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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 1st
day of February, 1995.

In the matter of the Joint Application)
of GTE Midwest Incorporated and Cass)
County Telephone Company for authority to)
transfer and acquire part of GTE Midwest)
Incorporated's Missouri franchise,)
facilities or system located in the State)
of Missouri.)

CASE NO. TM-95-163

ORDER GRANTING RECONSIDERATION

On December 28, 1994, the Commission issued an Order Concerning Application with respect to the Joint Application of GTE Midwest Incorporated (GTE) and Cass County Telephone Company (Cass) for Commission approval of the acquisition by Cass of part of GTE's franchise, facilities, and system. The Commission noted in its Order that Cass does not possess and has not applied for a Certificate of Service Authority, and that Cass could not provide telecommunication service in Missouri absent a Certificate of Service Authority. The Commission also stated: "The Commission is of the opinion that in order to obtain a Certificate of Service Authority, Cass must either file a separate application for Certificate of Service Authority or must amend its Joint Application to reflect that it is also seeking a Certificate of Service Authority. In addition, Cass must comply with the requirements of 4 CSR 240-2.060(2)."
Re the joint application of GTE Midwest Incorporated and Cass County Telephone Company, Case No. TM-95-163, Order Concerning Application, issued December 28, 1994, at 1.

On January 11, 1995, GTE and Cass jointly filed a Motion for Reconsideration of the Commission's decision in its Order Concerning Application. GTE and Cass make a number of arguments in support of their

utility and which has never previously operated as a public utility seeks to purchase a portion of the system of an existing utility. It is true as movants claim that GTE Midwest was at the time of Case No. TM-93-1 not authorized to provide telecommunications services in the state of Missouri, and that certificates of public convenience and necessity held by the joint applicants in that case were transferred to GTE Midwest. However, the purpose of Case No. TM-93-1 was the *intracompany* merger of various operating companies of an existing public utility. The GTE Corporation had previously purchased part of the system of Contel, and GTE Midwest was set up as a wholly-owned, newly-formed subsidiary for the purpose of company consolidation. This purpose was evident in the requirement that GTE Midwest take steps to file a consolidated tariff designed to replace the separate tariffs of the merging companies within a reasonable time. Hence the merger did not involve an unknown entity, and no issues were raised with respect to the technical expertise or financial wherewithal of GTE Midwest. Instead, the Commission in effect had a "track record" that it could assess.

The Commission also does not find 4 CSR 240-2.060(2) to be inapplicable, as suggested by movants. While portions of the Commission's rule appear to focus on the building of plant by a company as opposed to the acquisition of plant by purchase, the vast bulk of the rule's requirements are pertinent to the question of whether a certificate should be issued in this type of situation. Even the part of the rule referenced by movants in support of their position that the rule is not applicable -- the requirement of a feasibility study -- is not as irrelevant as may appear at first glance. Though no "installations" are anticipated for which plans, specifications, and cost estimates would be needed, Cass's plans for financing its purchase of a portion of GTE's system may still be relevant in relation to the rates and charges proposed, and estimated

revenues and expenses. For example, movants state in their Joint Application that Cass proposes no immediate changes in the rates, terms, and conditions under which GTE's customers are currently being served, and that Cass intends to accelerate GTE's current modernization program for the six exchanges involved in the proposed transaction. Thus Cass's revenues should remain about the same as GTE's revenues, but Cass's expenses may be very different, depending on factors such as costs related to the financing of its purchase, costs related to accelerated network modernization, and so forth.

In addition, movants point out in their joint motion that the standards of review are different for cases involving the sale and transfer of assets, and those involving the grant of a certificate. However, it is precisely because the standards of review are different that these two application procedures must be separately undertaken; they are not synonymous or interchangeable.

Upon reconsideration, the Commission concludes that its original Order Concerning Application issued on December 28, 1994 is correct and should be reaffirmed. The Commission also concludes that Cass should be ordered to comply with the directives of the Order Concerning Application within a reasonable time, by filing a separate Application for Certificate of Service Authority or amending its Joint Application to specifically reflect that it is also seeking a Certificate of Service Authority; describing the type of service it seeks to offer; and complying with 4 CSR 240-2.060(2).

Although the Commission finds movants' arguments to be unpersuasive and their citations to be distinguishable, the Commission is concerned that a continuation of the practice of granting the transfer of certificates under certain circumstances may cause confusion in the future in relation to its decision herein. The Commission is not strictly bound

by its past practices as precedent. See, e.g. Re Kansas City Power and Light Company, 28 Mo. P.S.C. (N.S.) 228, 376 (1986). The Commission therefore determines that the more appropriate procedure to be utilized in the future in sales and merger cases is to cancel the "old" certificates of the seller or merging companies, and to grant "new" certificates to the buyer or surviving company.

IT IS THEREFORE ORDERED:

1. That the joint Motion for Reconsideration filed by GTE Midwest Incorporated and Cass County Telephone Company on January 11, 1995 be and is hereby granted as specified herein.

2. That the Order Concerning Application issued on December 28, 1994 be and is hereby reaffirmed.

3. That Cass County Telephone Company be and is hereby directed to comply with this order and the Order Concerning Application issued on December 28, 1994, within sixty (60) days from the effective date of this order.

4. That this order shall become effective on the date hereof.

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,
Kincheloe and Crumpton, CC., Concur.