

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
January 26, 1999**

CASE NO: TO-99-294

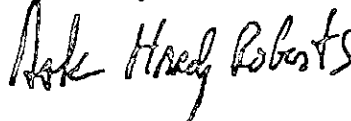
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Tracy D. Pagliara
GTE Midwest Incorporated
601 Monroe Street, Ste. 304
Jefferson City, MO 63385

Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,



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

Uncertified Copy:

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 26th
day of January, 1999.

In the Matter of the Petition of GTE)
Midwest Incorporated Regarding Price Cap)
Regulation Under RSMo Section 392.245)
(1996).)
CASE NO. TO-99-294

ORDER APPROVING PRICE CAP APPLICATION

On January 7, 1999, GTE Midwest Incorporated (GTE) filed a Petition for determination that it is subject to price cap regulation pursuant to Section 392.245, RSMo Supp. 1996.¹ On that same date notice of the application was given by GTE to the Office of the Public Counsel (Public Counsel) and to the Staff of the Missouri Public Service Commission.

The issue in this application is whether GTE may convert from rate base/rate of return regulation to price cap regulation. GTE claims that it is authorized to convert to price cap regulation by virtue of Section 392.245.2 in that it has met the prerequisites contained therein. Section 392.245.2 states as follows: "A large incumbent local exchange telecommunications company shall be subject to regulation under this section upon a determination by the commission that an alternative local exchange telecommunications company has been certified to provide

¹ All statutory references are to the 1997 Supplement to the Revised Statutes unless otherwise noted.

basic local telecommunications service and is providing such service in any part of the large incumbent company's service area."

Since no proper party filed an application to intervene and there are no outstanding requests for hearing, the Commission determines that an evidentiary hearing is not necessary and the Commission may base its decision upon the pleadings. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989).

On May 19, 1998, Mark Twain Communications Corporation (Mark Twain) was certified to provide basic local telecommunications service within GTE exchanges in the state of Missouri. On June 16 the Commission approved an interconnection agreement between GTE and Mark Twain. On April 29 Mark Twain filed tariffs with the Commission for the provision of local service in GTE's exchanges. These tariffs were approved on July 23.

Mark Twain is now providing basic local telecommunications services in GTE's Lewiston and LaBelle exchanges. The Commission is the controlling authority which grants permission to provide local service and is also the authority which approves interconnection agreements and approves telecommunications tariffs for service within Missouri. If GTE were to file for permission to sell the Lewiston and Labelle exchanges, the Commission may re-evaluate, at that time, whether the sale of those exchanges would have any effect of GTE's price cap status.

The Commission has reviewed the Petition filed by GTE and has determined that:

a) GTE is a local exchange telecommunications company which has been authorized to provide and has provided basic local telecommunications services in a specific geographic area in the state of Missouri prior to December 31, 1995, and thus is an incumbent local exchange telecommunications company as defined in Section 386.020(22).

b) GTE has at least 100,000 access lines in the state of Missouri, and thus is a large local exchange telecommunications company as defined in Section 386.020(30).

c) Mark Twain received a certificate of service authority to provide basic local telecommunications service on May 19, 1998 in Case No. TA-98-305. That certificate became effective simultaneously with the effective date of Mark Twain's tariff, which was approved on July 23, 1998, to become effective for service on and after July 28, 1998.

d) Mark Twain received its certificate of service authority to provide basic local telecommunications services subsequent to December 31, 1995, and thus is an alternative local exchange telecommunications company as defined in Section 386.020(1).

e) Mark Twain has been providing basic local telecommunications service on a resale basis to customers in the Lewiston and LaBelle exchanges for the period following July 28, 1998.

f) The Lewiston and LaBelle exchanges are part of GTE's service area.

The Commission has determined that GTE has met the conditions contained in Section 392.245.2, and thus is subject to price cap regulation. The Commission has further determined that the initial maximum allowable prices which GTE may charge for its telecommunications services are the prices which were in effect on December 31, 1998. Moreover, the maximum allowable prices for basic local telecommunications service and exchange access service may not be changed prior to January 1, 2000, except as otherwise provided in Section 392.245.4.

The Commission concludes that GTE is a telecommunications company and public utility as defined in Sections 386.020(51) and 386.020(42), and as such is subject to the jurisdiction of the Commission pursuant to Chapters 386 and 392 of the Missouri Revised Statutes. GTE is also an incumbent local exchange telecommunications company as defined in Section 386.020(22), and a large local exchange company as defined in Section 386.020(30). Mark Twain is an alternative local exchange telecommunications company as defined in Section 386.020(1).

Section 392.245.2 mandates that a large incumbent local exchange telecommunications company be subject to price cap regulation upon a finding that an alternative local exchange telecommunications company has been certificated and is providing basic local telecommunications service in any part of the incumbent's service area.

Section 392.245.3 provides that the maximum allowable rates for a company subject to price cap regulation are those in effect on December 31 of the year preceding the year in which the company is first subject to price cap regulation, except as otherwise provided in the statute. The Commission has determined that the initial maximum allowable prices which GTE may charge for its telecommunications services are the prices which were in effect on December 31, 1998.

Section 392.245.4 also provides that the maximum allowable rates for basic local telecommunications service and exchange access service shall not be changed prior to January 1, 2000, except in certain circumstances. The Commission concludes that GTE is prohibited from changing the maximum rates for those services before January 1, 2000, or until such time as one of the statutory exceptions may apply.

The Circuit Court of Cole County has held "there is doubt that the competition envisioned by 392.245 would be met by the competition provided by a single reseller of telecommunications services, although Section 392.245.2 does not specify that any designated level of competition be obtained before price cap regulation is applied."²

IT IS THEREFORE ORDERED:

1. That GTE Midwest Incorporated has met the prerequisites of Section 392.245.2, RSMo Supp. 1997, and may

² Case No. CV197-1795cc, Revised Findings of Fact and Conclusions of Law and Judgment, issued August 6, 1998.

therefore convert from rate base/rate of return regulation to price cap regulation.

2. That the maximum allowable prices which may be charged by GTE Midwest Incorporated are the prices which were in effect on December 31, 1998.

3. That GTE Midwest Incorporated may not change the maximum allowable prices for basic local telecommunications service or exchange access service prior to January 1, 2000, unless otherwise authorized by the Commission in accordance with Sections 392.245.8, 392.245.9, or 392.248, RSMo Supp. 1996.

4. That this order shall become effective on February 5, 1999.

5. That this case may be closed on or after February 6, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Roberts, Chief Regulatory Law Judge

AL/Sec'y:

Roberts / Priddy

Date Circulated

1-22

CASE NO.

10-99-294

Lumpé, Chair

Crumpton, Commissioner

Murray, Commissioner

Schemenauer, Commissioner

Drainer, Vice-Chair

Agenda Date

1-26

Action taken:

5-00A

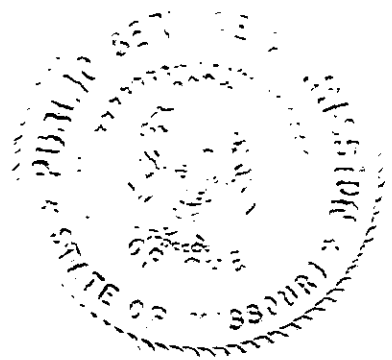
Must Vote Not Later Than

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 26TH day of JANUARY, 1999.



Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge