

OF THE STATE OF MISSOURI

In the Matter of GTE Midwest Incorporated's)
Tariff Revision Designed to Provide IntraLATA) Case No. TT-96-398
Equal Access Conversion in GTE End Offices.)
)

REPORT AND ORDER

Issue Date: June 20, 1997

Effective Date: July 8, 1997

Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company (the "Small Telephone Company Group"); and ALLTEL Missouri, Inc.

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ADMINISTRATIVE

LAW JUDGE:

Dale Hardy Roberts, Chief.

Table of Contents

I. Procedural History	3
II. Contested Issues and Findings of Fact	4
A. Implementation, Balloting and Customer Notification	4
B. Cost Recovery	5
C. Primary Toll Carrier Plan and Carrier of Last Resort	6
D. Expanded Calling Plans	6
E. Business Office Practices	7
F. Precedential Value	8
III. Conclusions of Law	8
Ordered Paragraphs	9

REPORT AND ORDER

I. Procedural History

On May 13, 1996, GTE Midwest Incorporated submitted proposed tariff sheets which bore an effective date of December 10. GTE stated that the purpose of the proposed tariff was to introduce intraLATA equal access in GTE end offices. On May 17 the Mid-Missouri Group filed an application to intervene, and the Commission docketed this case to address that application and any subsequent requests regarding the proposed tariff.

On July 30 the Commission issued its Order and Notice and Order Granting Intervention in which it granted intervention to all pending applications and in which it provided notice for potential intervenors. That order specifically granted intervention to the Mid-Missouri Group of local exchange telephone companies (Mid-Missouri Group), MCI Telecommunications Corporation (MCI), AT&T Communications of the Southwest Incorporated (AT&T) and to the Small Telephone Group (STG). That order also suspended the tariff for a period of 120 days to January 8, 1997. At the prehearing conference held on August 19, intervention was granted on the record to ALLTEL Missouri, Inc. (ALLTEL) and to Southwestern Bell Telephone Company (SWBT).

On September 4 the Commission issued its Order Establishing Procedural Schedule, Setting Hearing, Granting Intervention and Suspending Tariff. Within this order, the Commission established the schedule for filing testimony, the hearing memorandum and for the hearing. This order also granted an additional application to intervene for Sprint Communications Company, L.P. and United Telephone Company of Missouri (Sprint), and further suspended the tariff from January 8, 1997, to July 8, 1997. On

January 31, 1997, a hearing memorandum was jointly filed by the parties to this case and on February 10 the Commission convened an evidentiary hearing in this matter.

II. Contested Issues and Findings of Fact

Having considered all of the competent and substantial evidence upon the record, the Commission makes the following findings of fact.

A. Implementation, Balloting and Customer Notification

GTE did not support a ballot for the sole purpose of intraLATA equal access because such a single-issue balloting process is time-consuming, costly and may lead to customer confusion. OPC, Sprint, SWBT and MCI all agreed with the position that balloting was unnecessary, too expensive and not sufficiently informative to be of any real use to the customer. Staff was the only party which affirmatively supported balloting. Staff proposed a single-round customer ballot in order to ensure that the customers knew their choices regarding interexchange companies and to reduce confusion.

The alternative to the ballot process is some form of customer notification. GTE, SWBT and others suggest that a bill insert would be most effective, while parties such as OPC and AT&T support a customer notice which must not be sent as a bill insert. The Commission finds that GTE should give customer notice of its plan by means of a separate mailing and that balloting is not necessary under these circumstances. The Commission finds that the customer notice submitted and proposed by GTE does not provide sufficient detail. The notice should include a map and, at the least, state that: "This means that any long distance company can be used-

to place an intraLATA call without dialing additional digits"; and "Please note that if you presently subscribe to a Community Optional Service (COS) flat-rate dialing plan through your local telephone company, your selection of a different intraLATA carrier may affect that service." GTE will be directed to submit a revised notice for Commission approval.

B. Cost Recovery

The various parties' positions on this issue were similar. GTE proposed to recover incremental costs over a three-year period, distributing costs among all toll providers on the basis of intrastate access minutes and GTE's toll minutes. GTE also proposed to provide a cost reconciliation at the beginning of the third year and to adjust the cost recovery rate at that time. The Staff and Sprint were essentially in agreement with GTE on this issue. SWBT did not dispute GTE's proposal but argued that GTE's plan should not foreclose the ability of other carriers to recover their costs on an entirely different basis than that proposed by GTE. The Commission will review each tariff or application on its own merit, and in this case the Commission finds that GTE's proposal to recover its cost is reasonable and should be approved. The Commission finds that its determination in this case does not preclude other LECs from proposing different implementation plans for intraLATA dialing parity, and that those plans may include different estimates of costs and different methods of cost recovery.

GTE has stated that new customers will have 90 days within which to select a toll provider without incurring a Primary Interexchange Carrier (PIC) charge. Each existing customer will have one PIC change free of charge with no time limit, and that thereafter customers will be charged an intraLATA PIC charge for each subsequent PIC change. In the event a

customer changes both the intraLATA PIC and the interLATA PIC at the same time, GTE proposes to impose two PIC change charges, one for each jurisdiction. SWBT concurred with GTE on this issue. However, AT&T and MCI both assert that if a customer changes both intraLATA and interLATA carriers at the same time, only one charge need apply. MCI supported the proposal that a customer should be allowed at least an initial change of intraLATA toll carrier at no charge. Although Sprint joined in the proposal regarding one "free" change, Sprint asserts that such a change must be made within a definitive period of time. Sprint has argued the benefit of this time requirement is that such a limited offer will encourage competitors to more aggressively attract customers and thus will encourage customers to evaluate alternatives to the competitive choices. The Commission finds that GTE's proposal to recover the revenue it foregoes as a result of offering a 180-day period in which customers may change their intraLATA toll carrier without paying the PIC charge is reasonable and shall be implemented.

C. Primary Toll Carrier Plan and Carrier of Last Resort

GTE did not request any change to the existing Primary Toll Carrier (PTC) Plan with this tariff. However, GTE has continued to assert that the PTC Plan does need to be addressed, albeit in a separate case. This position was shared, in part or in whole, by every party to this case. The Commission finds that the role of the PTC Plan has been brought before the Commission in Case No. TO-97-217, and the PTC Plan and carrier of last resort obligation need not be considered or resolved in this case.

D. Expanded Calling Plans

Although numerous parties cautioned the Commission to carefully consider any changes to expanded calling plans, it should be clear that the

Commission is currently investigating the status of COS and related services in Case No. TW-97-333. The Commission finds that implementing intraLATA dialing parity in COS target exchanges and their associated Extended Area Service (EAS) exchanges will complicate the existing toll collection process and would reduce the value of COS service to subscribers. GTE will be allowed to implement a variation of its tariff with the exception that intraLATA dialing parity may not be implemented in COS target exchanges until after the Commission has resolved the future provision of COS service in Missouri. Because of this exception the Commission will reject the tariff as filed and direct GTE to file a tariff in compliance with this exception regarding the COS target exchanges.

E. Business Office Practices

GTE has asserted that it has implemented competitively neutral business practices and procedures to ensure that each customer has the opportunity to select an intraLATA toll provider of their choice in a competitively neutral manner. MCI proposed, and GTE objected to, the imposition of a 55 percent discount on access charges for offices that are not converted within an approved implementation schedule. The Commission recognizes that GTE's implementation will have been somewhat impeded by not having a final order in place in time to allow GTE to comply with FCC Docket 96-98.¹ The Commission does not find it appropriate or necessary to dictate business practices for GTE under these circumstances or in this case. It must never be forgotten that, while the State may regulate with a view to enforcing reasonable rates and charges, it is not the owner of

¹ In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order (Fed. Comm. Comm'n, Aug. 8, 1996).

the property of public utility companies, and is not clothed with the general power of management incident to ownership. State of Missouri v. PSC, 262 U.S. 276, 289 (1923).

F. Precedential Value

OPC and SWBT both made specific assertions that the Commission's determination regarding GTE's tariff filing in this case should not limit or be precedent-setting for other local exchange providers. Although matters involving 1+ equal access have broad statewide interest and application, those specificities must be addressed on a case-by-case docket at this time. An administrative agency is not bound by stare decisis. See State ex rel. GTE North v. Missouri PSC, 835 S.W.2d 356, 371 (Mo. App. 1992) (quoting State ex rel. Churchill Truck Lines Inc. v. Public Serv. Comm'n, 734 S.W.2d 586 (Mo. App. 1987)). The Commission does not find any issue for decision in this docket which should rise to the level of a binding precedent.

IV. Conclusions of Law

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

GTE is a public utility and a telephone company subject to the Commission's jurisdiction under Section 386.250 and Chapter 392, RSMo 1994. The Federal Telecommunications Act of 1996 and the Federal Communications Commission require LECs such as GTE to implement intraLATA equal access by August 8, 1997. A LEC that is not able to comply with the deadline must give notice to the FCC by May 8, 1997, and justify its inability to

comply.² The Act requires LECs to provide dialing parity without unreasonable delays.³

GTE has submitted an intraLATA dialing parity implementation tariff to the Commission for approval. Based upon its findings of fact, the Commission has determined that the tariff should be approved with the exception of delaying implementation in target COS exchanges. In order to accomplish this, the Commission must reject the tariff as submitted and will direct GTE to refile its tariff in compliance with this order. The Commission concludes that such a delay is reasonable, and will not prevent the development of competition in the intraLATA toll market.

IT IS THEREFORE ORDERED:

1. That the proposed tariff, No. 9600705, submitted by GTE Midwest Incorporated on May 13, 1996, is hereby rejected. GTE is directed to file a tariff substantially similar to the proposed tariff but with the exception that intraLATA dialing parity shall not be implemented in Community Optional Service target exchanges and their associated EAS exchanges pending a Commission decision in Case No. TW-97-333.

2. That GTE Midwest Incorporated shall advise customers of the implementation of intraLATA dialing parity by means of a separate mailing.

3. That GTE Midwest Incorporated shall file with the Commission a proposed customer notice in compliance with this order no later than 15 days prior to the proposed effective date of the tariff directed to be filed by Ordered Paragraph 1 above for Commission approval.

² 47 C.F.R. § 51.211(c).

³ 47 U.S.C. § 251(b)(3).

4. That the cost recovery method proposed by GTE Midwest Incorporated is approved.

5. That all objections not previously ruled upon are hereby overruled and all motions not ruled upon are hereby denied.

6. That this Report And Order shall become effective on July 8, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

Zobrist, Chm., Crumpton,
Drainer, Murray and Lumpe, CC.,
concur and certify compliance
with the provisions of
Section 536.080, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 20th day of June, 1997.

