

**SERVICE LIST FOR  
CASE NO: TO-99-294**

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FILED

FEB 3 1999

Notice of *Ex Parte* Contact

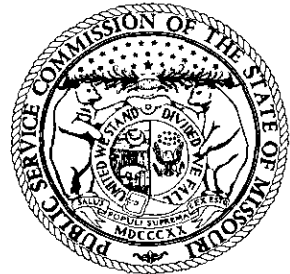
PUBLIC SERVICE COMMISSION

TO: All Commissioners  
All Parties in Case No. TO-99-294

FROM: Dale Hardy Roberts, Chief Regulatory Law Judge

DATE: February 3, 1999

*MR*



On January 26, 1999, I was contacted in person, by Deputy General Counsel Penny Baker regarding the GTE price cap case. This contact occurred at approximately 8:20 a.m., prior to the Commission's regular morning Agenda at which the Commission was scheduled to vote on a proposed order regarding GTE's request for price cap status. Attorney Baker advised me that staff would be filing a motion in a separate case to investigate this company for alleged overearnings, forthwith. I acknowledged the statement and she again stated her intent. I then said something to the effect that I did not want to discuss it and she responded by saying that she thought the Commissioners and I should be aware of this information before the Commission went in to its Agenda meeting and voted out the pending order on the price cap case. From my perspective, at the time it occurred, this appeared to be an attempt to influence the judgment of the Commission on the matter before it. I did not pass this information, or her comments, on to the Commissioners prior to the vote on the order and for that reason saw no need to make a contemporaneous *ex parte* report. However, I did make a contemporaneous report to her supervisor, the General Counsel.

Later that morning, after the Commission took up the order in question, I was asked by one or more of the Commissioners if our records confirmed that service was being provided by the competitor in question (Mark Twain Telecommunications Company). The Commission's records already indicated that each of the requisite conditions had been met for Mark Twain to provide competitive service. That is, that Mark Twain had a certificate, an approved interconnection agreement and an approved tariff. In response to that request I went to the Assistant Manager of the Telecommunications Department and asked, in light of those documented matters, if there was any reason to think they were not providing service. His answer was short and to the point. "Yes, they're providing service." In addition I believe he subsequently attempted to provide some numbers (of subscribers) but that was information beyond that which the Commission could have administratively noticed and I did not take note of that information, nor did I convey that information to the Commissioners for their consideration.

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The Commission is currently considering GTE's application for price cap status in Case No. TO-99-294. The Commission is bound by the same *ex parte* rule as a court of law. Pursuant to 4 CSR 240-4.020(4) it is improper for any person to attempt to sway the judgement of the Commission by undertaking, directly or indirectly, outside the hearing process, to bring pressure or influence to bear upon the Commission, or the Regulatory Law Judge assigned to the proceeding.

Whenever such contact might occur 4 CSR 240-4.020(a) states: as *ex parte* communications (either oral or written) may occur inadvertently, any member of the Commission or Regulatory Law Judge who received the communication shall immediately prepare a written report concerning the communication and submit it to the Chair and each member of the Commission. The report shall identify the person(s) who participated in the *ex parte* communication, the circumstances which resulted in the communication, the substance of the communication, and the relationship of the communication to a particular matter at issue before the Commission.

Therefore, out of an abundance of caution, I think it appropriate to submit this notice of *ex parte* contact pursuant to the standards set out in the rules cited above. This will ensure that any party to this case will have notice of the attached information and a full and fair opportunity to respond to the comments contained therein.

cc: Executive Director  
Secretary/Chief Regulatory Law Judge  
General Counsel

**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 3RD day of FEBRUARY, 1999.



*Dale Hardy Roberts*

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