

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Staff of the Public Service Commission)
of the State of Missouri,)

Complainant,)

v.)

Time Warner Cable Information)
Services (Missouri), LLC,)

Respondent.)

Case No. TC-2007-0413

ORDER SETTING PREHEARING CONFERENCE AND DIRECTING
FILING OF A PROPOSED PROCEDURAL SCHEDULE

Issue Date: May 30, 2007

Effective Date: May 30, 2007

The Staff of the Missouri Public Service Commission ("Staff") filed a complaint against Time Warner Cable Information Services (Missouri), LLC, d/b/a Time Warner Cable ("TWC") on April 23, 2007. According to the complaint, even though Staff had previously sent TWC two letters concerning the issue and received assurances that the reports would be filed, TWC failed to file a series of quarterly Quality of Service Reports in violation of Commission Rule 4 CSR 240-3.550(5), which requires each company providing basic local telecommunications service to file such reports with the Commission "no later than forty-five (45) days following the end of each quarter." Staff further sought authorization to bring a penalty action against TWC in circuit court to recover "the maximum statutory forfeiture allowed by section 386.570 RSMo. for each separate, distinct, and continuing violation."

On April 25, 2007, the Commission notified TWC of the complaint and allowed it thirty days in which to answer as provided by 4 CSR 240-2.070(7). TWC filed its answer on May 25, 2007, in which it admitted that it had not filed the reports for certain quarters as required by Commission order but denied that the Internet Protocol-based services it provides its customers constitute basic local exchange telecommunications service. Nevertheless, by way of affirmative defense, TWC certified that it would “file quality of service reports for the fourth quarter of 2006, the first quarter of 2007, and every quarter thereafter in accordance with Commission rules.” TWC also pledged to “file the fourth quarter 2006 and first quarter 2007 reports not later than June 15, 2007,” and asked that the Commission dismiss Staff’s complaint upon receipt of those reports.

This matter is now at issue and a prehearing conference is appropriate to ensure its prompt resolution. In part, a prehearing conference is designed to permit the parties to pursue settlement discussions and to identify all remaining procedural or substantive matters of concern prior to the formal disposition of the issues in the case.¹ In addition, a prehearing conference offers the parties a valuable opportunity to attempt to resolve their differences by agreeing to voluntary mediation of their dispute. The parties shall jointly file a proposed procedural schedule within twenty days after the prehearing conference.

The Commission reminds the parties that this prehearing conference is *not an evidentiary hearing*. Sworn testimony will not be taken and no final decision will result from this prehearing conference.² However, all parties are required to be present for the

¹ See Commission Rule 4 CSR 240-2.090(6).

² Also, under Commission Rule 4 CSR 240-2.090(7), any facts the parties may discuss during the conference, including any settlement offers or discussions, are privileged and cannot be used against any participating party unless the parties agree to disclose them or they are fully supported by other, independent evidence.

prehearing conference, and a court reporter will be present to make a record of the parties that appear. **Parties must arrive in person or appear by telephone at or before the scheduled starting time of 10:00 a.m. in order to participate.** Pursuant to Commission Rule 4 CSR 240-2.090(5), "Failure to appear at a prehearing conference without previously having secured a continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown."

The Commission further advises the parties that arriving late to a prehearing conference is the equivalent of failing to appear. Parties are expected to appear at scheduled hearings on time, or to advise the Commission of their need to appear late or to timely request a continuance. If a party fails to meet those obligations, that party may be dismissed and the Commission may rule in favor of an opposing party. This is why the Commission issues advance notice of all hearings and conferences and extends various opportunities prior to any scheduled event for the parties to appear by phone or request a continuance.

IT IS ORDERED THAT:

1. The parties shall appear at a prehearing conference to be held on June 18, 2007, beginning at 10:00 a.m. The prehearing conference will be held in Room 305 at the Commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, a building that meets the accessibility standards required by the Americans with Disabilities Act. Any person needing additional accommodations to participate in this prehearing conference should call the Public Service Commission's Hotline at 1-800-392-4211 or dial Relay Missouri at 711 prior to the conference.

2. Any party wishing to appear by telephone shall notify the Regulatory Law Judge by calling 573-751-7485 no later than June 11, 2007.

3. Any party wishing to request a continuance shall file a pleading with the Commission stating why they are unable to attend the scheduled prehearing conference on June 18, 2007, either in person or by phone, and shall provide the Commission with a list of dates when that party is available to appear. Any such pleading shall be filed no later than June 13, 2007, and shall also be served on every other party to this complaint by the party requesting the continuance.

4. The parties shall jointly prepare and file a proposed procedural schedule no later than July 9, 2007.

5. This order shall become effective on May 30, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Benjamin H. Lane, Regulatory
Law Judge, by delegation of authority
under Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 30th day of May, 2007.