

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Tariff No. 3 of Time)
Warner Cable Information Services)
(Missouri), LLC d/b/a Time Warner Cable)

Case No. LT-2006-_____
Tariff File No. JL-2006-0231

MOTION TO SUSPEND TARIFF

COMES NOW the Staff of the Missouri Public Service Commission and for its motion states:

1. In Case No. LA-2004-0133, the Commission granted Time Warner Cable Information Services (Missouri), LLC (Time Warner) a certificate of service authority to provide basic local telecommunications services, a certificate to provide non-switched local exchange telecommunication service, and a certificate to provide interexchange telecommunications services. (Report and Order, March 2, 2004; Notice of Correction, May 10, 2004)

2. The Commission approved Time Warner's local market trial tariff, P.S.C. Mo. No. 1, and its permanent tariff, P.S.C. No. 2, in Case No. LT-2004-0523.

3. On September 23, 2005, Time Warner submitted its proposed P.S.C. Mo. No. 3. Original Sheet No. 1 states, "This Tariff No. 3 replaces P.S.C. Mo. Nos. 1 and 2 in their entirety." P.S.C. Mo. No. 3 has a proposed effective date of October 23, 2005. This tariff submission, which was assigned Tariff File No. JL-2006-0231, is attached to this motion pursuant to Commission Rule 4 CSR 240-2.065(3).

4. With this tariff submission, Time Warner proposes to delete specific rates for its telecommunications services and to implement individual case basis arrangements and customer specific contracts. See Original Sheet Nos. 38 and 47.

5. Section 392.450 RSMo 2000 requires applicants for a certificate to provide or re-sell basic local telecommunications companies to file and maintain tariffs in the same manner as the Commission requires of the incumbent local exchange telecommunications company with which the applicant seeks to compete.¹

6. Section 392.220 directs that every telecommunications company shall print and file with the Commission schedules showing the rates, rentals and charges for service of each and every kind by or over its facilities.

7. Commission Rule 4 CSR 240-3.545(1) provides that unless otherwise allowed by statute, a telecommunications company, as defined in Section 386.020, RSMo, shall file a tariff as defined in section (8). Subsection (8)(G) requires tariffs to contain:

(G) For each service, tariffs shall provide the following:

1. The name of the service, which clearly identifies the regulated intrastate offering, as it will be advertised and offered to the customer. Any service name that references a rate will accurately reflect the applicable intrastate rate(s) for the service;
2. A detailed description of the service offered;
3. The **specific rates** and charges in U.S. dollars and the period of time covered by the rate or charge; and
4. Any terms and customer requirements that affect the rates or charges for the service. (Emphasis added.)

8. Section 392.200.8, as amended by Senate Bill 237, authorizes customer-specific pricing for dedicated, nonswitched, private line and special access services, for central-office based switching systems which substitute for private branch exchange services, and for any business service offered in an exchange in which basic local telecommunications service offered to business customers by the incumbent local exchange telecommunications company has been declared competitive under Section 392.245. However, Time Warner proposes customer-specific pricing for all of its telecommunications services.

¹ All statutory citations are to RSMo 2000 unless otherwise specified.

9. In its September 12, 2003 Application for Certificate of Service Authority to Provide Local and Interexchange Voice Service and for Competitive Classification (Application) in Case No. LA-2004-0133, Time Warner described the nature of the telephone service it intended to provide. As stated in Exhibit B of its Application:

The Applicant intends to provide facilities-based local Internet Protocol (“IP”) voice service, targeted to the residential market. Initially, the service will be offered only to customers who subscribe to Time Warner’s high-speed, cable modem data service. The service will be offered on a flat-rate basis and will allow local calling in addition to 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. Applicant’s customers will be able to call and be called by any other IP voice service subscriber of Applicant. IP voice service subscribers will also have access to the public switched telephone network (“PSTN”) and thus will be able to call and be called by all other parties connected to the PSTN.

Exhibit B also included the following description of Time Warner’s operations:

Prior to offering service in Missouri, the Applicant will deploy a softswitch and two Media Gateway Controllers in Kansas City, Mo. In addition, the Applicant will deploy new Multimedia Terminal Adapters (i.e., voice-enabled cable modems) in the homes of customers using the Applicant’s voice services as it deploys service throughout its Missouri operating area.

10. At paragraph eight of its Application, Time Warner stated that it is willing to comply with all applicable Commission rules and that it is willing to meet all relevant service standards, including, but not limited to billing, quality of service, and tariff filing and maintenance in a manner consistent with the Commission’s requirements for incumbent local exchange carriers with whom Time Warner seeks to compete.

11. Time Warner’s instant tariff filing seeks to relieve itself from this commitment to the Commission. Instead of filing tariffs consistent with incumbents with whom it competes, Time Warner’s proposed tariff has only limited and vague references to telecommunications services offered and without any reference to rates charged. For example, original Sheet No. 39

prohibits Relay Missouri calls to informational recordings and other recorded messages such as to time and weather recordings. Time Warner's proposed tariff also attempts to exclude itself from calls to Relay Missouri by stating that it contracts such call completion to an "outside provider." Moreover, "Exhibit A" of Time Warner's proposed tariff describes the National Television System Committee standards circa 1953. Such specifications have nothing to do with Time Warner's telephone offerings and the Staff objects to their inclusion in Time Warner's telephone tariff. Likewise, "Exhibit B" of Time Warner's proposed tariff provides a technical specification description of non-regulated customer premise equipment denoted an "Azox Broadband Modem." The Staff objects to Time Warner's use of tariffs to provide technical descriptions of non-regulated customer premise equipment.

12. In response to numerous applications to intervene in Time Warner's original Application in Case No. LA-2004-0133, Time Warner amended its application by deleting references to the phrase "provide local and interexchange voice service" and inserting in its place the phrase "provide basic local, local and interexchange voice service." Time Warner's amended application was in response to interveners' concerns that, in spite of its announced "IP Platform," Time Warner should be held to the same traffic recording and reporting requirements as other telecommunications companies. Three interveners, Fidelity Communication Services I, Fidelity Communications Services II and Fidelity Communications Services III (collectively, Fidelity) requested that the Commission determine whether the services that Time Warner proposed constitute "basic local exchange services" or "information services." Time Warner responded to interveners by again stating that it would agree to abide by the Commission's jurisdiction and to its rules applicable to holders of a certificate. In its Order Granting Certificate, the Commission specifically held that it was granting Time Warner's certificate

based on its representations: “As previously noted, Time Warner has stated that it will comply with all applicable Commission rules except those expressly waived by the Commission. Based on this statement, the Commission finds that Time Warner has demonstrated that the services it proposes to offer satisfy the minimum standards promulgated in Section 392.455(2).” (Order Granting Certificate, page 7) The Staff opposes Time Warner’s proposed tariff because it does not comport with the Commission’s Report and Order and because it is contrary to the Commission’s rules and Missouri law.

13. In submitting its Application in Case No. LA-2004-0133, Time Warner specifically stated that it did not waive its right to benefit from future regulatory or judicial decisions making clear that existing regulatory requirements governing telecommunications services do not apply to VoIP-based services (Response to Applications to Intervene, page 6). The Staff anticipates that Time Warner Cable will suggest that its tariff proposal is supported by a recent ruling by the Federal Communications Commission (FCC) in *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211. In its Memorandum Opinion and Order, the FCC stated:

46. For the reasons set forth above, we preempt the *Minnesota Vonage Order*. As a result, the Minnesota Commission may not require Vonage to comply with its certification, tariffing or other related requirements as conditions to offering DigitalVoice in that state. Moreover, for services having the same capabilities as DigitalVoice, the regulations of other states must likewise yield to important federal objectives. To the extent other entities, such as cable companies, provide VoIP services, we would preempt state regulations to an extent comparable to what we have done in this Order.

14. The Staff disagrees that the FCC’s Vonage Order allows Time Warner to offer customer-specific pricing. First, the Staff notes that FCC’s Vonage Order, having been appealed

to the United States Court of Appeals for the Eighth Circuit, is not final.² Second, the FCC's Vonage Order speaks to preemption of state regulation and not merely to preemption of state regulations requiring tariffed rates. But thirdly and most importantly, Vonage's DigitalVoice and Time Warner's telecommunications services are not the same.

15. The FCC provided the following description of Vonage's DigitalVoice Service in its Memorandum and Opinion:

A. Vonage's DigitalVoice Service

4. DigitalVoice is a service that enables subscribers to originate and receive voice communications and provides a host of other features and capabilities that allow subscribers to manage their personal communications over the Internet. By enabling the sending and receiving of voice communications and providing certain familiar enhancements like voicemail, DigitalVoice resembles the telephone service provided by the circuit-switched network. But as described in detail here, there are fundamental differences between the two types of service.

5. First Vonage customers must have access to a broadband connection to the Internet to use the service. Because Vonage does not offer Internet access services, DigitalVoice customers must obtain a broadband connection to the Internet from another provider. In marked contrast to traditional circuit-switched telephony, however, it is not relevant where that broadband connection is located or even whether it is the same broadband connection every time the subscriber accesses the service. Rather, Vonage's service is fully portable; customers may use the service anywhere in the world where they can find broadband connection to the Internet. According to Vonage, it does not know where in the world its users are when using DigitalVoice.

6. Second, Vonage indicates that DigitalVoice requires customers to use specialized customer premises equipment (CPE). Customers may choose among several different types of specialized CPE; (1) a Multimedia Terminal Adapter (MTA), which contains a digital signal processing unit that performs digital-to-audio and audio-to-digital conversion and has a standard telephone jack connection; (2) a native Internet Protocol (IP) phone; or (3) a personal computer with a microphone and speakers, and software to perform the conversion (softphone). Although customers may in some cases attach conventional telephones to the specialized CPE that transmits and receives these IP packets, a conventional telephone alone will not work with Vonage's service.

² *The Minnesota Public Utilities Commission v. Federal Communications Commission*, Case No. 05-1069.

7. Third, DigitalVoice offers customer a suite of integrated capabilities and features that allows the user to manage personal communications dynamically, including but not limited to real-time, multidirectional voice functionality. In addition to voice, these features include voicemail, three-way calling, online account and voice mail management, and geographically independent “telephone” numbers. Vonage’s Real-Time Online Account Management feature allows customers to access their accounts 24 hours a day through an Internet web page to manage their communications by configuring service features, handling voicemail, and editing user information. At the users’ discretion, the user may, among other options, play voicemails back through a computer or receive them in e-mails with the actual message attached as a sound file. Using other features, user may request that DigitalVoice ring simultaneously the user’s Vonage number plus any other number in the United States or Canada regardless of who provides the service connection with that other number.

8. Among these features, DigitalVoice provides the capability to originate and terminate real-time voice communications. Once the CPE and software are installed and configured, the customer may place or receive calls over the Internet to or from anyone with a telephone number – including another Vonage customer, a customer of another VoIP provider, a customer of a commercial mobile radio service (CMRS) provider, or a user reachable only through the public switched telephone network (PSTN). In any case, the subscriber’s outgoing calls originate on the Internet and are routed over the Internet to Vonage’s servers. If the destination is another Vonage customer or a user on a peered service, the server routes the packet to the called party over the Internet and the communication also terminates via the Internet. If the destination is a telephone attached to the PSTN, the server converts the IP packets into appropriate digital audio signals and connects them to the PSTN using the services of telecommunications carriers interconnected to the PSTN. If a PSTN user originates a call to a Vonage customer, the call is connected, using the services of telecommunications carriers interconnected to the PSTN, to the Vonage server, which then converts the audio signals into IP packets and routes them to the Vonage user over the Internet. Together, these integrated features and capabilities allow customers to control their communications needs by determining for themselves how, when, and where communications will be sent, received, saved, stored, forwarded, and organized.

9. Fourth, although Vonage’s service uses North American Numbering Plan (NANP) numbers as the identification mechanism for the user’s IP address, the NANP number is not necessarily tied to the user’s physical location for either assignment or use, in contrast to most wireline circuit-switched calls. Rather, as Vonage explains, the number correlates to the user’s digital signal processor to facilitate the exchange of calls between the Internet and the PSTN using a convenient mechanism with which users are familiar to identify the user’s IP address. In other words, and again in marked contrast to traditional circuit-switched telephony, a call to a Vonage customer’s NAP number can reach

that customer anywhere in the world and does not require the user to remain at a single location.

16. Contrast that description to Staff member William Voight's description of Time Warner's telecommunications services:

Unlike Vonage, Time Warner has been granted a certificate to "provide local and interexchange voice service." Unlike Vonage, Time Warner has agreed to abide by all Commission rules, including service quality, and tariff filing requirements *in a manner consistent with the Commission's requirements for incumbent local exchange carriers with whom Time Warner competes*. Unlike Vonage, Time Warner has agreed to charge no more for exchange access service than the incumbent carriers with whom Time Warner seeks to compete. Unlike Vonage, Time Warner's service "will utilize Internet Protocol technology to provide voice service and features similar to those offered by traditional analog telephone service." In response to interveners, Time Warner stated that its verified application "raises no new or unique issues."

Unlike Vonage, who merely resells broadband service of third Party providers, Time Warner offers service "to consumers in Missouri [as] a true facilities-based, broadband, competitive alternative to incumbent LECs' local exchange service..." (Time Warner's Motion for Rehearing or Reconsideration in Case No. LA-2004-0133, paragraph 2).

Unlike Vonage, whose customers must obtain Internet access from a third party or, as characterized by the FCC, from "another provider" (i.e., a third party broadband provider); Time Warner does provide its own Internet access service, although its telephone customers are not required to purchase internet access. Unlike Vonage customers, whose calls "originate on the Internet and are routed over the Internet to Vonage's servers", Time Warner's customer calls are not routed over the Internet. Unlike Vonage, whose service is "portable" because it relies on the

Internet, Time Warner's service is "stationary" to Time Warner's network. Indeed, Time Warner has stated that its service "in fact, does not traverse the public Internet cloud at all." (Id., page 5).

Although Time Warner telephone customers may choose to have public Internet access, subscription to such service is not mandatory. As stated in the Application section of Time Warner's current Commission-approved tariff, P.S.C. Mo. No.2, Time Warner's customers merely have to subscribe to Time Warner's high-speed cable modem service and/or CPST or Digital Cable Video television service to receive the telephone service.

Unlike Vonage customers, who must also obtain local exchange telephone service when purchasing Southwestern Bell's DSL service, Time Warner telephone customers are not required to maintain local telephone service from Southwestern Bell.

Unlike Vonage, whose customers must purchase broadband service from a third party provider, Time Warner qualifies Southwestern Bell for competitive classification under Missouri's 30-day competitive statute. Section 392.245 RSMo, as amended by Senate Bill 237. Indeed, as Time Warner has stated, "[A] variety of providers use VoIP technology in many ways to deliver a multitude of services, and each of the various 'flavors' of VoIP-based services may have different regulatory and policy implications. (Motion for Rehearing or Reconsideration in Case No. LA-2004-0133, paragraph 9).

17. Section 392.230.3 RSMo 2000 authorizes the Commission to suspend and to enter upon a hearing concerning the propriety of a telecommunications company's tariff filing.

WHEREFORE, the Staff requests the Commission to suspend and to enter upon a hearing concerning the propriety of Time Warner's proposed P.S.C. Mo. No. 3 tariff.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record shown below this 13th day of October 2005.

/s/ William K. Haas

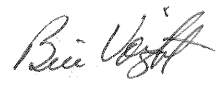
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**VERIFICATION OF
MOTION TO SUSPEND TARIFF**

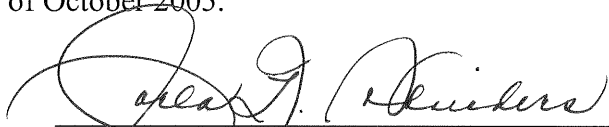
State of Missouri)
) ss
County of Cole)

William L. Voight, of lawful age on his oath states: that he is the assistant manager of the Public Service Commission's Telecommunications Department; that he has knowledge of the matters set forth in the foregoing Motion to Suspend Tariff; and that such matters are true to the best of his knowledge and belief.



William L. Voight

Subscribed and sworn to before me this 12th day of October 2005.



Notary Public

My commission expires June 7, 2008

