



2345 GRAND BOULEVARD
SUITE 2500
KANSAS CITY, MISSOURI 64108-2684
816-292-2000, FAX 816-292-2001

1050/40 CORPORATE WOODS
9401 INDIAN CREEK PARKWAY
OVERLAND PARK, KANSAS 66210-2007
816-292-2000, FAX 913-451-0875

February 2, 1999

FILED

FEB - 2 1999

Missouri Public
Service Commission

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Re: Case No. TO-99-294

Dear Judge Roberts:

Attached for filing with the Commission is the original and fourteen (14) copies of AT&T Communications of the Southwest, Inc.'s Motion For Rehearing Or Reconsideration in the above-referenced case.

Please call me on 635-1320 if you have any questions. Thank you for your assistance in this matter.

Sincerely,

Paul S. DeFord
AT&T Attorney

Att.

cc: All Parties of Record

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

Petition of GTE Midwest Incorporated
Regarding Price Cap Regulation Under
Section 392.245 RSMo (1996).

TO- 99- 294

FILED

FEB - 2 1999

Missouri Public
Service Commission

AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.'S

MOTION FOR REHEARING OR RECONSIDERATION

COMES NOW AT&T Communications of the Southwest, Inc. (AT&T) and for its Motion For Rehearing or Reconsideration of the Commissions Order Approving Price Cap Application, states as follows:

1. On January 7, 1999, GTE Midwest Incorporated (GTE) filed a Petition with the Commission regarding price cap regulation under Section 392.245 RSMo (Supp. 1998). In its Petition GTE requests that the Commission make a determination that an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and its providing such service in any part of GTE's service area.

2. On January 26, 1999, the Commission issued an Order Approving Price Cap Application (Order) with an effective date of February 5, 1999. On January 27, 1999, the Staff of the Missouri Public Service Commission (Staff) filed Staff's Motion to Reconsider Order Approving Price Cap Application. On January 28, 1999, the Commission issued an Order Reducing Response Time which directed interested parties

to respond to Staff's Motion to Reconsider within five calendar days. On January 29, 1999, the Office of Public Counsel filed its Motion for Rehearing.

3. In the process of determining to enter its Order, the Commission indicated that "...no proper party filed an application to intervene are there are not outstanding requests for hearing." The Commission then concluded that an evidentiary hearing was not necessary and proceeded to base its decision upon the pleadings.

4. While the statement that no proper party had filed an application to intervene and that there were no outstanding requests for hearing may be accurate, AT&T believes the Commission erred in basing its "decision on the pleadings." Fundamental due process concepts as well as long established Commission practice require both notice and an opportunity to be heard. In this case interested and affected parties were not given notice. AT&T notes that in the only other previous case decided under Section 392.245 RSMo the Commission ordered that notice be given and permitted intervention. See *Order Giving Notice, Granting Intervention, and Establishing Procedural Schedule, April 19, 1997. Case No. TO-97-397.*

5. AT&T would further point out that the Commission routinely issues an Order requiring notice and setting a reasonable intervention period for applications to provide competitive local exchange services Missouri. The Commission also routinely issues an Order requiring notice and an intervention period for a competitive local exchange company to adopt an existing approved interconnection agreement. It is entirely inconsistent and unreasonable to require notice and set an intervention period for something as routine an application for a certificate of service authority to provide competitive local exchange service or to adopt an existing interconnection agreement and

not to follow a similar procedure for a petition that may irreversibly and profoundly alter the manner of regulation for Missouri's second largest incumbent local exchange company.

6. The Commission also, in apparent reliance upon the representations in GTE's unverified Petition, has concluded that Mark Twain Communications Corporation (Mark Twain) is providing basic local telecommunications services in GTE's Lewiston and LaBelle exchanges. AT&T believes the Commission erred in arriving at that conclusion without the benefit of any competent and substantial evidence. In fact it does not appear that there is evidence, competent or otherwise, that Mark Twain is actually providing basic local service to customers in any GTE exchange.

7. The situation at hand is further complicated by allegations that GTE is attempting to sell its Lewiston and LaBelle exchanges. Because the "competition" GTE faces in these exchanges is the triggering mechanism for granting relief under Section 329.245 RSMo, the Commission's decision to grant GTE's Petition without a full investigation is imprudent. AT&T submits that the legal and practical ramifications of such a sale, if indeed contemplated by GTE, must be examined before taking action which may be irrevocable.

8. AT&T also submits that the Commission should consider the impact of GTE's proposal to sell 105 exchanges before GTE's request for price cap regulation is granted. In general, the exchanges GTE is currently proposing to sell are the most rural, least populated, possess the fewest access lines per exchange and have the highest cost of operating. This sale will result in a significant financial windfall for GTE, both from the immediate sale and from the profound impact on GTE's revenues and costs from ongoing

operations. In Case No. TO-99-262, the Commission determined that the appropriate time to consider the sale of these exchanges is when GTE proposes to consummate a sale or trade regarding any of its Missouri properties. Given the tremendous impact this sale will have on GTE's operations, AT&T recommends that the Commission stay any ruling on GTE's petition until the sale of those exchanges is final and the impact of that sale on GTE revenues and costs can be determined.

9. If GTE consummates the proposed sale of its high cost exchanges, GTE will retain approximately 74% of its ratepayers while shedding almost half of its service territory. GTE's current rate structure was designed to recover the cost of serving all of GTE's territory, including the highest cost areas GTE is proposing to sell. GTE's end-users pay rates designed to recover the cost of serving all of its territory, including the high cost areas. The access charges that interexchange carriers pay to GTE are priced in well in excess of the cost of providing access services for the purpose of keeping end-user rates low while allowing GTE to recover the cost of providing service. By selling its most costly, lowest revenue generating exchanges and retaining its less costly, most revenue generating exchanges, GTE will shed its highest cost, least profitable territory and retain its lower cost, more profitable exchanges.

10. If GTE is afforded price cap regulation prior to the sale of these exchanges, the Commission may be unable to examine GTE's rates even though the underlying cost structure has been drastically reduced. This will only increase the amount of over-earnings GTE will take from Missouri ratepayers.

11. In its Motion to Reconsider Order Approving Price Cap Application the Commission's Staff indicates that it had begun an earnings investigation of GTE prior to

GTE's request for price cap regulation. If that is indeed the case, GTE should not summarily be deemed subject to price cap regulation. At a minimum, the Commission should stay its Order until it can determine the status of Staff's review and determine if the desire to avoid an ongoing review factored into GTE's decision to request price cap regulation.

12. Staff's Motion to Open Investigatory Docket provides an expedited timeline for Staff to conduct an audit of GTE. This expedited review is entirely consistent with the Cole County Circuit Court's Revised Findings of Fact and Conclusion of Law and Judgement where the court considered challenges to the Commission's decision in Case No. TO-97-397. The Court concluded that the Commission has the authority, under Section 392.245.1 RSMo to ensure that rates, charges, tolls, and rentals for telecommunications services are just, reasonable and lawful. The procedural schedule proposed by Staff would enable the Commission to carry out its duties to ensure just and reasonable rates without unreasonably delaying ruling on GTE's petition.

WHEREFORE, for all of the foregoing reasons, AT&T requests that the Commission grant rehearing and set aside it's order approving GTE's Petition until such time as a full investigation and evidentiary hearing is completed.

Respectfully submitted,

 (Kd)

Paul S. DeFord Mo. #29509
LATHROP & GAGE L.C.
2345 Grand Boulevard, Suite 2800
Kansas City, Missouri 64108
Telephone: 816-292-2000
Facsimile: 816-292-2001

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, postage prepaid, to all counsel of record as shown on the following service list, this 3rd day of February, 1999.

Paul S. DeFord (cd)

Paul S. DeFord

Dana K. Joyce
Marc D. Poston
Penny G. Baker
The Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Tracy D. Pagliara
GTE Service Corporation
601 Monroe St., Suite 304
Jefferson City, MO 65101