

Date Mailed December 15, 1999

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation into the Recision or Modification of Previous
Commission Orders Affecting GTE North Incorporated

2180-TI-130

FINAL DECISION

Introduction

On November 12, 1998, GTE North Incorporated (GTE) filed a motion that the Commission modify or rescind its order in the combined docket 2180-TR-13/2180-TI-1 entered October 19, 1982 (1982 order) or enter such order as is necessary to relieve GTE of the restriction that it engage in nonutility merchandising activity only through a separate subsidiary. The motion indicated GTE's desire to dissolve the wholly owned subsidiary, GTW Telephone Systems Incorporated, which was formed in compliance with the 1982 order and was used for marketing and servicing telecommunications equipment and services (customer premise equipment).

A notice of investigation and assessment of cost was issued March 5, 1999. A draft order was prepared and comments were solicited from GTE regarding this matter. Any comments from GTE have been considered before approving this final order. Following adoption, this order will be sent to those entities that were parties in the 2180-TR-13/2180-TI-1 docket and to persons indicating an interest in this matter subsequent to the Commission's March 5, 1999, notice to provide opportunity for possible input. A list of persons who participated in this docket

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for purposes of review is attached to this order as Appendix A. A list of persons who were mailed copies of this order is attached as Appendix B.

FINDINGS OF FACT

THE COMMISSION FINDS:

1. On October 19, 1982, the Commission issued an order in the combined docket 2180-TR-13/180-TI-1 (1982 order).
2. In the 1982 order, the Commission held that GTE must use a separate subsidiary for nonutility merchandising.
3. Ending the requirement that GTE use a separate subsidiary for nonutility merchandising is reasonable based on actions at the federal level since the 1982 order, including certain preemptions and the development of safeguards to which GTE is subject, as described in the Opinion below.

CONCLUSION OF LAW

THE COMMISSION CONCLUDES:

1. It has jurisdiction under Wis. Stat. §§ 196.02, 196.06, 196.12, 196.204, 196.37, and 196.625 and other provisions of Wis. Stat. chs. 196 and 227 as may be pertinent hereto; to issue the following order to act or refrain from acting as provided herein.

OPINION

On October 19, 1982, the Commission issued an order in the combined docket 2180-TR-13/2180-TI-1. One of the issues in that docket was whether GTE should be required to form a separate subsidiary for its nonutility merchandising.¹ The Commission determined in order point no. 5:

That the proposal of General Telephone Company of Wisconsin to engage in non-utility merchandising activities pursuant to the accounts established by the commission for non-utility business in docket 2-U-902 is denied. The non-utility merchandising activities contemplated by applicant shall be conducted only through a subsidiary or other affiliated separate legal organization duly created and identified to the commission. The commission neither requires nor prohibits the establishment of separate personnel and facilities for this entity.

As a result, GTE formed GTW Telecommunications Systems, Inc., and filed an affiliated interest agreement (docket 2180-AT-6). This subsidiary was used to merchandise customer premises equipment.

By this order, the Commission ends the requirement that GTE use a separate subsidiary for nonutility merchandising. However, GTE's nonutility merchandising activities remain subject to all applicable state and federal laws, regulations, and orders. This Commission action will allow GTE to terminate its affiliated interest agreement with GTW Telephone Systems, Inc., and to dissolve such subsidiary.

The Commission finds that ending the requirement that GTE use a separate subsidiary for nonutility merchandising is reasonable based on actions at the federal level since the 1982 order was issued. In 1987 the Federal Communications Commission (FCC) preempted state

¹ Nonutility merchandising includes the merchandising of customer premises equipment, enhanced services, and "other" services such as calling cards.

commissions from imposing a requirement on GTE that customer premise equipment merchandising be conducted only through separate subsidiaries (BOC Relief Order, 2 F.C.C.R. 143 (1987)). In its Computer III Report and Order, the FCC also preempted states from imposing a requirement that enhanced services (as defined in 47 C.F.R. § 702(a)) be provided only through separate subsidiaries (104 F.C.C.2d 958 (1986)). Further, by the time of the 1987 BOC Relief Order, the FCC had created rules that provided safeguards when nonutility services were provided on a combined basis with its regulated activity without the use of separate subsidiaries. These safeguards included: (1) accounting and reporting requirements for joint and common costs, (2) disclosure of network information, (3) restrictions on the use of customer proprietary network information (CPNI), and (4) provision of nondiscriminatory access to network services (47 C.F.R. §§ 901 *et seq.*, 702 *et seq.*, 2001*et seq.*, and 1401 *et seq.* respectively). The FCC continues to evaluate and update its rules in these areas for all telecommunications utilities in light of the changing telecommunications industry. All of GTE's nonutility merchandising activities are subject to the above safeguards, including those that are not subject to FCC preemption of state requirements for separate subsidiaries. GTE has provided customer premise equipment on a combined basis with its regulated activity since the 1987 FCC preemption concerning this activity.

The Commission finds that ending the separate subsidiary requirement for GTE is reasonable. GTE's nonutility merchandising activities remain subject to any and all applicable state and federal laws, regulations, and other orders. As a result, it remains possible that, in the future, based on an evaluation of the nature of nonutility activities, the effectiveness of the FCC's safeguards, future federal actions, the development of competition or other

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considerations, the Commission could again require that certain nonutility activities be conducted through separate subsidiaries.

ORDER

THE COMMISSION ORDERS:

1. This order is effective in fifteen days unless an objection to this order is received.
2. GTE may engage in nonutility merchandising activity without a separate subsidiary.

This ends the restriction imposed in the combined docket 2180-TR-13/2180-TI-1, entered October 19, 1982.

3. GTE's nonutility merchandising activities remain subject to all applicable state and federal laws, regulations, and other orders.

4. Jurisdiction is retained.

Dated at Madison, Wisconsin, _____

By the Commission:

Lynda L. Dorr
Secretary to the Commission

LLD:AWW:reb:slg:g:\order\pending\2180-TI-130 11-99

See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98

APPENDIX A

This proceeding is not a contested case under Wis. Stat. Chapter 227, therefore there are no parties to be listed or certified under Wis. Stat. § 227.47. However, an investigation was conducted and comments were solicited, and the persons below participated.

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Appendix B

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