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November 20^J
~~July 15, 2003~~

FILED²

NOV 20 2003

Missouri Public
Service Commission

VIA HAND DELIVERY

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Judge
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65102

Re: In the matter of the Application of Time Warner Cable Information
Services (Missouri), LLC for a Certificate of Service Authority
Case No. LA-2004-0133

Dear Mr. Roberts:

Enclosed for filing with the Commission are the original and eight copies of **Time Warner Cable Information Services (Missouri), LLC's Response to Order Directing Filing of Briefs** in the above matter.

If you have any questions concerning this filing, please contact me.

Very truly yours,

LATHROP & GAGE L.C.

By:


Paul S. DeFord

PD/jf
Enclosures
cc: All parties of record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²
NOV 20 2003

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.)

Case No. LA-2004-0133

Missouri Public
Service Commission

**TIME WARNER CABLE INFORMATION SERVICES (MISSOURI), LLC'S
RESPONSE TO ORDER DIRECTING FILING OF BRIEFS**

Comes now Time Warner Cable Information Services (Missouri), LLC ("TWCIS") d/b/a Time Warner Cable, by its undersigned counsel, and hereby submits the following Response to Order Directing Filing of Briefs:

1. On November 10, 2003, the Commission issued an Order Directing the Filing of Briefs in which it stated that uncertainty exists as to whether or not the Commission has jurisdiction over Voice over Internet Protocol ("VoIP") services and directed the parties to submit a brief setting forth its position on that issue prior to the prehearing conference scheduled for November 21, 2003.

2. TWCIS submits that the ultimate resolution of whether the Commission has jurisdiction over VoIP services is not relevant to the processing and resolution of TWCIS' pending Application. Indeed, such complex issues relating to jurisdiction and regulatory classification should not delay the processing of TWCIS' Application and should be addressed in a separate and, if the Commission deems necessary, simultaneous proceeding. As TWCIS set forth in its previous submissions, the purpose of TWCIS' voluntarily submission of its Application and agreement to abide by the existing rules governing local telephone service was its desire to enter the market in a timely manner by

ensuring that the complex and, in all likelihood, much contested issues regarding VoIP based services be addressed a context separate and distinct its Application proceeding. 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.

3. In addition, there are a variety of methods of utilizing VoIP technology to provide services to consumers and the potential of a variety of public policy implications to the deployment of VoIP services. As TWCIS made clear in its previous submissions in this Docket, however, many of the regulatory issues implicated by some types of VoIP-based services, such as whether access charges are due and the implications of providing NXX codes in foreign geographic areas, are not at all raised by TWCIS' particular manner of providing voice services.¹ Nonetheless, the Commission, in examining VoIP services generally, should address each of the various "flavors" of these services appearing in the marketplace today and the regulatory implications of each. Doing so in the context of TWCIS' limited Application proceeding—which does not raise many of the issues which should legitimately be examined—would serve only to prejudice TWCIS. Although TWCIS neither opposes nor supports the Commission's exploration and investigation of these and other issues, it would be prejudicial to TWCIS and to the public interest to conduct a lengthy review of such issues in the context of TWCIS' Application. Such a review is simply not required by the pending Application.

¹ As TWCIS indicated in its Motion for Rehearing and Reconsideration filed on November 7, 2003, TWCIS intends to pass and terminate traffic in accordance with existing intercarrier compensation regimes and does not intend to assign NXX codes in geographic areas other than the rate centers in which those codes are assigned.

4. 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. Although TWCIS does not oppose the creation of an industry forum or generic proceeding to investigate the regulatory issues surrounding VoIP services, TWCIS believes that such a proceeding could not possibly be conducted and concluded in a timeframe that would permit it to deploy its services in Missouri and begin serving customers in a timely manner. As evidenced by the several proceedings pending before the FCC relating to VoIP services, the relevant issues are varied and far-reaching. The FCC has pending before it several proceedings to consider the regulatory status of VoIP services, each relating to a discrete aspect of a particular type of service. *See Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211 (filed Sept. 22, 2003) (relating to Vonage Holdings Corporation's provision of VoIP-based services); *AT&T Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (filed October 12, 2002) (relating to the payment of access charges on VoIP based traffic); *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket 03-45 (filed Feb. 5, 2003) (relating to a free VoIP-based service involving a closed user group). In addition, the FCC has indicated its intention to conduct a broad investigation into VoIP services, *see* FCC News Release "**FCC to Begin Internet Telephony Proceedings**", November 6, 2003, indicating the likelihood that the FCC's resolution of the multitude of issues on the table will not be completed for several months, perhaps longer. Similarly, any effort by this Commission to resolve jurisdictional and classification issues relating to VoIP services would involve

many varied issues and the differing positions of a multitude of parties and could, conceivably, proceed for several months. To avoid such a delay to its intended market entry, TWCIS has voluntarily submitted to the Commission's existing rules, subject to its reservation of rights, until the Commission and/or the FCC is able to make a determination about the nature of these services. In view of this submission, as well as the fact that no party has contested TWCIS' fitness to hold a certificate and enter the market, the Commission should keep TWCIS' Application separate from any lengthy and complex discussion of jurisdictional issues.

5. TWCIS' deployment of facilities-based, residential telephone services to Missouri consumers offers the potential to bring to the State the full promise of the Telecommunications Act of 1996. The Commission should not delay TWCIS' deployment of services by waiting to rule upon TWCIS' Application until it makes a jurisdictional determination regarding VoIP-based services, particularly where TWCIS has voluntarily submitted to the Commission's jurisdiction. Rather, the Commission should bifurcate any general investigation into the regulatory uncertainties surrounding VoIP services from TWCIS' Application and consider and grant TWCIS' Application promptly.

WHEREFORE, TWCIS requests that the Commission accept this response to the Order Directing Filing of Briefs and immediately address the merits of TWCIS' Application.

Respectfully submitted,

LATHROP & GAGE, L.C.

A handwritten signature in cursive script that reads "Paul S DeFord". The signature is written in black ink and is positioned above a solid 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 20th day of November, 2003, to:

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