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October 8, 2003

FILED²

OCT 08 2003

Missouri Public
Service Commission

Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

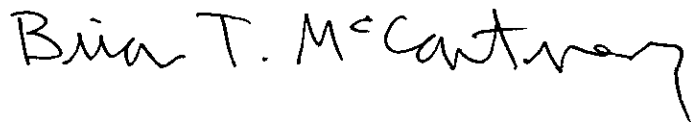
Re: Case No. TK-2004-0070

Dear Mr. Roberts:

Enclosed for filing on behalf of the Small Telephone Company Group, please find an original and eight copies of the Application to Intervene and Request for Hearing in above-referenced matter.

Please see that this filing is brought to the attention of the appropriate Commission personnel. Copies of the attached are being provided to parties of record. If there are any questions, please direct them to me at the above number. I thank you in advance for your cooperation in this matter.

Sincerely,



Brian T. McCartney

BTM/da

cc: Parties of Record

FILED²

OCT 08 2003

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

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 Company as Competitive)

Case No. LA-2004-0133

APPLICATION TO INTERVENE AND REQUEST FOR HEARING

COMES NOW the Small Telephone Company Group (STCG)¹ and for its Application to Intervene and Request for Hearing, states to the Missouri Public Service Commission (Commission) as follows:

SUMMARY

The Application filed by Time Warner Cable Information Services (Missouri), LLC ("TCI") presents the Commission with a case of first impression involving voice over internet protocol ("VOIP") telecommunications services in the state of Missouri. TCI proposes to offer VOIP telecommunications services and seeks Commission authority to offer these services. VOIP services raise issues related to recording and reporting of interexchange traffic and intercompany compensation, and Time Warner has taken the position before the Federal Communications Commission (FCC) that VOIP services are not subject to access charges. VOIP service also presents issues related to Commission jurisdiction and E-911 services. Therefore, the Commission should grant the STCG's Application to Intervene and Request for Hearing.

¹ See Attachment A.

APPLICATION TO INTERVENE

1. On September 23, 2003, the Commission issued its order giving notice of this case and setting intervention deadlines.

2. For the purposes of this case, the STCG consists of the companies listed in Attachment A. The member companies are small incumbent local exchange carriers that provide local and exchange access service in rural areas of the state of Missouri. The STCG's interest in this case is different from that of the general public and may be adversely affected by a final order arising from this case.

3. **Case of First Impression.** The STCG seeks intervention in this case because it appears to present an issue of first impression in Missouri – namely, an application for certificate of service authority to provide telecommunications services with VOIP technology. VOIP presents a number of issues that will affect Missouri's telecommunications carriers.

4. **Recording and Reporting of Interexchange Traffic.** The STCG has concerns about the way in which TCI's proposed VOIP interexchange traffic will be recorded and reported to the STCG companies. In comments before the FCC, Time Warner Telecom stated that "many VOIP providers do not provide calling party number ("CPN"), which is needed by ILECs to identify and bill for termination of access traffic."²

² See AT&T's Petition for Declaratory Ruling that Phone-to-Phone IP Telephone Services are Exempt from Access Charges, WC Docket No. 02-361, Comments of Time Warner Telecom, filed Dec. 18, 2002, available at this Internet address: http://svartifoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513398532

The issue of unidentified and uncompensated traffic has been a longstanding problem in Missouri, and efforts are presently being made to resolve the problem in a number of cases pending before the Commission. Because TCI's proposed service raises the possibility that more unidentified and uncompensated traffic will be added to Missouri's network, the Commission should require that TCI provide appropriate records and reports to all of Missouri's local exchange carriers (LECs).

5. **Intercompany Compensation.** TCI's proposed service also raises intercompany compensation issues. Interexchange VOIP traffic that is delivered to the STCG's exchanges will use the same STCG facilities and services as traditional interexchange traffic delivered by carriers such as AT&T and MCI. However, Time Warner Telecom has taken the position before the FCC that VOIP telecommunications services are not subject to access charges.³ Like the issue of records and reports, the issue of intercompany compensation has been a real problem in Missouri for a number of years. Therefore, the Commission should make clear that TCI's interexchange services are subject to the current intercarrier access compensation regime.

6. **Telecommunications Services.** Although TCI's application seeks authority to provide both local and interexchange services, TCI also states that its application should not be construed as an agreement that its proposed services

³ See *AT&T's Petition for Declaratory Ruling that Phone-to-Phone IP Telephone Services are Exempt from Access Charges*, WC Docket No. 02-361, *Comments of Time Warner Telecom*, filed Dec. 18, 2002, available at this Internet address: http://svartifoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513398532

"constitute telecommunications services, local exchange services, common carrier offerings, or services that are otherwise subject to federal or state regulation, nor that the entity or entities providing them constitute telecommunications carriers, telecommunications providers, local exchange carriers, common carriers, or other regulated entities." This apparent contradiction requires Commission clarification.

7. **Emergency 911 Service.** A recent complaint case involving a VOIP provider in Minnesota addressed the issue of emergency 911 service. In that case, the Minnesota Department of Commerce filed a complaint against VOIP provider Vonage alleging, among other things, that: (a) Vonage was offering telecommunications services without first obtaining a certificate; and (b) Vonage's provision of local service violated Minnesota law by failing to provide adequate 911 service and failing to remit 911 fees. In an order issued last month, the Minnesota Public Utilities Commission concluded that it had jurisdiction over Vonage and required Vonage to "comply with Minnesota Statutes and rules, including certification requirements and the provisioning of 911 service."⁴

REQUEST FOR HEARING

8. The STCG requests a hearing in order for the Commission to carefully examine TCI's application and consider the public policy implications and regulatory treatment for VOIP telecommunications services.

⁴ *In the Matter of the Complaint of the Minnesota Department of Commerce against Vonage Holding Corp. Regarding Lack of Authority to Operate in Minnesota, Docket No. P-6214/C-03-108, Order Finding Jurisdiction and Requiring Compliance, issued Sept. 11, 2003.*

CONCLUSION

Any carrier that uses the public switched telephone network to originate or terminate interexchange telecommunications services, regardless of the transport technology that is used (i.e. circuit switched or internet protocol) should be subject to the current intercarrier compensation regime. The current federal and state intercarrier compensation regime for such telecommunications service is access charges. The interests of the STCG member companies will be directly and adversely affected if the Commission grants TCI's application without clarifying that TCI's provision of interexchange telecommunications services is subject to Missouri's recording and reporting requirements as well as the STCG's existing access tariffs. Therefore, the STCG respectfully requests that the Commission grant its Application to Intervene and Request for Hearing.

Respectfully submitted,

By Brian T. McCartney

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Attorneys for the STCG

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 8th day of October, 2003, to the following parties:

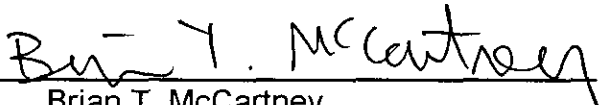
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Brian T. McCartney

ATTACHMENT A

BPS Telephone Company
Cass County Telephone Company
Citizens Telephone Company
Craw-Kan Telephone Cooperative, Inc.
Ellington Telephone Company
Farber Telephone Company
Fidelity Telephone Company
Goodman Telephone Company, Inc.
Granby Telephone Company
Grand River Mutual Telephone Corporation
Green Hills Telephone Corp.
Holway Telephone Company
Iamo Telephone Company
Kingdom Telephone Company
KLM Telephone Company
Lathrop Telephone Company
Le-Ru Telephone Company
McDonald County Telephone Company
Mark Twain Rural Telephone Company
Miller Telephone Company
New Florence Telephone Company
New London Telephone Company
Orchard Farm Telephone Company
Oregon Farmers Mutual Telephone Company
Ozark Telephone Company
Peace Valley Telephone Company
Rock Port Telephone Company
Seneca Telephone Company
Steelville Telephone Exchange, Inc.
Stoutland Telephone Company