

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND

PROFESSIONAL CORPORATION

312 EAST CAPITOL AVENUE

P.O. BOX 456

JEFFERSON CITY, MISSOURI 65102-0456

TELEPHONE (573) 635-7166

FACSIMILE (573) 635-0427

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR

DEAN L. COOPER
MARK G. ANDERSON
GREGORY C. MITCHELL
BRIAN T. MCCARTNEY
DIANA C. FARR
JANET E. WHEELER

OF COUNSEL
RICHARD T. CIOTTONE

November 20, 2003

FILED²

NOV 20 2003

Missouri Public
Service Commission

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

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 Brief on Jurisdiction

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:

Sondra B. Morgan

Sondra B. Morgan

SBM/lar

Enclosure

cc: All Parties of Record

FILED²

NOV 20 2003

Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

BRIEF ON JURISDICTION

COMES NOW the Small Telephone Company Group (STCG) and in response to the November 10, 2003 *Order Directing Filing of Briefs*, states to the Missouri Public Service Commission (Commission) as follows:

SUMMARY

The Application filed by Time Warner Cable Information Services (Missouri), LLC ("Time Warner") presents issues involving voice over internet protocol ("VOIP"). Although this new technology presents many questions about intercompany compensation and records exchange, there should be no confusion about the Commission's jurisdiction over telecommunications services offered in Missouri. Under Missouri law, any telecommunications service, regardless of the technology that is utilized, is subject to the Commission's jurisdiction unless it falls within the specific statutory exemptions of §386.020(53) RSMo. 2000. There is no such exemption for VOIP traffic.

Moreover, there is nothing functionally or technically different about VOIP telecommunications traffic once it arrives at the facilities of small rural local exchange companies. In fact, it uses the same circuit-switched access functions/facilities as used by other interexchange carriers when originating or terminating interexchange traffic.

Thus, there is no question about the Commission's jurisdiction over VOIP services at this time.

DISCUSSION

Time Warner's *Application* cites Missouri law and the Commission's rules in seeking Commission authority "to provide local and interexchange voice service in portions of Missouri."¹ The *Application* explains that Time Warner "proposes to provide local and interexchange voice service on a facilities and resold basis..."² Furthermore, "Exhibit B" to the *Application* states that customers will "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."³ All of these representations indicate that Time Warner seeks to offer telecommunications service in Missouri.

1. Missouri Law

The Commission has regulatory jurisdiction over any entity providing telecommunications services within the state. Section 386.250(2), RSMo 2000, states that the jurisdiction, supervision, powers and duties of the Commission extend

[t]o all telecommunications facilities, telecommunications services and to all telecommunications companies so far as such telecommunications facilities are operated or utilized by a telecommunications company to offer or provide telecommunications service between one point and another within this state or so far as such telecommunications services are offered or provided by a telecommunications company between one point and another within this state . . .

¹ *Application*, p. 1.

² *Application*, p. 2.

³ *Application*, Exhibit B.

Thus, if the services provided by Time Warner fall within the definition of telecommunications services, they are clearly within the jurisdiction of this Commission.

In Missouri, "telecommunications service" is broadly defined 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."⁴ This statutory definition has a few exceptions, such as wireless and paging services, but VOIP service is not included in the statutory exceptions. Therefore, VOIP falls within Missouri's statutory definition of telecommunications service.

2. Federal Law

The FCC has not exempted VOIP services from state regulation. Rather, the FCC has held that such services are more akin to traditional "telecommunications" service than any type of "information" service. For example, in its 1998 *Report to Congress*,⁵ the FCC defined "phone-to-phone" IP telephony as a service which: (1) holds itself out as providing voice telephony service; (2) does not require customers to use CPE different from the CPE necessary to place ordinary touch-tone calls over the public switched telephone network; (3) allows customers to call telephone numbers associated with the North American Numbering Plan; and (4) transmits customer

⁴ Section 386.020(53) RSMo. 2000.

⁵ *In the Matter of the Federal-State Board on Universal Service*, CC Docket No. 96-45, *Report to Congress*, 13 FCC Rcd 11501, rel. April 10, 1998.

information without net change in form or content.⁶ The Commission explained:

From a functional standpoint, users of these services obtain only voice transmission, rather than information services such as access to stored files. The provider does not offer a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information. Thus, the record currently before us suggests that this type of IP telephony lacks the characteristics that would render them “information services” within the meaning of the statute, and instead bear the characteristics of “telecommunications services.”⁷

Accordingly, the FCC stated, “We note that, to the extent we conclude that certain forms of phone-to-phone IP telephony service are ‘telecommunications services,’ and to the extent the providers of those services ***obtain the same circuit-switched access as obtained by other interexchange carriers***, and therefore ***impose the same burdens on the local exchange as do other interexchange carriers***, we may find it reasonable that they pay similar access charges.”⁸

The services described in Time Warner’s Application appear to fit the FCC’s definition of phone-to-phone IP telephony, and they have the same characteristics as other interexchange telecommunications services. Specifically, Time Warner’s VOIP telecommunications service would use the same circuit-switched access as obtained by other interexchange carriers (“IXCs”) for interexchange voice traffic, and the VOIP service would impose the same burdens on the local exchange networks as other interexchange traffic. Even Time Warner’s *Application* recognizes that there is no

⁶ *Id.* at ¶ 88.

⁷ *Id.* at ¶ 89 (emphasis added).

⁸ *Report to Congress*, ¶ 91.

exemption for VOIP services and references “the currently unsettled nature of the issues surrounding the appropriate regulatory treatment of IP-based voice services such as those proposed by the Applicant...”⁹

3. VOIP Traffic Is Identical to Traditional Voice Traffic When It Arrives at the STCG’s Networks.

VOIP telephony traffic is no different from traditional voice telecommunications traffic when it reaches the STCG member companies’ networks. Indeed, it uses the same switched access services in exactly the same way as other interexchange traffic. For example, in AT&T’s Petition before the FCC concerning VOIP traffic, AT&T explained:

A “phone-to-phone IP call will travel over the public switched network to a local gateway where it is converted to Internet Protocol and then routed over [AT&T’s] Internet backbone to a terminating gateway, **where it is converted back to voice and sent over local exchange facilities to the called party.**”¹⁰

Thus, by the time VOIP telephony traffic arrives at the STCG networks, it looks and acts exactly like any other interexchange voice call. It transverses the same facilities, requires the same functions, and creates the same costs as any other minute of interexchange traffic. Simply put, VOIP telephony traffic is no different from other interexchange voice traffic when it arrives at the STCG networks, and there is no reason to treat it as anything but voice traffic.

Before the FCC, AT&T conceded that “all phone-to-phone and computer-to-

⁹ *Application*, p. 4.

¹⁰ *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361, *AT&T’s Petition*, pp. 10-11 (emphasis added).

phone services are terminated in precisely the same way, for they all route traffic in voice (TDM) format from the providers' terminating gateways to called parties **over circuit switched local exchange facilities.**"¹¹ Thus, when VOIP telephony traffic arrives in STCG member company exchanges, it uses the same network facilities and services as other interexchange voice traffic. This is true whether VOIP telephony is provided via phone-to-phone or computer-to-phone services.¹²

CONCLUSION

Under Missouri law, any telecommunications service, even if provisioned via VOIP, is subject to the Commission's jurisdiction unless it falls within the specific statutory exemptions in Chapter 386. Because there is no such exemption for VOIP traffic, the Commission has jurisdiction over the issues involving VOIP telecommunications services that are raised in this case.

¹¹ AT&T's *Petition*, p. 30 (emphasis added).

¹² AT&T's *Petition*, p. 11 (Most pertinently, ***all phone-to-phone and all computer-to-phone calls are terminated in identical ways, in identical protocols, and over identical local exchange facilities.***") (emphasis added).

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 20th day of November, 2003, to the following parties:

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

Michael F. Dandino
Office of the Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102

Paul S. DeFord
Lathrop and Gage L.C.
2345 Grand Boulevard, Suite 2800
Kansas City, Missouri 64108-2612

James Fischer
Fischer & Dority, P.C.
101 Madison, Suite 400
Jefferson City, MO 65101

Craig Johnson/Bryan Lade
Andereck, Evans, Milne, Peace & Johnson
P.O. Box 1438
Jefferson City, Missouri 65102-1438

Sheldon Stock
Fidelity Cablevision, Inc.
10 South Broadway, 2000
Equitable Building
St. Louis, MO 63102

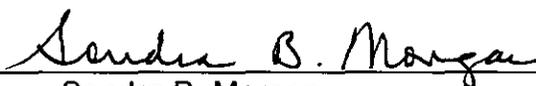
Steve Weber
AT&T Communications of the Southwest
101 W. McCarty, Ste 216
Jefferson City, Missouri 65101

Larry Dority
Fischer & Dority, P.C.
101 Madison, Suite 400
Jefferson City, MO 65101

Paul Lane
SBC Missouri
One Bell Center, Room 4300
St. Louis, MO 63101

Lisa Hendricks
Sprint Missouri, Inc. d/b/a Sprint
6450 Sprint Parkway, Bldg. 14
Overland Park, KS 66251

William Steinmeyer
Xspedius Management Co. of Kansas City
2031 Tower Drive
Jefferson City, MO 65109


Sondra B. Morgan

Respectfully submitted,

By Sondra B. Morgan

W.R. England, III Mo. #23975
Sondra B. Morgan Mo. #35482
Brian T. McCartney Mo. #47788
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue, P.O. Box 456
Jefferson City, MO 65102-0456
trip@brydonlaw.com
smorgan@brydonlaw.com
bmccartney@brydonlaw.com
(573) 635-7166
(573) 634-7431 (FAX)

Attorneys for the STCG