

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 November, 1996.

Office of the Public Counsel, )  
)  
Complainant, )  
)  
vs. ) Case No. TC-96-270  
)  
GTE Midwest Incorporated, )  
)  
Respondent. )

**ORDER GRANTING MOTION TO COMPEL**

On February 16, 1996, the Office of the Public Counsel (Public Counsel) filed a Complaint against GTE Midwest Incorporated (GTE) alleging, *inter alia*, that GTE has failed to comply with certain Commission standards and regulations. The parties have proposed a procedural schedule in this case and are currently engaged in discovery in preparation of their testimony.

On August 30, 1996, GTE forwarded its data requests Nos. P.S.C.-1 through P.S.C.-3 to the Telecommunications Department Staff of the Public Service Commission (Staff). Pursuant to 4 CSR 240-2.090(2), Staff is required by that rule to either provide GTE the information requested within 20 days (not later than September 19, 1996) or to notify GTE of Staff's inability to provide the requested information in a timely manner or of Staff's objections to the request within 10 days (not later than September 9, 1996). On September 12, 1996, Staff notified GTE that it could not provide the information requested as that information ". . . is considered as non-public information within the custody and control of the Commission, and as such cannot be released by the Staff without specific approval and direction by the Commissioners." In support of that statement Staff has cited 386.480, R.S. Mo. (1994), which prohibits the Commission Staff from releasing certain information without an order of the Commission.

The Commission has addressed this statutory provision on many occasions. GTE properly cites The Staff of The Missouri Public Service Commission v. Laclede Gas Company, 28 Mo. P.S.C. (N.S.) 129 (1986), in which the Commission recognized the following test for determining whether to issue an order pursuant to 386.480:

In exercising its discretion, the Commission should consider the possibility of a constitutional right to privacy held by the regulated company or [other third parties involved]. This right to privacy must be balanced with the public's right to know. Detroit Edison Company v. NLRB, 440 US 301 (1979). Nil Services et al., 433 US 425 (1977). The case law indicates that three factors are generally considered in this balancing test. These are the intimacy of the material, the broadness of the issuance of the information and the wideness of the audience to which the information is released. Nixon, 433 US at 455-465. See, Laclede Gas, 28 Mo P.S.C. (N.S.) at 131.

GTE has asserted that it requires the information sought in the request in order to defend itself from the Complaint filed in this case. GTE cites the allegations that there have been increasing trouble reports regarding GTE's service and that, for example, Staff has investigated 23 specific complaints made by customers regarding service installation delays. GTE has further asserted that the information requested is necessary to evaluate and respond to the assertions and allegations which are being brought forward within this complaint case. Provision of this information will allow GTE to test the accuracy of the assertions and the nature, frequency and trends of informal complaints against GTE. Public Counsel and Staff are relying on the veracity of the assertions articulated against GTE in this matter. GTE submits that its data requests are reasonably tailored and advanced by GTE in good faith and that GTE would be materially and substantially prejudiced if it does not obtain the requested information.

As to the three factors set out in the test, GTE has raised the following points. For assessing the privacy interest at stake GTE notes that, with respect to the intimacy of the material factor, the complainants would not have a reasonable expectation of privacy with respect to the company against whom the

complaint is lodged. Indeed, the justification for making the complaint is to get that utility company to recognize and resolve the very issue which is set out within the complaint. With respect to the broadness of the issuance of the information GTE requests only that the information be provided to it and n public at large. Similarly, as to the wideness of the audience to which the information is released again GTE simply requests that the information which is already available to the other parties in this case, Staff and Public Counsel, be equally available to GTE so that it may properly defend itself. GTE has noted that the Commission has ordered the use of the Commission's Protective Order in this case and that the information requested may, where necessary, be provided as proprietary or highly confidential. GTE notes that any privacy considerations will be adequately addressed by proper use of the Commission's Protective Order.

The Commission has reviewed the Motion to Compel the Staff of the Missouri Public Service Commission to Produce Information in Response to GTE Midwest Incorporated's Data Requests as filed on September 23, 1996 along with the entirety of the file and makes the following findings of fact. The Commission finds that GTE has made three distinct data requests. Neither Public Counsel nor Staff has filed a responsive pleading within the 10 days after GTE's Motion was filed, as provided by our rules. Staff has given GTE a "blanket" refusal to respond to any of the three data requests. Although Staff has failed to distinguish between the nature or substance of the three different requests, the Commission is compelled to do so, *sua sponte*.

The Commission finds that the data requested by GTE in P.S.C.-1 is, in fact, that data upon which Public Counsel bases the Complaint which it filed against GTE herein. That data is directly relevant to the dispositive issue(s) in this case. The Commission finds that the information proposed to be disclosed is that same information which the customers may well expect the Commission would provide directly to the company in an attempt to resolve those customers' complaint(s). Therefore, the Commission will order the Staff to release the data as requested by GTE in P.S.C.-1. Staff may classify that information, as proprietary or hiursuant to the Protective Order in this case in a manner which Staff deems appropriate.

The Commission finds that the information requested by GTE in P.S.C.-2 and in P.S.C.-3 are not relevant to the preparation of GTE's representation in this case. GTE is alleged by Public Counsel to have failed to meet the service standards set out by the Commission. The information sought regarding any other local exchange telecommunications carriers will not prove or disprove whether GTE has met those standards. Similarly, the information sought by GTE in P.S.C.-3 regarding complaints filed against other local exchange telecommunications carriers will not prove or disprove whether GTE has met the required standards. The Commission does not set standards which compare how well one company does compared to all the rest. Rather, the standards set out in the Commission rule(s) set standards by an absolute percentage and whether or not other companies meet or fail those standards is not dispositive of the case *sub judice*.

Moreover, GTE's own logic for the release of customer complaints to GTE was that the justification for the customer's making the complaint is to get GTE to recognize and resolve the very issue which is set out within the customer's complaint. GTE's reasoning does not support having the Commission release the complaints of other companies to GTE. The Commission finds that the data requested in GTE' P.S.C.-2 and P.S.C.-3 is not necessary nor appropriate for release herein. This portion of GTE's motion to compel will be denied.

**IT IS THEREFORE ORDERED:**

1. That the data requested within P.S.C.-1, submitted to the Telecommunications Department Staff of the Public Service Commission by GTE Midwest Incorporated, is to be provided forthwith.
2. That the data requested within P.S.C.-2 and P.S.C.-3, to the Telecommunications Department Staff of the Public Service Commission by GTE Midwest Incorporated, is hereby denied.
3. That this order shall become effective on the date hereof.

BY Wright

Executive Secretary

(S E A L)

Zobrist, Chm., McClure, Kincheloe, Crumpton, and Drainer, CC., Concur.

ALJ: Roberts