

OF THE STATE OF MISSOURI

CASE NO. TA-84-82

In the matter of the application of
MCI Telecommunications Corporation for
a certificate of public convenience and
necessity to offer telecommunications
service in Missouri.

CASE NO. TA-84-114

In the matter of the application of
GTE Sprint Communications Corporation
for a certificate of public convenience
and necessity to offer intercity
telecommunications services to the public
in the State of Missouri.

APPEARANCES: LELAND B. CURTIS, Attorney at Law, Curtis, Bamburg & Crossen,
230 South Bemiston, Suite 410, St. Louis, Missouri 63015,
ROBERT W. NICHOLS, Senior Attorney, and RUTH S. BAKER-BATTIST,
Assistant General Counsel, MCI Telecommunications Corporation,
1133 19th Street, N. W., Washington, D. C. 20036, for MCI
Telecommunications Corporation.

BASIL W. KELSEY, Attorney at Law, Spencer, Fane, Britt & Browne,
106 West 14th Street, Kansas City, Missouri 64105, JAMES E. MAGEE,
Attorney at Law, Isham, Lincoln & Beale, 1120 Connecticut Avenue,
N. W., Suite 840, Washington, D. C. 20036, ROBERT M. PEAK,
Attorney at Law, Reboul, MacMurray, Hewitt, Maynard & Kristol,
45 Rockefeller Plaza, New York, New York 10111, and DEBORAH A.
DUPONT, Attorney at Law, GTE Sprint Communications Corporation,
1828 L Street, N. W., Suite 500, Washington, D. C. 20036, for GTE
Sprint Communications Corporation.

JAMES E. TAYLOR, General Attorney-Missouri, MICHAEL THOMPSON,
Attorney at Law, and PAUL G. LANE, Attorney at Law, Southwestern
Bell Telephone Company, 100 North Tucker, St. Louis, Missouri
63101, for Southwestern Bell Telephone Company.

WILLIAM H. KEATING, Vice President-General Counsel, General
Telephone Company of the Midwest, 11 Eleventh Avenue, Grinnell,
Iowa 50112, for General Telephone Company of the Midwest.

H. EDWARD SKINNER, Assistant General Counsel, ALLTEL Missouri,
Inc., 212 Center Street, Suite 900, Little Rock, Arkansas 72203,
for ALLTEL Missouri, Inc.

W. R. ENGLAND, III, Attorney at Law, and MARK W. COMLEY, Attorney
at Law, Hawkins, Brydon & Swearingen, P. C., P. O. Box 456,
312 East Capitol Avenue, Jefferson City, Missouri 65102, for

Citizens Telephone Company, Continental Telephone Company of Missouri, Fidelity Telephone Company, Eastern Missouri Telephone Company, General Telephone Company of the Midwest, Goodman Telephone Company, Seneca Telephone Company, Northeast Missouri Rural Telephone Company, Grand River Mutual Telephone Corporation, Kingdom Telephone Company, Mid-Missouri Telephone Company, Missouri Telephone Company, Central Telephone Company of Missouri.

DENTON ROBERTS, Attorney at Law, 6666 West 110th Street, Overland Park, Kansas 66211, for United Telephone Company of Missouri.

MARK P. ROYER, Attorney at Law, and R. STEVEN DAVIS, II, Attorney at Law, 1100 Main Street, Suite 1405, Kansas City, Missouri 64105, for AT&T Communications of the Southwest, Inc.

DOUGLAS M. BROOKS, Public Counsel, P. O. Box 7800, Jefferson City, Missouri 65102, for Office of the Public Counsel and The Public.

KENT M. RAGSDALE, General Counsel, and WILLIAM C. HARRELSON, Deputy General Counsel, Missouri Public Service Commission, P. O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REPORT AND ORDER

On November 4, 1983, MCI Telecommunications Corporation (MCI or Applicant) filed its application for a certificate of public convenience and necessity to offer interexchange telecommunications services in Missouri. Thereafter, on December 30, 1983, GTE Sprint Communications Corporation (GTE Sprint or Applicant) filed its application for a certificate of public convenience and necessity to offer intercity telecommunications service in the State of Missouri. By order of February 23, 1984, the Commission established a deadline for the filing of applications to intervene and consolidated these matters for purposes of hearing.

By order of April 5, 1984, the Commission granted the applications to intervene filed on behalf of Southwestern Bell Telephone Company, AT&T Communications of the Southwest, Inc., United Telephone Company of Missouri, Continental Telephone Company of Missouri, Seneca Telephone Company, Northeast Missouri Rural Telephone Company, Missouri Telephone Company, Mid-Missouri Telephone Company, Kingdom Telephone Company, Grand River Mutual Telephone Corporation, Goodman Telephone Company, Inc., Fidelity Telephone Company, Eastern Missouri Telephone Company,

Citizens Telephone Company, Central Telephone Company of Missouri, General Telephone Company of the Midwest and ALLTEL, Missouri, Inc.

On July 13, 1984, a document entitled Joint Recommendation of the Staff of the Missouri Public Service Commission, Office of Public Counsel and Certain Intervenor (Joint Recommendation) was filed for the purpose of proposing a solution to the questions raised by the filing of the instant applications. Said Joint Recommendation was signed by all parties to this proceeding with the exception of MCI, GTE Sprint and AT&T Communications (AT&T Communications or ATTCOM).

Hearings were held in the Commission's offices in Jefferson City, Missouri on August 6, 8, 9, and 10, 1984. Pursuant to a Hearing Memorandum signed by all parties, the oral hearing focused primarily on the Joint Recommendation and related issues. All parties have submitted briefs.

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:

MCI is a corporation duly organized and existing under the laws of the State of Delaware with its principal office at 1133 19th Street, N. W., Washington, D. C., 20036. MCI is authorized as a foreign corporation to do business in Missouri and has its principal Missouri office at 11720 Borman Drive, Suite 300, St. Louis, Missouri 63146.

GTE Sprint is also a corporation duly organized and existing under the laws of the State of Delaware having its principal office at One Adrian Court, Burlingame, California 94010. GTE Sprint is authorized as a foreign corporation to conduct business in Missouri.

Other than the Commission Staff and the Office of Public Counsel, the parties to this consolidated proceeding consist of corporations authorized to provide telecommunication services in Missouri.

As indicated above, a number of the parties submitted a Joint Recommendation for Commission consideration. The Joint Recommendation was marked as Exhibit 1 and received into evidence. Paragraph 17 of that document essentially provides that if the Commission does not approve and adopt the specific terms of the Joint Recommendation, it shall be void and no party shall be bound by any of the agreements or provisions thereof. The Commission is of the opinion that it cannot adopt the Joint Recommendation in its entirety and therefore bases its findings on consideration of all evidence presented.

Applicants generally propose to provide interLATA telecommunications services within the State of Missouri. It should be noted that although Applicants originally sought authority to provide both intraLATA and interLATA service, their requests for intraLATA authority have been temporarily withdrawn. More specifically, MCI and GTE Sprint indicated during the course of the hearing that they were asking the Commission to defer consideration of their applications for intraLATA authority.

The Commission finds, based upon the verified applications and the prepared direct testimony of the Applicants' witnesses, that both MCI and GTE Sprint are financially as well as technically capable of providing the proposed service.

Applicants have presented testimony or argument to the effect that surveys they have conducted and actual usage of their systems indicate that there is a public need for the proposed services. It has also been argued that competition in the interLATA telecommunications market will be beneficial to the public because among other things, competition promotes diversity in services and products, promotes technological innovation and reduces the burden on regulatory agencies. The evidence shows and the Commission finds that Applicants are currently providing telecommunications service within the State of Missouri. Applicants point out that they are not holding themselves out as providers of intrastate telecommunications service but are in fact incapable of preventing subscribers from completing intrastate calls.

The Commission finds that the public interest would be promoted by granting certificates of public convenience and necessity to Applicants and that Applicants are fit to provide the proposed service. The Commission must next determine under what conditions MCI and GTE Sprint should be authorized to serve. The Commission believes the best way to examine this question is to consider the proposals set forth in the Joint Recommendation (Exhibit 1).

The Joint Recommendation begins by reciting briefly the procedural background of these matters and then provides as follows:

"As a result of extensive negotiations between and among the signatory parties, the following joint recommendations are hereby submitted to the Commission for its consideration and approval by stipulation between and among the signatory parties:

1. That the Commission grant Applicants intrastate interLATA authority and that Applicants' request for intrastate intraLATA authority be deferred to June 30, 1985. Any time thereafter the Applicants may reactivate their request for intraLATA authority.
2. That the Commission establish a generic docket to examine the broad issues of whether intraLATA competition is in the public interest and to what extent and under what procedures all toll carriers, including local exchange companies, should be regulated including all details (such as required books of account and reporting, tariff procedures, handling of customer complaints, service standards, degree of regulation, pricing flexibilities, etc.). The signatory parties propose to conclude the generic docket no later than June 30, 1985 and all the agreements and requirements contained in each and every paragraph herein are binding only until such time as the generic docket is concluded by the Commission; provided, however, that the signatory parties agree not to oppose any request by Staff to consolidate in the generic docket that portion of any filing made by the signatory parties designed to achieve a change in their degree of regulation until June 30, 1985.
3. That the Commission order the Applicants to continue, in cooperation with the Staff, a good faith effort to develop and maintain a data base useful for determining the jurisdictional nature of its traffic carried in or through Missouri and to develop and maintain the aforesaid data base on a prospective basis. The data base is designed to determine the jurisdictional nature of originating messages based upon the billed address of customers such that messages which originate on Applicants' network in Missouri and terminate at a telephone number in Missouri shall be considered as intrastate. After the data base is developed and a more reasonable estimate of intrastate usage is obtained, the Applicants shall report and pay intrastate access charges to the local exchange telephone

companies in accordance with the estimate. The Staff has detailed the data it believes is necessary to jurisdictional determinations in its Data Request No. 68 attached hereto as Exhibit 1. The Applicants shall comply with this requirement by October 31, 1984.

4. That until such time as actual usage data is available or a more reasonable estimate of actual usage is available, the Applicants will report and pay to the local telephone company intrastate access charges for all telecommunications messages which originate on Applicants' network in Missouri and terminate at a telephone number in Missouri, including both interLATA and intraLATA messages. A message originates on Applicants' network when it first reaches any point of interconnection of whatever type or nature between Applicants' facilities (owned or leased, including FX lines and private lines of any type) and the facilities of a local exchange telephone company. Until the data base described in paragraph 3 is operational, Applicants shall report and pay intrastate access charges on messages which gain access to Applicants' network in St. Louis or Kansas City and terminate at a telephone number in Missouri in accordance with the population breakdown of the Standard Metropolitan Statistical Area (SMSA) as obtained from U. S. Department of Commerce, Bureau of Census, 1980 Census of Population. Attached as Exhibit 2 is this percentage split to be applied to messages which gain access to Applicants' network in St. Louis and Kansas City and terminate at a telephone number in Missouri. If an Applicant establishes a point of interconnection between its facilities and those of a local exchange telephone company in a state which adjoins Missouri and which Missouri customers may gain access on a toll free basis, then messages which gain access at such points of interconnection and terminate at a Missouri telephone number shall be reported as intrastate messages. Until the data base described in paragraph 3 is developed, traffic gaining access at a point of interconnection in Kansas or Illinois and through which Kansas City or St. Louis customers may access on a toll free basis and which terminate at a telephone number in Missouri shall be apportioned between the interstate and intrastate jurisdictions in accordance with the population breakdown of the SMSA as set forth in Exhibit 2. The requirements of this paragraph shall be effective on the effective date of an Order of the Commission granting Applicants intrastate interLATA authority in Missouri;

5. That the Applicants, the Staff, or other intervening party may apply to the Commission to alter the requirement in paragraph 4) hereinabove in the generic docket to be established pursuant to paragraph 2) hereinabove if and when a more reasonable estimate of actual usage is available. Whenever actual usage data is available, such data will govern the reporting and payment of intrastate access charges irrespective of the requirements contained in this paragraph and paragraph 4) hereinabove;

6. That the Applicants shall not hold themselves out to provide intraLATA service of any kind. Implementation of this restriction shall include, but not be limited to: a) a one-time

mailing of a brochure, (including a detailed of LATA identifying prohibited calling areas) which is subject to review and approval by the Staff and, if necessary, the Commission, to all existing Missouri customers and any Missouri customers added in the future clearly giving notice that Applicants do not and are not authorized to provide any intraLATA service in Missouri; b) the establishment, maintenance, and enforcement of written personnel policies, to be provided in advance of implementation to Staff, which instruct all employees who engage in the phone solicitation of or any other contact with potential or existing Missouri customers that intraLATA services are not authorized or offered in Missouri is required; c) all media advertising published or broadcast primarily for Missouri distribution will carry the message that intraLATA service is not offered or authorized in Missouri; and d) no national media advertising disseminated in Missouri shall hold out to the public that Applicants provide Missouri intraLATA service. Requirement d) herein is agreed to generally with any disputes as to interpretation or enforcement should they arise left for the Commission to resolve on a case by case basis. The term intraLATA as used in this paragraph is to be defined in clear and common terms for purposes of any requirement contained herein;

7. That the Applicants' toll schedules in Missouri shall specify a particular rate and not minimum and maximum rates;

8. That the Applicants shall initiate billing practices and procedures in Missouri for all Missouri customers which comply with 4 CSR 240-33 effective upon the effective date of authority to provide intrastate interLATA service in Missouri;

9. That the Applicants shall take equal access as and when it becomes available at each end office in Missouri if the Applicant offers toll free originating access to any customer served by the end office. The requirement contained herein may be waived by the Commission for good cause shown upon its approval of a written request for waiver filed by an Applicant. The local exchange operating company in which the end office is situated shall be notified of all waiver requests and shall have the opportunity to intervene in any waiver proceeding;

10. That: (a) The Applicants shall not construct or provide replacements for switched local facilities designed for the provision of intrastate exchange access or intraexchange service, nor otherwise construct or provide new facilities designed to replace, in whole or in part, the use of the local exchange network unless an Applicant makes application for such authority to the Commission and is granted such authority by the Commission. (b) Except for those existing as of the effective date of the Report and Order in this case, Applicants shall not construct, place or otherwise provide points of presence or any other point of interconnection between Applicants' facilities and the facilities of any local exchange telephone company without the prior approval of the Commission upon a showing of good cause and upon notice to the local exchange telephone companies. (c) The Staff recommends that the Commission impose the requirements

of Paragraphs 10(a) and (b) upon any and all common carriers authorized to provide only intrastate interLATA telephone service in Missouri that are parties to this proceeding in the Commission's Report and Order to be issued in this proceeding;

11. That the Applicants shall be granted a certificate of public convenience and necessity granting authority to provide intrastate interLATA toll telecommunications services in Missouri upon the effective date of the Report and Order to be issued in this proceeding. The Staff urges that such Report and Order be issued as early as possible, but no later than September 25, 1984;

12. That the Applicants shall be subject to the complaint procedures set forth in Section 392.230-392.250, RSMo. 1978 and the associated rules and regulations promulgated by the Commission;

13. That upon the effective date of a Report and Order granting Applicants intrastate interLATA authority in Missouri and until such time as an Order or a final Report and Order is issued and made effective in the generic docket established pursuant to paragraph 2 hereinabove, the Applicants shall be subject to interim regulation by the Commission consistent with the FCC's regulatory reporting, bookkeeping and rate or tariff requirements effective on this date pursuant to 47 CFR Parts 61 and 63 to the extent pertinent to the Applicants' provision or abandonment of its intrastate interLATA service offerings in Missouri, except as specifically provided otherwise in paragraphs 1) through 12) hereinabove. Provided, however, that the signatory parties do not agree to tariff changes by the Applicants becoming effective on less than thirty days notice. Each signatory party instead reserves the right to separately present its position on the effective date of tariff changes by the Applicants;

14. That the Applicants be ordered to report and pay to the local exchange telephone company serving the territory in which the message originates, in accordance with the data base described in paragraph 3, the revenue which Applicants bill to its customers for traffic which originates on Applicants' network in Missouri and terminates at a called telephone-number in the same LATA in Missouri. A message originates on Applicants' network when it first reaches any point of interconnection of whatever type or nature between Applicants' facilities (owned or leased, including FX lines and private lines of any type) and the facilities of any local telephone company. Until the data base described in paragraph 3 is operational, Applicants shall report and pay the billed revenue to the local exchange telephone company on messages which originate on Applicants' network in Missouri and terminate at a telephone number in Missouri in the same LATA. Traffic which gains access to Applicants' network in St. Louis or Kansas City and terminates in the same LATA shall be determined in accordance with the population breakdown of the SMSA as obtained from the U. S. Department of Commerce, Bureau of Census, 1980 Census of Population. Attached as Exhibit 2 is the percentage split to be applied to messages which gain access to

Applicants' network in St. Louis and Kansas City terminate in the same LATA.

15. That the signatory parties shall not be prejudiced, bound by, or in any way affected by the terms of this Joint Recommendation: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; (c) in this proceeding should the Commission decide not to approve this Joint Recommendation or to in any way condition its approval of same.

16. That in the event the Commission accepts the specific terms of this Joint Recommendation in its entirety and without modification with respect to the issues addressed hereinabove the signatory parties waive their respective rights to judicial review as regarding the disposition of Case Nos. TA-84-82 and TA-84-114, pursuant to Section 386.510, RSMo. 1978. However, the parties reserve their right to judicial review pursuant to Section 386.510, RSMo. 1978 of the disposition of any issue not addressed in this Joint Recommendation.

17. That the agreements in this Joint Recommendation have resulted from extensive negotiations among the signatory parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Joint Recommendation this Joint Recommendation shall be void and no party shall be bound by any of the agreements or provisions hereof."

Since the Commission is not adopting the entire Joint Recommendation, it will not be necessary to address each of the foregoing numbered paragraphs. Unless otherwise provided any paragraph or provision of a paragraph not addressed is hereby rejected.

The substance of numbered paragraphs 1 and 11 have been addressed above and will not be discussed further.

With regard to paragraph 2, the Commission is of the opinion and finds that it will be necessary, or at least desirable, to establish a generic docket to examine whether intraLATA competition is in the public interest. A generic proceeding or investigation concerning this matter will allow the Commission to collect and evaluate a broader base of information than would be possible in a series of individual application cases.

The Commission believes consideration of the other issues set out in paragraph 2 would be more appropriately taken up in a rulemaking proceeding. The Commission expects in the very near future to cause to be published proposed rules

concerning the extent to which all toll carriers, including local exchange companies, should be regulated.

The Commission further believes that by creating both a generic docket and a rulemaking proceeding to separately consider these matters, substantial time and effort may be saved.

Paragraph 3 provides for the establishment of a "permanent" Missouri-specific-data base for determining the jurisdictional nature of GTE Sprint and MCI traffic in Missouri. MCI does not object to the provisions of paragraph 3, but requests that the data base turned over to the Commission Staff remain confidential until released by the Commission. GTE Sprint on the other hand, objects to paragraph 3 because it believes the Federal Communications Commission (FCC) has prescribed the means by which the interstate and intrastate nature of its traffic shall be calculated.

The issue of jurisdictional reporting arises primarily because interstate and intrastate access charges are not set at the same level and Applicants are, as a practical matter, unable at the present time to determine the jurisdictional nature of their traffic. The record reflects that the Missouri Commission has imposed intrastate access charge rate levels that are higher than interstate access charge rate levels. Further, the evidence shows that the Feature Group A Connection by which these carriers provide service in Missouri, does not provide automatic number identification (ANI). Without automatic number identification, the Applicants cannot state with precision whether a particular call is interstate or intrastate.

The Commission believes that it is in the public interest for Applicants to make an equitable contribution to the intrastate interLATA access pool. In order to accomplish that goal, the appropriate jurisdiction must be credited for access charges. The Commission finds that the recommendations set forth in paragraph 3 provide a generally reasonable method of estimating the jurisdictional nature of Applicants' traffic. By so finding, the Commission specifically rejects the contention that the FCC has preempted this area and prohibited states from adopting a

method of determining jurisdictional usage which does not track the tariff language approved by the FCC.

In order to avoid the possibility that some minutes of usage on Applicants' systems could be counted twice (that is, reported as both interstate and intrastate usage), the Commission finds that paragraph 3 should be amended as suggested by Southwestern Bell witness Thomas Barry. Mr. Barry proposes that paragraphs 3 and 4 should state that after the percent of intrastate minutes of use is determined, the local exchange company shall round the percent of interstate use to equal the nearest number of full lines and then bill the difference between that percent and one hundred percent as the intrastate percent.

Paragraph 3, as amended by the immediately preceding provision, clearly provides a more reasonable method of jurisdictional reporting than allowing MCI and GTE Sprint to follow the FCC tariff which apparently permits carriers to arbitrarily designate traffic as interstate or intrastate.

The final matter to be addressed with regard to paragraph 3 is GTE Sprint's inability to measure the minutes of use which enter its network in Missouri and terminate in Missouri. Without this ability the provisions of paragraph 3 cannot be implemented unless an additional step is added to the estimating process. Both GTE Sprint and Southwestern Bell are able to identify a total volume of traffic which enters at each point of interconnection. With that information an assumed percentage of intrastate traffic can be derived for GTE Sprint by applying the same percentage as determined for MCI pursuant to the terms of paragraph 3 as amended. The applicable percentage would be the ratio of MCI's total number of minutes determined to be intrastate under the Joint Recommendation to the total number of minutes which enter MCI's network in Missouri. This ratio would be applied to the total number of minutes which enter GTE Sprint's network in Missouri and the product would be assumed to be intrastate minutes of use. The Commission finds that this method will produce a reasonable estimate and further notes that it will only have to be utilized for a

short period of time since the record shows that GTE Sprint will have the capability to make the actual measurement shortly after January 1, 1985.

For the aforementioned reasons, the Commission is of the opinion and finds that the provisions of paragraph 3 as amended, should be adopted. The Commission further finds that the data base submitted by MCI and GTE Sprint pursuant to these provisions, should remain confidential until otherwise ordered.

Paragraph 4 provides the method by which GTE Sprint and MCI would be required to report and pay intrastate access charges until such time as the "permanent" data base is developed. Both Applicants object to this proposed interim method. Although the Commission is of the opinion that paragraph 4 would be reasonable if amended as was paragraph 3, it believes it is unnecessary to cause the interim method to be implemented at this time since the "permanent" data base should exist by the issuance date of this Report and Order. Paragraph 4 will therefore not be adopted at this time. However, the Commission would note that if the permanent data base is, in fact, not available within a reasonable time after the issuance date of this Report and Order, the Commission may adopt paragraph 4 as an interim method.

There appears to be little substantive disagreement among the parties as to the provisions of paragraphs 6, 7, 8 and 9. The provisions of paragraphs 6 and 7 are hereby found to be reasonable and are adopted without change.

GTE Sprint does not concur with the provisions of paragraph 8 because it asserts it is at this time physically unable to comply with its requirements. GTE Sprint's billing system provides bills by randomly-assigned authorization codes rather than by city, state or region. GTE Sprint asserts that currently there is no means by which that system could produce bills in compliance with the provisions of 4 CSR 240-33.

The Commission is concerned that although GTE Sprint believes it cannot comply with Chapter 33, its witness clearly had no knowledge of the requirements imposed by said Chapter. Given these circumstances, the Commission believes that GTE Sprint should be granted a temporary variance from the provisions of

4 CSR 240-33, on the condition that it file a petition seeking for the specific provisions of Chapter 33 that it believes to be unduly burdensome. Said petition shall be filed within thirty (30) days of the effective date of this order or GTE Sprint will be immediately required to conform to all provisions of Chapter 33.

GTE Sprint objects to the provisions of paragraph 9. The record shows that Applicants have taken equal access in all instances when it has been made available. Further, Applicants have taken the position that equal access is extremely important to their respective businesses. Given these facts, the Commission believes the provisions of paragraph 9 to be reasonable. The Commission is not willing at this time to delegate to the manager of the communications department the authority to waive the requirement that Applicants take equal access as is suggested by GTE Sprint.

Since the record reflects Applicants do not plan to construct additional points of presence in Missouri prior to July, 1985, the Commission does not believe it is necessary or appropriate to adopt the provisions of paragraph 10 in this proceeding. The Commission does however, recognize the legitimacy of the concerns underlying the inclusion of such a provision and will seek the cooperation of Applicants in monitoring and investigating bypass.

Neither MCI nor GTE Sprint have sought a variance from the complaint procedures set forth in Sections 392.230-392.250, RSMo 1978, and the associated rules and regulations promulgated by the Commission. The Commission is therefore of the opinion that paragraph 12 should be adopted.

Paragraph 13 is opposed by AT&T Communications and in part by GTE Sprint. ATTCOM objects to paragraph 13 to the extent that the provisions of said paragraph propose the adoption of 47 CFR, Parts 61 and 63 as the rules applicable to MCI and GTE Sprint. ATTCOM argues those rules cannot be adopted absent compliance with the rulemaking provisions of Section 536.021, RSMo 1978.

Applicants have presented evidence which shows they cannot comply with the bookkeeping requirements of this Commission. Additionally, they are unable to

present the necessary data to establish rates, nor do they have the necessary data for rate base regulation. The Commission finds that this evidence shows good cause for granting a variance from compliance with 4 CSR 240-30 and 32. The Commission further finds that until such time as the rulemaking proceeding described hereinabove is completed, the Applicants shall be subject to regulation by the Commission consistent with the provisions of paragraph 13.

GTE Sprint requests that the Commission find that good cause has been shown for changing any rate, charge or rental of GTE Sprint on less than thirty (30) days notice pursuant to Section 392.220, RSMo 1978. The Commission is not persuaded that the record supports a finding that MCI and GTE Sprint tariff filings should, as a general rule, be given expedited consideration. Therefore, GTE Sprint's request must be denied. The Commission would, however, point out that all tariff filings will be considered on an individual basis and if good cause is shown, may be allowed to become effective on less than 30 days notice.

The final provision of the Joint Recommendation to be addressed is paragraph 14. Applicants have set forth numerous arguments as to why the Commission cannot or should not adopt the provisions of paragraph 14.

The Commission has found that Applicants are in fact providing telecommunications services within Missouri. Applicants admit that some portion of the calls completed on their networks are intraLATA calls.

The Commission finds that all revenue paid to Applicants for intraLATA toll calling represents a loss of revenue to the intraLATA toll pool and an indirect loss of contribution to local exchange service revenue requirements. The Commission further finds that a reasonable method of protecting the integrity of the intraLATA toll pool is to require Applicants to remit through the appropriate local exchange company into the intraLATA toll pool, the billed revenues for any such calls less the access charges paid thereon. The Commission does not believe imposition of this provision on Applicants as a condition of providing service in Missouri in any way constitutes a penalty.

Conclusions

The Missouri Public Service Commission has arrived at the following conclusions:

When the Commission finds that the public convenience and necessity will be promoted by the granting of the authority sought by an applicant qualified to render the service, a certificate of public convenience and necessity will be issued pursuant to Section 392.260, RSMo 1978. The Commission may by its order impose such condition or conditions as it may deem reasonable and necessary. The Commission concludes that under the conditions set forth herein the public convenience and necessity will be promoted by the granting of the authorities sought in these cases.

It is, therefore,

ORDERED: 1. That subject to the conditions set forth hereinabove and to the filing of tariffs to be approved by the Commission, MCI Telecommunications Corporation be, and is, hereby granted authority to provide intrastate interLATA toll telecommunications services in Missouri.

ORDERED: 2. That subject to the conditions set forth hereinabove and to the filing of tariffs to be approved by the Commission, GTE Sprint Communications Corporation be, and is, hereby granted authority to provide intrastate interLATA toll telecommunications services in Missouri.

ORDERED: 3. That paragraphs 6 and 7 of the Joint Recommendation are hereby adopted without change as conditions upon the grant of certificates of public convenience and necessity to Applicants.

ORDERED: 4. That paragraphs 2, 3, 8, 9, 12, 13 and 14 of the Joint Recommendation are hereby adopted as modified hereinabove as conditions upon the grant of certificates of public convenience and necessity to Applicants.

ORDERED: 5. That all motions not previously ruled upon be, and the same are, hereby denied. That all objections not previously ruled upon be, and the same are, hereby overruled.

ORDERED: 6. That Docket No. TC-85-126 is hereby established for the purpose of examining whether intraLATA competition is in the public interest.

ORDERED: 7. That GTE Sprint is hereby granted a temporary variance from compliance with the provisions of 4 CSR 240-33, consistent with the findings and conclusions herein.

ORDERED: 8. That MCI and GTE Sprint are hereby granted temporary variances from compliance with the provisions of 4 CSR 240-30 and 4 CSR 240-32, consistent with the findings and conclusions herein.

ORDERED: 9. That this Report and Order shall become effective on the 7th day of December, 1984.

BY THE COMMISSION

Harvey G. Hubbs
del.
Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Musgrave, Mueller,
Hendren and Fischer, CC., Concur and
certify compliance with the provisions
of Section 536.080, RSMo 1978.

Dated at Jefferson City, Missouri,
this 21st day of November, 1984.