

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the application of Contel of Missouri,)
Inc., Contel System of Missouri, Inc., and The Kansas State)
Telephone Company, d/b/a Contel of Eastern Missouri, for) CASE NO. TM-91-311
authority to sell and transfer a portion of their franchise,)
facilities or system to GTE Telecom Incorporated.)
)

APPEARANCES: W.R. England, III, Brydon, Swearengen & England, P.C., Post Office
Box 456, Jefferson City, Missouri 65102,

and

James C. Stroo, Attorney at Law, GTE Central Area, 290 East
Carpenter Freeway, Irving, Texas 75062, for Contel of Missouri,
Inc., Contel System of Missouri, Inc., and The Kansas State Tele-
phone Company, d/b/a Contel of Eastern Missouri.

James M. Fischer, Akre, Wendt & Fischer, 102 East High Street,
Suite 200, Jefferson City, Missouri 65101, for Fidelity Telephone
Company.

Randy Bakewell, 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 Commis-
sion, Post Office Box 360, Jefferson City, Missouri 65012, for the
staff of the Missouri Public Service Commission.

HEARING

EXAMINER: Mark Grothoff.

REPORT AND ORDER

On April 15, 1991, Contel of Missouri, Inc., Contel System of Missouri,
Inc., and The Kansas State Telephone Company, d/b/a Contel of Eastern Missouri
(Applicants) filed an Application proposing the sale and lease-back of a fiber-
optic system to GTE Telecom, Inc. (GTE Telecom), an unregulated subsidiary of
GTE Corporation. Applicants' fiber-optic system provides interLATA services to
carriers and resellers. The Commission gave notice of this matter and set an
intervention date.

By order issued May 31, 1991, the Commission granted intervention to Fidelity Telephone Company. A hearing was held on August 8, 1991, in which the prefiled testimony was placed on the record. All of the parties waived cross-examination and reading of the transcript by the Commission. Each party subsequently submitted a Position Statement.

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.

Applicants currently own fiber-optic facilities which provide interLATA services. All of Applicants' issued and outstanding stock is owned by Contel Corporation. On March 14, 1991, Contel Corporation merged with GTE Corporation through a transaction approved by the Commission (Case No. TM-91-123). Through the merger, Contel Telephone Operating Companies, including Applicants, became wholly-owned subsidiaries of GTE Corporation. In 1983, GTE Corporation entered into a Consent Decree which prohibited GTE Telephone Operating Companies (GTOCs) from either providing interLATA services or owning any assets which are used to provide such services. Upon the merger of Contel Corporation and GTE Corporation, Applicants became subject to the same restrictions of the Consent Decree as other GTOCs.

Applicants have proposed to sell their fiber-optic system to GTE Telecom, an unregulated subsidiary of GTE Corporation. As part of the proposed transfer, Applicants would lease back capacity on the system necessary to maintain their intraLATA services.

The issue presented is whether the sale/lease-back transaction proposed by Applicants is detrimental to the public interest. The Commission Staff (Staff) contends that Applicants' proposal will cause an increase in the revenue requirement over a ten-year period, forcing higher rates on ratepayers. Staff has

argued for rejection of Applicants' proposal unless the Commission prohibits Applicants from seeking recovery of any increase in revenue requirement resulting from the proposed transaction in future rate cases.

The Office of Public Counsel (OPC) argues that since the parent company (GTE Corporation) will derive the benefit of any earnings from the fiber-optic system, Applicants' ratepayers should not have to pay higher rates as a result of the transfer than they would without the transfer. OPC also argues for rejection of Applicants' proposal absent restrictions similar to Staff's position.

Applicants argue that an analysis of the impact of their proposal on revenue requirement ten years into the future is speculative with no factual basis. Applicants contend there is no actual evidence that their proposal is not in the public interest. Applicants also argue that the proper venue to consider revenue requirement impact is in a subsequent rate case.

According to analyses by Applicants and Staff, the sale/lease-back arrangement would cause a decrease in Applicants' revenue requirement over the first year of the proposed transaction. Staff's analysis shows that such a decrease in revenue requirement would likely be maintained through 1995, but subsequently the revenue requirement would continually increase through the year 2000.

In securing Commission approval for their merger (Case No. TM-91-123), GTE Corporation and Contel Corporation entered into a Stipulation and Agreement. Paragraph 2 of the Stipulation states in pertinent part that "specific merger and acquisition costs" would not be included in future rate cases. Included in these costs are "future implementation costs."

The Commission finds that the proposed sale/lease-back arrangement proposed by Applicants is subject to Paragraph 2 of the Stipulation and Agreement in Case No. TM-91-123. The Commission also finds that the proposed sale/lease-back arrangement proposed by Applicants is not detrimental to the

public interest and should be approved. Applicants have no choice in selling the fiber-optic system as they are subject to the restrictions of the Consent Decree entered into by GTE Corporation. The Commission should not prevent Applicants from complying with the Consent Decree but must take precautions to protect ratepayers from any unfair or unnecessary burden which might result. The Commission further finds that any costs associated with the sale/lease-back of the fiber-optic system should be separately identified within Applicants' records and that Applicants are prohibited from recovering such costs by Paragraph 2 of the Stipulation and Agreement in Case No. TM-91-123.

Conclusions of Law

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

Applicants are subject to the jurisdiction of the Commission pursuant to Sections 386 and 392, R.S.Mo. 1990. Pursuant to Section 392.300,

"[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, nor by any means, direct or indirect, merge or consolidate such line or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing the same shall be void."

The standard for Commission approval of the sale/lease-back arrangement proposed by Applicants is whether the transaction is detrimental to the public interest. *State ex rel. Fee Fee Trunk Sewer v. Litz*, 596 S.W.2d 466 (Mo. App. 1980).

Applicants must sell the fiber-optic system in order to comply with the Consent Decree issued by the United States District Court for the District of Columbia in *United States v. GTE Corporation*. The Commission concludes that the sale/lease-back of the fiber-optic system as proposed by Applicants is not

detrimental to the public interest but that any costs arising from this transaction may not be recovered by Applicants pursuant to Paragraph 2 of the Stipulation and Agreement in Case No. TM-91-123.

IT IS THEREFORE ORDERED:

1. That the sale and lease-back of the fiber-optic system as proposed by Applicants be hereby approved.
2. That Applicants be hereby prohibited from seeking to recover any costs resulting from the sale/lease-back of the fiber-optic system in future rate proceedings.
3. That the costs, capital, and revenues related to the fiber-optic system shall be separately identified on the books and records of Applicants and GTE Telecom.
4. That Applicants be hereby authorized to do and perform, or cause to be done and performed, all such other acts and things, as well as to make, execute and deliver any and all documents as may be necessary, advisable or proper to the end that the intent and purposes of the sale/lease-back of the fiber-optic system may be fully effectuated.
5. That this Report And Order shall become effective on September 2, 1991.

BY THE COMMISSION

(S E A L)

Brent Stewart
Brent Stewart
Executive Secretary

Steinmeier, Chm., Mueller, Rauch,
McClure and Perkins, CC., Concur
and certify compliance with the
provisions of Section 536.080, RSMo
1986.

Dated at Jefferson City, Missouri,
on this 23rd day of August, 1991.