

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 1st day of
November, 2007.

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 GRANTING MOTION FOR CONTINUANCE AND
RESCHEDULING EVIDENTIARY HEARING**

Issue Date: November 1, 2007

Effective Date: November 1, 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 forthwith, 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 the Commission’s rules, but denied that the Internet Protocol-based telephone 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 requested that the Commission dismiss Staff’s complaint upon receipt of those reports.¹

By order dated July 12, 2007, the Commission adopted a procedural schedule requiring the parties to file a list of issues and witnesses by September 21, 2007.² In the same order, the Commission set the matter for an evidentiary hearing on October 23, 2007.

At the outset of that hearing, which commenced as scheduled, counsel for Staff announced that Staff was ready to proceed.³ However, counsel for TWC then orally moved for a continuance, explaining that because the company had been “working with several members of Staff to conclude its last portion of quarterly reporting,” testing of the new data

¹ No one has yet filed a formal pleading indicating whether TWC honored its pledge and met that deadline. However, at a prehearing conference held on August 27, 2007, counsel for both Staff and TWC both stated that TWC had filed certain quality of service reports. Transcript of Second Prehearing Conference at 14-15. The question, as framed by counsel for Staff during that prehearing conference, “is whether or not the reports [TWC has filed] are actually complying with the rules, not that they haven’t filed anything at all.” *Id.* at 14.

² The parties timely complied with this order, and identified the following witnesses: Mr. Myron Couch for Staff, Ms. Barbara Meisenheimer for OPC, and Mr. Dale Fox for TWC.

collection software should be completed by October 26, 2007, and the company would be able to conclude its reporting efforts “shortly thereafter,” TWC believed the case could be settled relatively quickly without conducting a full-blown evidentiary hearing.⁴ The attorneys for TWC and OPC further indicated that the witnesses they had originally scheduled to testify were not present and available to testify.⁵

Counsel for OPC averred that even though the case had already “gone on much, much too long,” OPC had no objection to a continuance, “especially if it goes to resolving the issues” raised in the parties’ pleadings.⁶ Meanwhile, counsel for Staff indicated that Staff would agree to a continuance as long as: (1) it received “assurances from Time Warner that they would not object to Staff supplementing their witness list;” and (2) TWC would stipulate that it violated Commission rules when it failed to timely submit quarterly Quality of Service Reports that fully complied with the specific informational requirements of 4 CSR 240-3.550(5).⁷ The Regulatory Law Judge neither granted nor denied TWC’s motion for a continuance from the bench, but instead informed the parties that it would be promptly taken up and formally ruled on by the Commission.⁸

³ Transcript of October 23, 2007 Hearing at 24.

⁴ *Id.* at 24, 26. Counsel for TWC later estimated that TWC’s reporting efforts could be completed “within a week” of October 26 and “well before” November 23. *Id.* at 26-27, 32-33.

⁵ *Id.* at 26. Despite having previously endorsed Ms. Meisenheimer as a witness a month earlier, counsel for OPC stated that he no longer planned on presenting her as a witness and was ready to proceed. *Id.* at 26, 30, 32.

⁶ *Id.* at 26, 27. OPC’s position was that it was “worth the time of all the parties and of this Commission to give [TWC] an opportunity” to bring itself into compliance by continuing the evidentiary hearing for a maximum of 30 to 45 days. *Id.* at 27.

⁷ *Id.* at 25, 28, 30-31, 47. Counsel for TWC readily agreed to the first condition, but was not quite so willing to stipulate to the second, at least without consulting with her client first. *Id.* at 28, 31, 35, 38-39, 41, 48.

⁸ *Id.* at 48-49. After a brief consultation, the parties were all notified that should the Commission grant the motion, the evidentiary hearing would be rescheduled for Friday, November 30, 2007, in Hearing Room 310 beginning at 10:00 a.m. *Id.* at 50-51.

The Commission is acutely aware that this matter has been pending for over six months, that Staff claims TWC has a long history of failing to meet various deadlines relating to the quality of service reports at issue, and that TWC could simply have requested a waiver of or extension of time to comply with Commission Rule 4 CSR 240-3.550(5) if it believed full compliance was technically infeasible or unduly expensive. Nevertheless, since “the law favors settlements and compromises based upon valid considerations,”⁹ the Commission finds TWC’s request for a continuance to be reasonable under the circumstances and will grant it. However, the Commission advises TWC that absent extraordinary circumstances, no further continuances will be granted, and that it expects the parties to make every reasonable effort to resolve this matter as quickly and fairly as possible.

IT IS ORDERED THAT:

1. Time Warner Cable Information Services (Missouri), LLC’s motion for a continuance of the evidentiary hearing originally scheduled for October 23, 2007 is granted. Assuming the case does not settle before then, an evidentiary hearing on the merits of Staff’s complaint will be held on Friday, November 30, 2007, in Hearing Room 310 beginning at 10:00 a.m.

⁹ *Miners’ & Farmers’ Bank of Aurora v. American Bonding Co.*, 186 S.W. 1139, 1140 (Mo. App. S.D. 1916). See also *Sanger v. Yellow Cab Co.*, 486 S.W.2d 477, 481 (Mo. banc 1972) (internal quotation marks omitted) (“The law favors settlements fairly made.”)

2. This order shall become effective on November 1, 2007.

BY THE COMMISSION

(S E A L)



Colleen M. Dale
Secretary

Davis, Chm., Murray, Clayton, Jarrett, CC., concur
Appling, C., absent

Lane, Regulatory Law Judge