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December 11, 2003

FILED

DEC 12 2003

**Missouri Public
Service Commission**

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

Re: LA-2004-0133

Dear Secretary:

Enclosed please find an original and eight copies of the Reply of MITG to Staff Recommendation.

Thank you for seeing this filed.

Sincerely,



Bryan D. Lade

BDL:lw

Encl.

CC: Mike Dandino
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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

DEC 12 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

Reply of MITG to Staff Recommendation

Comes now the MITG and submits the following Reply to the November 24, 2003 Staff Recommendation, and attached November 24, 2003 Staff Memorandum.

I. INTRODUCTION

This reply will clarify the MITG's position as to the nature of the regulatory classification which should apply to the services to be offered by TWCIS. The MITG will also respond briefly to some issues raised by the Staff's Recommendation, which may be beyond the scope of TWCIS's application, but are nevertheless appropriate for discussion in the context of this case as it is one of first impression regarding services delivered through VoIP technology.

II. APPLICANT'S PROPOSED SERVICE IS TELECOMMUNICATIONS SERVICE

The MITG agrees with Staff that the services Applicant proposes to provide constitute telecommunications services as defined by § 386.020 (53) RSMo. Applicant proposes to transmit information by wire, cable, electronic impulse, or other similar means. Regardless of any new or technological nuances Applicant will utilize in transmitting such information,

Applicant proposes to offer telecommunications services. Applicant is required by Missouri law to obtain a certificate or certificates of service authority from this Commission in order to offer such telecommunication service to the public.

A. A Certificate of Interexchange Service Authority is Required

The MITG agrees with Staff that a certificate of interexchange service authority is required before Applicant will be authorized to provide telecommunications service between exchanges.

B. A Certificate of Local Service Authority is Required

The MITG agrees with Staff that a certificate of local service authority is required before Applicant will be authorized to provide telecommunications service within an exchange.

C. Basic Local Service Certificate/Competitive Advantage

However, the MITG disagrees with Staff as to the Applicant's need for a basic local certificate. Staff appears to argue for a new certification scheme that would provide Applicant with a significant competitive advantage over other certificated local exchange providers.

Applicant will be providing two way switched voice service within an exchange or local calling scope as determined by the Commission. §386.020(4) RSMo. Applicant's service will direct or switch voice communications from the caller to the called party. Both the caller and the called party will be able to exchange speech, or engage in two-way voice communications. The caller and the called party may be within the same exchange. The caller and the called party may be within the same calling scope, such as the MCA, that the Commission approves for Applicant.

If Applicant does not receive a basic local certification, it would be unlawful for Applicant to allow its customers to engage in voice communications with called parties within the same exchange or local calling area.

The MITG does not believe that it is reasonable for Applicant or Staff to suggest that Applicant will not be providing basic local service. It appears that Staff believes Applicant will in fact be providing basic local service. Staff's recommendation contains the following statements:

Time Warner maintains that it is not holding itself out to be a provider of basic local telecommunications service. Although the Staff does not necessarily agree with Time Warner's characterization of the nature of its business, the Staff nevertheless supports Time Warner's plea for local exchange (and not basic local exchange) certification.

By operating under a certificate of authority to provide local exchange service (and not basic local), it is the Staff's opinion that Time Warner would not be obligated to observe certain statutory obligations normally associated with providing basic local service.¹

Although Applicant will be offering basic local service in competition with ILECs and CLECs, Staff suggests that Applicant should not be required to meet the same obligations that ILECs and CLECs must meet as a condition of offering basic local service. Staff suggests that Applicant not be required to offer basic local service as a separate and distinct service, not be required to provide equitable access to all potential customers, and not be required to provide service on an exchange-wide basis. Without any support from the law or Commission rules, Staff appears to advocate that Applicant be provided competitive advantage over CLECs or ILECs.

The basis for this aspect of Staff's recommendation is that Applicant's parent company does not provide CATV service in areas corresponding to ILEC exchange boundaries. The

¹ Staff's Recommendation, p. 6.

MITG suggests that this is an insufficient basis. When any CLEC first organizes, and becomes certificated, they too have no facilities corresponding with ILEC exchange boundaries, but they are nevertheless only granted authority to provide basic local service on the condition they comply with statutes and rules. Applicant is no different in this respect, and should also be required to comply with all statutes and rules. Staff's suggestion that this Applicant receive this clear competitive advantage not sanctioned to any other carrier has no basis in law, and should be rejected.

Staff's rationale for allowing this competitive advantage is further premised upon internally inconsistent statements within the recommendation. Staff states, "Staff concurs with Time Warner's statement that "(T)here is simply no reason to treat TWCIS' Application any differently than any other certification application." Yet, Staff argues Applicant not be required to obtain basic local certificate. This is in fact asking that Applicant be treated differently than all other CLECs have been treated.

Staff's recommendation suggests that certification be considered on a technology-neutral basis. Recognizing Applicant will be providing telecommunications service by use of a "nascent" technology, Staff suggests that the technology be disregarded because the law is technology neutral. On the other hand, when considering the type of certificate to be granted, Staff advocates Applicant not be required to obtain a basic local certificate *because* Applicant's service platform is based on the nascent CATV/VOIP technology.

Missouri statutes recognize that competition for basic local service is the type of competition ushered by the Telecommunications Act of 1996. It is competition for basic local service by CLECs and CMRS providers with ILECs that the Act contemplated. Despite this apparent directive to enhance competition, the MITG cautions the Commission to review the

significant regulatory consequences to the provision of basic local service. Missouri statutes set forth clear and distinct obligations all CLECs must meet in competing with ILECs for local customers.

First, Missouri law either mandates large ILECs or allows small ILECs to become price cap regulated when a CLEC is certificated to provide, and is providing, basic local service. §392.245 RSMo. Staff's recommendation would allow Applicant to compete with ILECs for local customers, without allowing the ILEC to obtain the competitive pricing flexibility necessary for the ILEC to compete with Applicant.

Second, §§392.450.2, 392.451, and 392.455 RSMo require a provider of basic local service to file and maintain tariffs as ILECs are required to do, meet minimum quality of service and billing standards ILECs are required to meet, set forth its service areas and exchanges as ILECs are required to do, offer basic local service as a separate and distinct service as ILECs are required to do, and provide equitable access as ILECs are required to do. Additionally, when certificated in small ILECs exchanges, a competitive provider of basic local service is required to offer all essential telecommunications services, as determined by the Commission, to advertise the availability of those essential services, to make the same reports and information filings required of ILECs, and to comply with all Commission rules and regulations applicable to the ILEC with whom the CLEC wishes to compete.

The primary beneficiary of these "level playing field" rules is the Missouri customer. If a Missouri customer will rely upon Applicant to provide basic local service, Applicant should be subject to all service requirements imposed upon providers of basic local service.

All of the commitments outlined above are applicable to ILECs and new "alternative" providers of basic local service. They have never been required of providers of private line, or

“non-switched” local service providers, because these providers are not competing for the local customer. Time Warner is competing for the local customer, and in essence will be providing basic local service, and therefore should be required to be certificated as a basic local service provider.

The MITG believe the Applicant should be granted a basic local certificate, and ordered to abide by the same obligations as every other CLEC required to obtain a basic local certificate. If Applicant is not granted basic local certification, the Commission should state in an Order granting other certifications that Applicant is not to provide two way switched voice within an exchange or local calling scope as established by the Commission.

III. GENERIC ISSUES REGARDING VOIP

As of the prehearing conference, Applicant made representations to the MITG sufficient to persuade the MITG to withdraw its concerns regarding how Applicant would be provisioning service. In short, Applicant made representations to the MITG that resolved MITG concern with the provisioning of “transit” traffic originated by Applicant. The MITG still believes Applicant should be required to obtain a basic local certification. The MITG also believe that a separate generic docket to address these “generic VOIP” traffic concerns would be appropriate, but based upon Applicant’s representations the MITG do not believe this docket should address such “generic” concerns. The MITG committed to support requesting that these generic concerns be addressed in a separate docket, and not delay consideration of this Application.

Nevertheless, Staff’s recommendation has rekindled some of the MITG’s concern, because it contains certain assertions to the effect that issues of transit traffic and intercompany compensation are not relevant to a VOIP certifications proceeding. While it has been conceded by all parties that this case is not the forum in which to examine these issues, Staff’s

Recommendation recalls some earlier positions taken by the MITG, which need clarification before future discussions take place.

Among these concerns are how VOIP providers will provide customers with phone numbers, the locating of those phone numbers, the potential for creating virtual NXXs, and the passing of call information with sufficient detail to allow call identification, rating, routing, and successful billing for intercompany compensation.

The Missouri telecommunications market cannot accommodate further entrants, unless provisions are made to assure that appropriate records and compensation mechanisms are in place. The MITG raised these issues at time of termination of the PTC Plan, but the problems have lingered for over 4 years, without a clear solution in sight. During this 4 years, millions of minutes of CLEC and CMRS generated traffic has terminated to the MITG exchanges, for which no compensation has been paid. As a consequence the Commission is embroiled in several dockets attempting to resolve intercompany compensation related directly to this traffic.

Intially, SWBT's position was that it had an obligation to transit traffic to small companies, even though SWBT successfully refused to accept transit traffic from other carriers. Later, SWBT changed its position and claimed it had no obligation to transit traffic. SWBT has subsequently memorialized its fluctuating positions, in numerous interconnection agreements. Those agreements have addressed "transit" traffic to small ILECs, without the small companies' participation in the development, even with regard to the provisions for transiting traffic to them as a third party provider.

Now, the docket the Commission created over 4 years ago to address these issues is dormant. For approximately two years the docket has been rendered inactive by Staff's promise

to promulgate an “Enhanced Record Exchange Rule” which they claim will resolve the issues without affecting carriers’ “business relationships.” Many companies are waiting for such a rule.

The MITG is hopeful that the “Enhanced Record” rule will one day become effective, because of the certainty about future practices it would bring. As it stands currently, the MITG are unclear which records standards and practices should be followed. In the recent past when the MITG opposed an agreement on the grounds its transit traffic provisions were contrary to the current draft of the “Enhanced Record Exchange Rule”, Staff countered the MITG opposition by pointing out the rule was “not yet in effect.” Yet, here when the MITG opposes an application on the grounds that it may not meet the current MITG tariff billing record and compensation requirements, Staff counters the MITG opposition on the grounds that the MITG concerns “will be addressed” by the “Enhanced Record” Rule.

After several years of being on the suffering end of this stick, the MITG believes the time is right for the Commission to assure that existing tariffs compensation provisions are complied with. After years of dockets addressing uncompensated traffic, the time is now to prevent even more uncertainty in the future. There is no justification for further delay, or denial, of the small companies’ right to be compensated for use of their facilities, under tariffs lawfully in place for that purpose. There is no justification for further delay in the promulgation of some rule that may resolve those concerns. Unfortunately, any such rule, if it helps at all, will only be prospective. It will not help small companies get paid for the traffic terminated over the past several years.

Staff also recognizes the uncertainty in the manner in which TWCIS will route its traffic, but dismisses the MITG’s concerns as redundant.² This is precisely the reason for the MITG’s concern, the redundancy and potential inconsistency in Staff’s positions on transiting traffic.

² Staff’s Recommendation, p. 9.

Too many dockets are currently underway, in which the Commission is in part asked to either approve, interpret or apply “transit” provisions that have absolutely no basis in law, and which, if they did have some legal basis, cannot have the effect of supplanting existing tariffs of third party providers, without the Commission’s action.

Before this problem is made worse by the insurgence of other “new” types of CLECs utilizing VOIP technology, the Commission needs to investigate further the issues of intercarrier compensation and proper interconnection arrangement provisions, before significant amounts of traffic generated by carriers using VOIP technology is delivered to the small company networks for termination.

IV. CONCLUSION

The MITG believes that this docket should not be the docket in which “generic concerns” associated with VOIP traffic are considered. Applicant has made sufficient assurances to the MITG that its generic concerns will not apply to Applicant’s traffic.

The MITG believes that a separate docket should be initiated in which to consider general issues associated with VOIP traffic. The MITG does not believe that this docket should be delayed pending resolution of that separate docket.

The MITG does believe that Applicant will be providing basic local service, and should be required to obtain a basic local certificate for which it is required to meet all statutory obligations of basic local service required of ILECs and other CLECs.

To the extent that Staff’s recommendation suggests otherwise, the MITG opposes Staff’s recommendation and requests that it be refused.

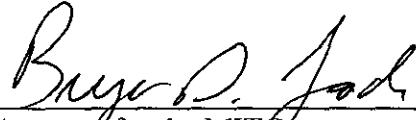
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**ATTORNEYS FOR MISSOURI
INDEPENDENT TELEPHONE GROUP**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was hand delivered or mailed, U. S. Mail, postage pre-paid, to all attorneys of record in this case this 11th day of December 2003, to:



Attorney for the MITG