

**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) Case No. LA-2004-0133
and Interexchange Voice Service in Portions of the)
State of Missouri and to Classify said Services)
and the Company as Competitive.)

**SBC MISSOURI'S
RESPONSE TO STAFF RECOMMENDATION¹**

In its Brief Concerning Jurisdiction, SBC Missouri previously explained that the Commission does not have authority to regulate Voice Over Internet Protocol (“VoIP”) services found to be information services under the federal Telecommunications Act. SBC Missouri’s Brief Concerning Jurisdiction, filed November 20, 2003. Time Warner indicated its intent to offer a VoIP service,² but has chosen not to contest the Commission’s regulatory authority, subject to its reservation of right to do so in the future. Time Warner has chosen to voluntarily subject its service(s) to the Commission’s jurisdiction rather than engage in a jurisdictional debate. While Time Warner’s choice cannot change the appropriate classification of VoIP services, SBC Missouri does not challenge Time Warner’s right to make that choice. Based on the representations Time Warner³ made in its Application, SBC Missouri does not oppose Time Warner being granted a certificate of service authority to provide “basic local telecommunications service” in Missouri (or its request for competitive classification).

SBC Missouri, however, does oppose the proposed classification of Time Warner’s services as simply “local exchange telecommunications service.” Staff Recommendation,

¹ SBC Missouri makes this filing pursuant to the Missouri Public Service Commission’s (“Commission’s”) November 26, 2003, Order Directing Filing of Responses to Staff’s November 24, 2003 Recommendation. Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as “SBC Missouri.”

² For purposes of this application, SBC Missouri accepts arguendo that Time Warner’s proposed service is true VoIP.

³ Time Warner Cable Information Services (Missouri), L.L.C. will be referred to as Time Warner.

Attachment A, pp. 6-7. Staff's proposal would exempt Time Warner from certain rules applicable to all other providers of basic local telecommunications service. *Id.* Given Time Warner's election to treat its VoIP services as subject to Missouri regulatory jurisdiction, however, the services Time Warner seeks to provide fall squarely within the statutory definition of "basic local telecommunications service" under Section 386.020(4) RSMo. 2000. Time Warner has "voluntarily agree[d] to abide by the Commission's jurisdiction"⁴ and its services should be appropriately classified in accordance with Missouri law. Having made its choice, Time Warner must be treated consistent with Missouri law. Section 392.455 RSMo. 2000 requires providers of "basic local telecommunications service" to obtain certification, and Time Warner must comply with that statute.

All parties offering basic local telecommunications service should be subject to the same rules (except as appropriately modified for those carriers declared to be competitive). It is neither appropriate nor lawful to give one carrier an advantage in the marketplace by imposing less burdensome regulation not authorized under statute.

1. Classification of Time Warner's Proposed Services

In general, the extent of the Commission's jurisdiction over Voice Over Internet Protocol ("VoIP") offerings will depend upon whether the offering is classified as a "telecommunications service" under Missouri law or an "information service" under the federal Telecommunications Act.⁵ This jurisdictional issue, however, does not need to be addressed in this proceeding because Time Warner has agreed to be subject to the Commission's regulatory authority, subject to certain reservation of rights to challenge jurisdiction based on subsequent FCC or judicial determinations.

⁴ See, Time Warner's Response to Applications to Intervene, p. 6, filed October 17, 2003 (describing its voluntary submission to Commission regulation subject to a reservation of certain rights).

⁵ See, SBC Missouri's Brief concerning jurisdiction, filed November 20, 2003, pp. 1-4.

Time Warner's Application appears to indicate that it is characterizing its proposed service offerings as "local exchange telecommunications services." But even the most cursory examination of Time Warner's proposed services demonstrates that they fall squarely within the statutory definition of "basic local telecommunications service" under Missouri law, and go far beyond mere "local exchange telecommunications service."

Section 386.020(31) RSMo (2000) defines "local exchange telecommunications service" merely as "telecommunications⁶ service between points within an exchange." "Basic local telecommunications service," however, goes beyond the mere provision of telecommunications between points within an exchange. Section 386.020(4) defines "basic local telecommunications service" as:

Two-way switched voice service within a local calling scope as determined by the Commission comprised of any of the following services and their recurring and non-recurring charges:

- (a) Multiparty, single line, including installation, touchtone dialing, and any applicable mileage or zone charges;
- (b) Assistance programs for installation of, or access to, basic local telecommunications services for qualifying economically disadvantaged or disabled customers or both, including, but not limited to, lifeline services and link-up Missouri services for low-income customers or dual-party relay service for the hearing impaired and speech impaired;

⁶ Section 386.020(53) RSMo. (2000) defines "telecommunications service" 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. Telecommunications does not include: (a) The rent, sale, lease, or exchange for other value received of customer premises equipment . . . (b) Answering services and paging services; (c) The offering of radio communications services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations; (d) Services provided by a hospital, hotel, motel, or other similar business whose principal service is the provision of temporary lodging through the owning or operating of message switching or billing equipment solely for the purpose of providing at a charge telecommunications services to its temporary patients or guests; (e) Services provided by a private telecommunications system; (f) Cable television service; (g) The installation and maintenance of inside wire within a customer's premises; (h) Electronic publishing services; or (i) Services provided pursuant to a broadcast radio or television license issued by the Federal Communications Commission."

- (c) Access to local emergency services including, but not limited to, 911 service established by local authority;
- (d) Access to basic local operator services;
- (e) Access to basic local directory assistance;
- (f) Standard intercept service;
- (g) Equal access to interexchange carriers consistent with rules and regulation of the Federal Communications Commission;
- (h) One standard white pages directory listing.

Basic local telecommunications service does not include optional toll free calling outside a local calling scope but within a community of interest available for an additional monthly fee or the offering or provision of basic local telecommunications service and private shared-tenant service locations. (Emphasis added).

Time Warner's Application unequivocally demonstrates that it will be providing two-way switched for service within a local calling scope:

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.⁷

And even though the statute mandates a "basic local" classification if any one of eight services enumerated in the definition's subparts are provided, Time Warner itself acknowledges that it intends to provide six -- those described in subparts (a), (b), (c), (d), (e) and (h) -- of the eight:

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 toll free calling; local number portability; and access to telephone relay services.

Staff also addresses Time Warner's apparent claim that it is merely providing "local exchange telecommunications service:"

⁷ Application for Certificate of Service Authority, Ex. B.

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.⁸

While Staff appears to acquiesce in Time Warner's "local exchange" characterization, that acquiescence appears to stem from a prior Commission decision that has no application to the services Time Warner seeks to provide. In that prior case, the Commission permitted AT&T to add Direct Inward Dial ("DID") capability to its Digital Link Service that at the time offered only Direct Outward Dial ("DOD") service (with only a DOD capability, the service did not satisfy the "two-way" characteristic of "basic local"). Staff had asked that the tariff be suspended because it believed the combination of DID and DOD allowed AT&T to provide a two-way switched voice service within a local calling scope and therefore questioned how AT&T could lawfully provide the service without meeting the requirements for basic local telecommunications service.

Although the Commission allowed AT&T's proposed tariff to become effective, the Commission did not specifically rule that AT&T's proposed Digital Link Service was in fact merely a "local exchange telecommunications service." But even if it can be construed to have done so by letting the tariffs go into effect, AT&T's Digital Link Service is readily distinguishable from the local residential service Time Warner proposes in this case. As reflected in the Commission's Order, Digital Link Service, which AT&T provided to medium to large businesses that utilize PBX equipment, was "not intended to completely replace a business customer's existing basic local services."⁹ Rather, the Digital Link tariff "requires customers to

⁸ Staff Recommendation, Appendix A, p. 6.

⁹ In the Matter of AT&T Communications of the Southwest, Inc., Tariff Filing Proposing Direct Inward Dial for Digital Link Service, Case No. TT-99-237, Order Denying Motion to Suspend Tariff, <http://www.psc.state.mo.us/orders/12109237.htm>, issued December 10, 1998 at p. 2.

retain basic local service from an incumbent LEC or competitive LEC as a condition of purchasing Digital Link Service.”¹⁰

In contrast, Time Warner’s proposed offering will be targeted to the residential market,¹¹ and as recent Time Warner testimony to the FCC makes clear, its service is intended as a replacement for the basic local telecommunications service currently being provided by the incumbent LEC:

From a consumer perspective, Time Warner Cable Digital Phone provides unlimited local and long distance calling for a single price that includes popular calling features such as call waiting, caller ID, and call waiting with caller ID. International calling, as well as Operator Services and Directory Assistance, are offered at an extra charge at competitive rates. Time Warner Cable Digital Phone utilizes Local Number Portability, permitting consumers to maintain their existing telephone numbers, in addition to whole-home wiring and the opportunity to utilize each telephone jack in the home. Customers also have access to toll-free 800 calling, Telecommunications Relay Services, Enhanced 911 services, and Directory Listings. Customers are billed for their Digital Phone service, in addition to other Time Warner Cable-provided services, on a single billing statement.¹²

Time Warner’s Application here shows that it intends to roll out its service in numerous communities across the state:

Initially, this service will be offered only to customers who subscribe to Time Warner Cable’s high speed, modem data service . . . the Applicant intends to offer IP voice service in the areas in which Time Warner Cable owns and operates cable systems and offers cable television and high speed cable modem services. Specifically, the Applicant intends to offer IP voice service in the exchanges in the following communities, to the extent that it has facilities and the technical capability to do so: Bellton, Bethel, Blue Springs, Excelsior Springs, Farley, Ferrelview, Gladstone, Grandview, Greenwood, Holt, Independence, Kansas City, Kearney, Lake Lotawana, Lake Waukomis, Lees Summit, Liberty, Melrose, Oakview, Oakwood, Oakwood Park, Parkville, Platte City, Platte County, Platte Woods, Pleasant Valley, Raytown, Riverside, Smithville, Tracy, Trimble, Village

¹⁰ Id. at p. 3.

¹¹ “The Applicant intends to provide facilities-based local Internet Protocols (“IP”) voice service, targeted to the residential market.” Application for Certification, Exhibit B.

¹² Prepared testimony of John K. Billock, Vice Chairman and Chief Operating Officer of Time Warner Cable, before the Federal Communications Commission, December 1, 2003 (appended as Attachment 1).

of Oaks, Weatherby Lake and Weston. The Applicant intends to begin service in Kansas City and then to expand gradually to service the remaining communities listed above.¹³

And Time Warner seeks authority to provide its service across most of the state:

TWCIS proposes to provide local and interexchange voice service on a facilities and resold basis, throughout all exchanges currently served by Southwestern Bell Telephone Company (SWBT), Sprint and CenturyTel. The specific SWBT, Sprint and CenturyTel exchanges within which TWCIS proposed to offer service are listed in the respective tariffs of those incumbent LECs' local exchange tariffs. TWCIS make seek authority to provide service in other areas of the state in a subsequent proceeding."¹⁴

Based on these facts, the services described in Time Warner's Application would fall within the "basic local" rather than the "local exchange" telecommunications classification.

2. Time Warner's Certification Request

Although Time Warner appears to be seeking only a certificate to provide "local exchange telecommunications service," Time Warner's Application goes much further. It provides evidence of financial, technical, and managerial qualification, which are standards applied to requests for certification to provide "basic local" exchange service. Section 392.455 RSMo. 2000.

Indeed, after examining Time Warner's Application, and its qualifications in these areas, Staff determined that Time Warner met the minimum qualifications for "basic local" exchange certification, even though Time Warner did not request such authority.¹⁵ Staff based this determination on Time Warner's representations in its Application that it is:

willing to comply with all applicable Commission rules and is willing to meet all relevant service standards, including, but not limited to billing, quality of service, and tariff filing and maintenance in the manner consistent with the Commission's requirements for incumbent local exchange carrier(s) with whom TWCIS seeks authority to compete.¹⁶

¹³ Application for Certification, Exhibit B.

¹⁴ Application for Certification, p. 2.

¹⁵ Staff Recommendation, Appendix A, p. 6

¹⁶ Time Warner Application for Certificate of Service Authority, p. 3.

Time Warner also stated, as a condition of certification and competitive classification, that unless otherwise ordered by the Commission, its originating and terminating switched access rates would be no greater than the lowest Commission-approved corresponding access rates of the incumbent local exchange carrier with whom it is competing; and that if the incumbent decreases those rates, Time Warner would file an appropriate tariff amendment to reduce its own corresponding rates to the level of the incumbent within 30 days in order to maintain the cap on switched access rates.

In light of these representations and commitments, there does not appear to be any grounds for the Commission to deny a certificate of service authority to provide “basic local telecommunications service” to Time Warner if Time Warner desires such authority. But it would not be appropriate to exempt Time Warner from compliance with statutes and rules applicable to all other provisions of basic local telecommunications service when it is provisioning such services, and is not contesting the Commission’s regulatory authority.

WHEREFORE, SBC Missouri respectfully suggests that Time Warner be advised that “basic local” telecommunications service authority is the appropriate certification for the types of services described in its Application.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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