

James C. Stroo  
Associate General Counsel-Midwest



GTE Telephone  
Operations

1000 GTE Drive, MO611LGW  
P.O. Box 307  
Wentzville, MO 63385-0307  
314 332-7663  
Fax: 314 332-7969

August 22, 1997

Mr. Cecil Wright  
Executive Secretary  
Missouri Public Service Commission  
301 W. High Street  
5th Floor, Room 530  
Jefferson City, MO 65101

FILED  
AUG 22 1997  
MISSOURI  
PUBLIC SERVICE COMMISSION

Subject: IN THE MATTER OF AN INVESTIGATION INTO THE PROVISION OF  
COMMUNITY OPTIONAL CALLING SERVICE IN MISSOURI.  
CASE NO. TW-97-333

Dear Mr. Wright:

Enclosed for filing is the original and fourteen copies of the Reply Brief of GTE  
Midwest Incorporated in the above referenced case.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink that reads "James C. Stroo". To the right of the signature is a small, handwritten mark that appears to be "bfp".

James C. Stroo

JCS:sah  
Enc.

c: Carolyn Little - Jefferson City, MO

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED

AUG 22 1997

MISSOURI  
PUBLIC SERVICE COMMISSION

IN THE MATTER OF AN  
INVESTIGATION INTO THE  
PROVISION OF COMMUNITY  
OPTIONAL CALLING SERVICE  
IN MISSOURI.

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) CASE NO. TW-97-333  
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**REPLY BRIEF OF GTE MIDWEST INCORPORATED**

The Commission should eliminate the mandate upon the Primary Toll Carriers (PTC) to provide Community Optional Calling Service (COS). Nothing in any of the Initial Briefs would indicate that COS can continue to exist as it is presently provided in a 1+ intraLATA equal access environment or as a subsidized service in the new competitive environment resulting from the Telecommunications Act of 1996 (Telecommunications Act) and 1996 Mo. Laws S.B. 507 (S.B. 507). Everyone agrees that something must be done about COS. Basically the initial briefs present three arguments for not eliminating the mandate to provide some form of COS. Those arguments are:

First, that there is some sort of covenant with the consumer to continue COS, Initial Brief of the Office of the Public Counsel (OPC) at 1;

Second, that years of effort have been spent by the customers, the industry, the Staff, the Office of the Public Counsel, and the Commission in developing COS service, Initial Brief of the Small Telephone Company Group; and

Third, that as a matter of universal service COS should continue to be provided, Initial Brief of the Mid-Missouri Group.

86.

None of these arguments hold water. Therefore and for the reasons stated in GTE's Initial Brief, the Commission should eliminate the mandate on the PTCs to continue COS. If carriers, whether PTCs, other local exchange carriers or interexchange carriers, want to continue to provide COS, they should be allowed to do so on an optional basis.

### **COVENANT WITH THE PEOPLE**

OPC claims that there is some sort of covenant with the people to continue COS. OPC claims that the promise of competitive local exchange service under the Telecommunications Act and S.B. 507 is to bring better service, more choices and lower prices to the consumer and therefore two-way COS must be continued. While indeed those Acts suggest that consumers, as a whole, will have better service, more choices and lower prices, they do not suggest that all current services must be continued or that every consumer will be better off. Indeed the philosophy underlying these Acts suggests that prices for services will be driven toward cost. In the case of services that are below-cost such as COS, that means that prices need to be driven upward if the service is to continue.

Moreover, the idea behind competition is that competitors should choose the services they are willing to provide beyond basic or essential services. COS is clearly not a basic local telecommunications service as defined in Mo. Rev. Stat. § 386.020(4). Nor is it easy to see how a service to which only one-half of one percent of the customers statewide, one percent of outstate customers, and only 13 percent of the eligible customers are subscribers, can be considered either a basic interexchange telecommunications service or an essential service of any type. Ex. 24, at 3; Ex. 6, Sch. RCS-2.

Finally, it is difficult to see where there can be any "covenant with the people" where only half of one percent of the "people" take a particular service. Therefore, the Commission should give no credence to the theory of OPC that there is some "covenant with the people" that should require continuation of COS in its present form.

### **YEARS OF EFFORT**

While it certainly is true that every one involved in COS has spent years of effort on this issue, most of that effort took place in a totally different regulatory environment than today's environment. Under the environment prior to the Telecommunications Act and S.B. 507, the Commission used rate of return regulation to ensure that an incumbent local exchange carrier's rates were reasonable overall and encouraged universal service by setting low local rates implicitly subsidized by high access and toll rates relative to costs.

The Telecommunications Act and S.B. 507 represent a sea change in regulation. The theory has changed so that now competition, rather than the Commission, is responsible for ensuring that rates will be reasonable. Moreover universal service is to be supported through subsidies from explicit funding mechanisms rather than through the implicit funding mechanism of the current system. This sea change not only invalidates years of effort on COS but also years of effort on a number of different issues. Therefore, the years of effort on COS should be no barrier to eliminating COS given the sea change in the regulatory environment.

## **UNIVERSAL SERVICE**

The Mid-Missouri Group essentially argues that COS is part of universal service. The Mid-Missouri Group also argues that universal service and competition are incompatible with each other.

COS is not a part of the universal service commitment of this state. Under S.B. 507, funds from the state universal service fund may only be used

"(1) to ensure the provision of reasonably comparable essential local telecommunications service, as that definition may be updated by the Commission by rule, throughout the state including high cost areas, at just, reasonable and affordable rates; (2) to assist low-income customers and disabled customers in obtaining affordable essential telecommunication services ; and (3) to pay the reasonable, audited costs of administering the universal service fund." Mo. Rev. Stat. 392.248.2.

Unless COS can be classified as an essential local telecommunications service, COS does not meet the requirements of S.B. 507.

Despite the provisions of S.B. 507, the Telecommunications Act requires the Commission to implement a mechanism to replace the subsidies provided to services that were ordered to be provided below cost. In Competitive Telecommunications Association v. FCC, No. 96-3604, 1997 U.S.App.LEXIS 15398 (8th Cir. 1997) ("CompTel"), the Eighth Circuit recognized the need for a funding mechanism to preserve universal service until it is funded through competitively neutral means.

In CompTel, the Court recognized the essential link between cost-based rates for Unbundled Network Elements (UNE) and the preservation of universal service. The issue presented in that case was whether the FCC violated the Telecommunications Act's cost-

based pricing provisions by allowing ILECs to collect, on an interim basis, the Common Carrier Line Charge (CCLC) and 75% of the transport interconnection charge (TIC) for all interstate minutes traversing switches for which interconnecting carriers pay UNE switching element charges. The FCC assessed these charges as a temporary funding mechanism for universal service. CompTel sought to vacate the charges, claiming that they were not related to the cost of the UNEs and therefore application of the charges violated the Telecommunications Act's cost-based pricing standard.

The Court rejected this argument. The Court recognized that universal service would be adversely affected if the CCLC and TIC charges were not assessed, and that Congress could not have intended such a result. The Court concluded that the application of the CCLC and TIC on an interim basis was lawful:

To date, the subsidies necessary to achieve the goal [of universal service] have been derived, at least in part, from access charges that are not cost-based, so that long-distance rates have been subsidizing local rates.

\* \* \*

[T]he Act requires the reform of universal service subsidies and not, significantly, abolishment of universal service, even temporarily. Clearly, Congress did not intend that universal service should be adversely affected by the institution of cost-based rates. But the nine-month disparity between the deadline for implementation of cost-based service and the deadline for reform of universal service raises the threat of serious disruption in universal service for those nine months if cost-based service is required before universal service is funded by competitively neutral means. . . .

If the FCC . . . had not instituted an interim access charge of some sort in order to subsidize universal service for the nine months before universal service reforms are complete, we think it apparent that universal service soon would be nothing more than a memory.

CompTel at 5.

In short, the Court, mindful of both the Telecommunications Act's cost-based pricing provisions and its universal service provisions, upheld the FCC's rule that assessed two separate universal service support charges (the CCLC and the TIC) on an interim basis until universal service reforms are completed.

The Court's decision also means that *state commissions* must adopt an universal service funding mechanism to preserve existing *intrastate* subsidies or rebalance prices to eliminate such subsidies. Today, GTE's intrastate rate structures reflect implicit subsidies under which excess contributions from certain services (e.g., toll and switched access services) provide support for other services (e.g., local exchange services and COS). These implicit subsidies promote and advance universal service.

Implicit subsidies, however, cannot be maintained in a competitive environment. The FCC acknowledged this problem in its First Report and Order regarding access charges, stating that,

as competition develops, incumbent LECs may be forced to lower their access charges or lose market share, in either case jeopardizing the source of revenue that, in the past, has permitted the incumbent LEC to offer service to other customers, particularly those in high-cost areas, at below-cost prices.

First Report and Order, In re Access Charge Reform ¶ 32, CC Docket No. 96-262, FCC 97-158 (released May 16, 1997). The FCC has thus acknowledged that competitive pricing will jeopardize the current universal service support flows implicit in ILEC rates. The Court affirmed this very point in CompTel. CompTel at 4-6. To this degree, the Mid-Missouri Group is correct when it argues that universal service as presently encouraged is incompatible with competition.

However, the Mid-Missouri Group is incorrect when it states that universal service is incompatible with competition. To make universal service compatible with competition, the Commission must allow the incumbents to reduce rates on high margin subsidizing services to competitive levels while either increasing rates on subsidized services or providing for an explicit funding mechanism to maintain those below-cost prices. For purposes of COS, this means the Commission has two choices. If it wants to view COS as a service that falls within the category of services to be subsidized for universal service purposes, then the Commission must provide an explicit funding mechanism to support COS' below-cost rates. Given the low customer interest in this service, as evidenced by the fact that only one-half of one percent of all Missouri customers, one percent of outstate customers and only 13 percent of eligible customers subscribe to the service, the better approach would be to eliminate the mandate that PTCs provide COS. Given the low take rates for COS, it is hard to see how COS can be classified as an essential service requiring subsidization.

### **CONCLUSION**

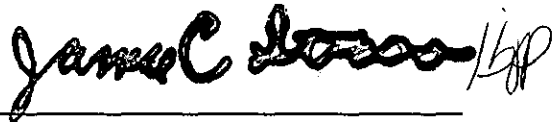
None of the reasons provided by the OPC, the Small Telephone Company Group or the Mid-Missouri Group support continuation of COS in any way, shape or form. Indeed the Small Telephone Company Group admits that the Outstate Calling Area (OCA) plans meet the one-way calling needs of Missouri's rural customers. Initial Brief of the Small Telephone Company Group at 4. As demonstrated in the Initial Briefs of Staff, United Telephone Company of Missouri d/b/a Sprint, and GTE, COS is a service whose time has come and gone. With the implementation of intraLATA equal access, COS as it is



currently configured cannot work. The Commission also cannot mandate that any carrier, classified as competitive, provide COS unless the Commission can find that COS is an essential local telecommunications service and the carrier is a carrier of last resort. The record in this proceeding does not support classification of COS as an essential local telecommunications service, given that it has been classified as a toll service and given the low customer take rate of the service. With the new competitive environment in which customers will have a variety of toll calling options, including cellular and PCS service, there is no need for any form of COS. Accordingly, the Commission should eliminate COS as a mandatory service. If companies still wish to provide COS, they should be allowed to do so but those companies that no longer wish to provide COS service should be allowed to eliminate that service offering whenever a COS exchange is converted to intraLATA equal access.

Respectfully submitted,

GTE MIDWEST INCORPORATED

A handwritten signature in black ink, appearing to read "James C. Stroo", followed by a vertical line and the initials "LBP".

James C. Stroo, #43349  
1000 GTE Drive  
Wentzville, MO 63385  
314-332-7663  
314-332-7969 fax

Its Attorney

## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document was hand delivered to Cecil Wright, Executive Secretary, Missouri Public Service Commission, 301 W. High Street, Room 530, Jefferson City, Missouri 65101 and was faxed this 22nd day of August, 1997, to the following:

W. R. England III/Sondra Morgan  
Brydon Swearengen & England  
312 E Capitol Ave  
Jefferson City, MO 65101

Carl Lumley/Leland Curtis  
Curtis Oetting Heinz Garrett & Soule  
130 S. Berniston Suite 200  
Clayton, MO 63105

Stephen Morris  
MCI  
701 Brazos, Suite 600  
Austin, TX 78701

Craig Johnson  
Andereck Evans Milne Peace &  
Baumhoer  
305 E McCarty Street  
Jefferson City, MO 65101

Paul Lane/Leo Bub/Diana Harter  
Southwestern Bell  
100 N. Tucker Blvd Room 630  
St. Louis, MO 63101

Linda Gardner/Mark Harper  
United Telephone  
5454 W. 110th Street  
Overland Park, KS 66211

Paul DeFord  
Lathrop & Gage  
2345 Grand Blvd  
Kansas City, MO 64108

Julie Thomas Bowles  
Sprint  
8140 Ward Parkway 5E  
Kansas City, MO 64114

Paul Gardner  
Goller, Gardner & Feather  
131 E. High Street  
Jefferson City, MO 65101

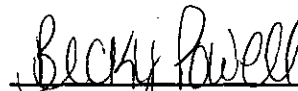
Mark Comley  
Newman, Comley & Ruth  
205 E. Capitol Avenue  
Jefferson City, MO 65101

Larry Lovett  
AT&T  
101 W. McCarty Suite 216  
Jefferson City, MO 65101

Doug Trabaris/Madelon Kuchera/  
Elizabeth Howland  
Teleport Communications Group  
233 S. Wacker Drive Suite 2100  
Chicago, IL 60606

Michael J. Ensrud  
Competitive Telephone Association  
of Missouri  
6950 W. 56th Street  
Mission, KS 66202

Office of the Public Counsel (2)  
PO Box 7800  
Jefferson City, MO 65102



Becky Powell  
TW-97-333