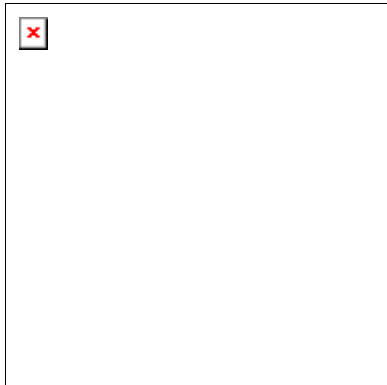


**BEFORE THE PUBLIC SERVICE COMMISSION**



**OF THE STATE OF MISSOURI**

In the Matter of GTE Midwest Incorporated~~s~~ )

Proposed Revision of its PSC MO. NO. 1 to ) **Case No. TT-98-545**

Introduce LATA-wide GTE Extended Reach Plan. ) (Tariff File 9800915)

**REPORT AND ORDER**

**Issue Date:** December 17, 1998

**Effective Date:** December 29, 1998

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**APPEARANCES**

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**REGULATORY LAW JUDGE: Nancy Dippell, Senior.**

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## **REPORT AND ORDER**

### **Procedural History**

GTE Midwest Incorporated (GTE) submitted proposed revisions to its Local Exchange Tariff, PSC MO. NO. 1 on May 22, 1998. The proposed revision offers an optional one-way, local calling plan called the GTE Extended Reach Plan (ERP) which allows the customer to call all exchanges within the customer-s Local Access Transport Area (LATA). The tariff sheets had an effective date of June 22.

On June 2 AT&T Communications of the Southwest, Inc. (AT&T) and the Mid-Missouri Group of local exchange telecommunications companies (MMG) each filed applications to intervene and motions to suspend the tariff. Similar

applications to intervene and motions to suspend were later filed by MCI Telecommunications Corporation (MCI), CompTel-Mo, and the Small Telephone Company Group (STCG). On June 8 the Staff of the Commission (Staff) filed a motion to suspend the tariff.

The Commission issued an order on June 11 granting intervention to MCI, AT&T, CompTel-Mo, STCG, and MMG. The Commission suspended the tariff sheets until October 20, 1998, scheduled an early prehearing conference, and directed the parties to file a procedural schedule. On June 26 Sprint Communications Company L.P. (Sprint) filed an Application for Intervention. The parties met in prehearing conference on July 1 at which time Sprint's motion to intervene was granted by the Regulatory Law Judge.

On July 9 GTE and Staff filed a joint motion to establish a procedural schedule and requested that a protective order be issued. On July 10 MCI, AT&T, Sprint, CompTel-Mo, MMG, STCG, and the Office of the Public Counsel (OPC) filed a joint response. On July 16 the Commission issued an order establishing a procedural schedule, granting a protective order, and further suspending the tariff until December 20, 1998. The parties prefiled testimony and a hearing was held on September 14, 15, and 17.

The Commission filed seven separate Notice of Ex Parte Contact memorandums in this case on October 15, 19, 21, and November 3. The notices state that comments relating to this case were received by the Commission from members of the general public.

On October 7 the Commission established a briefing schedule directing that late-filed exhibits were due on October 13, initial briefs were due October 28, and reply briefs were due November 12.

An Order further suspending tariffs was issued on December 10 which suspended the tariff until January 20, 1999.

### **Pending Motions and Late-Filed Exhibits**

At the hearing, Exhibit No. 17HC was reserved for late-filing by GTE of an exhibit showing the percentage of traffic terminating in exchanges of GTE, SWBT, and other local exchange companies. Exhibit No. 18 was reserved for GTE to file a list of companies in Missouri with which GTE has a Abill and keep@ arrangement. Exhibit No. 20HC was reserved for GTE to file the breakdown of projected minutes of usage between business and residential customers. Exhibit No. 24 was reserved for CompTel-Mo to file a diagram explaining how aggregation of ERP would work and Exhibit No. 25 was reserved for GTE to file a similar diagram. Exhibit No. 26P was reserved for GTE to file the switch translations procedures which will be required to implement ERP. GTE and CompTel-Mo filed those exhibits on October 13. There were no objections and late-filed Exhibits No. 17HC, 18, 20HC, 25 and 26P were received into the record.

On October 28 GTE, OPC, Sprint, MMG, CompTel-Mo, MCI, and STCG submitted their initial briefs. On October 29 Staff filed a Motion to Accept Filing Out of Time along with its initial brief. On November 10 Sprint filed its Revised Initial Brief and also filed a Notice of Filing in Error and Substitution of Revised Initial Brief for Initial Brief.

Reply briefs were filed on November 12 by MCI, GTE, Sprint, STCG, and Staff.

CompTel-Mo filed a Motion to Accept Reply Brief for Filing One Day Out of Time and its reply brief on November 13. MMG filed its reply brief on November 16 with no request for the Commission to accept it out of time.

No objections to Staff, CompTel-Mo, Sprint, or MMG's briefs or reply briefs were received.

During the course of the hearing Staff objected to any testimony presented at the hearing by GTE's witnesses related to the bundling of ERP with basic local service. The objection was reduced to writing and a Motion to Strike Supplemental Testimony was filed by Staff on September 15.

Staff argues in its motion that nowhere in the tariff filing and specifically, not in PSC MO. NO. 1, Section 4, Original Sheet 32, Paragraph B., entitled AService Description,@ is there an indication that ERP refers to a Abundled@ service which includes local exchange monthly access service, Extended Area Service, and ERP. Staff states that Ano party had any notice or had any indication that the GTE Extended Reach Plan, as proposed in the tariff filed on May 22, 1998, as amended by testimony filed by Mr. Graham on August 31, 1998, was a service that was only to be considered as a bundled service.@ As support for its argument that the testimony relating to ERP being a Abundled@ service should be stricken from the record, Staff attached to its motion an Order Concerning Motions to Dismiss and Motion to Strike, issued on July 12, 1995, in Case No. TR-95-241.

In Case No. TR-95-241, the Commission directed that a Joint Recommendation and prefiled rebuttal testimony of one witness be stricken from the record because they were related to service by local exchange companies (LECs) that were not a part of the tariff at issue. The Commission stated that A[s]ervice by those LECs was not part of the initial tariff sheets and it is those companies' addition through the Joint Recommendation that renders the Joint Recommendation so inconsistent with the initial pleading that it cannot be maintained in this case.@

GTE responded to Staff's objection by filing a Memorandum in Opposition to Motion to Strike on September 25. GTE states in its response that: AThe terms of the tariff are clear. . . . Under the tariff, this Plan is defined as an optional extension of a customer's basic local service.@

The tariff does not Aclearly@ define ERP as being Abundled@ with basic local service. However, the tariff does indicate in the footnote

at Original Sheet 35 that Areplacement codes@ will be used for customers subscribing to ERP. And, Sprint's witness, David E. Stahly, recognized that a potential problem existed when he testified, AGTE will only allow CLECs to resell the Extended Reach Plan if the CLEC also resells GTE's local service.@ In addition, Staff's counsel was suspicious enough of the language in the footnote to cross-examine GTE's witness, Michael V. Chopp, regarding the meaning of the word Afrom@ in the footnote.

The Commission finds that although the tariff does not clearly define the service as Abundled@ with basic local service, at least one party did identify the problem prior to hearing, and even Staff cross-examined Mr. Chopp regarding the footnote in the tariff. The inclusion of the testimony explaining the Abundling@ language will not unduly prejudice Staff, OPC, or the intervenors to

this matter as it points out the confusion regarding the explanations as to what service is being provided under the language in the tariff.

The Commission finds that the testimony regarding the Abundling@ of this service should be allowed and, therefore, it will not be stricken from the record.

## Discussion

GTE provides telecommunications services in various exchanges throughout the state of Missouri. GTE proposed changes to its Local Exchange Tariff. PSC MO. NO. 1, to introduce an optional calling service entitled the GTE Extended Reach Plan (ERP). ERP allows local customers of GTE to call anywhere in the Local Access and Transportation Area (LATA) for up to thirty hours for a monthly fee. If more than thirty hours of calls are made per month, the calls after thirty hours are billed on a per minute basis.

### **1. Should GTE's Extended Reach Plan be classified as a local or a toll service?**

GTE witness, Michael V. Chopp, testified that ERP has many characteristics which make it similar to local service. Mr. Chopp testified that ERP uses a seven or ten digit dialing pattern instead of a 1+ dialing pattern which is usually associated with toll plans. Mr. Chopp stated that ERP is similar to the Metropolitan Calling Area (MCA) service in that it is completely optional for the customer, and that MCA is considered a local calling plan. Mr. Chopp also testified that this service is provisioned in the switch like other services which are considered local services.

GTE also argues in its initial brief that A[t]he designation of local is also consistent with customers= needs and desires for local calling.@ Although Mr. Chopp testifies that ERP was filed in response

to GTE=s customers= needs for expanded calling plans, GTE did not present any specific evidence of this conclusion. On the contrary, Mr. Chopp stated during cross-examination that GTE had not conducted any customer surveys to determine if customers desired this particular plan, and had not conducted any customer surveys for this plan to determine if customers would prefer a local dialing pattern.

Mr. Chopp stated in response to a question during cross-examination that it is important to have the plan classed as local because that is how GTE has it in its marketing plan. Mr. Chopp testified that GTE thought it could better keep contact with its customers if the service was classed as local.

Mr. Chopp testified in response to cross-examination by CompTel-Mo that it was his understanding that a call made under the ERP plan would use the same network that is used for intraLATA toll calling. Also in response to questions from CompTel-Mo, Mr. Chopp indicated that the per minute charge for calls over the initial thirty-hour block of time was chosen because of how it compared with toll rates for the same calls.

Both MCI and CompTel-Mo argue that this service cannot be classified as a local service under the statutory definition. MCI and CompTel-Mo quote Section 386.020(31), Revised Statutes of Missouri, which defines a Alocal exchange telecommunications service@ as a telecommunications service Abetween points within an exchange,@ and, Section 386.020(24) which defines

Ainterexchange telecommunications service@ as service Abetween points in two or more exchanges.@ These intervenors argue that since this is a service between exchanges, it must not be classified as a local service.

GTE argues that ERP should not be classified as a toll service simply because it is interexchange. Both OPC-s witness, Barbara Meisenheimer, and CompTel-Mo-s witness, Michael J. Ensrud, testified during cross-examination that subscribers in the St. Louis MCA make interexchange calls which are considered local calls. GTE argues that the statutory definitions do not preclude the Commission from classifying services in different portions of a company-s tariff.

Ms. Meisenheimer testified that it was the OPC-s position that this plan should be considered toll because it is a replacement to COS, which is a toll plan. During cross-examination, Mr. Chopp agreed that ERP is a substitute for toll services. GTE argues that this plan should not be considered toll simply because it is a substitute for other toll plans, as it is also a substitute for MCA which is classified as a local plan. CompTel-Mo argues in its brief that in the Alimited situations in which calling between exchanges has been classified as >local,= the Commission judged the intensity of interactivity between the exchanges, and based upon the calling patterns and communications, concluded that the two exchanges should be treated as one.@

OPC, CompTel-Mo, Staff, and Sprint argue that in Case No. TT-98-351, the Commission rejected arguments similar to GTE-s in determining that Southwestern Bell Telephone Company-s LATA-wide tariff was not a local calling plan.

Staff-s witness, Ben D. Childers, Ph.D., indicates that a local calling plan is generally based on a community of interest standard. Staff argues that GTE has offered no evidence which indicates that a community of interest exists within the ERP-s calling scope. CompTel-Mo-s witness, Mr. Ensrud, also testified that calls under this plan are likely to originate and terminate at points over 100 miles apart. According to Mr. Ensrud, there is not likely to be a community of interest between those locations Aunlike the degree of interaction which typically exists between locations classified as >local@. CompTel-Mo argues further that there was no evidence presented regarding the activity level within each LATA being so strong as to justify the local classification.

GTE argues that, as Ms. Meisenheimer testified on behalf of OPC, and Robert G. Schoonmaker on behalf of STCG, no community interest study was done between all the communities in the St. Louis MCA and it is a plan which is classified as local. Staff argues that it is inherently reasonable to assume that a metropolitan area has a community of interest.

Staff and many of the intervenors make the general argument that this plan has more characteristics of toll than of local and should therefore be classified as toll. Dr. Childers testified on behalf of Staff that ERP is very similar to GTE-s ABetween Friends@ toll calling plan which allows the customer a one-hour block of time and \$.13 per minute after the initial hour. Also, according to Dr. Childers, GTE offers an unlimited use intraLATA toll calling plan which is generally referred to as the ACommunity Optional Service (COS) replacement@ plan. Dr. Childers also testified that Staff considers the one-way nature of this calling plan to be more consistent with toll plans than local.

Staff also notes that the price structure is not merely a Aflat rate@ like other local service, but rather has a per-minute element after the initial thirty-

hour block.

Staff recommended in its brief, as did the STCG, that if the Commission should decide that this service is a Ahybrid@ of local and toll, it should specify how the various aspects of the service should be treated. The Staff recommended that the Commission should:

- a. require that the service be available for resale at wholesale discount rates to both CLECs and IXCs, and that the functions to accomplish this are in place before GTE offers the service to the public;
- b. require dialing parity;
- c. be certain the service is priced appropriately; and
- d. require proper detailed billing for customers.

MMG, CompTel-Mo, and STCG also argue that ERP has more characteristics of toll service than of local and is therefore properly classed as a toll calling plan. For instance, STCG-s witness, Mr. Schoonmaker, and CompTel-Mo-s witness, Mr. Ensrud, each testified that the payment of terminating access charges as intercompany compensation is consistent with toll calling plans rather than local.

Michael J. Pauls, on behalf of AT&T also testified that ERP should be classed as toll due to the long distances over which a call can be made and the fact that terminating access charges will be paid as intercompany compensation. Furthermore, GTE-s witness, Thomas L. Vogel, testified that he was not aware of any other local calling plans for which GTE pays terminating access charges as a method of intercompany compensation.

STCG argues that by classifying ERP as a local calling plan, geographic deaveraging of toll is likely to result. Mr. Schoonmaker proposed a hypothetical situation in his testimony that suggested that if GTE were allowed to classify this plan as local, an interexchange carrier might decide to classify every call within 75 miles of the St. Louis or Kansas City metropolitan areas as local and charge a substantially lower rate than its toll rate in the rural areas. STCG did note that if GTE shows, and the Commission finds, that such geographic deaveraging is in the public interest, there is no violation of the statute.

## **2. What is the appropriate costing standard for Extended Reach?**

and

## **3. Is imputation required for Extended Reach?**

GTE-s witness, James L. Graham, testified that the Total Service Long Run Incremental Cost (TSLRIC) is the appropriate costing standard for ERP. Mr. Graham stated that GTE did not impute the cost of switched access charges to ERP because an imputation test is not necessary where a service is available for resale. GTE argues that the Commission made such a finding in its order in Case No. TT-98-351.

GTE also argues that imputation is not necessary because ERP is a local service and imputation has not traditionally been required for local services. Mr. Graham testified that ERP covers incremental costs and makes a positive contribution as shown by the cost study in Ex. 7HC (Schedule JLG-4).

The STCG argues that there are at least three flaws in GTE's cost study. Mr. Schoonmaker testified on behalf of the STCG that GTE's cost study is based on forward-looking TSLRIC, not the cost of the network today or the cost of the local loop. Mr. Schoonmaker also stated that GTE's cost study did not include the cost of the class of service restrictions in the switch.

The STCG argues that the ERP is a toll service, or if not purely toll, than it is a hybrid of local and toll like SWBT's Local Plus<sup>7</sup> in Case No. TT-98-351. STCG states in its brief, that because ERP is mostly toll, imputation of access charges is necessary.

The STCG presented Exhibit 22HC at the hearing to support its argument that ERP would not pass a cost study using imputed access charges (imputation test). Although Mr. Graham testified that GTE did not conduct its own imputation study, he agreed that Exhibit 22HC showed that ERP would fail an imputation test.

The STCG also argues that GTE has not provided any specific support for the rates it intends to charge. Mr. Schoonmaker testified that he found no support for the price of the thirty-hour block of time or for the per minute charges.

MCI and Staff argue that GTE wants to have this service classified as local so that it can avoid having to pass an imputation test. Staff's witness, Childers, testified that by classifying the service as local rather than toll, GTE is trying to avoid proving that the service is offered above cost. Staff, CompTel-Mo, and MCI argue that the service should be classified as a toll service, and therefore, imputation of access charges is necessary.

Mr. Schoonmaker and Mr. Ensrud testified that GTE must impute the cost of access because ERP is a toll service. Mr. Ensrud stated that GTE should impute the cost of applicable access to itself, as if a carrier was providing an identical toll service and GTE was charging underlying access to a provider different than itself. Mr. Ensrud also testified that if GTE is allowed to price ERP below its actual costs, then no other carrier will be able to offer a competitively priced service because a competing carrier will have to pay terminating access charges which will cost more than GTE's retail price for ERP.

Sprint argues that the appropriate costing standard is TSLRIC plus imputed access charges. Sprint suggests that in the alternative, Commission should order GTE to reduce its access charges to TELRIC costs.

#### **4. Should Extended Reach be combined on the customer's bill with other elements of local service?**

GTE argues that it is appropriate to combine the rate for ERP with the customer's rate for basic local service because the customer would be purchasing a total local service package. However, GTE's witness, Michael V. Chopp, testified at the hearing that GTE would separate ERP for billing purposes if the Commission found that was necessary.

Ms. Meisenheimer testified on behalf of OPC that combining the rates will provide the customer with less information and would be confusing. OPC argues that because this is not an unlimited flat-rated calling plan, combining ERP with basic local service elements would hinder the consumer in his or her ability to compare prices of essential services.

Staff argues that combining the two costs would be contrary to 4 CSR 240-33.040 which requires the bills to state clearly the amount for basic service, and to Section 392.455, RSMo, which requires that All providers [of basic local telecommunications service] must offer basic local telecommunications service as a separate and distinct service.@ Both CompTel-Mo and MCI argue that combining the costs is not appropriate nor in accordance with the Commission's decision in Case No. TT-98-351.

#### **5. Should the customer's bill contain call-detailed information?**

Although the tariff as submitted does not include a provision for optional detailed billing, Mr. Graham testified that GTE is willing to make call-detail billing available for a \$1.00 monthly charge. Staff argues that 4 CSR 204-33.040(6) requires detailed billing on every bill because this is a toll service. OPC argues that the Commission found in Case No. TT-98-351 that detailed billing at no more than nominal fee is required. CompTel-Mo and MCI agree with OPC and also argue that A[i]f the rate for the ERP is embedded in the price of local service, the customer will be unable to make a meaningful comparison of ERP versus MTS rates.@

#### **6. Should resale of Extended Reach be made available to IXC's and/or CLECs?**

Mr. Graham and Mr. Chopp testified on behalf of GTE that this plan is a local plan and, therefore, IXC's would not be authorized to resell ERP without certification as a local carrier. Mr. Graham and Mr. Chopp also testified that ERP would not be available for resale by itself. The reseller would also be required to purchase GTE's basic local service. GTE argues that because ERP is an additive to local service it cannot be separated for resale purposes from basic local service. As support for its argument, GTE points to Mr. Schoonmaker's cross-examination testimony. The relevant exchange between Mr. Weaver, counsel for GTE, and Mr. Schoonmaker, witness for the STCG, is as follows:

Q. Okay. Wouldn't you agree that there are several functional obstacles or issues [to] provisioning GTE's ERP plan which essentially expands local service to a basic local service being provided by another CLEC through its own switching?

A. I'd agree there is substantial issues there. I'm not sure I could identify all of them, but there certainly are a number of issues there that would have to be considered.

(emphasis added). *Tr. p. 527.*

The STCG argues in its reply brief that the above exchange does not support GTE's contention that Mr. Schoonmaker was admitting to there being obstacles to provisioning ERP so that a facilities-based CLEC can provide the service.

Mr. Schoonmaker did testify under cross-examination that he was not aware of

any local calling service that is purchased for resale separately from the underlying basic local service. And, AT&T's witness, Mr. Pauls, testified that he was not aware of any service which is currently available to both IXCs and CLECs.

CompTel-Mo and AT&T argued that not only should ERP be available for resale, but aggregation should also be allowed. GTE presented evidence that if aggregation were allowed, the price for ERP would be a multiple of the proposed rate because the current price is based on the needs and calling patterns of individual end-users. GTE argues that the Federal Telecommunications Act of 1996 (the Act) does not prohibit all restrictions on resale, but only limits unreasonable or discriminatory restrictions. GTE's witnesses testified that GTE will not offer the service if aggregation is allowed.

OPC argues that GTE has wrongfully classified ERP as a local service. OPC states that ERP should be correctly classified as a toll service and as such should be made available for resale to IXCs, CLECs, and to GTE's secondary carriers= (SCs=) customers.

Staff states in its brief that it agrees with Sprint's witness, David E. Stahly, that allowing IXCs to resell ERP, would alleviate some of the anticompetitive aspects of ERP. Sprint also argues that it is the availability of resale that eliminates the need for imputation.

Staff also agrees that ERP should be available for resale without being Abundled® with basic local service. GTE's witness, Mr. Chopp, stated during cross-examination that it would not be practical for a facilities-based CLEC to resell GTE's basic local service.

Staff, CompTel-Mo, and MMG argue that in accordance with Section 251(b)(1) of the Act, GTE should make ERP available to both CLECs and IXCs at a wholesale rate.

MCI argues that the service should be available to both IXCs and CLECs at a discounted rate as provided for in the AT&T/GTE Arbitration.

In addition to the other arguments, the STCG states that this service must be made available to both IXCs and CLECs in order to be in compliance with the Commission's order in Case No. TT-98-351.

### **7. Does Extended Reach, as proposed, violate the dialing parity requirement?**

Staff argues that approval of ERP with the 7- or 10-digit dialing pattern may violate the dialing pattern requirement and frustrate the purpose of intraLATA presubscription.® Dr. Childers also testified that ERP's dialing pattern may create additional barriers to entry for CLECs. Staff argues in its reply brief that the dialing parity issue is only a by-product of the larger problem, that GTE has incorrectly classified this service as local rather than toll.

GTE's witness, Mr. Chopp, testified that CLECs can offer a similar service with the same 7- or 10-digit dialing pattern using either their own switch or through unbundled network elements purchased from GTE. In addition, GTE argues this proposal does not violate the dialing parity requirement because other telecommunications companies may resell ERP and provide the same dialing pattern to their customers.

Sprint and MMG argue that GTE must provide dialing parity in order to be in compliance with Section 251(b)(3) of the Act, which requires a local exchange carrier to provide dialing parity to competing providers of telephone exchange service and telephone toll service. Sprint argues in its reply brief that the dialing parity requirement is not satisfied when a CLEC must purchase basic local service from GTE in order to obtain the dialing parity.

MCI argues that it believes dialing parity is important in order to allow effective competition.

## **8. Will ERP affect payments from Missouri Universal Service Fund?**

GTE argues that this issue should be addressed in the Missouri Universal Service Fund (MoUSF) docket and not as part of this case. GTE argues that the MoUSF issue is being taken up in a separate case and the parties should not speculate at this point as to the outcome of that case. GTE's witness, Mr. Chopp, testified at the hearing that GTE did not intend for ERP to be subject to support from the MoUSF.

Staff and MMG argue that because of the uncertainty of how the federal and state Universal Service Funds will be administered, the classification of this service as local could effect the size of the MoUSF. Dr. Childers testified that because Staff believes that ERP is a toll service, the reclassification of toll to a local service could cause GTE's entire in-state network to be classified as local for MoUSF recovery purposes.

The STCG argues that the statutes require the MoUSF provide assistance where the cost of essential local telecommunications service is more than the just, reasonable, and affordable rate as determined by the Commission. STCG further states in its brief that the Commission has defined essential local telecommunications service and that even if ERP is classified as a local service, it would not meet the definition of essential local telecommunications service. OPC also argues that because this service is optional, it does not meet the definition of essential local services.

GTE's witness, Mr. Chopp, testified that basic local service receives a subsidy from intraLATA toll services and from switched access charges. Mr. Graham testified that GTE would expect to lose some switched access revenue and some intraLATA toll revenue if ERP is introduced. However, Mr. Graham also testified that neither of those revenue reductions was considered in GTE's cost study for ERP.

CompTel-Mo makes the argument that although GTE's witness states that it will not ask for MoUSF reimbursement for shortfalls in revenue caused by ERP, there is no way to determine how reimbursement for basic local service might be affected because GTE failed to take into account how ERP would impact the revenue support given to basic local service from intraLATA toll revenue and access revenue.

CompTel-Mo, Sprint, and MCI urged the Commission in its brief, to order that GTE may not draw funds from the MoUSF as a result of offering and providing ERP.

## **9. Should GTE reduce access charges to the TSLRIC cost?**

MCI, AT&T, and Sprint argue that reducing access charges would help minimize the anti-competitive aspects of the proposed service. However, GTE argues that the issue of reducing access rates is not an appropriate one for discussion in the context of this case. GTE states in its brief that the reduction of access charges should be decided in a rate rebalancing, the USF docket, or an access reform docket. OPC agrees that the issue is beyond the scope of the tariff.

#### **10. Will the benefits to customers of Extended Reach outweigh the costs?**

GTE argues that ERP will bring a significant benefit to customers which subscribe to the service. OPC's witness, Ms. Meisenheimer testified during cross-examination that customers desire expanded local calling scopes and generally prefer flat-rated or block-of-time plans because of the security in knowing how much they will be billed each month. Ms. Meisenheimer also testified that ERP may replace COS for some customers. In addition, GTE argues that this service will offer business customers the ability to expand their business and provide better service to their customers.

Mr. Chopp testified on behalf of GTE that of GTE's 208 Missouri exchanges, customers in 162 of those exchanges cannot call to their county seat without making a toll call. Mr. Chopp testified that it would be of benefit to customers in those exchanges to be able to make local calls to school districts and shopping areas without incurring a toll charge.

OPC argues that even though this service may replace COS for some it should not be approved unless available for resale to IXCs and to the customers of GTE's secondary carriers. Ms. Meisenheimer states that if a service destroys competition the customers do not gain any true benefits.

MMG argues that ERP should be classified as a toll service and should be made available to GTE's secondary carriers' customers as long as the Primary Toll Carrier (PTC) plan is in place. Otherwise, MMG argues, GTE's offer is discriminatory because the ERP will not be offered to all of GTE's toll customers.

GTE states in its initial brief that the local dialing pattern of 7- or 10-digit numbers meets the needs and desires of the customer. However, the STCG argues that the record does not support this claim, as GTE witness, Mr. Chopp, testified that GTE had not performed any customer surveys or done any other studies to support that claim.

The problem of Alooking over the fence@ is another issue that the STCG raises in its brief. Mr. Schoonmaker testified that the small telephone companies lack the economies of scale to offer a similar service and therefore, will not be able to offer similar services to their customers. Mr. Schoonmaker stated that this will lead to greater disparity of services between the small companies and the larger ones such as GTE.

Mr. Chopp testified that if a customer subscribes to ERP, any 1+ dialed intraLATA calls would be blocked from carriers other than GTE. CompTel-Mo argues that the blocking of 1+ intraLATA traffic is an anticompetitive feature of ERP.

MCI argues that the long-run damage to competition by ERP will outweigh any short-term benefits to customers. Staff agrees, stating that ERP would

effectively erect new barriers to entry (e.g. non-standard dialing patterns, and masked charges, bundling of services, certification requirements) into the intraLATA market.®

## **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. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

It is GTE's position that its ERP tariff has many characteristics of local and therefore is appropriately filed in its Local Exchange Tariff. GTE argues that ERP's local characteristics include: 1) flat-rate pricing; 2) local dialing; 3) similar to MCA; 4) provisioned in the switch; and 5) meets customers needs and desires for expanded local calling scopes. GTE also argues that ERP is part of a total service® offering and can not be separated from the basic local service elements. Although GTE argues ERP has these local characteristics, it did not present sufficient evidence to support a finding that this service is a local service.

The other parties argue and the evidence suggests that ERP has many characteristics of a toll service. These toll characteristics include: 1) terminating access as the method of intercompany compensation; 2) is a substitute for toll service and is very similar to toll services which GTE already has in place; 3) has a per minute charge after the initial thirty hours; 4) the service is one-way; and 5) calls may originate and terminate at points separated by long distances.

The price structure for this service, as reflected in the tariff, is not strictly a flat rate, but also includes a per minute charge after the initial thirty hours. This per minute addition makes the plan very similar to OCA (a toll plan) rather than the flat-rated (unlimited) expanded calling plans which are considered local (e.g., MCA and EAS). Testimony by Staff's witness indicated that GTE has two other calling plans (i.e., Between Friends and EECF) which are similar to ERP yet have been filed in GTE's toll tariff. The Commission is not inclined to recognize a service as local which charges the customer on a per minute-of-use basis.

GTE argues that ERP should be considered a local service because it meets the needs and desires of its customers for expanded local calling scopes. However, GTE did not conduct any customer surveys or present any other specific evidence which supports this claim. Ms. Meisenheimer testified on behalf of OPC that customers desired these types of services, but that the long-term detriments of this service to competition outweighed any short-term benefits provided.

GTE witnesses testified that it is GTE's position that ERP would only be available for resale at a wholesale discount to CLECs and the CLECs must also purchase GTE's basic local service because the two elements cannot be separated. GTE argues that there are functional obstacles to the resale of ERP apart from the basic local service, but the evidence did not support this argument. The Commission finds that the tariff as written would preclude any effective

facilities-based local competition by resale.

Recently, in Case No. TT-98-351 the Commission issued an order rejecting SWBT's Local Plus<sup>7</sup> tariff. Local Plus<sup>7</sup> was also a LATA-wide calling plan which was filed in that company's Local Exchange Tariff. In Case No. TT-98-351, the Commission stated that Local Plus<sup>7</sup> had characteristics of both local and toll services and was more appropriately considered a Hybrid<sup>®</sup> of the two services. Although ERP and Local Plus<sup>7</sup> have some similarities, the services proposed are very different. The most important differences are that ERP is not a flat-rated calling plan and that GTE Abundled<sup>®</sup> this service with its basic local service so that the service's resale potential is severely limited. Because of the Abundling<sup>®</sup> of this service and the per minute rate, the Commission finds that this service is so similar to GTE's other toll services that it would not be appropriate to call it a hybrid.

The Commission finds that as filed, this tariff must be rejected. Specifically, the Commission finds that ERP is not a local service and should not be filed in the company's Local Exchange Tariff. The Commission in rejecting the tariff need not make specific findings as to each issue raised.

The Commission encourages all telecommunications providers to offer extended calling scope services through the use of their own facilities or by contracting with others. The Commission is aware that the public interest would be served by having extended calling scope services available to all customers. Therefore, the Commission encourages GTE and other telecommunications providers to file expanded calling plans which would provide dialing parity and be available for resale at wholesale rates. Providers can find instruction from those expanded calling plans that the Commission has approved.

## **Conclusions of Law**

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission has jurisdiction over the operations of, and the rates charged by, GTE Midwest Incorporated pursuant to Chapters 386 and 392 of the Revised Statutes of Missouri 1994. This law also gives the Commission authority to review all tariffs filed with the Commission and to reject or suspend tariffs that fail to comply with state law, Commission rule or order, if they include unjust or unreasonable rates, or are not in the public interest. Sections 386.250 and 392.200, RSMo Supp. 1997.

The burden of proof to show that a proposed tariff is just and reasonable is upon the telecommunications company. Section 386.430. Based upon its findings of fact, the Commission concludes that GTE Midwest Incorporated has not met its burden of proof. Thus, the tariff is rejected and GTE Midwest Incorporated is encouraged to file tariffs in compliance with the Commission's findings above.

The Commission concludes that pursuant to Section 251(b)(1) of the Telecommunications Act of 1996, each local exchange carrier has the duty not to prohibit, and not to impose unreasonable or discriminatory limitations on, the resale of its telecommunications services.

The Commission concludes that pursuant to Section 251(c)(4) of the

Telecommunications Act of 1996, local exchange carriers also have the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.

**IT IS THEREFORE ORDERED:**

That the Staff of the Missouri Public Service Commission is granted leave to file its initial brief out of time.

That Sprint Communications L.P. is granted leave to file its Revised Initial Brief.

That CompTel-Mo is granted leave to file its Reply Brief out of time.

That the Mid-Missouri Group of local exchange telecommunications companies is granted leave to file its Reply Brief out of time.

That Staff-s Motion to Strike Supplemental Testimony is denied.

That the proposed tariff submitted by GTE Midwest Incorporated on May 22, 1998, is rejected. The specific tariff sheets which are rejected are:

**PSC MO. NO. 1**

**Section 1:**

**7th Revised Sheet 2, Cancels 6th Revised Sheet 2**

**Section 4:**

**Table of Contents, 2nd Revised Sheet 1, Cancels Table of Contents**

**1st Revised Sheet 1**

**Original Sheet 32**

**Original Sheet 33**

**Original Sheet 34**

**Original Sheet 35**

That any objection not ruled on is overruled and any motion not ruled on is denied.

That this Report and Order shall become effective on December 29, 1998.

**BY THE COMMISSION**

( S E A L )

**Dale Hardy Roberts**

**Secretary/Chief Regulatory Law Judge**

Lumpe, Ch., Crumpton, Drainer,

Murray and Schemenauer, CC.,

concur and certify compliance

with the provisions of

Section 536.080, RSMo 1994.

Dated at Jefferson City, Missouri,

on this 17th day of December, 1998.