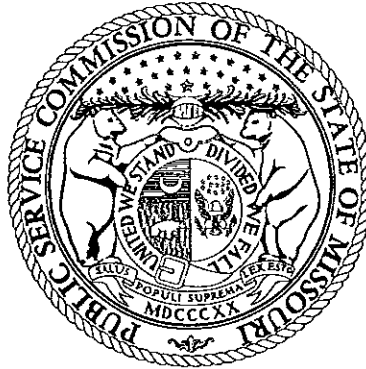


BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI



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

REPORT AND ORDER

Issue Date:

April 4, 2000

Effective Date:

April 14, 2000

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Financing Statement.)

APPEARANCES

Byron E. Francis, Armstrong Teasdale, L.L.P., One Metropolitan Square, Suite 2600, St. Louis, Missouri 63102, for GTE Midwest Incorporated.

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Leo J. Bub, Senior Counsel, Southwestern Bell Telephone Company, One Bell Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Mark W. Comley, Newman, Comley & Ruth, 601 Monroe Street, Suite 301, Post Office Box 537, Jefferson City, Missouri 65102, for Show-Me Competition, Inc.

Craig S. Johnson, Andereck, Evans, Milne, Peace & Baumhoer, 305 East McCarty Street, Post Office Box 1438, Jefferson City, Missouri 65102, for Mark Twain Communication Company.

Kurt U. Schaefer, Lathrop & Gage, 326 East Capitol Avenue, Jefferson City, Missouri 65101-3004, for AT&T Communications of the Southwest, Inc.

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Cliff E. Snodgrass, Senior Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Kevin A. Thompson, Deputy Chief.

REPORT AND ORDER

Procedural History

On August 24, 1999, GTE Midwest Incorporated (GTE) and Spectra Communications Group, L.L.C. (Spectra), filed their joint application seeking authority for GTE to sell a portion of its Missouri network to Spectra,¹ seeking certificates of service authority for Spectra so that it can operate the purchased network, and seeking authority for Spectra to borrow no more than \$250,000,000 to finance the proposed acquisition.

¹According to the joint application, the 107 exchanges affected are: Amazonia, Annapolis, Arcola, Aurora, Avenue City, Avilla, Belgrade, Belleview, Birch Tree, Bolckow, Boss, Braymer, Bronaugh, Brunswick-Triplett, Bunker, Caledonia, Cameron, Canton, Centerville, Clarence, Clarksdale, Collins, Concordia, Cosby, Dadeville, Dalton, Easton, Edgar Springs, Eldorado Springs, Ellsinore, Elmer, Eminence, Everton, Ewing, Fillmore, Freemont, Golden City, Gorin, Gower, Greenfield, Grove Spring, Hamilton, Hartville, Helena, Houston, Humansville, Hunnewell, Irondale, Ironton, Jericho Springs, Kahoka, Keytesville, Kidder, Kingston, La Belle, La Plata, Laddonia, Lagrange, Lawson, Lesterville, Lewistown, Licking, Lowry City, Macon, Manes, Maysville, Milo, Monroe City, Montauk, Monticello, Mount Vernon, Mountain Grove, Nebo, Norwood, Oates, Osborn, Osceola, Palmyra, Paris, Perry, Plattsburg, Potosi, Raymondville, Revere, Roby, Rockville, Rosendale, Santa Fe, Sarcoxie, Savannah, Schell City, Shelbina, Shelbyville, Sheldon, Stewartsville, Stoutsville, Timbers, Trimble, Turney, Van Buren, Vanzant, Walker, Wayland, Weaubleau, West Quincy, Whitesville, and Winona.

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), to be filed within 90 days of the filing of the application. Also on August 31, 1999, the Commission issued its standard Notice of Applications with respect to Spectra's application for certificates of convenience and necessity. This notice was directed to all telecommunications carriers certificated in Missouri. The Order of August 31, 1999, also granted certain waivers requested in the application with respect to certain application requirements. For example, the Commission waived its Rule 4 CSR 240-2.060(4)(H), which requires that applicants seeking authority to provide telecommunications services file with their applications a proposed tariff with an effective date not less than 45 days following the date of issue.²

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. This second notice was directed to the county commission of every Missouri county containing all or any part of one of the affected exchanges, to the members of the Missouri General Assembly representing the persons residing in those exchanges, and to the newspapers serving those persons. On September 9, 1999, the Office of the Public Counsel (Public Counsel) filed its Motion for an Evidentiary Hearing and,

²This rule is frequently waived. Other waivers concerned the number of copies provided of certain very bulky exhibits and the requirement that 5 years of financial data be provided. As a new entity, Spectra did not have 5 years of data.

on September 14, 1999, GTE filed nondisclosure agreements as called for by the protective order.

Timely 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. On October 13, 1999, Spectra filed its responses in opposition to the intervention applications of SWBT and Fidelity. The Commission granted all of the applications to intervene by Order issued on October 22, 1999. The Commission also set a prehearing conference for November 5, 1999, and directed that the parties file a proposed procedural schedule by November 12, 1999.

On November 9, 1999, Staff filed the proposed procedural schedule on behalf of all the parties and requested relief from the obligation to file a staff recommendation in view of the fact that the case was clearly headed to a contested case hearing. On November 17, 1999, the Commission adopted the proposed procedural schedule and granted the requested relief to Staff.

Between December 1, 1999, and January 14, 2000, the parties prefiled direct, rebuttal and surrebuttal testimony of their witnesses, a joint list of issues, a joint list of witnesses and agreed order of cross examination, and individual position statements as required by the

procedural schedule.³ On January 7, 2000, GTE moved to strike certain portions of the rebuttal testimony of Michael Ensrud, filed on December 22, 1999, by Show Me. Show Me responded in opposition to GTE's motion on January 14, 2000. The Commission denied GTE's motion by Order issued on January 25, 2000. On January 20, 2000, Fidelity filed a motion seeking leave to not appear and participate in the hearing.

On January 26, 2000, on the eve of the hearing, certain parties filed a Joint Recommendation, a copy of which is attached to this Order as Attachment 1. This document constituted the non-unanimous agreement of the signatory parties as to various issues presented by the joint application. The signatory parties were Spectra, GTE, the Staff, and the Public Counsel. While the Joint Recommendation is not binding on the non-signatory parties, it is binding on the parties that signed it.

The Commission held an evidentiary hearing on January 27, 2000. Other than Fidelity, all parties were represented at the evidentiary hearing. At the opening of the hearing, Mark Twain moved to withdraw its intervention on the grounds that its differences with Spectra had been resolved. The motion was granted by the presiding officer and Mark Twain withdrew its witness and exhibits. At the same time, while it did not withdraw its intervention, SWBT moved to withdraw its witness and exhibits and to be excused from the hearing. The presiding officer also granted that motion.

³AT&T did not submit a position statement.

Following the evidentiary hearing, the Commission by Order issued February 4, 2000, adopted the briefing schedule proposed by the parties. The transcript was filed on February 9, 2000. The parties filed simultaneous briefs on February 17, 2000.⁴

Discussion

The Parties:

GTE is a Delaware corporation and a public utility engaged in providing interexchange and basic local telecommunications services to the public in numerous local exchanges in the state of Missouri. GTE's principal place of business is located in Wentzville, Missouri.

Spectra is a Delaware limited liability corporation authorized to do business in the state of Missouri. Spectra is composed of a group of investors, including CenturyTel, Spectronics Corporation, Local Exchange Carriers L.L.C., and two individuals. Spectra's principal office is located in Peculiar, Missouri. CenturyTel is a Louisiana corporation which provides telecommunications services to more than two million persons nationwide. Spectronics Corporation is a Georgia corporation specializing in providing telecommunications services in rural markets. Local Exchange Carriers L.L.C. is a Maryland limited liability corporation which invests in telecommunications companies.

Several parties were permitted to intervene in this matter. AT&T is a competitive interstate and intrastate interexchange telecommunications

⁴Fidelity advised the Commission by letter on February 17, 2000, that it would not file a brief. No brief was received from SWBT.

carrier that also provides local exchange and basic local exchange services in parts of Missouri. SWBT is a local exchange telecommunications company and a public utility. Fidelity is a telecommunications company that is seeking authority to provide local exchange telecommunications services in GTE's Missouri exchanges; Fidelity has notified GTE, under the Telecommunications Act of 1996, of its desire to enter into an interconnection agreement with GTE. Show Me is a not-for-profit Missouri corporation whose members include competitive basic local and interexchange telecommunications companies and telecommunications industry associations.

The Issues:

GTE and Spectra filed a joint application seeking authority for GTE to sell to Spectra a portion of its Missouri network, comprising some 107 rural exchanges. Spectra also seeks certificates of service authority so that it can operate the purchased network and seeks authority to borrow no more than \$250,000,000 to finance the proposed acquisition. Finally, GTE seeks to be relieved of the obligation to provide basic local telecommunications services in the exchanges sold to Spectra. Pursuant to Commission practice and in compliance with the Order Adopting Procedural Schedule issued on November 17, 1999, the parties jointly submitted a list of issues for determination by the Commission.

1. Should the transfer of GTE's assets to Spectra be approved? If yes, what, if any, conditions should be adopted as part of a grant of authority to transfer assets?

None of the parties oppose the sale of GTE's assets to Spectra. Staff and the Public Counsel recommend that the transfer be approved by the

Commission, subject to certain conditions set out in detail in the Joint Recommendation. Briefly, these conditions are: that Spectra will never seek to recover any part of the acquisition premium and incidental acquisition expenses in rates; that Spectra will use an offset to rate base, amortized over five years, to protect ratepayers from the effects of deferred income taxes eliminated through this transaction; that Spectra will use GTE's existing rates, charges and regulations; that Spectra will achieve a capital structure including 40 percent equity to total capital within five years; and that Spectra will negotiate interconnection agreements with CLECs to replace GTE's existing interconnection agreements, using the same terms where feasible.

2. Should Spectra be granted certificates of service authority to provide telecommunications service in the transferred exchanges?

None of the parties oppose the grant of certificates of service authority to Spectra. Staff and the Public Counsel recommend that the certificates be granted, subject to the conditions set out in the Joint Recommendation.

3. Should the financing contemplated by Spectra be approved?

None of the parties oppose the financing authority sought by Spectra. Staff and the Public Counsel recommend that the financing be approved by the Commission, subject to the conditions set out in the Joint Recommendation.

4. Should Spectra be classified as a price cap company pursuant to Section 392.245, RSMo Supp. 1998?

SWBT purportedly withdrew this issue. The prehearing positions of the parties on this issue were that SWBT contended that the Commission should grant price cap status to Spectra in this case and Staff, Public Counsel, Spectra, and Show Me asserted that the Commission could not grant price cap status to Spectra until Spectra requests it.

5. What effect, if any, will the transfer of assets have on the price cap status of GTE?

GTE asserts that this issue is not properly before the Commission in this case. Public Counsel and Show Me recommend that the Commission open a case to determine whether or not, following approval of the sale of the 107 exchanges concerned in this case, GTE still qualifies for price cap status.

Issues Relating to Price Cap Regulation:

Section 392.245.2, RSMo Supp. 1999, provides that a "large incumbent local telecommunications company shall be subject to regulation under this section upon a determination by the commission that an alternative local telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the large incumbent company's service area." While the joint application is silent as to price cap regulation, the parties sought to insert two issues with respect to this provision by way of the issues list and position statements required under the procedural schedule. The first of these is whether or not Spectra should be subject to price cap regulation if the joint application is granted. The second is whether or

not GTE should still be subject to price cap regulation if the joint application is granted.

In the first instance, it is the parties' initial pleadings that frame the issues. Thereafter, the issues may be narrowed or expanded by action of the Commission, on motion of the parties. See GS Technology Operating Company, Inc., d/b/a GST Steel Company v. Kansas City Power & Light Company, Case No. EC-99-553 (*Order Regarding KCPL's Motion for Clarification, Reconsideration and Rehearing of the Commission's Order of July 29, 1999, and Regarding GST Steel Company's Second Motion to Compel Discovery*, issued Aug. 19, 1999) at pp. 4-5. A contested case is initiated by the filing of a writing seeking action by the agency. A.S. NEELY, ADMINISTRATIVE PRACTICE AND PROCEDURE (20 MISSOURI PRACTICE SERIES), § 9.03 (1995); Section 536.063(1), RSMo.⁵

GTE and Spectra defined the issues when they filed their joint application. Although several other parties were permitted to intervene, none of them ever filed a pleading responsive to the joint application. "Answering, intervening and amendatory writings and motions may be filed in any case and shall be filed where required by rule of the agency[.]" NEELY, *op. cit.* The issues list and position statements are not pleadings; indeed, they are not even part of the record.⁶ They are submitted by the

⁵Chapter 536, RSMo, the Missouri Administrative Procedures Act (MAPA), applies to the Commission except where directly in conflict with Chapter 386, the Public Service Commission Act. State ex rel. Utility Consumers Council v. Public Service Commission, 562 S.W.2d 688, 692-93 and 693 n. 11 (Mo. App. 1978), *cert. den.* 439 U.S. 866, 99 S.Ct. 192, 58 L.Ed.2d 177 (1978).

⁶The issues list and position statements replace the former hearing memorandum. The hearing memorandum was part of the record because it was filed as a pleading and generally offered as an exhibit at the hearing, as well.

parties at the Commission's direction and used by the Commission for its internal purposes.

Under the civil rules, issues outside the pleadings are tried by consent where no objection is made to the offer of evidence concerning them. J. DEVINE, MISSOURI CIVIL PLEADING & PRACTICE, § 18-5 (1986); Rule 55.33(b), Mo. R. Civ. Pro. This rule applies with equal force to administrative proceedings. Section 536.063(3); NEELY, *supra*, § 9.03. The question is, did the parties herein try these two issues concerning price cap regulation by consent?

The first of these issues, that concerning Spectra, was purportedly withdrawn by SWBT. No evidence was offered on the issue by the parties and it was not argued by all of the parties in the post hearing briefs. The Commission concludes that this issue was not heard by consent of the parties and is thus not before the Commission in this case.

The second price cap issue concerns the effects of the proposed transaction on GTE's price cap status. Show Me points to the Commission's Order granting that status to GTE, which was based on competition in two of the exchanges being sold to Spectra. In the Matter of the Petition of GTE Midwest Incorporated, Case No. TO-99-294 (*Order Approving Price Cap Regulation*, issued Jan. 26, 1999). Show Me asserts, and the Order itself suggests, that the sale of these exchanges should occasion a review of GTE's price cap status. *Id.*, at page 2. Show Me is agreeable to conducting this review in another case. Public Counsel agrees with Show Me.

GTE, on the other hand, takes the position that this matter does not properly include the issue of the effect of the proposed transaction on its price cap status. Nonetheless, GTE's witness Gerald Shannon addressed the issue in his testimony, and showed that GTE will face active competition from resellers in some 62 exchanges if the joint application is approved. No party refuted Shannon's testimony.

The Commission concludes that the issue of the effect of the transaction proposed in the joint application on GTE's price cap status was tried in this matter by consent of the parties. The Commission further finds that no party has shown that approval of the transaction will have any effect on GTE's price cap status. Therefore, the Commission will not establish a case to review GTE's price cap status.

The Sale of System Assets by GTE:

Section 392.300, RSMo 1994,⁷ provides that "[n]o telecommunications company shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public . . . without having first secured from the commission an order authorizing it so to do." Commission Rule 4 CSR 240-2.060(5)(D) requires the applicant for such authority to state in the application "[t]he reason the proposed sale of the assets is not detrimental to the public interest."

⁷All statutory references herein are to the Revised Statutes of Missouri (RSMo), revision of 1994, unless otherwise specified.

In considering the joint application, the Commission is mindful that the right to sell property is an important incident of the ownership thereof and that "[a] property owner should be allowed to sell his property unless it would be detrimental to the public." State ex rel. City of St. Louis v. Public Service Commission, 335 Mo. 448, 459, 73 S.W.2d 393, 400 (Mo. banc 1934). Referring to a similar statute applicable to water corporations, the Missouri Court of Appeals stated, "The obvious purpose of [the statute] is to ensure the continuation of adequate service to the public served by the utility." State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980). To that end, the Commission has previously considered such factors as the applicant's experience in the utility industry; the applicant's history of service difficulties; the applicant's general financial health and ability to absorb the proposed transaction; and the applicant's ability to operate the asset safely and efficiently. See In the Matter of the Joint Application of Missouri Gas Energy et al., Case No. GM-94-252 (Report and Order, issued October 12, 1994) 3 Mo.P.S.C.3d 216, 220.

The record shows that this sale is part of GTE's nationwide strategic repositioning initiative. GTE is selling approximately 1.6 million switched access lines across the nation, about 8 percent of its domestic telephone network. The 107 Missouri exchanges involved in this case amount to approximately 120,000 switched access lines. GTE is taking this step in order to raise \$2 to \$3 billion dollars, after taxes, with which to pursue other opportunities.

GTE selected Spectra from several hundred prospective purchasers because Spectra possesses the necessary operational, technical, and financial resources to successfully operate the purchased exchanges. Additionally, Spectra is a minority-controlled firm. GTE selected Spectra through a sales process intended to enhance the opportunity and participation of minority-controlled firms.

Kenneth Matzdorff, Chief Operating Officer of Spectra, testified that he has worked in the telecommunications industry for about 23 years in various technical and managerial positions. Matzdorff testified that Spectra's owners have the necessary financial and operational capabilities to purchase and operate the GTE exchanges.

CenturyTel is one of Spectra's owners. CenturyTel is a publicly traded, Fortune 500 company. CenturyTel is the eighth largest incumbent local exchange carrier (ILEC) in the United States and the tenth largest cellular carrier in the United States. CenturyTel, headquartered in Monroe, Louisiana, is focused on the rural telephone market and provides telecommunications services to over one million rural subscribers. The average size of a CenturyTel exchange is 2200 lines.

Spectra will use GTE's existing infrastructure and personnel to operate the purchased exchanges. Some 143 GTE personnel will transfer to Spectra. In addition, CenturyTel will provide computerized billing, customer service, facilities records, and trouble dispatch systems support to Spectra.

The parties agree that Spectra's owners, managers and employees possess sufficient experience in the telecommunications industry to operate

the purchased exchanges safely and efficiently. Spectra is a new company and has no history of service difficulties. The financing will be provided by owner CenturyTel, a Fortune 500 company. No party has questioned the general financial health and ability to absorb the proposed transaction of CenturyTel or of Spectra.

The Commission has reviewed and carefully considered the Joint Recommendation and the conditions contained therein. Although it is not a unanimous stipulation and agreement, it is binding on the parties that signed it. Staff and Public Counsel conditioned their support of the joint application upon that agreement. Therefore, the Commission will approve Spectra's acquisition of GTE's exchanges subject to the conditions contained in the Joint Recommendation.

The Commission reads State ex rel. City of St. Louis v. Public Service Commission, *supra*, 335 Mo. at 459, 73 S.W.2d at 400, to require a direct and present public detriment. No party has identified such a detriment in this case and, with the conditions contained in the Joint Recommendation, the parties evidently agree that there is none. "[T]he Commission is unwilling to deny private, investor-owned companies an important incident of the ownership of property unless there is compelling evidence on the record tending to show that a public detriment will occur." In the Matter of the Joint Application of Missouri Gas Company et al., Case No. GM-94-252, *supra*, 3 Mo. P.S.C. 3rd at 221. There is no such compelling evidence in this record.

Requirements of Certification:

Section 392.430 provides that the Commission shall approve an application for a certificate of service authority to provide either interexchange telecommunications service or basic local telecommunications service upon a finding that the grant of service authority is in the public interest. Section 392.450.1, RSMo Supp. 1999, authorizes the Commission to approve an application for a certificate of local exchange service authority to provide basic local telecommunications service only upon a finding that the applicant has complied with the certification process established under Section 392.455, RSMo Supp. 1999. Under the latter section, a new entrant must: (1) possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service; (2) demonstrate that the services it proposes to offer satisfy the minimum standards established by the Commission; (3) set forth the geographic area in which it proposes to offer service and demonstrate that such area follows the exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange; and (4) offer basic local telecommunications service as a separate and distinct service. In addition, the Commission must give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

The Commission has already reviewed the evidence that establishes that Spectra possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

As noted, Spectra will use GTE's existing infrastructure and personnel to

operate the purchased exchanges and Spectra will also use GTE's existing tariffs, including rates, services and access rates. The transition will be "seamless" from the customer's point of view. The areas in which Spectra proposes to provide services are no smaller than GTE's existing exchanges and follow their boundaries. Spectra will offer basic local telecommunications service as a separate and distinct service. Spectra's tariffs, like GTE's, will provide appropriate opportunities for equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

Additionally, Spectra has plans to improve its services over those offered by GTE in these 107 exchanges. Spectra plans to roll out toll free internet access in all exchanges in a year. Spectra also plans to offer heretofore unavailable services such as Caller ID in these rural exchanges.

Additionally, Spectra expects to enjoy volume purchasing discounts through its association with CenturyTel. Spectra intends to locate its headquarters in Kansas City, Missouri, and to establish four district offices. Spectra also intends to increase its local presence by opening "greeter" offices in the communities it serves. Spectra presently plans to open such "greeter" offices in Potosi, Macon, Eldorado Springs, and Cameron. Five additional locations are under consideration. Staff and the Public Counsel recommend that the requested certificates be granted, subject to the conditions contained in the Joint Recommendation.

Based on its careful consideration of all the foregoing, the Commission concludes that granting the requested certificates of service authority to Spectra is in the public interest.

Financing:

The Commission is authorized to supervise the power of telecommunications companies to issue stocks, bonds, notes, and other evidence of indebtedness, and to grant liens upon their property within this state. Sections 392.290.1 and 392.310. Likewise, a telecommunications company cannot lawfully mortgage or encumber any part of its facilities or system without authority from the Commission. Section 392.300.1. The Commission approves applications for financing authority upon a showing that the proposed financing is reasonable and not detrimental to the public interest. See e.g. In the Matter of the Application of Raytown Water Company, Case No. WF-99-412 (Order Granting Expedited Treatment and Approving Financing, Apr. 15, 1999).

Spectra intends to purchase GTE's network using a mixture of equity and long-term debt. Spectra will also incur short-term debt in order to maintain sufficient operating funds. CenturyTel, an owner of Spectra, will be Spectra's creditor with respect to both the long-term and short-term debt. The pro forma financial sheets provided by Spectra show that Spectra will have sufficient cash flow to meet all of its obligations under the loan and to increase the equity percentage of its capital structure.

Staff's witnesses expressed concern because Spectra's capital structure will initially contain less than 40 percent equity. Staff believes that 40 percent is an appropriate figure for common equity for a telephone company. However, Spectra expects to improve its capital structure over its first five years of operation and has entered into an

agreement with Staff and Public Counsel in that regard. Based on its analysis and subject to the conditions contained in the Joint Recommendation, Staff recommends that the Commission authorize Spectra to borrow not more than \$250,000,000 from CenturyTel. Public Counsel, likewise, recommends that the Commission grant the requested authority.

The conditions contained in the Joint Recommendation adequately provide for the improvement of Spectra's capital structure. Therefore, subject to those conditions, the Commission finds that the proposed financing is reasonable and not detrimental to the public interest. The Commission will grant the requested authority.

Withdrawal of GTE from the Transferred Exchanges:

The joint application contains a prayer by GTE to be relieved, if the proposed transaction is approved, from any obligation to provide telecommunications services in the transferred exchanges after the day the sale closes. That prayer will be granted. GTE must file proposed amended tariff sheets which delete all references to the transferred exchanges and which make any other appropriate changes consequent to this transaction.

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. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider

relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

The Commission finds that GTE is a certificated telecommunications corporation that provides basic local and interexchange telecommunications services in the state of Missouri. Spectra is a foreign corporation, duly authorized to do business in Missouri. Spectra seeks herein to become a Missouri certificated telecommunications company and to acquire a portion of GTE's Missouri network.

The Commission finds, subject to the conditions contained in the Joint Recommendation, that Spectra has the necessary technical, operational and financial resources to operate the exchanges it proposes to acquire from GTE safely and efficiently, without any service interruption.

The Commission finds, subject to the conditions contained in the Joint Recommendation, that Spectra has the necessary technical, operational and financial resources to provide basic local telecommunications service. The services it proposes to offer satisfy the minimum standards established by the Commission. The proposed service area is no smaller than an exchange and follows existing exchange boundaries. Spectra proposes to offer basic local telecommunications service as a separate and distinct service. Spectra will provide appropriate opportunities for all Missourians to have equitable access to affordable telecommunications services.

The Commission finds, subject to the conditions contained in the Joint Recommendation, that Spectra's proposed financing arrangement is reasonable.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

The Missouri Public Service Commission has jurisdiction over the services, activities, and rates of GTE pursuant to Section 386.250 and Chapter 392, RSMo. The Commission likewise has jurisdiction over Spectra, as the prospective purchaser of a portion of GTE's Missouri network and as an applicant for Missouri certification.

Based on the findings of fact made herein, the Commission concludes that the proposed sale of GTE's assets to Spectra is not detrimental to the public interest and should be approved.

Based on the findings of fact made herein, the Commission concludes that the joint applicants have shown that granting certificates of service authority to Spectra to provide basic local and interexchange telecommunications services in the exchanges purchased from GTE is in the public interest and should be approved.

Based on the findings of fact made herein, the Commission concludes that the financing proposed by the joint applicants is not detrimental to the public interest and should be approved.

IT IS THEREFORE ORDERED:

1. That all pending motions not already ruled herein are denied.
2. That the Joint Recommendation filed herein on January 26, 2000, containing the agreement of Spectra Communications Group LLC, GTE Midwest Incorporated, the Staff of the Missouri Public Service Commission, and the Office of the Public Counsel, is approved. The various

grants of authority and certificates of service authority to Spectra Communications Group LLC contained in this Order are subject to the conditions contained in the Joint Recommendation filed herein on January 26, 2000, a copy of which is attached hereto as Attachment 1. Spectra Communications Group LLC is ordered to comply with those conditions.

3. That, as of the date of the closing of the transaction approved in Ordered Paragraph 4, below, GTE Midwest Incorporated is relieved from any obligation to provide telecommunications services in any of the exchanges sold to Spectra Communications Group LLC.

4. That GTE Midwest Incorporated is authorized to transfer and sell to Spectra Communications Group LLC, subject to the conditions referred to in Ordered Paragraph 2, above, all of its telecommunications facilities, assets and equipment located in the several exchanges described in Exhibit 3 of the Joint Application filed on August 24, 1999, pursuant to the Asset Purchase Agreement set out in Exhibit 2 (proprietary) of the Joint Application filed on August 24, 1999, and to take all other lawful actions necessary to consummate this transaction.

5. That Spectra Communications Group LLC is hereby authorized to consummate the financing transactions contemplated in the Joint Application filed on August 24, 1999, and in Exhibits 2 and 8 thereof, and may do all lawful things necessary to that purpose, including execute and deliver notes, mortgages, security agreements, and financing statements, all as contemplated and described in the Joint Application and subject to the conditions referred to in Ordered Paragraph 2, above. Spectra

Communications Group LLC shall use the proceeds of the financing herein approved for the purposes contemplated and described in the Joint Application and for no other purposes.

6. That Spectra Communications Group LLC shall submit all pertinent information regarding the financing transaction herein approved to the Staff of the Commission within 10 days of completion of the transaction, and shall file a pleading in this case notifying the Commission and the parties that the information has been submitted to the Staff of the Commission.

7. That nothing in this Order shall be considered a finding by the Commission of the value for ratemaking purposes of the properties, transactions and expenditures herein involved. The Commission reserves the right to consider any ratemaking treatment to be afforded the properties, transactions and expenditures herein involved in a later proceeding.

8. That Spectra Communications Group LLC is granted a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to all applicable statutes and Commission rules and subject to the conditions referred to in Ordered Paragraph 2, above. The certificate of service authority shall become effective when the company's tariff becomes effective.

9. That Spectra Communications Group LLC is granted a certificate of service authority to provide basic local exchange telecommunications services in the state of Missouri, subject to all applicable statutes and Commission rules and subject to the conditions referred to in Ordered

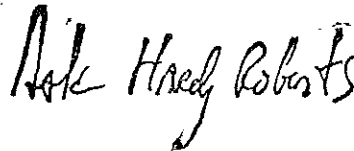
Paragraph 2, above. The certificate of service authority shall become effective when the company's tariff becomes effective.

10. That the request for waiver of the filing requirements of 4 CSR 240-2.060(4)(H) which requires the filing of a 45-day tariff is granted.

11. That Spectra Communications Group LLC shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations, terms and conditions, and the services it will offer, within 30 days after the effective date of this Order, and shall simultaneously file a pleading in this case advising the Commission that the tariffs have been filed.

12. That this Report and Order shall become effective on April 14, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray, and Schemenauer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.
Crumpton, C., not participating.

Dated at Jefferson City, Missouri,
on this 4th day of April, 2000.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

JAN 26 2000

Missouri Public
Service Commission

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 Communications)
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

JOINT RECOMMENDATION

On August 24, 1999, Spectra Communications Group, LLC ("Spectra") and GTE Midwest Incorporated ("GTE"), filed a Joint Application with the Missouri Public Service Commission ("Commission") requesting authority for GTE to sell and Spectra to acquire certain of GTE's telephone properties consisting of 107 Missouri exchanges. In this Joint Application, Spectra also requested certificates of service authority to serve the subject exchanges, and GTE requested that it be authorized to discontinue providing service in those exchanges. Spectra also requested Commission approval to borrow \$250,000,000 from CenturyTel, Inc., in order to partially finance the acquisition.

As a result of meetings and discussions between the parties ("Parties") concerning the above-described transactions, the parties to this Joint Recommendation have reached the following agreements and make the following recommendations to the Commission.

A. Transfer of assets

The Parties recommend that the Commission issue its order approving the transfer and acquisition of that part of GTE's franchise, facilities and system used in providing service to the public in the Missouri exchanges listed on Exhibit 3 to the Joint Application in accordance with the terms of the Asset Purchase Agreement attached to the Joint Application as Exhibit 2.

B. Issuance of certificates

The Parties recommend that the Commission grant certificates of service authority to Spectra to provide local telecommunications service, including basic local telecommunications service, and interexchange telecommunications service in the subject exchanges and authorizing Spectra to commence providing telecommunications service effective on the date of closing of the sale. The Parties also recommend that GTE be authorized to discontinue providing telecommunications services in the enumerated exchanges on the date of transfer.

C. Financing

The Parties recommend that the Commission authorize Spectra to borrow from CenturyTel an amount not to exceed \$250,000,000 substantially in accordance with the terms and conditions set out in the Summary Term Sheet attached to the Joint Application as Exhibit 8 and to execute and deliver all promissory notes and security documents necessary for placing a lien on Spectra's assets and securing the loan.

Further, as a condition of the authorizations recommended above in paragraphs A, B and C above, Spectra agrees to the following:

D. Acquisition adjustment

Spectra agrees to separately identify on its books and records all costs of acquisition of the subject properties which exceed their associated book value (i.e., acquisition premium) as well as all incremental acquisition costs (e.g., incorporation expenses, regulatory approvals, due diligence review, associated sales tax, etc.) incurred in acquiring these properties. Spectra further agrees to forego recovery in future rates for intrastate telecommunications services of any acquisition premium or incremental acquisition costs.

E. Deferred taxes

Spectra agrees to use an additional offset to rate base in any filing for a general increase in telecommunications rates in Missouri initiated in the next five (5) years to compensate for rate base deductions associated with deferred taxes eliminated by this transaction, unless Spectra can show that its actual deferred tax reserve is the same as or greater than that reserve would have been taking into account the amortization provided for hereinafter absent the sale of these exchanges. The amount of the offset shall reduce by 20% per year on the anniversary date of the closing of the transaction.

F. Rates

Spectra agrees to use the same rates, terms and provisions that GTE currently charges customers for telecommunications services in the subject exchanges. If Spectra has not been designated a price cap regulated incumbent local exchange telecommunications company within five (5) years of the closing date of this transaction, Spectra will file a rate proceeding in which all relevant ratemaking factors can be considered by the Commission and rates adjusted as needed.

G. Capital structure

Spectra agrees to achieve a capital structure of at least forty (40) percent equity to total capital (total capital is defined as the sum of short-term debt, long-term debt, preferred stock and common equity) within five (5) years of the closing date of the transaction. If such capital structure is not achieved within five (5) years, Spectra will make a filing with the Commission detailing why it has not achieved a forty (40) percent equity to total capital ratio and stating when and how it will achieve a forty (40) percent ratio. Spectra also agrees to file surveillance reports in accordance with the Commission's standard format for its Surveillance Reporting Tracking System with the Financial Analysis Department every six (6) months until such time as it achieves a 40 percent common equity level. Spectra also agrees to make no distribution of capital, other than for payment of taxes, until the equity to total capital ratio reaches forty (40) percent. Spectra agrees that it will not seek to recover in rates an increased overall cost of capital nor an increase to any component of cost of capital due to risk factors stemming from a low common equity ratio or other capital risk issues. Potential capital structure risk issues include, but are not limited to, a high level of leverage in the capital structure and an increased cost of debt due to a high level of leverage and/or an increased return on common equity due to a low common equity ratio.

H. Price cap status

Spectra has not requested that the Commission determine whether it should be subject to price cap regulation pursuant to Section 392.245.2, RSMo Supp. 1998, in this proceeding. Spectra will adopt the existing rates and tariffs of GTE at the time of transfer of the assets, but the price cap status of GTE will not be transferred to Spectra.

I. Interconnection agreements

Spectra agrees to make every effort to negotiate new interconnection agreements with all competitive local exchange companies ("CLECs") who currently have interconnection agreements with GTE and who desire to have interconnection with Spectra. Where it is feasible, Spectra will enter into agreements which have the same rates, terms and conditions as those agreements previously negotiated with GTE. There will, necessarily, be some differences in these agreements because of the different methods of interfacing between GTE and Spectra. If Spectra and any CLEC are unable to agree on the terms of these agreements, Spectra agrees to submit any disputes to the Commission for resolution. In those situations where the CLEC is already providing service in an exchange to be transferred, Spectra agrees to cooperate with the CLEC in requesting expedited approval of these new interconnection agreements from the Missouri Public Service Commission.

Respectfully submitted,

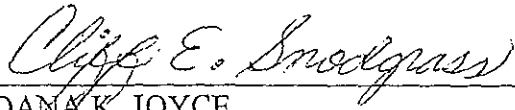
Spectra Communications Group, LLC

GTE Midwest Incorporated

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