

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

Office of the Public Counsel,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>Case No. TC-96-270</u>
	)	
GTE Midwest Incorporated,	)	
	)	
Respondent.	)	
	)	

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**REPORT AND ORDER**

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**Issue Date:** February 11, 1997

**Effective Date:** February 21, 1997

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**OF THE STATE OF MISSOURI**

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Complainant,	)	
	)	
v.	)	<u>Case No. TC-96-270</u>
	)	
GTE Midwest Incorporated,	)	
	)	
Respondent.	)	
	)	

**APPEARANCES**

Martha S. Hogerty, Public Counsel, and Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri, for the Office of the Public Counsel.

James C. Stroo, Associate General Counsel-Midwest, and Tracy D. Pagliara, Attorney, GTE Operations, 1000 GTE Drive, Wentzville, Missouri 63385, for GTE Midwest Incorporated.

R. Blair Hosford, Assistant General Counsel, and Eric B. Witte, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

**ADMINISTRATIVE**

**LAW JUDGE:** Dale Hardy Roberts, Chief.

**REPORT AND ORDER**

**Procedural History**

On February 16, 1996, the Office of the Public Counsel (Public Counsel) filed a Complaint against GTE Midwest Incorporated (GTE) alleging delays in new service installation orders. A Notice Of Complaint was issued to GTE on February 20. On March 31 GTE filed its Answer and a Motion To Dismiss For Failure To State A Claim. On May 1 the Commission

issued an Order Denying Motion To Dismiss And Directing Staff Investigation which directed the Telecommunications Department Staff (Staff) to conduct an investigation into the particulars of this Complaint and file a report within 30 days.

Staff filed its report on June 10 and, pursuant to the Protective Order which had been issued in this case, both a nonproprietary (NP) and a highly confidential (HC) copy were filed. The Commission convened a prehearing conference on June 26 for the purpose of ascertaining the potential for settlement among the parties or, in the alternative, narrowing the scope of disagreement. As a result of the prehearing conference, the parties filed a proposed procedural schedule on August 16 and a proposed public hearing schedule on August 27.

The Commission issued its Order Setting Local Public Hearing on September 17, and conducted local public hearings in Columbia on September 26 and in Marshfield on October 3.

GTE and Public Counsel filed a Stipulation And Settlement Agreement on January 10, 1997, and on January 16 filed a Memorandum Of The Parties In Support Of The Stipulation And Settlement Agreement. Staff was not a party to the Stipulation And Settlement Agreement but did not oppose it. On January 27 Staff filed its Memorandum In Response To Stipulation And Agreement in which Staff set out its position on the disposition of this case.

Pursuant to the Commission's procedural schedule established for this case, an evidentiary hearing was scheduled for January 30 and continuing to January 31, 1997. In lieu of the two-day contested evidentiary hearing, the Commission set aside January 31 for presentation

of the Stipulation And Settlement Agreement and arguments regarding the proposed disposition of this case.

### **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.

GTE's Third Quarter (1996) Service Quality Report demonstrates that, overall, GTE failed to meet the Commission's rule for a company-wide objective which mandates that 90 percent of all regular service orders be completed within five working days. This same report shows that 98 of GTE's Missouri exchanges failed to meet the surveillance level prescribed by the Commission's rule. GTE's revised Service Quality Reports for the first and second quarters of 1996 demonstrate that GTE failed to meet surveillance levels in 81 exchanges during the first quarter and 103 exchanges during the second quarter.

In fact, according to GTE's Service Quality Reports, new installation held applications which were "aged over 30 days and completed over 30 days" have continued to increase since the fourth quarter of 1994.<sup>1</sup> Specifically, from the fourth quarter of 1994 until the point at which Public Counsel filed its Complaint, GTE's held applications have increased from 101 to 195, and its held applications completed over 30 days increased from 53 to 415. Moreover, from November 1995 to February 1996 the Commission received over 60 complaints from GTE customers regarding delays

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<sup>1</sup> The Commission's Rule 4 CSR 240-32.020(20) defines a "held application" as "an application for establishment of basic access line service exceeding thirty (30) days after the applicant desires service."

for new service installations. This category of complaints was the highest source of complaints other than party line problems and regrade requests.

The Stipulation And Settlement Agreement (Stipulation) states from the outset that both the Complainant and the Respondent desire to settle the Complaint according to the terms set out in the Stipulation. These two parties believe that the agreement will provide relief to those GTE customers who are unable to receive the timely installation of telephone service through the payment of what are, essentially, liquidated damages.<sup>2</sup> This relief is provided to the customers awaiting the installation of service in the form of monetary compensation. That compensation may be used for interim alternate communications arrangements, such as cellular service, at the customer's option.

In addition, the Stipulation will provide a comprehensive plan with predetermined milestones and quarterly goals through which GTE will bring the company into compliance with objective and surveillance levels for new installations. In addition, the Stipulation provides for an acceleration of GTE's modernization plan. This acceleration would result in three additional central offices being upgraded to digital service in 1997, 15 additional central offices being upgraded to digital in 1998, and 15 additional exchanges being upgraded to one-party service in 1998. These enhancements, it is estimated, would require GTE to utilize approximately \$21 million of modernization plan funding earmarked for 1999 by applying approximately \$11 million in funds to 1997 and \$10 million in funds to improvements in 1998.

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<sup>2</sup> Liquidated damages is the sum of money, arrived at by a good-faith effort to estimate actual damages, which a party to the contract agrees to pay if he breaks some promise. **BLACK'S LAW DICTIONARY** (6th ed. 1990).

GTE has also targeted a total of 42 exchanges for the construction of additional outside plant margin. Twenty-two of these exchanges would be improved in 1996 and 20 more in 1997. In addition to these physical changes, GTE has instigated various new reporting systems and customer service projects which the parties agree will improve the quality of service offered to GTE customers in Missouri.

By entering into this agreement GTE does not admit that it has violated the rules of the Missouri Public Service Commission or that it has violated any Missouri statutes. Rather, GTE states that it enters this agreement in consideration of Public Counsel's agreement to dismiss the Complaint and abide by the terms of the Stipulation, and the Staff's commitment not to bring any complaint or similar proceeding against GTE so long as GTE remains in compliance in all material respects with the terms of the Stipulation.

### **Conclusions of Law**

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

GTE is a telephone utility providing local exchange service in the state of Missouri.

Public Counsel is authorized pursuant to Sections 386.700, 386.710 and 386.330.2, RSMo 1994, to file complaints with the Public Service Commission.

Missouri Public Service Commission rules provide for standards of quality of service by telephone utility companies in 4 CSR 240-32.070, "Quality of Service," and 4 CSR 240-32.080, "Service Objectives and Surveillance Levels." Further, the Commission concludes that its Service

Objectives and Surveillance Levels shall apply on an exchange-by-exchange basis and not a company-wide average.

The Commission has authority to accept a proposed stipulation and settlement agreement pursuant to Section 536.060, RSMo 1994.

**IT IS THEREFORE ORDERED:**


1. That the Commission will approve, accept and authorize the joint Stipulation And Settlement Agreement as jointly filed by the Office of the Public Counsel and GTE Midwest Incorporated on January 10, 1997.

2. That GTE Midwest Incorporated, the Office of the Public Counsel and the Telecommunications Department Staff of the Missouri Public Service Commission are hereby ordered to comply in all respects with the Stipulation And Settlement Agreement as filed herein.

3. That any objection or motion not previously ruled upon in this case is hereby overruled and denied.

4. That this Report And Order shall become effective on February 21, 1997.

**BY THE COMMISSION**



**Cecil I. Wright  
Executive Secretary**

( S E A L )

Zobrist, Chm., McClure, Kincheloe,  
Crumpton and Drainer, CC., concur.

Dated at Jefferson City, Missouri,  
on this 11th day of February, 1997.