

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

In the Matter of the Application of GTE Midwest )  
Incorporated for Classification of IntraLATA Message ) Case No. TO-96-425  
Toll Service as Transitionally Competitive. )  
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**REPORT AND ORDER**

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**Issue Date:** September 25, 1996

**Effective Date:** September 30, 1996

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OF THE STATE OF MISSOURI**

In the Matter of the Application of GTE Midwest )  
Incorporated for Classification of IntraLATA Message ) Case No. TO-96-425  
Toll Service as Transitionally Competitive. )  
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**APPEARANCES**

James C. Stroo, Associate General Counsel-Midwest, GTE Telephone Operations, 1000 GTE Drive, Post Office Box 307, Wentzville, Missouri 63385-0307, for GTE Midwest Incorporated.

James M. Fischer, Attorney at Law, 101 West McCarty Street, Suite 215, Jefferson City, Missouri 65101, for Southwestern Bell Telephone Company.

Paul S. DeFord, Lathrop & Gage L.C., 2345 Grand Boulevard, Kansas City, Missouri 64108-2684, 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.

Cherlyn D. McGowan, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

**ADMINISTRATIVE**

**LAW JUDGE:** Dale Hardy Roberts, Chief.

**REPORT AND ORDER**

**Procedural History**

On June 7, 1996, GTE Midwest Incorporated (GTE) filed a tariff sheet to reclassify its intraLATA message toll service from noncompetitive service to a transitionally competitive service. This tariff was filed pursuant to §§ 392.361.1, 392.370.1 and 392.490.2, RSMo 1994. On July 2, 1996, the Commission issued an order providing notice of the tariff filing. Within that order the Commission advised GTE that if it had not yet issued notice to all

telecommunications companies as required by 392.490.2, RSMo 1994, then the Commission's order would constitute such notice. On July 10, 1996, GTE advised the Commission that it had not provided the required notice and acknowledged that the 90-day effective date would, in fact, run from the notice provided to all telecommunications companies by the Commission. Therefore, the effective date for this tariff is September 30, 1996.

Applications to intervene were filed by Southwestern Bell Telephone Company (SWBT) and AT&T Communications of the Southwest, Inc. (AT&T). MCI Telecommunications Corporation (MCI) filed an application to participate without intervention. The Commission granted the applications of SWBT, AT&T and MCI. On August 7, 1996, the Commission convened the evidentiary hearing in this matter. Although the parties did not file a stipulation and agreement in this case, there appeared to be little contest as to the proposed outcome. GTE suggested in its opening statement that the only issue in the case was whether there were adequate cost studies as detailed under § 392.400.2. GTE did not file to change the rate of its service, and the tariff change itself was limited to only one tariff sheet. GTE has asked whether changing the service to a transitionally competitive status requires it to submit a cost study that supports the preexisting rate. GTE suggested that since the preexisting rate had been approved by the Commission, subsequent cost studies would be unnecessary. However, GTE did file cost studies to support the rate for this service.

### **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 Commission finds that GTE's initial question, as to whether a cost study is necessary or not, is now moot. GTE submitted a cost study with its case

and that study has been admitted into the record. The Commission finds that it is not in the interest of judicial economy or administrative efficiency to answer a question which has no bearing on the outcome of this particular case.

The Office of the Public Counsel (Public Counsel) did not contest GTE's filing, noting that its position is similar to an Alford plea.<sup>1</sup> Public Counsel went on to state: "We don't necessarily like the facts, but we really can't dispute them in good conscience." Public Counsel's "Alford plea" is taken as its acquiescence in a favorable determination for GTE in this case. Public Counsel acknowledged that GTE's cost study did indicate "a considerable contribution to joint and common costs."

The Commission finds that GTE's proposed tariff will classify its intraLATA message toll service as a transitionally competitive service. The Commission has previously found, pursuant to 392.361, that intraLATA message toll service is sufficiently competitive to justify a lesser degree of regulation. GTE's intraLATA message toll service is the same, substitutable or equivalent to that service. The Commission finds that pursuant to the language set out in § 392.400.2, RSMo 1994, and based upon the Commission's prior decision in Case No. TO-93-116, the Commission need not find the existing rate for noncompetitive telecommunications service offered by a noncompetitive telecommunications company to be above incremental cost prior to classifying such a service as transitionally competitive when no modification to existing rates is sought.

Therefore, the Commission finds it in the public interest to approve the proposed tariff which will reclassify this service as transitionally competitive. The Commission finds this is the same, substitutable or equivalent to intraLATA

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<sup>1</sup>The "Alford plea" is derived from North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). The Supreme Court held in this case that where strong evidence of actual guilt substantially negated a defendant's claim of innocence that it was not error for the Court to accept a statement wherein the defendant essentially claimed innocence but agreed to plead guilty as a form of acquiescence.

message toll service offered by other telecommunications companies within GTE's certificated area.

### **Conclusions of Law**

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

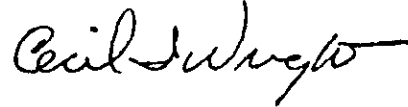
GTE Midwest Incorporated is a Delaware corporation with its principal offices at 1000 GTE Drive, Wentzville, Missouri 63385. GTE is a duly authorized local exchange telecommunications company and a primary toll carrier which provides local access and toll telecommunications services to its Missouri customers. As such GTE is subject to the jurisdiction of the Missouri Public Service Commission as set out in Chapters 386 and 392 of the Missouri statutes. GTE has met the filing requirements as set out in §§ 392.361.1, 392.370.1 and 392.490.2, RSMo 1994. In addition, GTE has met the filing and pleading requirements as set out in 4 CSR 240-2.010, *et seq.*

#### **IT IS THEREFORE ORDERED:**

1. That the tariff sheet filed by GTE Midwest Incorporated on June 7, 1996, is hereby approved for service on and after September 30, 1996.
2. That any motions or offers of evidence not previously ruled upon are hereby overruled and denied.

3. That this Report And Order shall become effective on the 30th day of September, 1996.

**BY THE COMMISSION**



**Cecil I. Wright  
Executive Secretary**

( S E A L )

Zobrist, Chm., McClure, Kincheloe,  
Crumpton and Drainer, CC., concur  
and certify compliance with the  
provisions of Section 536.080,  
RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 25th day of September, 1996.