

ANDERECK, EVANS, MILNE, PEACE & JOHNSON, L.L.C.

ATTORNEYS AT LAW

EUGENE E. ANDERECK
TERRY M. EVANS
ERWIN L. MILNE
JACK PEACE
CRAIG S. JOHNSON
RODRIC A. WIDGER
GEORGE M. JOHNSON
BEVERLY J. FIGG
WILLIAM S. LEWIS
VICTOR S. SCOTT
COREY K. HERRON
MATTHEW M. KROHN

700 EAST CAPITOL AVENUE
COL. DARWIN MARMADUKE HOUSE
P.O. BOX 1438
JEFFERSON CITY, MISSOURI 65102-1438
TELEPHONE 573-634-3422
FAX 573-634-7822

LANETTE R. GOOCH
SHAWN BATTAGLER
JOSEPH M. PAGE
LISA C. CHASE
JUDITH E. KOEHLER
ANDREW J. SPORLEDER
REBECCA L. SELLERS
JASON A. PAULSMEYER
BRYAN D. LADE
CONNIE J. BURROWS
OF COUNSEL
MARVIN L. SHARP
GREGORY C. STOCKARD (1904-1993)
PHIL HAUCK (1924-1991)

October 24, 2003

Secretary of PSC
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED

OCT 24 2003

Re: Case No. LA-2004-0133

Missouri Public
Service Commission

Dear Secretary:

Enclosed please find an original and eight(8) copies of the MITG's Response to Time Warner Cable Information Services' Opposition to Granting Applications to Interverne.

Thank you for seeing this filed. If you should have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Bryan D. Lade

Enc.

Cc: Dan Joyce
John Coffman
Paul DeFord
Sheldon Stock
W.R. England III
James Fischer
Rebecca DeCook
MITG Managers

Jason Ross
Brian McCartney
Larry Dority
J. Steve Weber

Trenton Office
9th And Washington
Trenton, Missouri 64683
660-359-2244
Fax 660-359-2116

Springfield Office
1111 S. Glenstone
P.O. Box 4929
Springfield, Missouri 65808
417-864-6401
Fax 417-864-4967

Princeton Office
207 North Washington
Princeton, Missouri 64673
660-748-2244
Fax 660-748-4405

Smithville Office
119 E. Main Street
P.O. Box. 654
Smithville, Missouri 64089
816-532-3895
Fax 816-532-3899

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

OCT 24 2003

Missouri Public
Service Commission

In the Matter of the 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 the Company as Competitive)

Case No. LA-2004-0133

**MITG'S RESPONSE TO TIME WARNER CABLE INFORMATION SERVICES
OPPOSITION TO GRANTING APPLICATIONS TO INTERVENE**

COMES NOW Alma Telephone Co., Chariton Valley Telephone Corp., Choctaw Telephone Co., MoKan Dial Inc., and Northeast Missouri Rural Telephone Co., the Missouri Independent Telephone Company Group ("MITG"), by and through undersigned counsel, in response to the pleading in opposition to granting intervention filed on October 17, 2003 by Time Warner Cable Information Services, LLC ("Time Warner").

1. The MITG believe that the issues outlined in their application for intervention are a sufficient basis to grant them participation in this preceding. While some of those issues may be ancillary to the question of Time Warner's qualifications for certification, the real issue at stake in this preceding is the proper grant of service authority for the services Time Warner proposes to offer.

2. The essential question to be answered in this preceding are what type of classification the services Time Warner proposes to offer should receive under Missouri law. There are some questions that need to be answered to determine this main issue. First, the commission needs to determine whether the service to provided by Time Warner is telecommunications service as defined by Missouri statute. Second, the commission needs to

determine whether there will be proper compliance with the rules that an interexchange carrier certified in Missouri must follow. Lastly, the commission must determine what the nature of the local service to be provided is and what type of certificate of service authority it should grant.

3. The Missouri statute defining "telecommunications service" is applicable to Time Warner's proposed services. Section 386.020.53 RSMo. defines "telecommunications service [as] the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols." The services that Time Warner proposes to provide will include the transmission of voice traffic to and from their customers over cable wire to an access point on the public switched telephone network. There the signal will be converted from Internet protocol into standard voice signal used by traditional telephone systems. This falls under the definition of telecommunications service, since they are transmitting information, i.e. the sounds of voice communications, via wire and electronic impulses. Thus, the service which Time Warner proposes to provide is a telecommunications service in Missouri.

4. The MITG companies are not opposed to the grant of service authority as an interexchange carrier sought by Time Warner. They are, however, concerned that without their participation in the certification process that the proper obligations regarding records generation and billing may not be properly established. Since VoIP technology is in its infancy, the configuration of the network and where the responsibility lies for creating call records is unclear at this time. Without an investigation prior to the grant of service authority the result may be another segment of the telecommunications industry plagued by billing and compensation disputes. Therefore, the MITG strongly suggest that the commission grant the interveners'

requests for an investigation of Time Warner's ability to create and distribute sufficient detail call records for the traffic their customers generate.

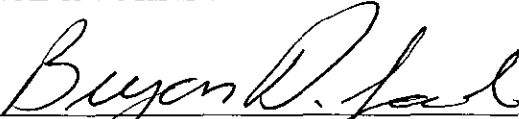
5. Another issue to be resolved before this grant of service authority is made is the determination of exactly what type of local service Time Warner will be providing. Time Warner proposes to provide local "voice service" consisting of the ability for their subscribers to call and receive calls from other VoIP and regular telephone end users. As their application indicates, and their response confirms Time Warner seeks a classification of service authority, that is not otherwise defined in Missouri statute. Time Warner has responded to the intervener Fidelity's request that the commission determine whether this service is a "basic local telecommunications service" as defined in Missouri statute § 386.020.4, or and "information service," not subject to regulation by this commission, by pointing to another statutory definition as the basis of authority for their request. The MITG believe that the local voice service Time Warner proposes to offer falls within the definition of basic local telecommunications service, as it is apparently going to provide "two-way switched voice service within a local calling scope." Intervention should be granted to the MITG so that they may be assured that the proper investigation and discussion of this issue is fully explored before a new classification of local telecommunications service authority is created in Missouri.

6. By the submission of this pleading the MITG do not intend any waiver of their ability to assert other issues that may arise as the result of further investigation or discovery during this proceeding.

WHEREFORE, the MITG request the commission grant their application for intervention and allow the issues they have outlined to be more fully discussed in a hearing. Alternatively, if the Commission determines that an independent docket to investigate the issues surrounding

VoIP service in Missouri should be opened, the MITG request the Commission to stay or suspend the application proceeding for Time Warner Cable Information Systems, LLC, until such issues are settled.

**ANDERECK, EVANS, MILNE,
PEACE & JOHNSON**

By: 

Craig S. Johnson, MO Bar #28179

Bryan D. Lade, MO Bar #55232

Col. Darwin Marmaduke House

700 East Capitol

P.O. Box 1438

Jefferson City, MO 65102

Telephone: 573/634-3422

Facsimile: 573/634-7822

email: CJohnson@aempb.com

email: BLade@aempb.com

**ATTORNEYS FOR MISSOURI
INDEPENDENT TELEPHONE GROUP**