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December 12, 2003

Dale Hardy Roberts
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

FILED²

DEC 12 2003

Missouri Public
Service Commission

Re: Case No. LA-2004-0133

Dear Mr. Roberts:

Enclosed for filing on behalf of the Small Telephone Company Group, please find an original and eight (8) copies of a Response to Staff Recommendation.

Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

I thank you in advance for your cooperation in this matter.

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By: *Sandra B. Morgan*

Sandra B. Morgan

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Enclosure

cc: Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

DEC 1 2 2003

Missouri Public
Service Commission

Application of Time Warner Cable Information)
Services (Missouri) LLC for a Certificate of Service)
Authority to Provide Local and Interexchange Voice)
Service in Portions of the State of Missouri and to)
Classify said Services and Company as Competitive)

Case No. LA-2004-0133

RESPONSE TO STAFF RECOMMENDATION

Comes now the Small Telephone Company Group ("STCG") and for its Response to Staff Recommendation states to the Missouri Public Service Commission ("Commission") as follows:

1. On November 24, 2003, the Staff of the Commission filed its Staff Recommendation in this case in which it recommended that Time Warner Information Services (Missouri), LLC ("Time Warner") be granted a certificate of service authority to provide "local exchange telecommunications service" and a certificate of authority to provide interexchange telecommunications service. The Staff also recommended that the Commission classify Time Warner and its services as competitive.

2. In response to the Staff Recommendation, the STCG first states that it has no objection to the Commission granting a certificate of authority to Time Warner to provide "basic local telecommunications services" in light of the assurances regarding the provision of these services contained in Time Warner's Application as well as the assurances made in subsequent pleadings in this case and at the prehearing. Although Time Warner is the first company to request authority from the Commission to provide telecommunications service using Voice over Internet Protocol ("VoIP") technology, Time Warner has nevertheless agreed to submit to the

Commission's jurisdiction and to abide by all Commission regulations pertinent to the provision of telecommunications service the same as all other incumbent local exchange telecommunications companies and interexchange telecommunications companies.

3. The STCG does have a concern, however, that the certificates of authority in this case may be granted without the Commission addressing the important issues associated with this new technology. In dismissing Case No. TO-2004-0172, the Staff's request to open a docket to consider VoIP and virtual NXXs, the Commission stated that those issues would be addressed in the Time Warner case. Those issues have not been addressed in this case as the services contemplated by Time Warner do not require an examination or consideration of these issues because of the type of service to be offered by Time Warner and its agreement to submit to the Commission's jurisdiction regarding service rules and regulations. The STCG supports Time Warner's motion requesting that the Commission bifurcate this proceeding and allow for a general examination of these issues separate from Time Warner's application for authority.

4. The STCG also objects to Staff's recommendation that Time Warner be granted a certificate to simply "provide local exchange telecommunications service" when the service Time Warner plans to provide is clearly basic local telecommunications service. Time Warner should not be allowed to compete with local exchange companies who provide basic local telecommunications service without the necessity of complying with Commission rules and regulations regarding the provision of basic local telecommunications service. The real harm is that competitive companies granted a certificate to provide local exchange service only are given *carte blanche* to compete by offering switched, two-way local service, but are not required to do so on an exchange wide basis or to be subject to the same quality of service and other rules as

those companies who hold certificates to provide basic local telecommunication service.¹

The service that Time Warner has stated that it will offer is "two-way switched voice service within a local calling scope," and Time Warner will also offer local calling, operator services, directory assistance, white page directory listings, enhanced 911 services, outbound 800 toll free calling, local number portability and access to telephone relay services.² This is basic local telecommunications service as defined in § 386.020(4), RSMo 2000.

"Local exchange telecommunications service" is defined in § 386.020(31) as "telecommunications service between points within an exchange." In previous application cases, the Staff has required that a company requesting local exchange authority limit that authority to "non-switched private line service." In fact, the Staff continues to note that requirement in its recommendations.³ Yet in its Recommendation in this case Staff states that, because Time Warner has not requested that its local exchange certificate be restricted to providing non-switched private line service, it recommends that it be granted a certificate to provide *switched* local exchange service. Staff states that the Commission has "on many occasions" approved certificates of the type Time Warner seeks. Yet Staff also admits that previous certificates to provide switched local exchange telecommunications service have always been granted in conjunction with a certificate to provide basic local telecommunications service. (Staff Rec. at p.

¹Staff states that while it "does not necessarily agree with Time Warner's characterization of the nature of its business," it nevertheless supports Time Warner's plea for local exchange, and not basic local exchange, certification. (Staff Rec. p. 6)

²Exhibit B to Application.

³See, Staff Recommendation in Case No. XA-2004-0161 dated November 25, 2003 ("local exchange authority should be restricted to dedicated, private line services").

6) Staff realizes that granting Time Warner's request may establish a new Commission policy allowing a company to offer a service similar to basic local telecommunications service solely under the authority of a certificate to provide local exchange service. (Staff Rec. p. 8) The STCG does not believe that the Commission should establish such a new policy in the context of a certificate case rather than a formal rulemaking.

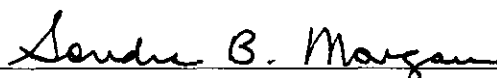
5. The STCG also objects to the Staff's creation of a new category of service authority outside of a formal rulemaking procedure. Sections 392.450 and 451, RSMo 2000, state that the Commission shall adopt rules setting out requirements for applicants seeking a "certificate of local exchange service authority to provide basic local telecommunications service." The Commission has never promulgated the rules required by the statutes, however.⁴ Instead, the procedure for granting certificates of authority to provide basic local telecommunications service was negotiated by the parties to the first certificate cases for competitive applicants and formalized through stipulation and agreement.⁵ The requirements of the stipulations were later incorporated into the application filed by applicants, and, indeed, these negotiated requirements

⁴Staff does state that if the Commission determines that allowing a company to provide basic local telecommunications service with a certificate for local exchange service creates problems regarding service requirements, the "Commission could address such problems through the rulemaking process." (Staff Rec. at p. 8)

⁵*In the Matter of the Application of AT&T Communications of the Southwest, Inc., for a Certificate of Service Authority to Provide Basic Local Exchange and Local Exchange Services*, 6 Mo. P.S.C. 3d 77 (1997); *In the Matter of the Application of TCG St. Louis for a Certificate of Service Authority to Provide Basic Local Telecommunications Services in Those Portions of St. Louis LATA No. 520 Served by Southwestern Bell Telephone Company*, 6 Mo. P.S.C. 3d 5 (1997); and *In the Matter of the Application of Digital Teleport, Inc., for Certificates of Service Authority to Provide Basic Local Telecommunications Services and to Classify Such Services as Competitive*, 6 Mo. P.S.C. 100 (1997).

for a certificate of authority to provide basic local telecommunications service are included in the verified application filed by Time Warner. Yet Staff recommends that Time Warner be granted a totally different type of certificate than contemplated by these previous applications and stipulations. Despite the numerous intervenors in this case, no stipulation is contemplated by Staff. In fact, Staff stated at the prehearing that, despite this being a case of first impression regarding the VoIP technology to be used by the applicant and despite the applicant requesting a certificate to provide local exchange telecommunications service when the service being provided is switched two-way voice service, this "was just another CLEC application." Staff states that it concurs with Time Warner's statement that there is no reason to treat its application any differently than any other certification application. (Staff Rec. p. 4) But there is reason to treat this application differently, since Time Warner is requesting a certificate to provide local exchange service, while providing basic local telecommunications service. The STCG objects to Staff's suggested change in Commission policy and creation of a new category of certificate, switched local exchange, merely through a Staff recommendation in this case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 12th day of December, 2003, to the following parties:

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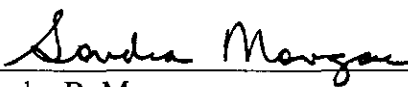
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