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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

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At a session of the Public Service
Commission held at its office
in Jefferson City on the 2nd
day of October, 1997.

In the Matter of an Investigation Concerning the)
Continuation or Modification of the Primary Toll) Case No. TO-97-217,
Carrier Plan When IntraLATA Presubscription is) et al.
Implemented in Missouri.)
)

ORDER REGARDING DISCOVERY MOTIONS

This case was established for the Commission to consider the continued viability in a competitive environment of the Primary Toll Carrier (PTC) Plan under which Missouri basic local service providers operate. The case is set for hearing October 23 through November 4, 1997.

A. Reply and Motion for Reconsideration filed by GTE Midwest Incorporated.

The Mid-Missouri Group (MMG) of local exchange companies filed a Motion to Compel Sprint/United and GTE to Answer Data Requests (DRs) on July 31. The Commission issued an order on August 15 granting MMG's motion with some limitations in response to specific objections by Sprint-United.

GTE filed a reply to MMG's motion on August 18, and filed a motion for reconsideration of the Commission's August 15 order on August 20. In its motion for reconsideration GTE argued that it had worked out a compromise with MMG permitting GTE until August 18 to respond to the Motion to Compel. GTE stated that the agreement between these parties was memorialized in a letter filed with the Commission on August 7. GTE argued that, because the Motion to Compel was served without the attachments, its

response should not have been due until August 18 under 4 CSR 240-.080(6). MMG filed no response to GTE's Motion for Reconsideration.

The Commission has reviewed GTE's filings and reminds the parties that an agreement between them is not binding on the Commission unless approval is asked and received. Despite GTE's allegation to the contrary, no letter reflecting this agreement appears in the Commission's official case file and, under any circumstances, a letter filed in the case file does not constitute a proper pleading. Had GTE filed a motion requesting an extension of time to respond, the Commission would have been on notice that GTE wished additional time to file. Finally, the attachments that were late-filed by MMG consist of data requests previously submitted to GTE and GTE's objections. The existence of the objections demonstrates that GTE had actual notice of the data requests at issue even without receipt of the attachments.

GTE filed objections in its August 18 reply that were more substantive than those reflected in the objections submitted directly to MMG, and that were in some respects similar to the objections raised by Sprint-United and favorably ruled upon. Therefore, in the interests of achieving equity among the parties, the Commission will take up GTE's substantive objections to the data requests at issue despite the procedural irregularities and GTE's failure to make these objections in its direct response to MMG.

GTE's objections that the information sought is irrelevant and overbroad appear to be directed at Data Requests 1 through 7 en toto. GTE argued that it serves as PTC for only four secondary carrier exchanges, none of which is an exchange of an MMG member. GTE further argues that, regardless of the outcome of the PTC Plan, it would not impact GTE's

current provision of toll to customers in its own exchanges. Finally, GTE complains about the large amount of financial data requested and states that it does not keep the data requested and would not be able to produce it in a reasonable amount of time.

The Commission finds GTE's objections meritorious in part. The Commission agrees with GTE that the company's provision of toll to its own customers is not at issue and is irrelevant to the disposition of the case. Therefore, GTE need not produce data regarding toll originating in its own exchanges. Furthermore, GTE alleges that none of the exchanges for which it serves as PTC belongs to an MMG member. The Commission is not persuaded that MMG has any need for data regarding GTE's relationships with non-MMG secondary carriers. Therefore, GTE need not produce data regarding toll originating in non-MMG exchanges.

GTE reiterated its complaints that it cannot produce the information called for by Data Requests 1-3 and presented no new arguments. Accordingly, the Commission finds that its August 15 ruling regarding Data Requests 1-3 adequately disposes of these objections.

B. STCG's Motions Addressed to SWBT and MMG's Concurrence.

STCG filed the following motions regarding discovery issues against SWBT:

Small Telephone Company Group's Motion to Compel Southwestern Bell Telephone Company to Answer Data Requests and For Expedited Consideration on September 4;

Small Telephone Company Group's Motion for Disclosure by Southwestern Bell Telephone Company of Highly Confidential Information Off Premises and for Expedited Consideration on September 4; and

The Small Telephone Company Group's First Set of Data Requests to Southwestern Bell Telephone Company on September 6.

The Mid-Missouri Group filed, on September 4, Concurrence of the Mid-Missouri Group and Small Telephone Company Group's Motion to Compel, Separate Motion for Disclosure for Southwestern Bell Telephone Company of Highly Confidential Information off Premises, and for Expediting Consideration Thereof.

STCG filed a letter to the case file on September 15 stating that the discovery issues between STCG and SWBT had been resolved. On September 16 STCG filed a withdrawal of its motions for disclosure and to compel.

The Commission finds that STCG has withdrawn its discovery motions against SWBT and the issues are resolved. The Commission finds that MMG's motions against SWBT are resolved as well since MMG had concurred in STCG's motions and has no separate motions pending against SWBT.

C. STCG's Motions Addressed to Sprint-United and MMG's Joinder.

The discovery pleadings addressed in this section are:

Small Telephone Company Group's Motion to Compel Sprint/United to Answer Data Requests and for Expedited Consideration filed on September 2;

Mid-Missouri Group Joinder in the Small Telephone Company Group Motion to Compel Sprint/United filed on September 5;

Response of United Telephone Company of Missouri d/b/a Sprint filed on September 8; and

Reply of the Small Telephone Company Group to Response of United Telephone Company of Missouri d/b/a Sprint filed on September 15.

The Commission has reviewed these pleadings and finds that the discovery dispute is identical to issues presented to the Commission and

decided by the Order Granting Motion to Compel issued on August 15. In that order the Commission granted MMG's motion to compel in part but limited the information Sprint-United must submit. The Commission finds that the same limitations should apply as between STCG and Sprint-United. The Commission will not reiterate its findings and discussion but refers the parties to the August 15 order, pages 2-5, and Ordered paragraphs 1-2.

Again, the parties are cautioned that they must abide by the provisions of the Protective Order that governs this case, particularly where information is requested that concerns a party other than the recipient of the request. The parties are reminded that the Commission expects the PTCs and SCs to cooperate in the sharing of information necessary for resolution of this matter.

IT IS THEREFORE ORDERED:

1. That the Motion for Reconsideration of Order Granting Motion to Compel filed by GTE Midwest Incorporated on August 20, 1997, is granted in part as set out in Ordered Paragraph 2 and more fully described in this order, and in all other respects is denied.

2. That GTE Midwest Incorporated shall not be required to produce data regarding toll originating in GTE exchanges.

3. That the following motions filed by the Small Telephone Company Group and by the Mid-Missouri Group on September 4, 1997, are declared moot:

Small Telephone Company Group's Motion to Compel Southwestern Bell Telephone Company to Answer Data Requests and For Expedited Consideration;

Small Telephone Company Group's Motion for Disclosure by Southwestern Bell Telephone Company of Highly Confidential Information Off Premises and for Expedited Consideration; and

Concurrence of the Mid-Missouri Group and Small Telephone Company Group's Motion to Compel, Separate Motion for Disclosure for Southwestern Bell Telephone Company of Highly Confidential Information off Premises, and for Expediting Consideration Thereof.

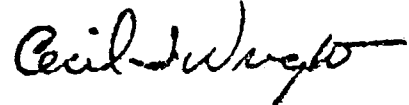
4. That the Commission makes the same rulings regarding the following motions filed against United Telephone Company of Missouri d/b/a Sprint as were made in its Order Granting Motion to Compel issued on August 15, 1997:

Small Telephone Company Group's Motion to Compel Sprint/United to Answer Data Requests and for Expedited Consideration; and

Mid-Missouri Group Joinder in the Small Telephone Company Group Motion to Compel Sprint/United.

5. That this order shall become effective on October 2, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

Crompton, Drainer and Murray, CC.,
concur.
Lumpe, Ch., absent.

Wickliffe, Deputy Chief Regulatory Law Judge