

**FILED**<sup>4</sup>

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

**MAY 16 2003**

**Missouri Public  
Service Commission**

In the Matter of the Tariff Filing of )  
Sprint Missouri, Inc. d/b/a Sprint )  
to Increase the Rate for the )  
Metropolitan Calling Area Plan )

**Case No. IT-2003-0292**  
**Tariff No. JI-2003-1401**

**SPRINT MISSOURI, INC.'S REPLY BRIEF**

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

In its Brief, the Office of Public Counsel ("OPC") raises several arguments to support its contention that any limitation on the Commission's authority found in the Price Cap Statute can be ignored because the Commission has broad supervisory authority over public utilities. Further, OPC contends that the Commission's decision in an earlier case relating to participation by competitive providers in the MCA Plan establishes that the Price Cap Statute does not apply to the MCA Plan. Neither contention is correct. First, while the Commission does have jurisdiction over Sprint and other telecommunications companies, the Commission's jurisdiction must be exercised consistent with the provisions of the Missouri Public Service Law. This Missouri Public Service Law includes the Price Cap Statute that specifically provides how the Commission exercises its jurisdiction with respect to just and reasonable prices for price cap companies. The Commission is bound by limitations found within the Price Cap Statute. Second, the earlier MCA case relied on by OPC was decided by the Commission under the

authority granted to it in Section 392.240.1 RSMo. The Price Cap Statute *explicitly exempts* price cap companies, such as Sprint, from this authority. The Price Cap Statute states:

A Company regulated under this section *shall not* be subject to regulation under subsection 1 of section 392.240. Section 392.245.7 (emphasis added).

Therefore, OPC is wrong on both contentions.

### **THE COMMISSION CANNOT IGNORE THE MISSOURI PRICE CAP STATUTE**

OPC suggests that the Commission is free to reject the price cap parameters provided in the Missouri Price Cap Statute and deny increases to rates that are within those parameters. It appears that OPC's suggestion is based on its argument that as the Commission is granted "extensive and broad authority to carry out this police power and regulatory power," the Commission is free to make any determination it thinks is reasonable regardless of the limitation in the Price Cap Statute. This argument is contrary to the applicable canons of statutory construction.

The Commission is an agency of limited jurisdiction and has only such powers as are conferred upon it by statute. *Inter-City Beverage Co. Inc. v. Kansas City Power & Light Co.*, 889 S.W. 2d 875, 877 (Mo. App. W.D. 1994). The Commission's authority therefore is limited to that specifically granted by statute or warranted by clear implication as necessary to effectively render the specifically granted power. *State ex rel. Intern. Telecharge, Inc. v. Missouri Public Service Com'n*, 806 S.W. 2d 680, 686 (Mo. App. W.D. 1991).

Section 392.245 RSMo controls the manner in which just and reasonable rates are established for price cap companies. The Price Cap Statute 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 for the Commission to apply that continues to provide just and reasonable rates.

The language in the Price Cap Statute takes price cap companies out of the general provisions of the Missouri Statutes addressing just and reasonable rates - specifically, the general provisions of Section 392.200.1 RSMo. Missouri case law clearly establishes that when the same subject matter is addressed in general terms in one statute and in specific terms in another, the more specific controls over the more general. *Greenbriar Mills v. Director of Revenue*, 935 S.W. 2d 36, 38 (Mo. banc 1996); *Robinson v. Health Midwest Development Group*, 58 S.W. 3d 519 (Mo. Banc 2001). In this case, Section 392.200 RSMo requires that all charges for any services rendered by telecommunications companies shall be just and reasonable.

The Missouri Price Cap Statute revised Missouri's telecommunications statutes in 1996 and applies specifically to the Price Cap companies. Section 392.245.1 of the Price Cap Statute states that "[t]he commission shall have authority to ensure that rates, charges, tolls and rental for telecommunications service *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 legislature made it clear that it did not intend for Section 392.200.1 to apply to price cap companies. Pursuant to subsection 5 of the Price Cap Statute, price cap companies can avoid price regulation upon a finding that effective competition exists for a given service. In addressing the Commission's authority in the event that effective competition is found not to exist, the legislature has 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. Thus, clearly, the maximum allowable price is to 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.

This conclusion is further supported by the fact that the Price Cap Statute explicitly exempts price cap companies from the very mechanism through which the Commission exercises its general rate jurisdiction - Section 392.240.1 RSMo. 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. 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 solely on the criteria contained in the Price 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.

The conclusion that the Price Cap Statute trumps Section 392.240.1 is reinforced by the mandatory language of the Price Cap Statute. The use of the word "shall" in legislation indicates that a statute's provisions are mandatory and not permissive. *Younger v. Public Entity Risk Manage Fund*, 957 S.W. 2d 332, 336 (Mo. App. W.D. 1997). The Price Cap Statute's repeated use of the word "shall" limits the Commission's authority to constrain pricing flexibility and explicitly exempts price cap companies from the mechanism through which this Commission exercises its general authority to ensure that rates are just and reasonable - Section 392.240.1 RSMo. *See* Section 392.245.7 RSMo. 2000. 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 et al. v. Public Service Commission*, 225 SW 2d 792, 794 (Mo. App. 1949). Therefore, OPC's contention that the Commission can escape the limitations provided in the Price Cap Statute must be rejected as contrary to the law.

The fact that the Price Cap Statute limits the Commission's general rate making authority over non-basic prices is not surprising. In return for the pricing flexibility for non-basic service, Sprint 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). Sprint 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), Sprint 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 Sprint greater pricing flexibility for non-basic services. Section 392.230.3 does not authorize the Commission to eliminate the pricing flexibility conferred by Section 392.245 RSMo.

Clearly, based on the above, the Commission can not rely on general statutory provisions cited by OPC to override the specific provisions of the Price Cap Statute. Furthermore, despite OPC's protest to the contrary, there is nothing in the general statutory framework that conflicts with the Price Cap Statute. The Price Cap Statute does not take price cap companies out of the Commission's jurisdiction, it merely provides how the Commission will exercise that jurisdiction with respect to rates for price cap companies. Price cap companies still file tariffs with the

Commission and must still comply with quality of service rules and other applicable rules. Indeed, if the Commission looks at the language of the broad provisions upon which OPC rest its case, it will see that the broad provisions anticipate other more specific provisions will impact the authority given. For example, OPC cites Section 392.470 RSMo to support its contention that the Commission can impose any condition it deems reasonable upon a telecommunications company. However, what OPC fails to mention is that the statute requires that any conditions imposed by the Commission be consistent with the provision of the Missouri Public Service Law. Section 392.470 RSMO provides in relevant part:

The Commission may impose any condition or conditions that it deems reasonable and necessary upon any company providing telecommunications service **if such conditions** are in the public interest and **consistent with the provisions** and purpose of **this chapter...** (Emphasis added).

The same is true of Section 392.250 RSMo relied on by OPC as it grants the Commission only the powers and authority over telecommunications companies that is provided by the Missouri Public Service law. With respect to pricing for price cap companies – that power and authority is provided by Section 392.245 RSMo. Therefore, the Commission does not have the ability to rely on any statute cited by OPC to find that the language of the Price Cap Statute can be ignored. In this case, the Missouri Price Cap Statute provides that Sprint can increase its maximum allowable price for non-basic service, such as the MCA Plan, by an amount not to exceed 8% per year. As established in Sprint’s Initial Brief, Sprint’s requested rate increases comply with this requirement. Therefore, the applicable statute provides that the requested increase “shall be approved.” Section 392.245.11 RSMO

**THE COMMISSION'S DECISION IN CASE NO. TO-99-483 IS NOT RELEVANT  
TO THE COMMISSION'S DECISION IN THIS CASE**

OPC criticizes Sprint and SBC for failing to address the Commission's decision in *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 of the Telecommunications Act of 1996*, Case No TO-99-483. However, the reason Sprint did not address the case is that it is not relevant to the Commission's decision in this case.

In Case No TO-99-483, the Commission addressed the conditions under which Competitive Local Exchange Companies ("CLECs") would be allowed to participate in the MCA Plan. Relying on Section 392.240.1 RSMo, the Commission ruled that CLECs would be subject to a cap on the price they could offer MCA service and the cap would be the price offered by the incumbent LEC. Quoting from OPC's supplemental brief, the court in upholding the Commission's decision stated as follows:

In State ex rel. MoKan Dial, Inc. et al. v. Public Service Commission, 897 S.W2d 54 (Mo. App. WD 1995), the Court rejected challenges to the Commission's order creating the Metropolitan Calling Area Plan. The Court held that "**Section 392.240.1** is applicable here and invests the Commission with authority to revise and to set reasonable rates for tolls and other services when customer needs are not being met and service is inadequate." At 55 (Emphasis added).

What OPC overlooks is that the Price Cap Statute explicitly exempts price cap companies from the Commission's authority under Section 392.240.1. The Price Cap Statute states:

A Company regulated under this section **shall not** be subject to regulation under subsection 1 of section 392.240. Section 392.245.7 (emphasis added).

As the Commission relied on its authority under Section 392.240.1 RSMo in Case No. TO-99-483, it can not apply the ruling from that case to companies regulated pursuant to Section 392.245. Sprint is regulated pursuant to Section 392.245 RSMo. Therefore, the Commission's decision in Case No TO-99-483 is not applicable or relevant.

**CONCLUSION**

For the reasons stated above, Sprint renews its request for the Commission to reconsider its earlier order suspending Sprint's tariff changes raising the actual rates for its MCA services to a level at or below the maximum allowable prices previously approved by the Commission.

WHEREFORE, Sprint requests that this Commission approve its tariff revision and withdraw its motion to suspend.

Respectfully submitted,

**Sprint**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 16th day of May, 2003 a copy of the above and foregoing was served via U.S. Mail, postage prepaid and or by electronic/facsimile mail, to each of the following:

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