

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 April, 1999.

In the Matter of the Application of GTE )  
Communications Corporation for a Certificate of )  
Service Authority to Provide Basic Local Tele- ) Case No. TA-98-152  
communications Service in Portions of the State )  
of Missouri and to Classify Said Services and )  
the Company as Competitive. )

ORDER GRANTING CERTIFICATE TO PROVIDE  
BASIC LOCAL TELECOMMUNICATIONS SERVICES

Procedural History

GTE Communications Corporation (GTECC) applied to the Commission on October 9, 1998, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994<sup>1</sup>, and Sections 392.410 and .450, RSMo Supp. 1998. GTECC asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Sections 392.361 and 392.420. GTECC is a Delaware corporation with principal offices located at 5221 North O'Connor Blvd., Thirteenth Floor, Irving, Texas 75039.

The Commission issued an order and notice on October 14, directing interested parties wishing to intervene to do so by November 10. The Commission granted permission to intervene to Southwestern

<sup>1</sup> All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated.

Bell Telephone Company (SWBT) and MCI Telecommunications Corporation (MCI) on December 9. On December 19, MCI filed a motion to consolidate this case with Case No. TA-97-269 (Sprint Communications Company, L.P. (Sprint) CLEC application, involving an ILEC affiliate), which was denied on January 13, 1998.

An early prehearing conference was held on July 16, 1998. On August 12, SWBT filed its withdrawal of intervention. On October 19, the Commission directed the parties to file a procedural schedule in this case no later than November 13. MCI filed its proposed procedural schedule on November 13. GTECC filed its nonunanimous stipulation and agreement pursuant to 4 CSR 240-2.115 on November 13. On November 17, MCI filed its request for hearing pursuant to 4 CSR 240-2.115. Staff notified the Commission on December 23 that it adopted GTECC's Nonunanimous Stipulation and Agreement.

MCI Telecommunications withdrew its request for a hearing on February 11, 1999. If no party requests a hearing, the Commission will treat the Stipulation and Agreement as a unanimous agreement. 4 CSR 240-2.115.

In the Agreement, the signatory and adopting parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

## Discussion

GTECC wishes certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by SWBT, GTE Midwest Incorporated (GTE), and Sprint Missouri, Inc., formerly known as Sprint/United Telephone Company (Sprint). GTECC is not asking for certification in any area that is served by a small incumbent local exchange provider. GTECC proposes to operate in all of the exchanges described in Appendix B to its application. GTECC is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

### **A. Requirements of 4 CSR 240-2.060(4)**

Commission rule 4 CSR 240-2.060(4) requires a foreign corporation applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of State showing it is authorized to do business in Missouri, a description of the types of service it intends to provide, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. GTECC has provided all the required documentation except for the proposed tariff. The company requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into interconnection agreements with the underlying local exchange carriers and those agreements have been approved by the Commission. The company agreed to submit to the Commission for approval a proposed tariff with a minimum 45-day effective date once it is party to the appropriate interconnection agreements. GTECC will file the tariff in this case and give notice of the tariff filing to all the parties.

Along with that filing GTECC has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas.

## **B. Basic Local Service Certification**

Section 392.455, RSMo Supp. 1998, sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants. 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 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.

GTECC submitted as Exhibit D to its application certain financial documentation including a copy of its most recent SEC Form 10-Q, along with a letter evidencing GTE Corporation's financial backing of GTECC. Exhibit C to the application lists the names and qualifications of GTECC's senior management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry including marketing, sales and sales management, legal issues, and product development. The signatory and

adopting parties agreed that GTECC possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

GTECC has agreed to provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. The parties agreed that GTECC proposes to offer basic local services that satisfy the minimum standards established by the Commission.

GTECC wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE, and Sprint as described in their basic local tariffs (see Appendix B to the application). The parties agreed that GTECC has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange.

GTECC has agreed to offer basic local telecommunications service as a separate and distinct service and to provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it will offer basic local services in compliance with Section 392.455(5), RSMo Supp. 1998.

In addition, the parties agreed to specific terms with regard to GTECC providing Basic Local Exchange and Local Exchange Service in GTE's territory. GTECC agreed to abide by all service quality rules to the extent applied to other CLECs, including reporting. GTE agreed to treat GTECC as it does any other non-affiliated CLEC for purposes of interconnection, unbundling, resale, establishment and dissemination of technical information, and the provision of new

telecommunication services, or modifications of facilities relating to telecommunications services, as required under 47 USC Section 251. The parties agreed that GTECC will not receive any preferential treatment from GTE relative to other non-affiliated CLECs regarding the display of its telephone number or other information in the telephone directories in GTE's service territory.

Further, the parties agreed that GTE and GTECC will conduct their operations independently. This includes maintaining separate books, records and accounts when GTECC competes in GTE's service territory, that GTECC's creditor would not have recourse to GTE's assets, except that the parent company may issue debt with recourse to the assets of GTECC or GTE, or both, and that GTE and GTECC shall conduct all transactions on an arm's length basis and such transactions shall be reduced to writing. In transactions with GTECC, the parties agreed that GTE may not discriminate between GTECC and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards. GTE shall account for all transactions between GTE and GTECC in accordance with the accounting principles and rules of the FCC and the Commission.

The parties agreed that GTE and GTECC shall fulfill any requests from an unaffiliated entity for telephone exchange service or exchange access on the same terms, including time of installation, as it does for all affiliated entities. The parties also agreed that GTE and GTECC shall fulfill any requirement to provide telecommunications facilities, telecommunications services, or network information to GTECC or any other entity under the same terms and conditions, consistent with 47 USC Section 251. GTE and GTECC shall charge the

affiliate or impute to itself, if using access for its provision of its own service, an amount for access to its telephone exchange service and exchange access that is not less than the amount charged to any unaffiliated carriers for such service.

The parties agreed that GTE will satisfy all 47 USC Section 251 obligations to offer unbundled elements or resale throughout its service territory regardless of whether GTE or GTECC supply the underlying facilities in satisfaction of this obligation and will make no distinction in prices, terms, and conditions based upon whether GTE or GTECC supply the underlying facilities. When GTECC is competing in GTE's service territory, the parties agreed that GTECC shall not be allowed to offer local services or functionalities based on GTE's services or functionalities that GTE does not offer on a retail basis to its own end users.

The parties agreed that GTE and GTECC shall be treated as one company for the purpose of determining the effective level of competition within GTE's territory as required by SB 507.

### **C. Competitive Classification**

The Commission may classify a telecommunications provider as a competitive company if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. § 392.361.2. In making that determination the Commission may consider such factors as market share, financial resources and name recognition, among others. In the matter of the investigation for the purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri, 30 Mo. P.S.C. (N.S.) 16 (1989); In the matter of Southwestern

Bell Telephone Company's application for classification of certain services as transitionally competitive, 1 Mo. P.S.C. 3d 479, 484 (1992). In addition, all the services a competitive company provides must be classified as competitive. § 392.361.3. The Commission has found that whether a service is competitive is a subject for case-by-case examination and that different criteria may be given greater weight depending upon the service being considered. *Id.* at 487.

The parties have agreed that GTECC should be classified as a competitive telecommunications company. The parties have also agreed that GTECC's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on GTECC's ability to charge for its access services. GTECC has agreed that, unless otherwise ordered by the Commission, its originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect at the date of certification for the large incumbent LECs within those service areas in which GTECC seeks to operate. The parties have agreed that the grant of service authority and competitive classification to GTECC should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1998, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1998, and 392.230, rather than Sections 392.500 and 392.510.

The parties agreed that waiver of the following statutes is appropriate: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1998, and 392.340.



The parties also agreed that application of these Commission rules could be waived: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35.

### 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:

- A. The Commission finds that competition in the basic local exchange telecommunications market is in the public interest.
- B. The Commission finds that GTECC has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services with the exception of the filing of a tariff with a 45-day effective date.
- C. The Commission finds that GTECC has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
- D. The Commission finds that GTECC meets the statutory requirements for provision of basic local telecommunications services and has agreed to abide by those requirements in the future. The Commission determines that granting GTECC a certificate of service authority to provide basic local exchange telecommunications services is in the public interest.

GTECC's certificate shall become effective when its tariff becomes effective.

E. The Commission finds that GTECC is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph 3 below.

F. The Commission finds that GTECC's certification and competitive status should be expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1998, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1998, and 392.230, rather than Sections 392.500 and 392.510.

### **Conclusions of Law**

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

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. GTECC has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo., which permit the Commission to grant a certificate of service authority where it is in the public interest. Sections 392.361 and .420 authorize the Commission to modify or suspend the application of its rules and certain statutory provisions for companies classified as competitive or transitionally competitive.

The federal Telecommunications Act of 1996 and Section 392.455, RSMo Supp. 1998, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. See Section 392.185, RSMo Supp. 1998.

The Commission has the legal authority to accept a Stipulation and Agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998. Based upon the Commission's review of the applicable law and Stipulation and Agreement of the parties, and upon its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved.

**IT IS THEREFORE ORDERED:**

1. That the Stipulation and Agreement of the parties, filed on November 13, 1998, is approved.

2. That GTE Communications Corporation is granted a certificate of service authority to provide basic local exchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when the company's tariff becomes effective.

3. That GTE Communications Corporation is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

Statutes

392.210.2	-	uniform system of accounts
392.270	-	valuation of property (ratemaking)
392.280	-	depreciation accounts
392.290.1	-	issuance of securities
392.300.2	-	acquisition of stock
392.310	-	stock and debt issuance
392.320	-	stock dividend payment
392.340	-	reorganization(s)
392.330, RSMo Supp. 1998	-	issuance of securities, debts and notes

Commission Rules

4 CSR 240-10.020	-	depreciation fund income
4 CSR 240-30.040	-	uniform system of accounts
4 CSR 240-35	-	reporting of bypass and customer-specific arrangements

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

5. That GTE Communications Corporation shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date of a Commission order approving an interconnection agreement which will allow GTE Communications Corporation to provide services. The tariff filed shall be filed in a separate case and shall include a listing of the statutes and Commission rules waived above.

6. That GTE Communications Corporation shall give notice of the filing of the tariffs described above to all parties or participants in this case. In addition, GTE Communications Corporation shall file a written disclosure of all interconnection agreements which affect its Missouri service areas, all portions of

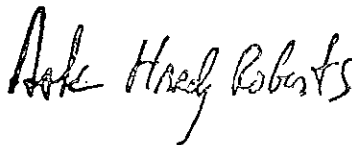
Missouri service areas for which it does not have an interconnection agreement, and an explanation of why no interconnection agreement is necessary for those areas.

7. That GTE Communications Corporation's certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1998, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1998, and 392.230, rather than Sections 392.500 and 392.510.

8. That this order shall become effective on April 16, 1999.

9. That this case may be closed after April 19, 1999.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Lumpe, Ch., Crumpton, Murray,  
Schemenauer, and Drainer, CC., concur

Register, Regulatory Law Judge

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COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF GTE COMMUNICATIONS CORPORATION FOR A CERTIFICATE OF SERVICE AUTHORITY TO PROVIDE BASIC LOCAL TELECOMMUNICATIONS SERVICE IN PORTIONS OF THE STATE OF MISSOURI AND TO CLASSIFY SAID SERVICES AND THE COMPANY AS COMPETITIVE

TAB	DATE	FILINGS AND PROCEEDINGS
001	10/09/1997	GTE COMMUNICATIONS CORPORATION FOR AUTHORITY TO PROVIDE BASIC LOCAL TELECOMMUNICATIONS SERVICE APPLICATION FILED
002	10/14/1997	ORDER AND NOTICE, ADOPTED
003	11/06/1997	ENTRY OF APPEARANCE (STEPHEN F. MORRIS, CARL J. LUMLEY, LELAND B. CURTIS) ON BEHALF OF MCI TELECOMMUNICATIONS CORPORATION, FILED
004	11/06/1997	MCI TELECOMMUNICATIONS CORPORATION'S APPLICATION TO INTERVENE, FILED
005	11/07/1997	SOUTHWESTERN BELL TELEPHONE COMPANY'S APPLICATION TO INTERVENE, FILED
006	12/09/1997	ORDER GRANTING INTERVENTION AND DIRECTING FILING PROCEDURAL SCHEDULE, ADOPTED
007	12/19/1997	MCI TELECOMMUNICATION CORPORATION'S MOTION TO CONSOLIDATE, FILED
008	12/19/1997	MOTION TO FILE STIPULATION AND AGREEMENT ON OR BEFORE 1/16/98, FILED
009	12/29/1997	APPLICANT'S RESPONSE TO MCI'S MOTION TO CONSOLIDATE, FILED
010	12/30/1997	STAFF'S RESPONSE TO MCI TELECOMMUNICATIONS CORPORATION'S MOTION TO CONSOLIDATE, FILED
011	01/12/1998	NOTICE OF CHANGE OF ADDRESS ON BEHALF OF SOUTHWESTERN BELL TELEPHONE COMPANY, FILED
012	01/13/1998	ORDER GRANTING MOTION TO EXTEND FILING DATE OF PROCEDURAL SCHEDULE AND DENYING MOTION TO CONSOLIDATE, ADOPTED
013	01/15/1998	MOTION FOR EXTENSION OF TIME ON BEHALF OF APPLICANT, FILED
014	01/30/1998	ORDER GRANTING MOTION FOR EXTENSION OF TIME, ADOPTED
015	02/06/1998	APPLICANT'S MOTION TO ESTABLISH PROCEDURAL SCHEDULE, FILED
016	05/28/1998	NOTICE TO FILE REVISED PROCEDURAL SCHEDULE, ISSUED
017	06/24/1998	NOTICE OF ADDRESS CHANGE ON BEHALF OF GTE SERVICE CORPORATION, LETTER FILED
018	06/26/1998	MOTION TO SET EARLY PREHEARING CONFERENCE ON BEHALF OF APPLICANT, FILED

IN THE MATTER OF THE APPLICATION OF GTE COMMUNICATIONS CORPORATION FOR A CERTIFICATE OF SERVICE AUTHORITY TO PROVIDE BASIC LOCAL TELECOMMUNICATIONS SERVICE IN PORTIONS OF THE STATE OF MISSOURI AND TO CLASSIFY SAID SERVICES AND THE COMPANY AS COMPETITIVE

TAB	DATE	FILINGS AND PROCEEDINGS
019	07/07/1998	ORDER ESTABLISHING EARLY PREHEARING CONFERENCE, ADOPTED
020	08/31/1998	SOUTHWESTERN BELL TELEPHONE COMPANY'S WITHDRAWAL OF INTERVENTION, FILED
021	09/16/1998	NOTICE OF CHANGE OF ADDRESS ON BEHALF OF GTE SERVICE CORPORATION, LETTER FILED
022	10/19/1998	ORDER DIRECTING FILING OF PROCEDURAL SCHEDULE, ADOPTED
023	11/13/1998	SUPPLEMENTAL APPENDIX D TO APPLICANT'S APPLICATION, FILED
024	11/13/1998	STIPULATION AND AGREEMENT, FILED
025	11/13/1998	MCI TELECOMMUNICATIONS CORPORATION'S PROPOSED PROCEDURAL SCHEDULE, FILED
026	11/17/1998	MCI TELECOMMUNICATIONS CORPORATION'S REQUEST FOR HEARING, FILED
027	11/24/1998	SPECIAL ENTRY OF APPEARANCE (TRACY D. PAGLIARA) ON BEHALF OF GTE MIDWEST INCORPORATED, FILED
028	11/30/1998	RESPONSE TO REQUEST FOR HEARING AND MOTION TO ESTABLISH PROCEDURAL SCHEDULE ON BEHALF OF APPLICANT, FILED
029	12/09/1998	ORDER ESTABLISHING PROCEDURAL SCHEDULE, ADOPTED
030	12/23/1998	STAFF'S ADOPTION OF THE STIPULATION AND AGREEMENT, FILED
031	01/07/1999	DIRECT TESTIMONY (FOWLER) ON BEHALF OF GTE COMMUNICATIONS CORPORATION, FILED
032	01/07/1999	WITHDRAWAL OF APPEARANCE (STEPHEN F. MORRIS) ON BEHALF OF MCI TELECOMMUNICATIONS CORPORATION, FILED
033	01/07/1999	ENTRY OF APPEARANCE (EDWARD J. CADIEUX) ON BEHALF OF MCI TELECOMMUNICATIONS CORPORATION, FILED
034	01/29/1999	NOTICE AMENDING HEARING SCHEDULE, ISSUED
035	02/11/1999	MCI TELECOMMUNICATIONS CORPORATION'S WITHDRAWAL OF REQUEST FOR HEARING, FILED
036	02/16/1999	MOTION TO CANCEL HEARING AND TAKE CASE UNDER SUBMISSION WITHOUT FURTHER PROCEEDINGS, FILED
037	02/23/1999	NOTICE CANCELING HEARING, ISSUED



