

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

In the Matter of the Joint Application )  
of GTE Midwest Incorporated and Spectra )  
Communications Group LLC for Authority to )  
Transfer and Acquire Part of GTE Midwest )  
Incorporated's Franchise, Facilities or )  
System Located in the State of Missouri and )  
for Issuance of Certificates of Service )  
Authority to Spectra Communications Group )  
LLC and for Authority for Spectra Communica- )  
tions Group LLC to Borrow an Amount not to )  
Exceed \$250,000,000 from CenturyTel, Inc., )  
and in Connection Therewith to Execute a )  
Telephone Loan Contract, Promissory Notes, )  
and a Mortgage, Security Agreement and )  
Financing Statement. )

Case No. TM-2000-182

**ORDER GRANTING INTERVENTION,  
SETTING A PREHEARING CONFERENCE  
AND DIRECTING FILING OF PROCEDURAL SCHEDULE**

**Procedural History:**

On August 24, 1999, GTE Midwest Incorporated (GTE) and Spectra Communications Group, LLC (SCG or Spectra) filed their joint application seeking authority for GTE to sell a portion of its Missouri network to SCG, certificates of service authority for SCG so that it can operate the purchased network, and authority for SCG to borrow no more than \$250,000,000 to finance the proposed acquisition.

On August 31, 1999, the Commission issued its Notice of Applications. With their application, the Applicants filed a request for a protective order. On August 31, 1999, the Commission adopted its standard protective order in this matter and ordered an investigation and report by the Staff of the Public Service Commission (Staff). On September 2, 1999, the Commission issued its Order Directing Notice, in which October 4, 1999, was established as the deadline for applications to intervene. On September 9, 1999, the Office of the Public Counsel (OPC) filed its Motion for an Evidentiary Hearing and, on September 14, 1999, GTE filed non-disclosure agreements as called for by the protective order.

**Intervention:**

Applications to intervene were filed by AT&T Communications of the Southwest, Inc. (AT&T), on September 29, 1999; by Mark Twain Communications Company (Mark Twain) and Southwestern Bell Telephone Company (SWBT) on September 30, 1999; and by Fidelity Communications Services II, Inc. (Fidelity), and Show Me Competition, Inc. (Show Me), on October 4, 1999. All of the applications to intervene were timely. On October 13, 1999, SCG filed its responses in opposition to the intervention applications of SWBT and Fidelity.

AT&T states that it is a competitive interstate and intrastate interexchange telecommunications carrier that has been granted authority to provide local exchange and basic local exchange services in parts of Missouri. AT&T states that its interest herein is different from that

of the general public because it has an approved interconnection agreement with GTE allowing for service offerings in the exchanges affected by this application. AT&T states that it seeks to ensure that the terms and conditions of its agreement remain in force. AT&T also asserts, without specifying, that it "believes it could be directly affected by the Commission's order in this matter."

Mark Twain states that it is a competitive local exchange company (CLEC) authorized to provide basic local exchange services in parts of Missouri in Case TA-98-305. Mark Twain states that its interest herein is different from that of the general public because it has an approved interconnection agreement with GTE and, pursuant thereto, has invested money and made improvements in order to provide telecommunications services "to hundreds of customers in certain exchanges of GTE that are proposed to be sold to Spectra." Mark Twain states that it seeks intervention herein because it fears disruption of its ongoing services due to the sale. In particular, although the agreement between Mark Twain and GTE allows SCG to assume GTE's role under the agreement, Mark Twain has not yet received any indication that such will in fact occur. Mark Twain notes that all of the exchanges in which it is currently operating are affected by the present application.

SWBT states that it is a local exchange telecommunications company and a public utility. SWBT states that its interest herein is different from that of the general public because it is one of GTE's largest intrastate access customers in Missouri, if not the largest. SWBT anticipates having the same relationship with SCG. SWBT states that it

is concerned about the level of access rates that SCG will establish. SWBT further states that no other party can protect its interest herein. SWBT also asserts that its intervention is in the public interest because it "will bring to this proceeding its expertise and experience as a telecommunications provider."

Fidelity states that it is a telecommunications company and a public utility and that it is seeking authority to provide local exchange telecommunications services in GTE's Missouri exchanges. Fidelity has also notified GTE, under the Telecommunications Act of 1996, of its desire to enter into an interconnection agreement with GTE. Fidelity states that its interest herein is thus different from that of the general public. Fidelity seeks to intervene because it is concerned that the sale contemplated in the present application might interfere with its ability to be a competitive local exchange carrier in the exchanges being sold and to negotiate an interconnection agreement in a timely manner.

Show Me states that it is a not-for-profit Missouri Corporation whose members include competitive basic local and interexchange telecommunications companies and telecommunications industry associations. Show Me states that the interests of its members are different from those of the general public because its members are either consumers of telecommunications services or competitors of GTE and of its successors in interest. Show Me further asserts that its intervention would further the public interest.

SCG opposes the intervention of SWBT and Fidelity, but does not oppose the intervention of AT&T, Mark Twain and Show Me. The Commission

has reviewed the intervention applications of AT&T, Mark Twain and Show Me and finds that they are in substantial compliance with Commission rules regarding intervention and that AT&T, Mark Twain and Show Me have an interest in this matter different from that of the general public. The Commission will grant those requests for intervention.

SCG opposes intervention by SWBT. SCG states that SWBT has failed to state grounds supporting intervention. SCG contends that SWBT's concern for its access rates is misplaced because SCG has stated in its application that there will be no immediate change in access rates. SCG states further that any rate increase will require additional filings with this Commission and SWBT will have an opportunity to object at that time.

SCG also opposes intervention by Fidelity. SCG contends that Fidelity has no right to intervene because it does not yet have an interconnection agreement with GTE. Fidelity's interest, according to GTE, is presently no different from that of the general public.

Commission Rule 4 CSR 240-2.075 governs intervention. Rule 4 CSR 240-2.075(2) requires the intervention applicant to state its interest in the proceeding, its reason for intervening, and whether or not the applicant supports the relief sought. Rule 4 CSR 240-2.075(3) requires an intervention applicant that is an association to list its members in an appendix to the application to intervene. Finally, Rule 4 CSR 240-2.075(4) lists grounds upon which intervention will be granted: (A) that the intervention applicant has an interest different from that of the general public; (B) that the intervention applicant is a

municipality or political subdivision; or (C) that granting intervention would serve the public interest.

Intervention is the process whereby a stranger becomes a full participant in a legal action. Ballmer v. Ballmer, 923 S.W.2d 365, 368 (Mo. App., W.D. 1996). The Commission's rules, like the civil rules, distinguish between those with a right to intervene and those with a mere desire to intervene. Due process requires that any person with a life, liberty or property interest that will be affected by the outcome of a legal matter be permitted to intervene upon timely application. See U.S. Constitution, Amendment XIV; Missouri Constitution, Article I, Section 10 (1945). Such persons have a right to intervene. *Supra*, 923 S.W.2d at 368.

In Ballmer, *supra*, an insurance company sought to intervene in a "friendly" lawsuit wherein a father sued his son for the wrongful death of another son in an automobile accident. The insurance company sought to intervene to prevent its insured from confessing judgment. Intervention was denied because the insurer lacked an interest in the case: "As to whether State Farm has an 'interest' in the underlying action, this court has stated that 'the liability of an insurer as a potential indemnitor of the judgment debtor does not constitute a direct interest in such a judgment as to implicate intervention as a matter of right.'" *Id.* (citations omitted). Neither SWBT nor Fidelity has a right to intervene in this matter.

Both SWBT and Fidelity contend that permitting their intervention would serve the public interest. This contention is similar to

permissive intervention under the civil rules. An economic interest, such as SWBT and Fidelity claim, will support permissive intervention. See Meyer v. Meyer, 842 S.W.2d 184, 188 (Mo. App., E.D. 1992). Permissive intervention is, by its nature, discretionary. *Id.* SWBT and Fidelity filed timely applications to intervene and permitting their intervention will not delay resolution of this matter. Both SWBT and Fidelity assert valid business relationships with GTE, relationships that will necessarily be effected by the outcome of this matter. Upon consideration of all of the circumstances and the arguments of the parties, the Commission will grant the applications to intervene filed by SWBT and Fidelity.

**Prehearing Conference and Proposed Procedural Schedule:**

An early prehearing conference should be scheduled to afford the parties the opportunity to discuss, define, and possibly resolve the issues presented in this case, and to discuss a procedural schedule. The Commission will also set a date for the filing of a proposed schedule in order to ensure that this case progresses in a timely manner to resolution.

**IT IS THEREFORE ORDERED:**

1. That AT&T Communications of the Southwest, Inc., is granted intervention in this case in accordance with 4 CSR 240-2.075(4).
2. That Mark Twain Communications Company is granted intervention in this case in accordance with 4 CSR 240-2.075(4).

3. That Show Me Competition, Inc., is granted intervention in this case in accordance with 4 CSR 240-2.075(4).

4. That Southwestern Bell Telephone Company is granted intervention in this case in accordance with 4 CSR 240-2.075(4).

5. That Fidelity Communications Services II, Inc., is granted intervention in this case in accordance with 4 CSR 240-2.075(4).

6. That a prehearing conference shall be held on Friday, November 5, 1999, beginning at 10:00 a.m. The prehearing conference shall be held at the Commission's office on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone wishing to attend who has special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days before the prehearing conference at: Consumer Services Hotline - 1-800-392-4211 or TDD Hotline - 1-800-829-7541.

7. That the parties shall file a proposed procedural schedule no later than November 12, 1999. The procedural schedule shall include dates for the filing of testimony and for a hearing.



8. That this order shall become effective on November 1, 1999.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

(S E A L)

Kevin A. Thompson, Deputy Chief  
Regulatory Law Judge, by delegation  
of authority pursuant to 4 CSR  
240-2.120(1), (November 30, 1995)  
and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 22nd day of October, 1999.

**R E C E I V E D**

OCT 22 1999

COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION