

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
January 11, 2002**

CASE NO: TO-2002-316

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Thomas R. Parker
Verizon/GTE
601 Monroe street, Suite 304
Jefferson City, MO 65101-3202

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Uncertified Copies:

To all interexchange and local exchange telecommunications companies.

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

The Matter of the Adoption of the Verizon California f/k/a)
GTE California Incorporated/Sprint Communications)
Company L.P. Interconnection Agreement by Sprint)
Communications Company L.P., Pursuant to Paragraph) **Case No. TO-2002-316**
32 of the BA/GTE Merger Conditions Released by the FCC)
in CC Docket No. 98-184 under PURA 95 and the)
Telecommunications Act of 1996)

**ORDER DIRECTING NOTICE AND ORDER
MAKING SPRINT COMMUNICATIONS COMPANY L.P. A PARTY**

On January 9, 2002, GTE Midwest Incorporated d/b/a Verizon Midwest, a Missouri corporation, filed its notice with the Missouri Public Service Commission of the adoption by Sprint Communications Company L.P., under the federal Telecommunications Act of 1996, of the interconnection agreement between Verizon California, Inc. f/k/a GTE California Incorporated, and Sprint, approved by the California Public Utilities Commission in application number 00-09-031, dated and effective on March 15, 2001.

Although Sprint is a party to the Agreement, it did not execute the application. Because Sprint is a necessary party to a full and fair adjudication of this matter, the Commission will add Sprint as a party to this case.

The Act provides at Section 252(e) that an interconnection agreement must be approved unless the state commission finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement is not consistent with the public interest, convenience and necessity. The Act also provides at Section 252(i) that a

local exchange carrier shall make available any interconnection, services, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

This provision has been interpreted as permitting any carrier to adopt any interconnection agreement previously entered into by any local exchange carrier with any other carrier. The Federal Communications Commission has adopted 47 CFR Section 51.809, referred to as "the pick and choose" rule, to implement Section 252(i). Rule 809 requires an incumbent local exchange company to

make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act....

Rule 809 has been approved by the United States Supreme Court.¹

The Commission finds that proper persons should be allowed 20 days from the issuance of this order to file a motion for intervention. The *Deffenderfer* case held that the requirement of a hearing is met when an opportunity to be heard has been provided.²

Section 252(e)(4) of the Act provides that if the Commission has not approved an agreement within 90 days after submission, the agreement will be deemed approved. Therefore, the Commission will proceed with this case without delay, and, if there are no requests for a hearing, relief may be granted based on the application. The Commission finds that notice of this application should be sent to all interexchange and local exchange telecommunications companies.

The Staff of the Commission will be required to file a memorandum advising either approval or rejection of the Agreement and giving the reasons therefor.

¹ *AT&T Corp. v. Iowa Utilities Bd.*, 119 S.Ct. 721 (1999).

² *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d, 494, 496 (Mo. App. 1989).

IT IS THEREFORE ORDERED:

1. That the Data Center of the Commission must send notice of this order to all interexchange and local exchange telecommunications companies.

2. That any party wishing to intervene in this matter must file an application no later than January 31, 2002, with:

Dale Hardy Roberts, Secretary
Missouri Public Service Commission
Post Office Box 360
Jefferson City, Missouri 65102-0360

and send copies to:

Thomas R. Parker, Esq.
601 Monroe Street, Suite 304
Jefferson City, Missouri 65101-3202

Legal Department
Sprint Communications Company L.P.
7301 College Blvd.
Overland Park, Kansas 66210

and:

Office of the Public Counsel
Post Office Box 7800
Jefferson City, Missouri 65102-7800

3. That the Staff of the Missouri Public Service Commission must file a memorandum advising either approval or rejection of this Agreement and giving the reasons therefor no later than February 13, 2002.

4. That this order will become effective on January 21, 2002.

BY THE COMMISSION



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

(SEAL)

Bill Hopkins, Senior Law Judge,
by delegation of authority under
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 11th day of January, 2002.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 11th day of Jan. 2002 .

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

