

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

**TIME WARNER CABLE INFORMATION SERVICES (MISSOURI), LLC'S
MOTION FOR REHEARING OR RECONSIDERATION**

Comes now Time Warner Cable Information Services (Missouri), LLC ("TWCIS") d/b/a Time Warner Cable, by its undersigned counsel, and pursuant to Section 386.500 R.S.Mo. hereby submits the following Motion for Rehearing or Reconsideration:

1. On November 4, 2003, the Commission issued an Order Granting Applications to Intervene and Setting Prehearing Conference in this proceeding. Therein the Commission states as follows: "In light of the fact that VoIP brings with it regulatory uncertainties, the Commission finds that the public interest will be served by an examination of those uncertainties. Inclusion of the proposed interveners in an examination of VoIP can only serve to address more fully issues surrounding VoIP. Consequently, the public interest would be better served by a full examination of this service."¹ TWCIS asserts the Commission's Order is unreasonable, unjust and unlawful for the following reasons:

¹ 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, *Order Granting Applications to Intervene and Setting Prehearing Conference*, Case No. LA-2004-0133, at 3.

2. TWCIS stands ready to offer to consumers in Missouri a true facilities-based, broadband, competitive alternative to incumbent LECs' local exchange service – the precise type of service that legislators and regulators have desired for many years. While reserving its rights to benefit from any future regulatory determinations, TWCIS voluntarily filed its Application so that it could avoid the types of delays to its market entry that the Commission's Order can be expected to cause. TWCIS' Application and agreement to abide by current regulation was intended to eliminate any regulatory concerns that the Commission and others might have regarding TWCIS' provision of a newly developed and innovative service offering before the Commission and/or the FCC have had an opportunity to investigate and examine such offerings. Conducting an investigation and examination of VoIP-based services before allowing TWCIS to enter the Missouri market under the existing rules, as the Commission proposes to do, would be an unreasonable and anticompetitive result. The delay that would be caused by permitting intervention in this proceeding and conducting a broad examination of VoIP would prejudice TWCIS, as well as Missouri consumers, and would be contrary to the clearly defined public interest in promoting and permitting competition in the market for local, residential telephone service.²

3. TWCIS' pending Application in this proceeding raises no regulatory or policy issues relating to VoIP that require resolution prior to grant. In fact, the purpose of TWCIS' voluntarily submission of an application for certification was its desire to ensure that the broader regulatory issues associated with VoIP-based services would be addressed in a context separate and distinct from TWCIS' entry into the competitive

² See Section 392.530 R.S.Mo.

market and at a time when the necessity of such a determination became apparent. TWCIS' Application does not seek to address VoIP technology generally and instead requests a determination that TWCIS has demonstrated its compliance with the Commission's certification and eligibility requirements. No other issues are raised by the Application, and, accordingly, no other issues warrant examination in this proceeding.

4. While it is true that the regulatory status of VoIP-based services is unsettled, as TWCIS itself has acknowledged, regulatory uncertainty does not provide a reasonable basis for delaying consideration of TWCIS' Application by conducting an examination of VoIP technology generally, particularly where TWCIS has voluntarily agreed to comply with all applicable requirements currently in place. Indeed, TWCIS' submission of its Application and agreement to comply with applicable regulation has specifically eliminated regulatory uncertainty as an issue relating to this proceeding or to its entry into the Missouri market. TWCIS' Application demonstrates clearly its willingness to comply with all applicable Commission rules and meet all relevant service standards, including, but not limited to billing, quality of service, and tariff filing and maintenance, unless and until such time as this Commission, the FCC or some other governmental body clarifies the regulatory landscape surrounding VoIP.

5. In view of TWCIS' voluntary agreement to abide by Commission regulations, it would be grossly unjust and unreasonable to delay TWCIS' intended entry into the Missouri competitive market indefinitely by bringing into this limited certification proceeding broader policy issues relating to VoIP technology and services. TWCIS is confident that the regulatory issues and uncertainty associated with VoIP-based services will be duly investigated and resolved, and it will readily participate in

those efforts. The regulatory flux surrounding these types of services, however, has existed for several years,³ and it is likely that the process of resolving them will continue for many months, perhaps years. It is for this reason that TWCIS determined to enter the market and begin serving customers now, under the existing rules, rather than wait for these issues to be debated and resolved at some unknown time in the future. If the Commission wishes to undertake a general examination of VoIP technology and services, it should do so in a proceeding separate from that involving TWCIS' Application.⁴

6. Moreover, many of the issues that the Commission appears interested in addressing in this proceeding are not at all implicated by TWCIS' Application or proposed service offering, and, accordingly, they should not be examined or included in TWCIS' application proceeding. In its Motion to Open a Case investigating VoIP, for instance, the Commission Staff raised issues relating implications of VoIP services upon virtual NXX central office codes and the payment of access charges. Through its Orders relating to the Staff's Motion and to TWCIS' Application, the Commission effectively determined to address those issues in the context of TWCIS' Application. Neither issue, however, is remotely raised by TWCIS' Application, and it would be prejudicial to

³ See, e.g., Federal-State Joint Board on Universal Service, *Report to Congress*, CC Docket No. 96-45 (1998) at ¶¶ 83-93.

⁴ Moreover, several other state commissions have considered and ruled upon certification applications involving VoIP without including in the certification proceedings a general examination of VoIP services. See Application of Time Warner Cable Information Services (North Carolina), LLC for a Certificate of Public Convenience and Necessity to Provide Local Voice Services as a Competitive Local Provider, North Carolina Utilities Commission, Docket No. P-1262, Sub 1 at Exhibit J (filed May 16, 2003) (certificate granted July 24, 2003); Application of Verizon Select Services, Inc. for New Operating Authority as a Local Provider, *Local Exchange Carrier Registration Form*, Public Utilities Commission of Ohio, Case No. 03-581-TP-ACE, Request for Waivers, p. 2 (filed Mar. 3, 2003) (certificate granted June 10, 2003); Time Warner Cable Information Services (Maine), LLC, Application to Provide Local and Interexchange Internet Protocol Voice Services, Maine Public Utilities Commission, Docket No. 2002-792, at 5 (filed Dec. 19, 2002) (certificate granted Feb. 17, 2003); Application for Certificate to Provide Alternative Local Exchange Telecommunications Service by Time Warner Cable Information Services (Florida), LLC, *Letter Transmitting Application*, Docket No. 011617-TX (filed Nov. 30, 2001) (certificate granted Jan. 10, 2002).

TWCIS and an inefficient use of Commission resources for the Commission to examine those issues rather than rule on the ripe Application pending before the Commission.

7. In the case of virtual NXX central office codes, TWCIS has given no indication that it intends to assign any NXX codes to customers who reside in geographic areas corresponding to different NXX codes. As indicated clearly in its Application, TWCIS intends to comply with all requirements applicable to the provision of local telephone service, which necessarily includes requirements relating to the distribution and assignment of telephone numbers.

8. Similarly, the issue of the applicability of access charges to VoIP-based services is not germane to TWCIS' Application proceeding, nor does TWCIS' Application itself raise questions regarding access charges or any type of intercarrier compensation. Indeed, TWCIS indicated clearly in its response to the Motions to Intervene that it intends to pass and terminate traffic in accordance with existing intercarrier compensation regimes. Because many of the issues identified by Staff as being relevant to a general inquiry regarding VoIP are not at all applicable to the particular VoIP service that TWCIS proposes to offer, these issues are best addressed in a separate proceeding in which all interested parties may participate. It would be patently unreasonable to include in TWCIS' certification proceeding an examination of issues not at all related to the particular type of VoIP-based services that TWCIS proposes to offer.⁵

9. Additionally, as demonstrated by the late filed Motions for Intervention in this proceeding, it would be unjust, unreasonable, and contrary to the public interest to consider in the context of a single certification application proceeding broad regulatory

⁵ Similarly, the Commission's Order refers to sending voice over the "Internet," apparently referring to the public Internet. TWCIS' proposed service, in fact, does not traverse the public Internet "cloud" at all.

issues that potentially affect a multitude of service providers. 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. Addressing general VoIP-related issues in the context of a single applicant’s certification proceeding would be unjust and unreasonable in two ways. First, as discussed above, the proceeding would raise issues that may not be implicated at all by the applicant’s proposed service, as is the case with TWCIS’ Application.

10. It would also be prejudicial not only to TWCIS, but also to other interested parties in the industry, to examine broad VoIP issues through a single applicant’s certification proceeding. SBC Missouri and Alltel Missouri, for instance, sought intervention in this proceeding *after* the Commission’s Order, demonstrating the interest that many providers have in a general examination of VoIP. Other incumbent and local providers, in addition to interexchange carriers and providers of alternative services, will similarly desire and have the right to participate in any discussion and examination of general issues relating to VoIP. While these parties have an interest in and right to participate in such a general examination of VoIP, permitting an endless stream of interveners into TWCIS’ limited certification proceeding to do so would cause unreasonable and unjust delays to the consideration and resolution of TWCIS’ Application and raise issues not at all implicated by the Application. Preventing TWCIS from promptly entering the market while the Commission examines and discusses issues not implicated by TWCIS’ services, particularly where TWCIS has agreed to comply with Commission rules, would be unreasonable, unjust, and prejudicial to both TWCIS and Missouri consumers.

11. Finally, including in this proceeding a general “examination of VoIP,” as the Commission’s Order will do, would unjustly discriminate against TWCIS by treating its certification application differently than all other applications routinely considered by the Commission. TWCIS’ Application is complete on its face and ripe for determination without the necessity of an examination of the regulatory and policy issues surrounding the use of VoIP technology. There is simply no reason to treat TWCIS’ Application any differently than any other certification application.

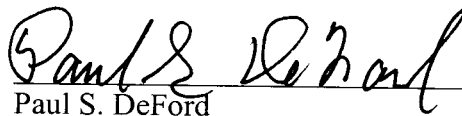
12. The Dissenting Opinion of Commissioner Connie Murray issued herein on November 4, 2003, accurately identifies the reasons that it is unjust, unreasonable and contrary to the public interest to grant interventions and set hearings in this case. As Commissioner Murray succinctly states, “Time Warner Cable Information Services (Missouri), LLC seeks voluntarily to submit itself to our jurisdiction until such time as there is a final determination by this Commission, the FCC or some other competent administrative or judicial body that provision of VOIP is beyond state jurisdiction. The attempts by numerous interveners to subject VOIP services to endless delays and costly proceedings that would deprive consumers of a valuable service should not be countenanced.”⁶

WHEREFORE, for all of the reasons expressed herein, TWCIS requests that the Commission rehear or reconsider its decision to grant interventions and set a hearing in this matter and urges the Commission to bifurcate any general examination of VoIP technology and services from TWCIS’ limited certification proceeding.

⁶ 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, *Order Granting Applications to Intervene and Setting Prehearing Conference*, Case No. LA-2004-0133, at 6 (Commissioner Murray, dissenting).

Respectfully submitted,

LATHROP & GAGE, L.C.

A handwritten signature in black ink, appearing to read "Paul S. DeFord", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the foregoing pleading was sent via U.S. Mail on this 6th day of November, 2003, to:

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