

**BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION**

In the Matter of Tariff No. 3 of)	
Time Warner Cable Information Services)	Case No. LT-2006-0162
(Missouri), LLC d/b/a Time Warner Cable)	Tariff File No. JL-2006-0231

**MITG Suggestions in Opposition to
Time Warner Cable information Services, LLC
d/b/a Time Warner Cable's
Application for Rehearing**

The MITG Companies submit these Suggestions in Opposition to Time Warner's August 17, 2006 Application for Rehearing:

1. The Commission's August 8, 2006 Report and Order rejecting Time Warner's tariff sheets, at pages 3 and 4, correctly ruled that Time Warner's Digital Phone Service did not meet the FCC's *Vonage* test for being preempted from Missouri regulation.
2. To the extent Time Warner challenges the Commission's ruling that Digital Phone Service is not preempted from state regulation, Time Warner's Application for Rehearing consists of re-argument of issues developed, briefed, submitted, and ruled upon by this Commission. The MITG incorporates by reference the points and authorities set forth in the Post Hearing Brief of the MITG pertaining to the reasons why Time Warner's Digital Phone Service is not preempted from state regulation.
3. The Commission's Report and Order cites ¶ 56 of the FCC's June 27, 2006 *Report and Order and Notice of Proposed Rulemaking in the Matters of Universal*

Service Contribution Methodology and IP-Enabled Services, WC Docket No. 06-122 and WC Docket No. 04-36, among other dockets (“*Universal Service Order*”).

4. In the *Universal Service Order*, the FCC determined to require VOIP providers utilizing the Public Switched Telephone Network (PSTN) to be subject to universal service contribution funding requirements.

5. As quoted by the Commission’s Report and Order, ¶ 56 of the FCC’s *Universal Service Order* stated that the fundamental premise of the FCC’s *Vonage Order* requiring preemption was the inability of Vonage, as a VOIP provider, to identify interstate or intrastate calls.

6. Time Warner’s description, in paragraph 4 of its Application for Rehearing, of this inability as a “precondition” to preemption is erroneous and misleading. As set forth in the *Vonage Order*, as amplified by the *Universal Service Order*, this inability was the fundamental premise of the FCC in preempting state regulation. The rest of the “factors” or “analysis” set forth in the FCC’s *Vonage Order* were all explanatory of prefatory to the fundamental premise. The FCC has only preempted state regulation of VOIP Services that, due to the nature of their call provisioning, do not permit identification of interstate versus intrastate calls.

7. Contrary to Time Warner’s assertion, this inability to identify is not merely a component of the *Vonage* analysis. It is the ultimate conclusion, or fundamental premise, that permits preemption of state regulation.

8. In this case all parties agree that Time-Warner can identify and separate interstate Digital Phone Service Calls from intrastate Digital Phone Service Calls.

9. Under the original *Vonage* analysis, as amplified or clarified in the *Universal Service Order*, Time Warner's Digital Phone Service is not preempted from regulation by Missouri.
10. The rejection of tariffs ordered in the Commission's Report and Order was correct, for the reasons stated in that Report and Order.
11. Time Warner's Application for Rehearing should be denied.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading was electronically mailed to the following attorneys of record in this proceeding this 21st day of August, 2006:

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/s/ Craig S. Johnson
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