STATE OF MISSOURI PUBLIC SERVICE COMMISSION JEFFERSON CITY April 22, 1999

CASE NO: TM-99-261

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Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,

Dale Hardy Roberts

Hole Hard Roberts

Secretary/Chief Regulatory Law Judge

Uncertified Copy:

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission held at its office in Jefferson City on the 22nd day of April, 1999.

In the Matter of the Proposed Merger) Case No. TM-99-261 between GTE Corporation and Bell Atlantic.)

ORDER DENYING MOTION TO RECONSIDER ORDER CLOSING CASE

On December 9, 1998, the Office of the Public Counsel (Public Counsel) filed a motion to establish a case for the purpose of investigating the proposed merger between Bell Atlantic Corporation and GTE Corporation, the parent of GTE Midwest Incorporated (GTE). On December 18, GTE filed a response in which it requested that the Commission summarily deny Public Counsel's motion to establish a case, citing the similarities between its proposed merger and the merger that was the subject of Case No. TM-99-76. In Case No. TM-99-76, after oral argument, the Commission found that it did not have jurisdiction to examine a merger of two non-regulated parent corporations even though they owned Missouri-regulated telecommunications companies, and denied Public Counsel's motion to open a docket.

On December 31, the Commission notified Public Counsel that it could respond to GTE Midwest In orporated's response no later than January 7, 1999. The Commission expressly stated that the response should explain the reasons why Public Counsel believes the Commission's decision in this

case should be different than the one it reached in Case No. TM-99-76 just two months earlier. Public Counsel chose not to file a response.

On April 9, 1999, the Commission issued an order dismissing this case for failure to prosecute pursuant to 4 CSR 240-2.116(2). On April 12, 1999, Public Counsel filed a motion asking the Commission to reconsider that order. Public Counsel asserts that it was not required to respond to the Commission's December 31, 1998 order, but it does not explain why it declined to respond to that order, nor does it explain why the question of the Commission's jurisdiction should be resolved any differently in this case than it was in Case No. TM-99-76. Public Counsel states that it believed that the case awaited the Commission's decision.

On April 16, GTE filed a memorandum in opposition to Public Counsel's motion for reconsideration. GTE notes that ". . . Public Counsel continues to ignore this Commission's request for an explanation why the decision in this case should be different than the one reached in Case No. TM-99-76."

Public Counsel is technically correct that it was not expressly "required" to file a responsive pleading by the terms of the Commission's December 31, 1998, order. Section 386.710, RSMo 1994, gives Public Counsel virtually unlimited discretion in choosing which proceedings to actively pursue. As a result, the Commission cannot require Public Counsel to prosecute an action that it has filed. Nonetheless, when

Public Counsel is given an opportunity to prosecute its case and declines to do so, it is subject to dismissal for failure to prosecute.

IT IS THEREFORE ORDERED:

- 1. That the Motion to Reconsider Order Closing Case filed on April 12, 1999, by the Office of the Public Counsel is denied.
 - 2. That this order shall become effective on April 22, 1999.

BY THE COMMISSION

Hole Hoed Roberts

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

(SEAL)

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

Mills, Deputy Chief Regulatory Law Judge

Must Vote Not Later Than	Action taken:	H-22 Agenda Date	Lumpe, Chalir Lumpe, Chalir Crumpton, Commissioner Murray, Commissioner Schemenauer, Commission Schemenauer, Commission Drainer, Vice-Chair	4-19 Date Circulated	ALJ/Secy: M
	4-CAS		nnissioner	7771-99-26/ CASE NO.	1.113/Bayce

STATE OF MISSOURI OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 22ND day of APRIL, 1999.

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

L HARD Roberts