension period and hold an evidentiary hearing on the proposed increases.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed or hand delivered this 29th day of April, 2002 to the following attorneys of record:

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