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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 11th  
day of May, 1999.

In the Matter of an Investigation       )  
Concerning the Primary Toll Carrier    )  
Plan and IntraLATA Dialing Parity.     )     Case No. TO-99-254, et al.

ORDER DENYING MOTION TO RECONSIDER OR, IN THE ALTERNATIVE, MOTION TO  
STRIKE AND MOTION IN LIMINE  
AND ORDER GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL

I. The Small Telephone Company Group's Motion to Reconsider or,  
in the Alternative, Motion to Strike and Motion in Limine

On February 26, 1999, the small telephone company group (STCG) filed a motion to compel Southwestern Bell Telephone Company (SWBT), Sprint Missouri, Inc. d/b/a Sprint (Sprint), GTE Midwest Incorporated (GTE), and Fidelity Telephone Company (Fidelity), the primary toll carriers (PTCs), to answer certain data requests. The PTCs each responded to the motion to compel, arguing essentially that the information sought pertained to their provision of service to their own customers, not to their provision of service to the customers of the secondary carriers (SCs). The Commission agreed with the PTCs, and on the record at the prehearing held April 7, 1999, denied the motion to compel because it sought information not relevant to the issues in this case.

On April 16, 1999, the STCG filed a Motion to Reconsider or, in the Alternative, Motion to Strike and Motion *in Limine*. The STCG argues that the Commission should reconsider its denial of the motion to compel, particularly in light of the testimony filed by the PTCs concerning the financial performance of the PTC plan. The STCG claims that it will not be able properly to rebut this testimony and cross-examine the PTCs' witnesses without the information it seeks.

SWBT and Sprint replied to the STCG's April 16 motion. Both point out, as they did in their responses to the motion to compel, that the DRs in dispute seek information about the PTCs' provision of toll service to their own customers in their own exchanges, and as such will not produce information that is relevant to the issues. Sprint states that this case will not alter its relationship to its own customers, and that the precise amount it makes on toll service in general (as opposed to the provision of toll service to SC customers in particular) is not relevant to the issues.

The Commission denied the STCG's motion to compel, not because the financial performance of the PTC plan is irrelevant to this case, but because the information sought was not relevant to (or necessary for) an evaluation of the PTC plan. The issue of whether the PTCs have suffered losses under the PTC plan is relevant to this case, and the STCG may request information about the issue. In fact, SWBT points out in its reply that the PTCs have fully answered all of the STCG's DRs concerning the provision of toll service to SC customers. The DRs that are the

subject of the motion to compel, and now the motion to reconsider, go beyond the issue and seek information about the PTCs' provision of toll service to their own customers in their own exchanges. The Commission will deny the motion to reconsider.

In the alternative, the STCG requests that the Commission strike the testimony filed on the issue of the financial profitability of the PTC plan and prohibit any other testimony on this issue. The STCG suggests this approach would be appropriate if the Commission determined that the issue of the financial performance of the PTC plan is not relevant. Because the issue is relevant, and because the STCG has been and still is free to submit DRs on this issue, the STCG's alternative request will also be denied.

## II. The Mid-Missouri Group's Motions to Compel

On April 5, 1999, the Mid-Missouri Group filed motions to compel GTE and Sprint to answer certain DRs. The MMG submitted identical DRs 1 and 4 to GTE and Sprint and each objected to them. DR 1 asks for information on whether GTE and Sprint are placing cellular or wireless-originated traffic on the LEC to LEC "Feature Group C" (FGC) network for termination. DR 4 asks for information on the steps, if any, GTE and Sprint have taken to prepare for the discontinuance of FGC switching when "Feature Group D" (FGD) is available for intraLATA toll traffic originating or terminating in GTE and Sprint exchanges.

GTE and Sprint filed responses to the motion to compel on April 19 and April 15, respectively. GTE and Sprint object to DR 1 on the grounds that it seeks information not relevant to the issues. They argue that the question of whether they have placed wireless traffic on the network and terminated calls to the SCs without compensation is beyond the scope of this case. They state that the issues in this case deal with the traffic originated by an SC's customer which has until now been carried by a PTC, and that wireless traffic is not at issue.

GTE and Sprint object to DR 4 because they believe it presumes that implementation of intraLATA dialing parity requires FGD. They state that the question of whether FGD is necessary is one of the issues the Commission will need to decide, and argue that answering the DR would usurp Commission authority.

On April 22, the MMG filed a response to GTE and Sprint. MMG states that compelling responses to DR 1 will give it, and the Commission, information about the trustworthiness of the PTCs and similar issues. The MMG points out that DR 4 merely asks what steps, if any, have been taken to replace FGC with FGD and does not assume that FGC will be replaced by FGD.

The Commission determines that DR 1 seeks information about wireless traffic that is not subject to the PTC plan and thus is beyond the scope of the issues. The Commission will deny the motions to compel as they pertain to DR 1.

The Commission agrees with the MMG that nothing in DR 4 requires an assumption that FGD will replace FGC. It simply asks whether, pursuant to tariff provisions, steps have been taken to prepare for discontinuance of FGC, and, if so, information about those steps. Subparts c and d, however, seek all internal and external communications concerning any actions that may have been taken in preparation for the discontinuance of FGC. The Commission determines that compelling GTE and Sprint to respond to DR 4 including subparts a and b may lead to the discovery of relevant information and will grant the motions to compel as they pertain to DR 4 including subparts a and b. Subparts c and d are overbroad, seek information that is irrelevant to the issues, and may be unduly burdensome to answer. The Commission will deny the motions to compel as they pertain to subparts c and d of DR 4.

**IT IS THEREFORE ORDERED:**

1. That the Motion to Reconsider or, in the Alternative, Motion to Strike and Motion *in Limine* filed by the small telephone company group is denied.
2. That the Motions to Compel filed by the Mid-Missouri Group are granted in part and denied in part as discussed herein.
3. That GTE Midwest Incorporated and Sprint Missouri, Inc. d/b/a Sprint shall provide responses to Data Request Number 4 including subparts a and b propounded by the Mid-Missouri Group no later than May 17, 1999.

4. That this order shall become effective on May 17, 1999.

BY THE COMMISSION



Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray,  
Schemenauer, and Drainer, CC., concur

Mills, Deputy Chief Regulatory Law Judge

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COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION