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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Order Granting Applications to Intervene and Setting
Prehearing Conference

November 21, 2003
Jefferson City, Missouri
Volume 1

In the Matter of the Application of)
Time Warner Cable Information Services)
(Missouri), LLC for a Certificate of) Case No.
Service Authority to Provide Local and) LA-2004-0133
Interexchange Voice Service in Portions)
Of the State of Missouri and to)
Classify Said Services and the Company)
As Competitive.)

KENNARD JONES, Presiding,
Regulatory Law Judge

REPORTED BY:
Jennifer L. Leibach
ASSOCIATED COURT REPORTERS

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PROCEEDINGS

JUDGE JONES: The date is November 21, 2003. This is the prehearing conference in Case No. LA-2004-0133 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.

I am Kennard Jones, Presiding Judge in this matter. I suppose the attorneys -- this is what I'll do. I'll read from the list of companies that, at this point, have intervened, and then I'll have the attorneys introduce themselves. For sake of time, just say your name. We have your address. We'll use the address that you filed with your briefs in order to correspond. Small Telephone Company Group.

MS. MORGAN: Sondra Morgan.

JUDGE JONES: Missouri Independent Telephone Company.

MS. CHASE: Lisa Chase.

MR. JOHNSON: Craig Johnson is here also, your Honor.

JUDGE JONES: Thank you, Mr. Johnson.

1 Fidelity.

2 MR. ROSS: Good morning, your Honor,

3 Jason Ross.

4 JUDGE JONES: Okay. CenturyTel.

5 MR. DORITY: Good morning, Judge.

6 Larry DORITY with the firm Fischer & DORITY.

7 JUDGE JONES: AT&T.

8 MR. COMLEY: Thank you, Judge. Mark W.

9 Comley as well as Rebecca B. DeCook and Jay Stephen

10 Weber.

11 JUDGE JONES: Time Warner.

12 MR. DEFORD: Paul Deford, your Honor.

13 JUDGE JONES: AllTel.

14 MR. DORITY: Your Honor, Larry DORITY

15 also representing AllTel Missouri in this proceeding.

16 JUDGE JONES: SBC.

17 MR. FISCHER: Your Honor, James M.

18 Fischer for the limited purpose of the prehearing

19 representing SBC.

20 JUDGE JONES: Sprint.

21 MS. HENDRICKSON: Pamela Hendrickson on

22 behalf of Lisa Creighton Hendricks.

23 JUDGE JONES: Xspedius.

24 MS. YOUNG: MaryAnn Young.

25 JUDGE JONES: All right. Did I

1 miss anyone other than Vonnage?

2 MR. JOHNSON: Your Honor, let the
3 record reflect Mark Johnson on behalf of Vonnage.

4 JUDGE JONES: Staff.

5 MR. HAAS: William K. Haas.

6 JUDGE JONES: Office of Public Counsel.

7 MR. DANDINO: Michael Dandino, your
8 Honor. Thank you.

9 JUDGE JONES: All right. Generally, as
10 you all know, the purpose of the prehearing
11 conference is to bring the parties together to better
12 understand the issues, and to perhaps facilitate an
13 agreement between the parties and also to satisfy the
14 Commission that the parties have had at least one
15 opportunity to meet.

16 At this point, from what I gathered,
17 Missouri Independent Telephone Company Group is
18 really the only party that opposes the application.
19 Is there anyone else here who opposes the
20 application? And Ms. Chase, what I've said of the
21 MITG, is that true?

22 MS. CHASE: I would say that we're not
23 opposed to the possibility of providing a
24 certificate, but we are opposed to providing that
25 certificate without first having the opportunity for

1 the industry to have some input into the issues that
2 have been set forth surrounding VOIP.

3 JUDGE JONES: Okay. I've looked at
4 you're briefs concerning the issue of jurisdiction,
5 and I have some concerns, and because I've already
6 been talking with MITG, I'll start with you all.

7 You say in your briefs that Voice Over
8 Internet Protocol Services are the functional
9 equivalent of plain old telephone service and
10 deserves no different regulatory treatment. I've
11 only been here a year, and I have not seen a
12 certificate case go to hearing. Normally, that case
13 will go through our staff who will advise the
14 Commission on how we should proceed, and if staff
15 says that they think the company can provide the
16 service and that their managerial and technical and
17 financial records and whatnot, then the Commission
18 usually approves the application, subject, of course,
19 to appeal thereafter.

20 You also say that the Commission should
21 exert jurisdiction and consider the application in
22 the most expedient manner possible. Would it be more
23 expedient to have a hearing or not?

24 MS. CHASE: It is unclear what type of
25 certification Time Warner is seeking, especially with

1 respect to local. It is unclear if they would be
2 subject to all the basic local services that other
3 carriers in Missouri are required to provide when
4 they are given a base local certificate.

5 MR. DEFORD: Your Honor, I think I can
6 maybe clarify this.

7 JUDGE JONES: I'll ask you to respond.
8 I think it's important that because of the number of
9 parties we have here, we let one another finish and
10 then when she's finished, I'll ask you to respond.

11 MS. CHASE: This is also a unique
12 situation where the entire billing and records and
13 the entire industry protocol has not been -- is not
14 established at this time for VOIP as it is for other
15 CLEX or IEPs or other commune for certification, and
16 that is another reason why a higher scrutiny of this
17 particular certification is justified.

18 JUDGE JONES: Mr. DeFord.

19 MR. DEFORD: Yes, your Honor. I think
20 I've spoke with all of the parties, and including, I
21 believe, Mr. Johnson. Our application does not raise
22 any VOIP specific issues. We have stated very
23 clearly, I think, that we are going to comply with
24 all of the Commission regulation, all of the industry
25 standards, all of the intercarrier compensation

1 mechanisms that are currently in place. Simply
2 stated, our application does not raise any new issue
3 for the Commission to address.

4 Now, if the parties would like to
5 address generic issues associated with Voice Over
6 Internet Protocol, I would suggest that the
7 Commission view something in a generic proceeding
8 such as that suggested by staff. I think there is no
9 justification whatsoever in delaying in any way Time
10 Warner's application to enter the market.

11 JUDGE JONES: Okay. Thank you, Mr.
12 Deford. Mr. Johnson.

13 MR. JOHNSON: Yes, your Honor, also for
14 the MITG. I have spoken to Mr. Deford about this,
15 and we applaud them coming to the Commission and
16 asking for certification. As we understand the
17 technology, one certificate they did not ask for was
18 a basic local certificate, but it appears to us that
19 they could be providing two-way switch voice within a
20 local calling scope established by the Commission so
21 they might need that.

22 Our other concerns has to do with the
23 routing and the rating and the billing of the traffic
24 has to do with when the call is initiated from a
25 computer on a VOIP call, we don't know whether

1 there's a phone number associated with that, how that
2 information is to the location of either the phone
3 number or the commuter gets transmitted to the public
4 switched network so that when it is delivered, we get
5 the necessary information to route and rate the call
6 to make sure the appropriate compensation, if any, is
7 applicable can thereby flow, and if you just grant
8 the certificate without addressing these and the
9 traffic gets delivered, we might have yet another
10 situation where we get unknown traffic that we're
11 unable to bill, and so we were hoping today to
12 discuss these things during the prehearing conference
13 with Mr. Deford to see if we can get the necessary
14 assurances to make sure that is not going to be a
15 problem, but we do have a concern about just granting
16 a certificate when the industry doesn't know how this
17 traffic is going to be delivered and what we'll be
18 able to do with it when it is delivered.

19 JUDGE JONES: Mr. Johnson, it seems
20 that your desire for a hearing is exploratory more
21 than, I mean, there doesn't seem to be an issue in
22 conflict, it doesn't seem right for the Commission to
23 consider at this point. Would the complaint be the
24 proper venue or the proper avenue for you to take?

25 MR. JOHNSON: Well, we've had

1 unfortunate experiences in the past where an
2 interconnection agreement or certificates are
3 granted, the traffic comes to us, it's reported to
4 us, sometimes it's not reported to us, and then we're
5 relegated to try to file a complaint to (1) identify
6 how the traffic originated, (2) who delivered it, (3)
7 what rates or company compensation rates should be
8 applicable and who should pay it, and I think it
9 would be preferable for the Commission to address
10 these before the traffic starts flowing rather than
11 after the traffic starts flowing. In my experience,
12 a complaint is unsatisfactory.

13 JUDGE JONES: I guess my concern is
14 that normally hearings are used to address some
15 conflict. There's no apparent conflict at this
16 point, is there, Mr. Johnson?

17 MR. JOHNSON:. There is no real
18 controversy in terms of we have a call that's been
19 reported as a Time Warner VOIP call for which we're
20 trying to obtain compensation, that's correct, but we
21 do have a concern because this is a brand new
22 technology, and the first time in Missouri that it's
23 been certificated as a telephone communication
24 service, and we're just wanting to know if the
25 traffic comes to us under the certificates that

1 they're asking the Commission to grant, whether we'll
2 get paid for it and get the necessary information to
3 get paid for it, and that's not been an issue with
4 respect to land line traffic or wireless traffic, but
5 it is going to be a brand new issue with respect to
6 VOIP initiated traffic.

7 JUDGE JONES: I trust that you and Mr.
8 Deford will further discuss this after we're done
9 with the prehearing conference.

10 MR. DEFORD: If I could, your Honor.

11 JUDGE JONES: Go.

12 MR. DEFORD: I think the misconception
13 here is that we would be transiting some traffic over
14 what people would consider the internet, and that is,
15 in fact, not the case. The VOIP technology here
16 would be used to connect the customer with its cable
17 modem to Time Warner's softswitch. The only time
18 that it would not touch the public switch network
19 would be if a Time Warner customer called another
20 Time Warner customer, in which case it would never
21 touch the public switch network, so there's no
22 internet traffic involved here and there are no
23 computer generated calls involved here.

24 JUDGE JONES: Okay. Well, Mr. Deford,
25 since I have your attention now, in your brief, one

1 of the statements made is whether Commission has
2 jurisdiction is not relevant to processing the
3 application. It seems like that's foremost --

4 MR. DEFORD: Actually, that may not
5 have been as clear as is it should have been. The
6 Commission's jurisdiction over the type of VOIP
7 technology, the internet, the true internet based
8 type of traffic that I think Mr. Johnson was
9 referring to where, you know, one computer is capable
10 of calling another computer over the internet and
11 you're able to have, you know, a conversation in that
12 manner, you know, the Commission's jurisdiction over
13 that type of technology is wholly irrelevant to
14 dealing with Time Warner's application here.

15 JUDGE JONES: So the Commission has
16 jurisdiction over the type of service you are
17 offering to provide?

18 MR. DEFORD: At this time, we're
19 submitting to the Commission's jurisdiction over the
20 service we're offering, yes.

21 JUDGE JONES: Okay. All right. Mark
22 Comley from AT&T.

23 MR. COMLEY: Yes.

24 JUDGE JONES: In your brief, Mr.
25 Comley, you state that regardless of whether the

1 Commission has jurisdiction over VOIP should refrain
2 from asserting that jurisdiction in regulating VOIP
3 services at this time. My question to you is how,
4 then, should the Commission proceed with the
5 application?

6 MR. COMLEY: I think our position is
7 that we have no objection to granting the relief.

8 JUDGE JONES: Is it, then, necessary
9 that the Commission determine that it have
10 jurisdiction prior to granting relief?

11 MR. COMLEY: I think the -- I'll have
12 to look at the brief one more time, but I'll confess
13 to you, Judge Jones, I'm fairly new to this docket,
14 but I think reading between the lines, I don't know
15 whether the Commission -- whether it's essential that
16 the Commission make a determination on jurisdiction.
17 It's not essential to the relief Mr. Deford's client
18 is seeking.

19 JUDGE JONES: Well, if the Commission
20 were to approve the application without making a
21 determination on jurisdiction, isn't there an
22 implicit determination in that we approved the
23 application?

24 MR. COMLEY: The application sets out
25 the services that they plan to provide, they've

1 submitted to the jurisdiction of the Commission with
2 respect to those services. If they engage in
3 services that are contrary to their certificate, like
4 he mentioned, they are subject to a complaint, either
5 by the Staff, Commission, or other telephone
6 companies.

7 JUDGE JONES: You also state that we
8 should avoid acting on the application until the FCC
9 has time to consider.

10 MR. COMLEY: Let's see, was that -- can
11 you point that to me in the brief, please? As I
12 recollect, it was that AT&T wanted you not to act on
13 the decision of VOIP --

14 JUDGE JONES: Right.

15 MR. COMLEY: -- until there was going
16 to be FCC decisions.

17 JUDGE JONES: Well, from what Mr.
18 Deford is saying, and I say this to you all, it
19 doesn't sound like this is VOIP service. Is that
20 true, Mr. Deford?

21 MR. DEFORD: It's not the type of VOIP
22 service that I believe is controversial in that
23 context of the proceedings pending before the FCC and
24 in other jurisdictions, no, it is not.

25 JUDGE JONES: Okay. I read in one of

1 the briefs that IP telephoning has several types of
2 services, VOIP being one, and I take it the type of
3 service you intend to offer is another type.

4 MR. DEFORD: That would be correct.

5 JUDGE JONES: Okay.

6 MR. COMLEY: Judge Jones, let me add
7 something.

8 JUDGE JONES: Yes, Mr. Comley.

9 MR. COMLEY: We may want to supplement
10 our brief. We understand that there is an order
11 issued in North Carolina to Time Warner, which North
12 Carolina Commission did not reach the issue of the
13 jurisdiction. They granted the relief requested.

14 JUDGE JONES: Well, then, they've
15 reached the issue of jurisdiction.

16 MR. COMLEY: Well, over the services
17 that were approved in the certificate.

18 JUDGE JONES: All right.

19 MR. DEFORD: To be clear, your Honor,
20 we are using VOIP technology, so this is, you know,
21 internet telephony. That is the technology that's
22 used, it's just not used in the context that I think
23 is causing the type of controversy in other
24 jurisdictions.

25 JUDGE JONES: Okay. I think all of my

1 concerns have been addressed. Is there anyone here
2 who thinks the Commission does not have jurisdiction?
3 Okay.

4 MR. JOHNSON: Your Honor, does not have
5 jurisdiction over Time Warner's application --

6 JUDGE JONES: Exactly.

7 MR. JOHNSON: -- or over VOIP?

8 JUDGE JONES: Well, it seems to be --
9 the relevance of VOIP seems to be dwindling during
10 this prehearing conference. That, of course, is in
11 light of the uncertainties of the service that they
12 intend to offer, but from what Mr. Deford has said,
13 it doesn't sound like what they intend to offer as
14 VOIP as what was offered in Minnesota in the Vonnage
15 holdings case. Is that true, Mr. Deford?

16 MR. DEFORD: Yes, but to be perfectly
17 clear, we have reserved our right at a later date to
18 challenge whether the Commission has jurisdiction
19 over any type of VOIP technology, any type of service
20 provided with VOIP client.

21 MS. PATTERSON: Judge, I'm Julie
22 Patterson with Time Warner Cable, if I can clarify.

23 JUDGE JONES: I'm sorry, what is your
24 name?

25 MS. PATTERSON: Julie Patterson with

1 Time Warner Cable, with the Applicant. I think your
2 statement that you just made with respect to the
3 Minnesota case is true. The service that we proposed
4 to provide is different from that service.

5 In terms of jurisdiction, whether the
6 Commission determines it has jurisdiction over these
7 particular types of service we don't think is exactly
8 relevant to this proceeding because we're stipulating
9 and agreeing to it at this point. Now, if the FCC or
10 this Commission after doing a thorough investigation
11 into this type of service and the Vonnage type of
12 services and all the different types of VOIP
13 services, comes to a different conclusion or the same
14 conclusion, we would abide by that, but at this
15 point, our goal is to get into the market and
16 existing rules and debate it at another point and
17 then once it's all touched out as evidence by this
18 proceeding, there's lots of questions and once those
19 questions are determined, we'll abide by what the
20 Commission determines. We just don't think it's
21 necessary to do so given our agreement to submit to
22 the jurisdiction at this time.

23 JUDGE JONES: You do realize that
24 subject matter of jurisdiction can't be waived, don't
25 you?

1 MS. PATTERSON: I do understand that.

2 JUDGE JONES: Okay, Mr. Johnson.

3 MR. JOHNSON: Can I ask a, perhaps, a
4 question that will help clarify service for me?

5 JUDGE JONES: Okay.

6 MR. JOHNSON: Is it -- it is my
7 understanding that one of the applicant's VOIP
8 customers can initiate a call using their VOIP or
9 computer, whatever you want to call it. I was
10 further under the impression that that call could be
11 delivered on the public switch network to terminate
12 to one of my client's end users, whether that's a
13 local call or toll call, I was under the impression
14 that that's not true, and the calls would be
15 delivered on what we referred to as the public switch
16 network, we may not have a problem with this
17 application, but if those calls can be delivered to
18 the public switch network and can terminate to my
19 clients on a plain old telephone, then we still have
20 the same concern that I mentioned to you earlier. If
21 that could possibly be clarified today, I can know
22 whether our continued intervention or opposition is
23 even necessary.

24 MS. PATTERSON: I think I can clarify
25 that.

1 JUDGE JONES: Go ahead.

2 MS. PATTERSON: Calls cannot be
3 initiated from computers on the type of service that
4 we propose to provide, only telephones. Calls can be
5 delivered to the public switch network in order for
6 Time Warner customers to call non-Time Warner
7 customers.

8 In those cases, the calls would be
9 rated and routed according to the originating number
10 and the rate center in which that call originates in
11 accordance with existing regimes, so if it's
12 determined to be a local or toll or interexchange or
13 interstate call based on the two telephone numbers,
14 and appropriate compensation will be paid to the
15 members of the MITG in accordance with the
16 origination and termination of that call, but calls
17 cannot originate on a computer, and you can always
18 tell where the call originates in this scenario, so
19 appropriate compensation can be paid.

20 JUDGE JONES: Did you hear her, Mr.
21 Johnson?

22 MR. JOHNSON: I think I caught most of
23 it, but as I understood it, maybe she could correct
24 me if I'm wrong, but the calls that are initiated by
25 one of your customers will have a phone number

1 assigned with them, they will have a rating and
2 routing location which will be delivered to public
3 switch network so all compensation should be taken
4 care of as is done -- currently done with the
5 existing regime on a public switch network.

6 MS. PATTERSON: That is true, and you
7 would know where that call originated. It would not
8 originate from an unknown location or computer.

9 JUDGE JONES: Okay. Does anyone else
10 have any concerns they would like to voice at this
11 time?

12 MR. DORITY: Your Honor, Larry DORITY
13 appearing on behalf of CenturyTel and AllTel
14 Missouri. I would like to echo some of the concerns
15 that Mr. Johnson raised earlier, and I'm still not
16 sure that I completely understand the routing and
17 paths that these calls are going to be making, and as
18 he suggested, I would hope that's the type of
19 discussions that we'll be able to have once we go
20 off-the-record here this morning.

21 In terms of the relevancy of the VOIP
22 issues in general, I would respectfully suggest that
23 the Commission, by its own action, has inextricably
24 linked VOIP issues with this particular docket by
25 actions that they took not only in this docket, but

1 also in regard to case number TO-2004-0172, which was
2 initiated by the Staff's motion to open a case that
3 would investigate the Voice Over Internet Protocol
4 and virtual inexec issues in Missouri.

5 We filed a pleading strongly supporting
6 Staff's motion to open a case to investigate these
7 issues, they're going to have tremendous implications
8 for all of the parties that are here in this room
9 this morning. We think it's absolutely critical that
10 the Commission move forward and investigate these
11 issues. Rather than sustaining staff's motion, the
12 Commission took action and indicated that they would,
13 in fact, address those issues in the context of this
14 proceeding, so with all due respect, your Honor, I
15 feel like I'm chasing a forum to make sure that these
16 very important issues be addressed by the Commission.

17 Now, I've heard Mr. Deford and some
18 other parties indicate that they are now willing to
19 support the Commission looking at these issues in a
20 generic docket so as not to hold up the Commission's
21 addressing the issues in this particular
22 certification request. Again, I think that's
23 something that perhaps the parties can discuss when
24 we go off the record and agree to, but I want to
25 state on the record that our clients, particularly,

1 are very interested in making sure that the
2 Commission provides a forum where these issues can be
3 addressed.

4 JUDGE JONES: Thank you, Mr. Dority.

5 MR. DORITY: Thank you.

6 JUDGE JONES: Does anyone else have
7 anything they'd like to add?

8 MS. MORGAN: I would just like to say
9 that I support what Mr. Dority has said. Small
10 Telephone Group does not oppose this application
11 because of the assurances that they have given us
12 about the type of traffic and how they're meant to be
13 routed throughout traffic, but we are very concerned
14 about Voice Over Internet generally and we would like
15 to see the Commission open a case to consider that.

16 JUDGE JONES: Thank you, Ms. Morgan, is
17 it?

18 MS. MORGAN: Yes.

19 JUDGE JONES: Okay. Does anyone else
20 have anything they'd like to add?

21 MR. DEFORD: Your Honor, just to be
22 clear, we would vehemently object to conducting to
23 what amounts to a generic proceeding in the context
24 of our application case. We think the implication
25 should be decided on its merit and if the Commission

1 wants to investigate VOIP, it should do so in another
2 docket.

3 JUDGE JONES: Mr. Deford, there's a
4 difference then between Voice Over Internet Protocol
5 and what you intend to provide?

6 MR. DEFORD: We're using Voice Over
7 Internet Protocol technology, but we're using it in
8 such a way that it eliminates the controversy that is
9 raised in other jurisdictions. There's no -- as
10 Ms. Patterson indicated, there are no computer
11 originated calls, there are no calls that you can't
12 identify, and the billing and the intercarrier
13 compensation issues are eliminated by the way we are
14 proposing to enter the market.

15 JUDGE JONES: How is what you're
16 proposing to offer different than regular telephone
17 service?

18 MS. PATTERSON: Well, it's Internet
19 Protocol technology and not circuit switched or TDM
20 protocols, which are traditionally used in regular
21 phone service.

22 MR. DEFORD: It's packet switched.

23 JUDGE JONES: Okay. Does anyone else
24 have anything they'd like to add before I leave you
25 all to discuss this? I will ask Staff, Mr. Haas,

1 when does Staff anticipate, in light of the
2 proceedings going on here today, being able to file a
3 memorandum in this matter? Your Honor, we would
4 anticipate filing a recommendation Monday.

5 JUDGE JONES: Okay. All right. And
6 does -- last chance, does anyone else have anything
7 they'd like to say on the record? Okay. With that
8 then, we'll go off-the-record.

9 WHEREUPON, the recorded portion of the
10 prehearing conference was concluded.

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