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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 21st
day of January, 1999.

In the Matter of the Investigation of)	
GTE Midwest Incorporated's Proposed Sale)	<u>Case No. TO-99-262</u>
or Exchange of 105 Exchanges in the State)	
of Missouri.)	

ORDER DENYING APPLICATION AND CLOSING CASE

Pleading requirements for the Commission require that all applications include, *inter alia*, a "[r]eference to the statutory provision or other authority under which relief is requested;" 4 CSR 240-2.060(1)(D). On December 9, 1998, the Office of the Public Counsel (Public Counsel) filed an application which it entitled "Office Of The Public Counsel's Motion To Open A Docket To Investigate And Hold Public Hearings Regarding GTE Midwest's Proposed Sale Or Exchange Of 105 Exchanges In The State Of Missouri" (Application). However, Public Counsel cites no authority for the proposition that the Commission may review an application which has not yet been filed by the applicant.

Public Counsel does cite the fact that on or about November 5, 1998, GTE Midwest, Inc. (GTE) announced that it was offering approximately 105 of its Missouri exchanges for sale. Public Counsel notes that portion of GTE's press release which made comments to the effect that this proposed sale is an independent action without regard to any transactions, such as mergers, in which GTE may be involved.

Public Counsel goes on to assert that the proposed divestiture of these exchanges raises significant questions and concerns about the quality of service afforded the customers in the areas which may be affected by any such sale. Public Counsel requested that GTE be required to provide information as to how service will be affected, and further requested that public hearings be held for the purpose of determining the impact which any future sale may have on current GTE customers and the potentially affected communities.

On December 18 GTE filed its Response¹ to Public Counsel's Application. GTE has argued that Public Counsel's Application is not ripe. GTE has specifically noted that it has "merely announced its intention to sell" GTE has asked the Commission to dismiss Public Counsel's Application.

Public Counsel has cited numerous statutory sections, many of which would apply if GTE were ever to file an application for permission and authority to sell or otherwise transfer any of its Missouri holdings. Until GTE makes such an application, these statutes do not apply. Public Counsel's motion is not ripe. Ripeness of an issue must exist for the proper exercise of a quasijudicial function and in the case *sub judice* GTE has filed no such issue for the Commission's consideration. Simply stated, Public Counsel is asking the Commission to rule upon a contingency which might occur at some future date.

¹ GTE's Response was more fully entitled "Memorandum Of GTE Midwest Incorporated In Opposition To Office Of The Public Counsel's Motion To Open Docket To Investigate And Hold Public Hearings Regarding The Proposed Repositioning Of 105 Exchanges In Missouri."

Until GTE asks the Commission for permission to buy, sell or trade, there are no facts in dispute; indeed, there are not any facts in existence. In order for due process to apply, there must be some fact in dispute. Weinberger v. Hynson Westcott & Dunning, 412 U.S. 609, 93 S.Ct. 2469, 37 L.Ed.2d 207 (1973).

Public Counsel has failed to state a claim upon which relief can be granted. It would not be in the interest of judicial economy for the Commission to proceed with this matter. It would consume resources of the Commission, the Public Counsel, GTE and any potential intervenor to investigate a speculative, and as yet nonexistent, transaction. Therefore, the Commission will dismiss Public Counsel's Application and close this case.

If GTE proposes to consummate a sale or trade regarding any of its Missouri properties, it will be required to secure authority and permission from the Commission prior to completing any such transaction. At that time Public Counsel may again file its suggestions contained in Public Counsel's Application and the Commission will follow its standard procedure for investigating proposed sales of utility properties.

IT IS THEREFORE ORDERED:

1. That the Application filed by the Office of the Public Counsel on December 9, 1998, and entitled "Office Of The Public Counsel's Motion To Open A Docket To Investigate And Hold Public Hearings Regarding GTE Midwest's Proposed Sale Or Exchange Of 105 Exchanges In The State Of Missouri" is hereby denied.

2. That this order shall become effective on February 2, 1999.
3. That this case may be closed on February 3, 1999.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Drainer,
Murray and Schemenauer, CC.,
concur.

Roberts, Chief Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION