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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 19th
day of March, 1998.

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| In the Matter of GTE Midwest Incorporated |) | |
| Proposed Revision of Its PSC Mo - No. 3 |) | |
| Long Distance Message Telecommunications |) | <u>CASE NO. TT-98-311</u> |
| Tariff to Introduce Extended Exchange |) | |
| Calling Plan Service. |) | |

ORDER REGARDING MOTION TO SUSPEND TARIFF

On January 28, 1998, the Mid Missouri Group of local exchange companies¹ (Mid-Mo) filed a Motion to Suspend Tariff and an Application to Intervene. These pleadings were filed in response to Tariff No. 980067 (sic). Mid-Mo was in fact filing its pleadings in response to Tariff No. 9800607 which had been submitted by GTE Midwest Incorporated (GTE) on January 20, 1998. However, on the same date upon which Mid-Mo filed its pleadings, the Commission had already cast a unanimous vote to approve the tariff sheet(s) in question. For that reason, Mid-Mo's pleadings were moot upon arrival.²

On February 5 Mid-Mo filed a Motion For Entry Of Written Order For Order Suspending Tariffs, Or For Rehearing (Motion for Written Order). Mid-Mo has asserted that a different procedure should have been followed by the Commission. Upon review of Mid-Mo's arguments, it appears that Mid-

¹ The Mid Missouri Group is comprised of Alma Telephone Company, Chariton Valley Telephone Corp., Choctaw Telephone Company, Mid-Missouri Telephone Company, Modern Telecommunications Company, MoKan Dial Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company.

² A copy of the Agenda Minutes of January 28, 1998 reflect this item as agenda item number 14. Those minutes are appended as attachment A. In addition, on January 28 the Commission issued its standard tariff approval letter confirming the approval of the tariff on that date. That letter is appended as Attachment B.

Mo has misconstrued the regulations and statutes cited to arrive at its conclusion.

Although the Motion to Suspend was moot on the day it was filed, the Commission, nevertheless, began a review of the motions after the expiration of the mandatory time periods cited below. This order concludes that review. The issues raised by Mid-Mo may best be addressed as issues arising under the Code of State Regulations and those arising under chapters 386 and 392 of the state statutes³.

Code of State Regulations

Within Mid-Mo's Motion for Written Order, Mid-Mo raised the following procedural arguments. Mid-Mo argues that 4 CSR 240-2.065(2) requires the Commission to docket a case under the circumstances herein. Mid-Mo also argues that the Commission purported to approve the tariff filing without the entry of a written order either in Tariff Filing 9800607 or in Case No. TT-98-311 in violation of 386.280. Lastly, Mid-Mo argues that the Commission failed to utilize docketed case procedures in violation of 4 CSR 240-2.065(2)(3).

Mid-Mo has argued that Commission's rule, 4 CSR 240-2.065(2) requires that the Commission open a docketed case under these circumstances. The rule cited by Mid-Mo does not apply to the facts of this case. The text of the rule reads as follows:

- (2) When a public utility regulated by the Public Service Commission submits a tariff for Commission approval but requests the tariff **become effective** in less than thirty (30) days, the Commission shall establish a case file for the tariff and file the tariff in the case file. All pleadings and orders shall be filed in the case file established for the tariffs. The request for less than thirty (30)-day approval

³ All statutory references are to the 1996 Revised Statutes of Missouri unless otherwise cited.

must state good cause for such treatment.
(Emphasis added.)

This rule refers to a situation where a company requests that its tariff become **effective** in less than 30 days not where the request is that the approval be granted in fewer than 30 days. In fact, GTE's request was not that the tariff become effective in less than 30 days, but only that the approval be granted in less than 30 days. GTE requested that the Commission "expedite approval of this filing in order to assure timely implementation and customer notification." GTE did not request an expedited effective date. The prompt approval of the tariff was necessitated by the deadline which existed at that time which would have required GTE to eliminate Community Optional Service not later than March 31. The tariff in question contained the replacement service needed prior to that deadline.

Mid-Mo has also argued that the Commission failed to appropriately utilize docketed case procedures as required by 4 CSR 240-2.065(3). That rule states:

- (3) When a pleading, which objects to a tariff or requests the suspension of a tariff, is filed with the Commission, the Commission shall establish a case file for the tariff and shall file the tariff and pleading in that case file. All subsequent pleadings and orders concerning the tariff shall be filed in the case file established for the tariff.

As indicated above, at the time of Mid-Mo's filing the tariff in question had already been approved by the Commission. Irrespective of that fact, compliance with the rule occurred as a ministerial act. Upon receipt of Mid-Mo's pleadings, the Commission's Records Department established a case file in compliance with the rule. This file was created on January 28. Pursuant to 4 CSR 240-2.080(12) the Commission did not act upon the January 28 pleading for ten days in order to allow a response to be filed

by the Commission Staff, the Office of the Public Counsel (Public Counsel), GTE or any other interested party. No such pleading was forthcoming. Prior to the expiration of that ten-day period, on February 5, Mid-Mo filed its Motion For Written Order which began anew a second ten-day period. Again, the Commission awaited the expiration of the ten-day period so that the Commission Staff, Public Counsel, GTE or any other interested party might file a responsive pleading. Again, no such pleading was forthcoming. Because of the rule cited, the Commission could not properly begin its deliberation on the pleadings filed by Mid-Mo until on or after February 17, the next business day after expiration of the ten-day reply period.

Lastly, Mid-Mo attempts to bootstrap the requirement which provides ten days to respond to a pleading or a motion into a requirement which also mandates ten days in which to respond to a tariff. This requirement is not supported by the rule. Clarification of this issue may be found within the Definitions section at 4 CSR 240-2.010(12) which states that "pleading means any application, complaint, petition, answer, motion or other similar written document, **which is not a tariff...**" (Emphasis added.) Although no authority has been cited for mandatory response time to a tariff the Commission withheld action on the tariff from the date it was submitted, on January 20, until the date approval was finally granted, January 28. In addition, it is important to recognize the distinction between a tariff which is submitted and one which is filed. Tariffs such as this one are routinely submitted to the Commission for approval. Unless the tariff is suspended the tariff is not filed. Until a tariff is filed it is not a contested case and the Code of State Regulations, as cited herein, is not controlling. The triggering event would ordinarily be a motion to suspend a tariff, at which point a case is created and the tariff

sheet(s) are then filed in that newly created case. In this case that motion was simply filed too late.

Chapters 386 and 392, Revised Statutes of Missouri

Mid-Mo has argued that the Commission approved the tariff in question in violation of 386.280. The statute states, in pertinent part, that:

- (1) Every order, authorization or certificate issued or approved by the commission under any provision of this chapter shall be in writing and entered on the records of the commission...

The Commission records reflect that the tariff in question was, indeed, approved in compliance with the statute cited. A copy of the tariff approval sheet reflecting the Commission action as well as a copy of the agenda minutes reflecting a vote upon this tariff are attached hereto as Attachment A and B respectively.

In its Motion To Suspend Tariff, Mid-Mo alleged that:

- (1) Section 392.200.2 prohibits special rates by which GTE would receive lesser compensation for toll service to toll customers residing in exchanges for which GTE is the local service provider than is received by GTE for toll service to toll customers residing in exchanges for which GTE is not the local exchange service provider.
- (2) Section 392.200.3 prohibits GTE from giving undue preference or advantage in toll rates to any locality, person or corporation.
- (3) Section 392.200.4 prohibits GTE from defining toll service as a different service based upon the geographical area or

market within which the service is offered or provided.

(4) Section 392.200.5 prohibits GTE from charging a different price per minute for the same, substitutable or equivalent interexchange service provided over the same or equivalent distance points.

(5) Section 392.230 prohibits GTE from charging less for the transmission of toll service for a longer distance than is charged for a shorter distance.

Mid-Mo has only cited the pertinent statutes in part. In light of an earlier Commission order which required the removal of Community Optional Service it was in the public interest to approve this quasi-replacement service. Mid-Mo's arguments and its statutory citations have omitted the most important, and in this case the controlling, portion(s) of the statute. Section 392.200 provides a public interest determination.

392.200 Adequate service--just and reasonable charges--unjust discrimination--unreasonable preference--reduced rates permitted for federal lifeline connection plan--delivery of telephone and telegraph messages-- customer--specific pricing.--

5. No telecommunications company may charge a different price per minute or other unit of measure for the same, substitutable, or equivalent interexchange telecommunications service provided over the same or equivalent distance between two points without filing a tariff for the offer or provision of such service pursuant to sections 392.220 and 392.230. In any proceeding under sections 392.220 and 392.230 wherein a telecommunications company seeks to charge a different price per minute or other unit of measure for the same, substitutable, or equivalent interexchange service, the burden shall be on the subject telecommunications company to show that **such**

charges are in the public interest and consistent with the provisions and purposes of this chapter. The commission may modify or prohibit such charges if the subject telecommunications company fails to show that such charges are in the public interest and consistent with the provisions and purposes of this chapter. This subsection shall not apply to reasonable price discounts based on the volume of service provided, so long as such discounts are nondiscriminatory and offered under the same rates, terms, and conditions throughout a telecommunications company's certificated or service area.

The Commission determined, at the time of its review of the tariff in question, that the proposal was in the public interest. The Commission's principal interest is to serve and protect ratepayers, State ex rel. Crown Coach Co. v. Pub. Serv. Comm'n, 238 Mo.App. 287, 179 S.W.2d 123, 126 (1944), and as a result, the Commission cannot commit itself to a position that, because of varying conditions and occurrences over time, may require adjustment to protect the ratepayers, State ex rel. Chicago, Rock Island & Pacific Railroad Co., 312 S.W.2d 791, 796. The Commission requires flexibility in exercising its [regulatory] function to deal with changing and unforeseen circumstances. Id. The Commission determined that the proposed tariff satisfied the purpose of the statutory scheme and was, in fact, in the public interest.

The Commission has determined that Mid-Mo's arguments regarding the procedure followed by the Commission fail to state a claim upon which relief can be granted in that the Commission did establish a docketed case as required by its rule even though the tariff had already been approved when Mid-Mo's first pleading was filed. The Commission approved the tariff in compliance with Section 386.280 and the Commission allowed ten days after the filing of each of Mid-Mo's pleadings as required by 4 CSR 240-2.080 so that other parties would have their opportunity to respond.

Neither the Commission's Staff nor the Office of the Public Counsel nor GTE chose to respond. Mid-Mo's Motions are denied.

IT IS THEREFORE ORDERED:

1. That the Motion to Suspend Tariff and an Application to Intervene filed by the Mid Missouri Group are denied.
2. That the Motion For Entry Of Written Order For Order Suspending Tariffs, Or For Rehearing is granted in part, by issuance of this written order.
3. That the Motion For Entry Of Written Order For Order Suspending Tariffs, Or For Rehearing is denied as to the request for suspension or rehearing.
4. That any other motion filed in this case and not specifically addressed is denied.
5. That this order shall be effective on March 30, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton,
Murray, and Drainer,
CC., Concur.

Roberts, Chief Regulatory Law Judge

MISSOURI PUBLIC SERVICE COMMISSION
MINUTES OF AGENDA MEETING
Wednesday, January 28, 1998
PSC Agenda Room, Harry S Truman Building, Room 530

Present: Lumpe, Crumpton, Drainer, Murray, and various Staff members.

Continued Orders and Tariffs

None

New Orders and Tariffs

1. 9800540 Excel Communications, Inc. - Introduce a New Service Offering
 --4-0, as submitted. Known as "Premier Plus III"
2. 9800582 UtiliCorp United, d/b/a Missouri Public Service - To Modify the
 --4-0, as submitted. Index and Promo. Practices Tariff Sheets
3. 9800531 United Cities Gas Company - Purchased Gas Adjustment
 GR-98-274
 --4-0, as submitted.
4. 9800532 United Cities Gas Company - Purchased Gas Adjustment
 GR-98-274
 --4-0, as submitted.
5. 9800533 United Cities Gas Company - Purchased Gas Adjustment
 GR-98-274
 --4-0, as submitted.
6. 9800534 United Cities Gas Company - Purchased Gas Adjustment
 GR-98-274
 --4-0, as submitted.
7. 9800594 Missouri Gas Energy - Purchased Gas Adjustment
 GR-98-167
 --4-0, as submitted.
8. TO-97-533 GTE Midwest Inc., and Sprint Spectrum - Order Directing the
 --3-0, as amended. Filing of Additional Information
 (Crumpton not participating)
9. 9800550 - 9800577 Clarify Lifeline Service
 & 9800602

Rock Port - 9800550
Ozark - 9800551
Oregon Farmers Mutual - 9800552
New Florence - 9800553
Miller - 9800554
McDonald County - 9800555
Le-Ru - 9800556
KLM - 9800557
Kingdom - 9800558
Iamo - 9800559
Holway - 9800560

- Grand River Mutual - 9800561
- Granby - 9800562
- Goodman - 9800563
- Citizens - 9800564
- Craw-Kan - 9800565
- Ellington - 9800566
- Farber - 9800567
- Steelville - 9800568
- Cass County - 9800569
- BPS - 9800570
- NE Missouri Rural - 9800571
- Modern - 9800572
- Peace Valley - 9800573
- Mid-Missouri - 9800574
- Choctaw - 9800575
- Chariton Valley - 9800576
- Alma - 9800577 and
- Mark Twain Rural - 9800602
- 4-0, as submitted.
- 10. TT-97-524 Southwestern Bell Telephone - Order Denying Motions for
--4-0, as amended. Rehearing or Clarification
- 11. GR-98-167 Missouri Gas Energy - Order Granting Intervention
--4-0, as submitted.
- 12. SC-98-180 West Elm Place v. Imperial Utility Corp. - Order Regarding
--4-0, as amended. Default
- 13. TD-98-267 Harvey Hotel Management Corporation, d/b/a Hospitality
--4-0, as submitted. Telecom Solutions - Order Canceling Certificate and Tariff
- 14. 9800607 GTE Midwest Inc. - Implement Extended Exchange Calling
--4-0, as submitted. Plan
- 15. TA-97-469 Midwestern Tel - Order Approving Tariff
--4-0, as submitted.
- 16. TA-97-506 USA Exchange, LLC, d/b/a Omniplex Communications Group
--4-0, as submitted. - Order Approving Tariff
- 17. GR-98-297 Laclede Gas Company - Purchased Gas Adjustment
9800604
--4-0, as submitted.

Other Discussion

- 1. Approval of Minutes of last agenda meeting
--4-0, as submitted.
- 2. Various Commission scheduling matters
--Discussed.
- 3. Legislation
--Discussed.
- 4. Budget
--Not discussed.
- 5. TT-98-292 - Southwestern Bell Telephone - Tariff Filing - Wickliffe
--Discussed.
- 6. ER-97-394 - UtiliCorp rate case - Derque
--Not discussed.

7. TX-98-56 - Mo Universal Service Fund Rule - Wickliffe
--Discussed.

Closed Meeting

1. Personnel
--Not discussed.
2. Litigation
--Not discussed.

Shirley Lumpke
Chairman

1/29/98
Date Approved

2001 08 14
2001 08 14 10:44 AM
2001 08 14 10:44 AM



Commissioners
SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

M. DIANNE DRAINER
Vice Chair

Missouri Public Service Commission

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Director, Utility Services
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Director, Administration
DALE HARDY ROBERTS
Chief Administrative Law Judge
DANA K. JOYCE
General Counsel

January 28, 1998

Ms. Carolyn Little
State Director-External Affairs
GTE Service Corporation
225 Madison, 2nd Floor
Jefferson City, MO 65101-3202

Dear Ms. Little:

RE: File No. 9800607

This correspondence is to advise that the tariff filing submitted with your letter of transmittal, a copy of which is enclosed herewith, is being made effective in accordance with Section 392.220 RSMo 1996.

A copy of the tariff filing, reflecting the filing record of this Commission, is enclosed for your use.

Sincerely,

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

DHR:dlh

Enclosure

RECEIVED

MAR 20 1998

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION

Attachment B
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