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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 6th
day of May, 1998.

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 Rejecting Second Request for Rehearing

On February 5, 1998, the Mid-Missouri Group of local exchange companies¹ (Mid-Mo or Applicant) filed a Motion For Entry Of Written Order For Order Suspending Tariffs, Or For Rehearing (sic). In addition, in a separate action, Mid-Mo applied for, and received from the Circuit Court of Cole County, a writ of mandamus requiring the Commission to respond to Mid-Mo's motions which were pending before the Commission.² In response, the Commission issued its Order Regarding Motion To Suspend Tariff on March 19. That order addressed the motions filed by Mid-Mo and in doing so also attempted to clarify the difference between tariffs which are filed but are not docketed into a contested case³ and tariffs which are filed but do necessitate the creation of a docketed, contested case. This discussion

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 State ex rel Alma Telephone Company et al. v Public Service Commission, Case No. CV198-269cc. Preliminary Order In Mandamus issued March 3, 1998.

³ These are often referred to as "submitted" as opposed to "filed" because no contested case is docketed, or created, into which these tariffs may be formally filed.

was explanatory and not dispositive of the issues. That discussion did not alter the Commission's prior determination regarding the underlying tariff sheets to which Mid-Mo objected. Inasmuch as the Order Regarding Motion To Suspend Tariff did not change the outcome of the case it should not give rise to any additional avenue of relief.

The Commission's March 19 order provided a response to the writ and Mid-Mo's pending motions and, in doing so, both satisfied the requirements of the writ and addressed Mid-Mo's Motion For A Written Order. The Commission's order denied Mid-Mo's request for suspension and it denied Mid-Mo's request for rehearing. That order stated:

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.

The March 19 denial of rehearing concluded the pendency of this matter before the Commission and, pursuant to Sections 386.500 and 386.510, began the time within which review of the Commission's action might be pursued.

The Commission has traditionally issued orders denying rehearing with an effective date the same as the issue date. Although it was not required to do so, out of an abundance of caution, the Commission made its March 19 order effective ten days after issuance owing to a Declaratory Judgment in which the Cole County Circuit Court had ordered that orders which resolve contested issues be issued with a date other than the date of issuance.⁴ Allowing additional time for the applicant does not allow additional applications for rehearing as that matter is controlled entirely by statute. It has subsequently become clear that orders denying rehearing may continue to become effective on the date of issuance as a 30 day time

⁴ State ex rel. County of Jackson v Mo. Public Service Commission, Case No. CV197-1833cc (March 11, 1998).

limit within which one must request review begins from that date, thus providing an ample period of time in which to seek a writ of review. See Section 386.510

Although Section 386.500 provides an opportunity to request rehearing before the Commission it contains no such provision for a second request for rehearing. In fact, the courts have held that no such provision exists.

We are of the opinion, also, that the application to the circuit court for *certiorari* or review was made too late, under Section 5234, R. S. 1929 (Mo. St. Ann. § 5234). Respondent's motion for rehearing before the commission was overruled on June 16. It did not apply for *certiorari* until August 12, much more than 30 days thereafter. It contends that the time should be considered as running from July 17, the day when its second motion for rehearing was overruled by the Commission. We do not agree with that contention. ... It seems to us that, when the commission, on June 16, denied respondent's application for rehearing, the proceeding before the Commission was concluded and the Commission's order became final, so far as respondent, applicant before the Commission, was concerned, and that its right to seek review by the circuit court thereupon accrued. State ex rel. Kansas City, Independence & Fairmont Stagelines Co. v. Pub. Serv. Comm'n, 63 S.W.2d 88, 93, 333 Mo. 544 (1933).

The Commission follows the reasoning of the Supreme Court of Missouri on this issue. With the Commission's March 19 denial of Mid-Mo's application for rehearing "The proceeding before the Commission was concluded and the Commission's order became final, so far as respondent, applicant before the Commission, was concerned, and that its right to seek review by the circuit court thereupon accrued." Id. at 93.

The Commission has already denied Applicant's request for rehearing in the Commission's order of March 19. Applicant has no right, either by statute or by common law, to a second request. The applicant's second request for rehearing fails to state a claim upon which relief may be granted and the Commission will neither grant nor deny the request.

Rather, the Commission determines that the second request for rehearing must be rejected.

IT IS THEREFORE ORDERED:

1. That the second request for rehearing filed on behalf of the Mid-Missouri Group of local exchange companies on March 25, 1998, is hereby rejected for failing to state a claim upon which relief may be granted.

2. That this order shall be effective on May 6, 1998

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Murray, Schemenauer, and
Drainer, CC., Concur.
Lumpe, Ch., Crumpton, C., Absent.

Roberts, Chief Regulatory Law Judge

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**COMMISSION COUNCIL
PUBLIC SERVICE COMMISSION**