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BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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| AT&T Communications of the Southwest, Inc., Complainant, | ) | |
| v. | ) | Case No. TC-89-28 |
| GTE North Incorporated, a successor corporation to GTE MTO Inc., a successor corporation to General Telephone Company of the Midwest, Respondent. | ) | |

APPEARANCES: Mark P. Royer, Attorney-Southern Region, AT&T Communications of the Southwest, Inc., Post Office Box 419418, 1100 Walnut Street, Room 2432, Kansas City, Missouri 64141-6418, for AT&T Communications of the Southwest, Inc.

William H. Keating, Associate General Counsel, Post Office Box 407, Westfield, Indiana 46074, for GTE North Incorporated.

Brad B. Baker, Assistant Public Counsel, Office of Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of Public Counsel and the public.

Mary Ann Young, General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

HEARING EXAMINERS: Alisa M. Dotson, Cecil I. Wright.

## REPORT AND ORDER

On August 10, 1988, AT&T Communications of the Southwest, Inc. (Complainant) filed a complaint against GTE North Incorporated (Respondent). In its complaint, AT&T alleged GTE made errors in its revenue calculations for its 1986 tariff filings thereby violating Commission orders in TO-84-222 et al., and unlawfully and unreasonably overcharged Complainant approximately $400,000.00. Complainant seeks a correction of Respondent's access rates and a refund of the overbillings with interest to date.

On September 8, 1988, Respondent filed its answer to the complaint in which it generally denied Complainant's allegations and asked the Commission to dismiss the complaint. On September 21, 1988, the Commission issued an order setting a hearing and establishing a procedural schedule in the case. In the order, the Commission determined that the Complainant's allegation that Respondent did not comply with the decision in TO-84-222 et al. was without merit and that any attempt to change the rate filed in January 1987 would be retroactive ratemaking. However, the Commission also determined that the complaint was authorized by Section 392.400.6 as a complaint as to the reasonableness of Respondent's intrastate access charges.

A prehearing conference was held on January 3, 1989 and the hearing was held on January 4, 1989. Briefs were filed according to a briefing schedule.

## Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

Complainant is a long distance carrier and subject to the Commission's jurisdiction pursuant to Chapters 386 and 392, R.S.Mo. 1986. Respondent is a local telephone company and also subject to Commission jurisdiction pursuant to Chapters 386 and 392. Complainant pays Respondent for its use of Respondent's non-traffic-sensitive facilities through an intrastate carrier common line charge.

In 1986, Respondent filed tariffs to establish its interLATA access rates for interexchange carriers in Missouri. Those rates were filed pursuant to the Commission's orders in Case No. TO-84-222 et al. in order to make the transition from interLATA access pooling to interLATA access rates. The rates contained two errors related to the mileage calculations for the Columbia, Missouri exchanges. First, Respondent treated all of its exchanges as though they were under a meet-point billing arrangement having only one local transport termination. Such treatment was incorrect because Respondent has a number of non-meet-point exchanges which it bills

for two terminations instead of one. The calculation of Respondent's local transport revenues was substantially understated with the corresponding effect of overstating Respondent's residually determined intrastate carrier common line (CCL) rates.

The second error made by Respondent was its use of zero local transport mileage for all three of its Columbia exchanges when the mileage was seven (the East Columbia office was four miles and the West Columbia office was three miles). The result of this error was to understate the amount which Respondent would receive in local transport revenues and to overstate Respondent's residually determined intrastate CCL rates.

Complainant contacted Respondent about an overbilling in December of 1987. Respondent did not deny it erred in the calculation of its 1985 local transport revenues but denied its rates were unreasonable and refused to give Complainant any redress. In August of 1988, Complainant filed a complaint alleging that Respondent's rates were unreasonable. Initially, Respondent and Complainant believed the errors were based upon the use of estimated rather than actual local transport revenues. When Complainant received Respondent's local transport work paper, Complainant learned the errors were based not on estimates but on errors as described above.

Respondent did not dispute that these errors were made. Instead, Respondent argued that the errors no longer affect the rates it charges because of the intervention of Case No. TC-89-57. On December 22, 1986, the Commission Staff filed a complaint, Case No. TC-87-57, against Respondent in which it alleged that its rates were unreasonable and should be reduced by $4,800,696.00 on an annual basis. The complaint was settled when Respondent agreed to reduce its annual rates by $2.1 million. A reduction in local exchange rates of $1,195,000.00 and a reduction in the carrier common line charge of $365,000.00 was included in the general rate reduction. Respondent argued that because of Staff's complaint case, the rates Complainant complains of ceased to exist after May 15, 1987 and that the errors made

in its local transport calculations are irrelevant as to the reasonableness of the intrastate access rates it presently charges.

The first issue is whether Respondent's access rates are unreasonable because they do not reflect the proper calculation of Respondent's local transport revenues. Complainant contended that the errors make the rates unreasonable because they made the Respondent's intrastate CCL rates higher than they would have been if the local transport revenues had been calculated correctly. Respondent argued that its current rates are not the same rates which the errors gave rise to and cannot be the basis of a finding that its present rates are unreasonable. Respondent further argued that because Complainant had not presented evidence of rate base, rate of return and expenses, Complainant did not bear its burden of proof to show that the intrastate CCL rates were unreasonable.

Staff stated in its brief that the reasonableness of Respondent's rates could be judged without requiring Complainant to prove an entire revenue requirement complaint case and to require such a task of a complainant in challenging only one rate would render the language of Section 392.400.6 meaningless.

The Commission is of the opinion that while Complainant should not be required to put on an entire revenue requirement case as suggested by Respondent, Complainant is required to demonstrate the nexus between the errors made in the 1986 local transport revenue calculations and the reasonableness of the intrastate CCL rates presently charged by Respondent.

A review of the record shows the Complainant's allegation that Respondent's intrastate CCL rates are unreasonable is based entirely on the two errors made in 1986. Since that time, the CCL rates, which include the local transport rates where the errors were made, have been reduced because of the settlement in Case No. TC-87-57. Respondent has argued this removes the nexus between the errors made then and the rates charged now. However, no party to the Stipulation For Dismissal in Case No. TC-87-57 took any action to correct the errors because no one knew the

errors existed until January of 1989. The errors which skewed the rates in TO-84-222 et al. also skewed the rates in TC-87-57. Thus, there is a nexus between the errors made in 1986 and the reasonableness of present rates. The Commission found TC-87-57 rates just and reasonable because it was unaware that the underlying calculations contained errors which caused Respondent to earn more than the prescribed limits. Now aware of said errors and their effect, the Commission finds the rates established in TC-87-57, Respondent's present CCL rates, are unjust and unreasonable.

The second issue is whether because of these errors the Commission should adjust Respondent's intrastate CCL rates retroactively to January 1987, to reflect the proper quantification of Respondent's local transport revenues. Complainant is also seeking a refund from January 1987. As stated in its Order Setting Hearing, the Commission cannot adjust the Respondent's rates retroactively. State ex rel. Utility Consumers Council v. the Public Service Commission, 585 S.W.2d 41 (Mo. 1979). Nor can the Commission require the Respondent to refund Complainant the overbilling. First, the Commission does not have the statutory authority to pronounce monetary judgments and enforce their execution. Second, such a refund would be a a retroactive lowering of rates and would constitute retroactive ratemaking. Therefore, the remaining issue is whether Respondent's rates should be adjusted on a going-forward basis to reflect a proper quantification of Respondent's local transport revenues.

In order for the Commission to adjust the Respondent's rates, the Commission must find that the rates are unjust and unreasonable. The Commission has made such a finding. Therefore, the Commission has determined that the rates should be adjusted on a going-forward basis to reflect the proper quantification of Respondent's local transport revenues.

## Conclusions

The Missouri Public Service Commission has arrived at the following conclusions.

The Commission has jurisdiction over the complaint pursuant to Section 392.400.6. This section allows a telecommunications company to file a complaint as to the reasonableness or lawfulness of any rate or charge provided by a noncompetitive telecommunications company.

The Complainant based its allegation that Respondent's intrastate CCL rates were unreasonable on the errors Respondent made in its local transport revenues when it was calculating its rates pursuant to the Commission's Report And Order in TO-84-222 et al. The Commission found that the intervening determination of just and reasonable rates in Case No. TC-87-57 did not remove the nexus between the errors made by Respondent and the current CCL rates because none of the participating parties knew of the errors, so no action was taken to correct them.

The Commission also found it could not adjust Respondent's rates retroactively to January 1, 1987 and order a refund of the overbilling because of the prohibition against retroactive ratemaking, and confined the issue of an adjustment on a going-forward basis. On this issue, the Commission found that because the rates were unreasonable, the rates should be adjusted on a going-forward basis.

It is, therefore,

ORDERED: 1. That GTE North Incorporated be, and is hereby, directed to file tariffs with new common carrier line rates in compliance with this Report And Order.

ORDERED: 2. That this Report And Order shall become effective on the 20th day of June, 1989.

BY THE COMMISSION

Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Mueller,
Hendren, Fischer and Rauch,
CC., Concur.
Dated at Jefferson City, Missouri,
on this 19th day of May, 1989.