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1                                   A P P E A R A N C E S

2   For Staff of the Missouri Public Service Commission:

3                   Mr. Blane Baker  
4                               and Ms. Jennifer Heintz  
5                   Public Service Commission  
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11   For Office of Public Counsel and the Public:

12                   Mr. Michael Dandino  
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18   For Time Warner Cable Information Services (Missouri),  
19   LLC:

20                   Ms. Aimee D. G. Davenport  
21                               and Mr. David Brown  
22                   Lathrop & Gage  
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1 P R O C E E D I N G S

2 JUDGE LANE: Well, good morning, ladies and  
3 gentlemen. And we're on the record in Case No.  
4 TC-2007-0413. That's the Staff of the Missouri Public  
5 Service Commission, who is the Complainant in this case,  
6 versus Time Warner Cable Information Services, Missouri,  
7 LLC, who is the Respondent.

8 My name is Benjamin Lane. I am the Regulatory  
9 Law Judge assigned to this matter. And we're actually  
10 here today for an evidentiary hearing on the merits of the  
11 Staff's complaint.

12 This evidentiary hearing was scheduled some two  
13 months ago. And it is my understanding there may have  
14 been some developments in the interim, and I'm sure the  
15 parties will fill me in on the latest status of this case.

16 But the reason that -- the reason that this  
17 hearing was convened was to -- was to take evidence on the  
18 merits of the complaint and the defenses raised by Time  
19 Warner and, also, to hear Office of Public Counsel's views  
20 on these issues.

21 I know many of you have already submitted or are  
22 in the process of submitting your written entries of  
23 appearance. But just for the record, I'd like to go ahead  
24 and take your oral entries. And let's begin with the  
25 Staff of the Commission.

1           MR. BAKER: Blane Baker and Jennifer Heintz  
2     appearing on behalf of the Staff of the Missouri Public  
3     Service Commission, P.O. Box 563 -- 360 -- I'm sorry --  
4     Jefferson City, Missouri 65102.

5           JUDGE LANE: Mr. Baker, Ms. Heintz, thank you  
6     very much for that entry. The Office of Public Counsel?

7           MR. DANDINO: Thank you, your Honor. Michael  
8     Dandino, Office of the Public Counsel, Post Office Box  
9     2230, Jefferson City, Missouri, 65102, representing the  
10    Office of Public Counsel and the public.

11          JUDGE LANE: Thank you very much, Mr. Dandino.  
12    And for Time Warner?

13          MS. DAVENPORT: Thank you, your Honor. Aimee  
14    Davenport and David Brown for Time Warner Information  
15    Services with the law offices of Lathrop & Gage, 314 East  
16    High Street, Jefferson City, Missouri, 65101.

17          JUDGE LANE: Thank you, Ms. Davenport. And that  
18    was Dan Brown?

19          MS. DAVENPORT: David Brown.

20          JUDGE LANE: David Brown. Thank you very much.  
21    I believe all the -- all the parties to this case are  
22    present.

23                 I will also note, of course, that there are  
24    other -- some other folks here, some observers, some folks  
25    from Staff that are also present.

1               Normally, I would go into any resolution of any  
2 preliminary matters or pending motions. As I understand  
3 it, there are no pending motions of any kind before the  
4 Commission at this point.

5               I would like to say that in the order scheduling  
6 this evidentiary hearing, the parties were -- the  
7 Commission requested that the parties submit a procedural  
8 schedule, which they did, and -- including such things as  
9 the housekeeping matters as the order of the opening  
10 statements, the order of cross-examination, closing  
11 arguments and so forth.

12              I am sure that if we -- if we do -- if we do  
13 continue with the evidentiary hearing portion of the case,  
14 I have all that information available. But just in case  
15 we do, I just want to refresh everyone's memory.

16              The opening statements, Staff would begin. OPC  
17 would present their opening statement, then followed by  
18 Time Warner. Presentation of evidence by Staff and OPC,  
19 then Time Warner.

20              The order of cross-examination, there was no  
21 pre-filed testimony in this. All the testimony was to be  
22 presented live here at the hearing. So the witness would  
23 be tendered for direct, first, by the proponent. And the  
24 order of cross-examination for Staff's witnesses would be  
25 OPC followed by Time Warner.

1           For OPC's witness, it would be Time Warner  
2 followed by Staff. And for Time Warner's witnesses, it  
3 would be Staff followed by OPC. Then finally, the oral  
4 closing arguments by the parties would be in the order of  
5 Staff, OPC and Time Warner with the rebuttal by Staff.

6           So I think we've got all the opening formalities  
7 done with. And I think I would like to ask if the parties  
8 are ready to proceed with -- with -- with this hearing?

9           MR. BAKER: Yes, your honor. Staff is prepared  
10 to proceed.

11          MS. DAVENPORT: Your Honor, before we proceed  
12 any further, I'd like to offer a resolution to -- to this  
13 hearing in its entirety.

14          And the company has been working -- I know Julie  
15 Patterson Lane has been working with several members of  
16 Staff to conclude its last portion of quarterly reporting.  
17 And I am told that they are -- the testing should be  
18 complete by this week, the end of this week, and they will  
19 have the report to offer -- to conclude their reporting by  
20 -- shortly thereafter.

21          And so I would like to offer that as a  
22 resolution and also move to continue -- to the extent that  
23 there are any further issues, move to continue them until  
24 after we have submitted the reports.

25          MR. BAKER: Staff is ready to proceed, your

1 Honor. This -- this has been set on the docket since  
2 September, and there has been plenty of time to resolve  
3 these issues. And we are prepared to proceed.

4           However, if -- if they would like to continue,  
5 we would agree to a continuance if we would have  
6 assurances from Time Warner that they would not object to  
7 Staff supplementing their witness list.

8           We do not believe that this case can be  
9 resolved. Our complaint seeks penalties as well as -- as  
10 well as submitting the quarterly quality of service  
11 reports. So we would -- we don't want to see this go away  
12 quite yet.

13           JUDGE LANE: All right. Well, let me -- let me  
14 ask this. Are -- are all the parties here ready to  
15 proceed? Did you all bring your witnesses?

16           It's my understanding that Staff was in some  
17 discussions -- or the last pleading indicated that, you  
18 know, Staff and Time Warner had been in discussions  
19 regarding possible settlement of this matter. And it  
20 sounds like those discussions have drug on for some time  
21 now with no final resolution.

22           But what I'm hearing from Time Warner is there  
23 may have been some fairly recent developments on a -- on  
24 the technical front as far as being able to provide the  
25 types of information that need to go into the quarterly

1 service reports.

2 I guess what I'm trying to say is are all the  
3 parties ready? For example, Time Warner, do you have your  
4 witness here today?

5 MS. DAVENPORT: We, do not.

6 JUDGE LANE: And -- and Office of Public  
7 Counsel, do you have your witness?

8 MR. DANDINO: Your Honor, Public Counsel didn't  
9 plan on putting on a witness. And we would -- even though  
10 we're ready to proceed, we would not object to a  
11 continuance of this case, especially if it goes to  
12 resolving the issues.

13 JUDGE LANE: All right. So I guess I can -- all  
14 right. Ms. Davenport, can I consider your -- your opening  
15 statement there -- or the comments that you made as a  
16 request to continue this evidentiary hearing?

17 MS. DAVENPORT: Yes.

18 JUDGE LANE: Until such time, you know, do you  
19 have a date certain for that?

20 MS. DAVENPORT: We don't have a date certain.  
21 We do know that the testing will be done by the end of  
22 this week. And then I -- from that, we can get the  
23 reports shortly thereafter next week is my -- but I need  
24 to consult with Ms. -- Ms. Julie Lane to understand  
25 exactly when they can pull those together. But it is



1     within a week.

2                 JUDGE LANE: All right. Let me --

3                 MR. DANDINO: Your Honor, may I -- may I  
4     comment?

5                 JUDGE LANE: Yes.

6                 MR. DANDINO: My comment, if you want to  
7     consider this as any type of -- as an opening is that  
8     Public Counsel believes it's in the public interest and  
9     the interest of the consumers to get compliance and to --  
10    to have the service quality standards met.

11                We are more interested in that than assessing  
12    any penalties against -- against the company. We -- we  
13    want to -- the customers to be assured that they're going  
14    to get quality.

15                And anything that goes -- moves toward that to  
16    -- to get them to comply and if they're willing to try to  
17    comply, I think it is -- it is worth the time of all the  
18    parties and of this Commission to give them an  
19    opportunity, even though we will admit, this has gone on  
20    much, much too long.

21                But I would say if the -- if the Commission  
22    could at least give them another 30 days, 45 days,  
23    whatever to -- or set this for 30 days or 45 days, again,  
24    with the idea that it's not going beyond that. That may  
25    be the impetus that is needed to finish this off.

1 JUDGE LANE: Well, I -- I -- I hear -- I hear  
2 what everyone's saying. I'm also aware, of course, that,  
3 according to the pleadings in this case, according to  
4 Staff's complaint, there, I guess, has been indications  
5 that there have been repeated promises of that the date is  
6 forthcoming and have not been met.

7 So I think that might be Staff's concern here  
8 is, you know, we may be looking at another lengthy delay.  
9 Can you address that?

10 MS. DAVENPORT: Your Honor -- sure. If I may,  
11 we are at the very tail end of the process. And we would  
12 be willing to resume the evidentiary hearing and allow  
13 Staff to supplement its witness list if we do not provide  
14 the reports within a reasonable time frame.

15 JUDGE LANE: All right. Mr. Baker, Ms. Heintz,  
16 would you -- would you be opposed to -- to something like  
17 that, setting a date certain by which this information  
18 must be provided, and then if it isn't provided by that  
19 time, you know, rescheduling the evidentiary hearing on an  
20 expedited basis?

21 MR. BAKER: If we agree to that, we'd have to do  
22 that on the stipulation that -- that Time Warner  
23 stipulates that they have violated Commission rules.

24 JUDGE LANE: All right. I think -- I think in  
25 their pleadings, they may have already done that. They --

1 they admitted that the quarterly service reports were not  
2 filed timely in their answer.

3 MS. DAVENPORT: Right. And there is an  
4 outstanding -- as you know, your Honor, a pending matter  
5 in Cole County regarding the actual jurisdiction over Time  
6 Warner's IT based services.

7 MR. BAKER: That matter is not pending.  
8 Judgment was entered on October 5th of -- September 5th.  
9 I have the date here.

10 MS. HEINTZ: There was an order issued by Judge  
11 Beetem, your Honor, on September 5th affirming the  
12 Commission's order on the Time Warner case.

13 JUDGE LANE: All right. And so that -- I take  
14 it that was a writ of certiorari? That would be --

15 MS. HEINTZ: Right. And we are not aware of any  
16 notice of appeal being filed.

17 MS. DAVENPORT: And we are considering our  
18 appeal options.

19 MS. HEINTZ: Ten days. Don't you have ten days  
20 to do that? That's passed.

21 MS. DAVENPORT: Well --

22 JUDGE LANE: Well, look -- look -- I mean, I  
23 realize that was one of the defenses that was mentioned in  
24 Time Warner's answer. We can -- and, you know, that's an  
25 offense -- that's a defense that can certainly be

1     litigated.

2                   But it sounds like we're not in a position to go  
3     forward today. Time Warner has not bought the witness it  
4     had scheduled. Office of Public Counsel does not have the  
5     witness it scheduled.

6                   I presume you have your witness. But the other  
7     parties are not ready to proceed. And I don't think it's  
8     -- given the substantial uncertainty about whether this  
9     matter is -- you know, is capable of being resolved  
10    today --

11                  MR. DANDINO: Your Honor, just to clarify the  
12    record, Public Counsel does not intend to -- to enter as a  
13    witness, so, you know, we're prepared to go forward. We  
14    just -- our witness -- we just decided not to present a  
15    witness.

16                  JUDGE LANE: All right. So Ms. Meisenheimer is  
17    no longer --

18                  MR. DANDINO: No. She's no longer going to be a  
19    witness.

20                  JUDGE LANE: All right. Well, thank you for --  
21    for letting me know that. I think at this point -- so  
22    what I hear from Staff is you wouldn't be willing to  
23    concur with -- with Time Warner's motion to -- for a  
24    continuance of this evidentiary hearing unless they were  
25    to stipulate that they violated Commission rules by not

1     timely filing the quality of service reports?

2                 MR. BAKER:   Yes.   And if -- if we have  
3     assurances from Time Warner that they won't object if we  
4     supplement our witness list.

5                 MS. DAVENPORT:   And we do not object to that  
6     portion.

7                 JUDGE LANE:   All right.   And -- and would you  
8     object to -- I mean, you've basically stated in your  
9     answer that the quality of service reports were not timely  
10    filed.

11                MS. DAVENPORT:   Sure.   Right.

12                JUDGE LANE:   So that would constitute a  
13    violation of Commission rules if the Commission does, in  
14    fact, have jurisdiction over Time Warner for that -- for  
15    that issue.

16                Are you willing -- well, it may be unnecessary  
17    to get -- to get to total agreement from everyone on this.  
18    And the Commissioners are beginning to arrive, and perhaps  
19    they have some questions or have had a chance to -- to  
20    listen in to what has happened so far.

21                Basically, just to -- just to summarize kind of  
22    what's happened for the Commissioners that have just  
23    arrived, we have a situation here with this -- this matter  
24    was set for an evidentiary hearing approximately two  
25    months ago, and that date is here.

1                   Time Warner has -- does not have its witness  
2     with it, or is -- is not present, is not available to  
3     testify today.

4                   MS. DAVENPORT: Right. And, your Honor, if I  
5     may, it isn't due to any delay tactic. It is simply  
6     because we had been relying on -- on ongoing discussions  
7     with some of the Staff about being able to submit the  
8     reports and then resolving the issue in its entirety, all  
9     the issues in their entirety.

10                  And it's my understanding that those discussions  
11     were still going on between Ms. Lane and certain members  
12     of the Staff and that, in fact, they -- they believed that  
13     the hearing itself had been continued, but it had not. So  
14     here -- here we are.

15                  JUDGE LANE: Okay. All right. It's -- it's  
16     also become -- come to my attention that although OPC had  
17     originally specified that Barbara Meisenheimer would be a  
18     witness for OPC at this hearing, Mr. Dandino informs me  
19     that they are no longer planning to call her at this  
20     point. So he's ready to proceed.

21                  Ms. Davenport of Time Warner has orally moved to  
22     continue this evidentiary hearing for no longer than -- I  
23     believe you said 30 days?

24                  MS. DAVENPORT: We -- that would be acceptable.  
25     Yes. We believe we should have our reports well before 30

1 days, well before that time. Yes.

2 JUDGE LANE: Okay. Well, let me ask you this:  
3 I mean -- and, again, I -- I don't mean to make you commit  
4 to, you know, one -- one bit of hearing strategy. But  
5 should you submit those reports, will you continue to  
6 defend the complaint on the grounds that the Commission  
7 has no jurisdiction?

8 MS. DAVENPORT: I -- well, yeah. If we -- we  
9 would intend to settle the whole complaint in its entirety  
10 and -- and resolve all outstanding issues. So it would be  
11 our intention or our expectation that there wouldn't be  
12 any further proceeding.

13 JUDGE LANE: All right. And does Staff share  
14 that -- that understanding that should Time Warner submit  
15 the quality of service reports with all of the data that's  
16 required by the rule within 30 days, should their motion  
17 for a continuance of this hearing be granted, would Staff  
18 -- is it likely that this matter could be finally  
19 resolved?

20 Or -- or will the parties -- or are the parties  
21 interested in litigating -- actually litigating to a  
22 conclusion this issue of whether the Commission has  
23 jurisdiction over Time Warner.

24 MR. BAKER: In our minds, there never was an  
25 issue of whether the Commission has jurisdiction over Time

1 Warner. The issue, to us, has always been what has been  
2 whether they have filed their quarterly of service  
3 reports, what information was needed in those reports.  
4 And -- and that's been the only issue in our mind. If --

5 JUDGE LANE: Understood. Understood. But the  
6 text of the rule upon which you're relying requires the  
7 entity that's supplying the reports to be providing basic  
8 local telecommunications service.

9 If -- if, as Time Warner claimed in their  
10 answer, they are not providing such service, there would  
11 be no violation of the rule, right?

12 MS. HEINTZ: Your Honor, I'm -- I'm not quite  
13 sure I understand your question. The ruling issued by  
14 Judge Beetem on September 5th of this year, which is not  
15 final, it has not been appealed, stated that it affirmed  
16 the Commission's underlying order in the -- in the Time  
17 Warner case.

18 And in that Time Warner case, the Commission  
19 determined that it did have jurisdiction over Time Warner.  
20 So that is not an issue in this case.

21 MR. BAKER: And that's LT-2006-0162.

22 JUDGE LANE: I understand that. But I can't  
23 take judicial notice of that. Nothing's been filed in  
24 this case. I don't have any -- the Commission doesn't  
25 have any -- I don't have any official knowledge of those



1 proceedings and the results of those proceedings. There's  
2 been no filing.

3 I -- you know, so -- so I'm not -- I'm not  
4 denying that that occurred or -- or -- or -- I'm just  
5 saying that I don't know that this is a mat -- this is a  
6 matter that I can take official notice based only on an  
7 oral representation here.

8 MS. HEINTZ: Is your Honor asking Staff to make  
9 a filing?

10 JUDGE LANE: Yes, I am. I'd like to see such a  
11 filing because it would bear directly on an issue raise by  
12 the pleadings in this case and could possibly finally  
13 determine that issue. So, yes, I very much would.

14 MS. DAVENPORT: And, your Honor, it's Time  
15 Warner's intention on that to resolve all outstanding  
16 issues in this complaint.

17 We certainly raised the legal issue of the  
18 jurisdictional matter while the matter was pending and  
19 having recognized that we may be still -- the reporting  
20 requirements may still apply to us and admitted that we  
21 would go ahead and submit those --

22 JUDGE LANE: Thank you very much. I want to  
23 open this up now to the Commissioners because I know they  
24 have a few questions, and maybe they can shed further  
25 light on this information, somebody coming from the

1     standpoint of not having been up to their knees in -- in  
2     all the pleadings and so forth.

3                 COMMISSIONER CLAYTON: I don't want to -- if  
4     Connie wants to --

5                 COMMISSIONER MURRAY: Go ahead.

6                 COMMISSIONER CLAYTON: I just want to -- there  
7     are not that many pleadings filed in this case. And when  
8     we opened everything up, it was a pretty thin record,  
9     which is out of the ordinary for these -- for cases before  
10    us.

11                I wanted to try to get a handle on the issues  
12    when there's been reference to settling all the issues or  
13    addressing all of the issues. And I wanted to get a  
14    handle on how many issues we're actually dealing with  
15    here.

16                Is there any dispute on the factual issues in  
17    this case? I mean, is there any -- any dispute that the  
18    reports were not filed or -- I mean, are there any  
19    discrepancies in facts aside from whether the type of  
20    service meets the definition of telecommunications  
21    service? Do the parties dispute any of the facts in this  
22    case?

23                MS. DAVENPORT: If I may, Commissioner Clayton,  
24    we did not dispute that we didn't submit the reports.

25                COMMISSIONER CLAYTON: Okay. And -- and from

1 Staff's perspective and from Public Counsel's perspective,  
2 is there any disagreement on the factual nature of the --  
3 of the service that is being provided, this VOIP service  
4 that's been described in the complaint and in the  
5 pleadings?

6 I mean, you all agree -- there's no dispute as  
7 to what type of service it is, that it's an IP based  
8 service over a certain type of phone? I mean, there's no  
9 discrepancy there, is there?

10 MR. BAKER: No.

11 COMMISSIONER CLAYTON: Do you agree with that,  
12 you two?

13 MR. DANDINO: There's -- there's no discrepancy.

14 MS. DAVENPORT: No.

15 COMMISSIONER CLAYTON: Okay. So -- so,  
16 basically, there is -- the sole issue in this case is --  
17 is whether those agreed -- that agreed to definition of  
18 whatever service it is is the legal issue of whether that  
19 service meets the definition of a telecommunications  
20 service under our statute as well as that we are not  
21 preempted. Is that correct? Is that the sole issue in  
22 this case?

23 MR. DANDINO: Your Honor --

24 COMMISSIONER CLAYTON: Maybe I'm --

25 MR. DANDINO: Here's my -- my -- my perspective.

1 And I'm a little bit more on the outside than the others.

2 COMMISSIONER CLAYTON: Yeah.

3 MR. DANDINO: I saw this as a case just of -- of  
4 making sure that Time Warner supplied the information that  
5 the -- that the rules required. And what information they  
6 said they could not provide, that was to the heart of the  
7 dispute between them.

8 The issue of jurisdiction was raised as part of  
9 a defense by the company. And -- and the Staff was --  
10 was, of course, insisting upon compliance with the -- with  
11 the -- the very specifics of the -- of the -- of the rule.

12 Now, that's where I thought was -- was -- that  
13 what they filed then, the Staff believed was not in  
14 compliance with what the rule was. Now, from Public  
15 Counsel's point of view, would that be a fair and accurate  
16 statement of what was --

17 MR. BAKER: Yes.

18 MS. DAVENPORT: Yes, I --

19 MR. DANDINO: -- What it was?

20 MS. DAVENPORT: And, your Honor, the company  
21 agrees that this complaint was limited to a pretty  
22 discreet technical -- whether or not we'd submitted the  
23 reports, what they required and when we were going to  
24 submit them to resolve the matter.

25 And just -- while preserving, of course, our

1 Cole County issue of jurisdiction.

2 COMMISSIONER CLAYTON: I understand. I  
3 understand. Okay. That's -- I'm struggling with this.  
4 We've had several of these cases now, and it's not clear.  
5 They're easy to get confused. So that -- that is helpful  
6 to me.

7 So if -- since we have made several decisions on  
8 the whole question of jurisdiction, if you remove that  
9 issue from the equation for the time being without waiving  
10 your right to challenge, then is it a factual or legal  
11 issue that's remaining in terms of the form of the reports  
12 that you filed and whether they meet our rules. Is that a  
13 factual question or a legal question?

14 MR. BAKER: It's a legal question. They -- they  
15 have made attempts to file the reports. There are several  
16 reporting areas that do not contain Missouri specific  
17 data. And that's our problem. That's our issue with  
18 that.

19 COMMISSIONER CLAYTON: Okay.

20 MS. DAVENPORT: And that -- that is what we  
21 intend to make right in resolution of the case.

22 COMMISSIONER CLAYTON: Okay.

23 MR. DANDINO: And, your Honor, I see that as a  
24 factual issue rather than a legal. But that's --

25 COMMISSIONER CLAYTON: You guys are killing me

1 here.

2 MR. DANDINO: Yeah.

3 COMMISSIONER CLAYTON: When I start off asking  
4 about facts. No. Everything's in agreement. Now you say  
5 it's a factual agreement.

6 MR. DANDINO: Well, over that point.

7 COMMISSIONER CLAYTON: Okay.

8 MR. BROWN: Commissioner, perhaps -- as I see  
9 it, the rules were designed to deal with telephone type  
10 Internet service. Time Warner is doing something very  
11 different on a technical level. The service is being  
12 provided different in electronic, technical, however you  
13 want to couch it.

14 And the way they have provided it has not been  
15 designed to produce the kind of information that readily  
16 falls out of the service when it's provided by the  
17 telephone companies.

18 And they didn't design the service to produce  
19 that information, and it didn't produce that information.  
20 That's my understanding. So when they were faced with  
21 this reporting requirement that was designed for the  
22 telephone system, they didn't have a system that naturally  
23 produced that information, and it wasn't designed to  
24 produce that information.

25 They had a totally different system that was

1 designed to deliver cable television and found a way to  
2 provide Internet access on that system. So the struggle  
3 has been a tech -- on a technical level with the technical  
4 staff, Can we produce this information? The answer is no,  
5 I don't think we can.

6 Well, maybe there is a way we can. And can we  
7 solve the technical problem of producing information now  
8 in the meantime? Well, we can't produce the information  
9 -- you know, we're defending the case the best we can on a  
10 legal basis.

11 But I think the current status is we are in a  
12 position where we believe that within a week we will have  
13 solved the technical problems that have been there. We've  
14 been working with Staff on that issue. And we are hopeful  
15 that once we can technically comply on a physical,  
16 scientific, electronic, computer technical base, we will  
17 start providing all this information that's required by  
18 the rule.

19 And in the meantime, we're defending the case  
20 just as -- as vigorously as we can. But we would hope  
21 that once we've solved the technical problem and we've  
22 complied with the rule that the case would be settlable.  
23 Whether disputes that are left are legal or factual, we  
24 would hope that once we're in compliance and we solve that  
25 technical issue, the other disputes would go away.

1                   COMMISSIONER CLAYTON: Did you all -- let me ask  
2     you this. Did you all ask for a waiver of the rule since  
3     you had difficulty complying with it?

4                   MS. DAVENPORT: No. Not -- I don't believe we  
5     have. No.

6                   COMMISSIONER CLAYTON: I mean, has that option  
7     been discussed? I guess I don't want to talk about  
8     settlement discussions, but it seems like that would have  
9     been the -- legally, if you have difficulty doing it.

10                  Well, so I guess the posture in this case is  
11     that you all are still talking and you're hoping for a  
12     resolution sometime in the next 30 days, and we'll just  
13     continue the hearing; is that correct?

14                  MS. DAVENPORT: Yes, your Honor.

15                  COMMISSIONER CLAYTON: Okay. I don't have  
16     anything further. No objection to that.

17                  JUDGE LANE: Commissioner Murray?

18                  COMMISSIONER MURRAY: I'd just like to ask Time  
19     Warner, are -- in -- in order to file these reports, is  
20     this requiring the development of a -- of a new software  
21     program?

22                  MS. DAVENPORT: That is my understanding. It's  
23     been a pretty complex issue. And what I -- I know very  
24     little about the software they're using. But they're  
25     going through some pretty methodical testing to see if



1     they can keep reproducing the actual -- it's regarding the  
2     dropped call portion of the reporting requirements. And  
3     that is the last glitch, I think, in the -- in the  
4     testing.

5                 COMMISSIONER MURRAY: And is it accurate that  
6     you have never been required to do that in any state?

7                 MS. DAVENPORT: That's right. I believe that is  
8     correct. And it was a -- somewhat of a surprise to the  
9     company when they were informed that they should have been  
10    submitting the reports.

11                COMMISSIONER MURRAY: Is there any way to  
12    quantify the costs involved at this point?

13                MS. DAVENPORT: In the development of software  
14    and testing? I would have to get back with you. But I --  
15    I believe we could probably get in the ballpark of what  
16    they've -- you mean, spent through notice and then up  
17    until now?

18                COMMISSIONER MURRAY: Yes.

19                MS. DAVENPORT: Yes.

20                COMMISSIONER MURRAY: Just to comply with those  
21    reporting requirements.

22                MS. DAVENPORT: Sure. We can get you that  
23    figure.

24                COMMISSIONER MURRAY: And then once that hurdle  
25    is passed, which it appears that you're going to pass that

1 and settle this proceeding, are there ongoing costs  
2 involved in compliance, or are the basic costs -- will  
3 they have been met at that point? Or do you know?

4 MS. DAVENPORT: I don't know the specific  
5 answer. I know there would be, you know, some change in  
6 operation, but I -- we haven't quantified it yet. Or at  
7 least I need to consult with -- with the company.

8 COMMISSIONER MURRAY: Now, assume that Missouri  
9 will -- assume that other states follow Missouri's  
10 posture, as has been followed so far with these  
11 proceedings, and develop their own reporting requirements  
12 for the same type of VOIP service, and assume they're not  
13 identical to Missouri's.

14 Does that mean that -- that Time Warner will  
15 incur different costs in every state that -- that requires  
16 those reports -- or different software programs?

17 MS. DAVENPORT: There's a high likelihood, yes.

18 COMMISSIONER MURRAY: And will that affect the  
19 desire to provide service, or will it affect the choices  
20 of where Time Warner chooses to provide service? Or -- or  
21 do you know?

22 MS. DAVENPORT: At this point, I am not sure  
23 about all the business considerations the company will  
24 have. I am sure they will get there once faced with the  
25 new regulatory requirements if they should -- if they do

1     come into effect in other states.

2                 COMMISSIONER MURRAY: All right. Thank you.

3                 JUDGE LANE: Thank you very much, Commissioner  
4     Murray.

5                 Mr. Brown, I just want to make sure that I --  
6     that I understood what you were saying. What I heard you  
7     say was that the issue was really not Time Warner's  
8     willingness to provide the information.

9                 It was a technical issue of whether the data  
10    that's required by the rule can be extracted from -- from  
11    the system that you've got in place to put into the  
12    report. Is that --

13                MS. DAVENPORT: If I may clarify, your Honor,  
14    the -- Mr. Brown raises the issue of why we have not  
15    provided it already. But we -- while the Cole County  
16    matter was pending, the company maintained the position  
17    and maintained the -- their right to defend the position  
18    that they weren't under the jurisdiction and may not  
19    ultimately have to provide the information.

20                But we're still willing to go ahead and resolve  
21    this matter by trying to provide the information. But  
22    it's the timely -- timeliness issue of why we haven't  
23    provided it that Mr. Brown speaks to.

24                JUDGE LANE: All right. Well, that's what I was  
25    trying to get at. I've heard you say several times we're

1 willing to resolve all issues in this complaint. It seems  
2 to me there are a couple of issues. One of them is, are  
3 you able to provide the information required by the rule?  
4 And the second one is, are you subject to the Commission's  
5 jurisdiction in the first place. That was raised as an --  
6 explicitly raised as a defense in the answer.

7 I guess what I'm -- what I'm trying to get at is  
8 are you willing to resolve both of those issues with Staff  
9 or just the one issue, just to provide the data and say,  
10 well, we'll -- you know, we'll appeal the -- the Judge's  
11 decision, you know, in the writ of review case, et cetera,  
12 et cetera? That's what I'm trying to get at.

13 MS. DAVENPORT: The company intends to resolve  
14 the issues in this matter and then -- until, I guess, a  
15 higher authority, which wouldn't be the Cole County or the  
16 Circuit -- or the Appeals Court. But until there is no  
17 jurisdiction, until that is resolved, the company intends  
18 to keep submitting -- to get current with the reports that  
19 they have not submitted and then submit them on a  
20 quarterly basis thereafter.

21 JUDGE LANE: All right. All right. Very good.  
22 Well, as I mentioned earlier, I would like to direct Staff  
23 to make an appropriate filing regarding the proceedings in  
24 that other matter.

25 I would also like Staff in the pleading to

1 analyze whether that issue is, indeed, final, and whether  
2 the opportunity for any further appeal of -- of the Judge  
3 -- of the Circuit Judge's decision is possible at this  
4 point because that could potentially resolve one of the  
5 issues in this case.

6 Let me get back to the issue at hand, which is  
7 Time Warner's pending motion for -- basically, to postpone  
8 the evidentiary hearing in this case for 30 days at a date  
9 certain.

10 As I understand it, Staff is not willing to  
11 agree to that motion unless Time Warner will, A, admit to  
12 violating the Commission's rule on quarterly quality of  
13 service reports. And is there a second -- is there a  
14 second objection to their request?

15 MR. BAKER: And if they provide assurances that  
16 they won't object to our supplementation of our witness  
17 list.

18 JUDGE LANE: All right. I think they already  
19 indicated they would have no objection to that.

20 MR. BAKER: And they did. They did.

21 JUDGE LANE: Right. Supplementing their witness  
22 list should -- should the evidentiary hearing take place,  
23 would be postponed today and take place later.

24 MS. DAVENPORT: Yes, your Honor.

25 JUDGE LANE: All right.

1 MS. DAVENPORT: And, your Honor, we would ask  
2 that as far as the other issue of agreeing that we have  
3 violated the rules, if we could work those out through our  
4 specific settlement document rather than right here on the  
5 record, I would like a chance to consult with the client.

6 JUDGE LANE: Well, sure. And I'm not trying to  
7 manufacture a settlement right here on the record while  
8 we're sitting here. But I'm just trying to -- what I'm  
9 basically trying to find out is is your motion opposed by  
10 Staff?

11 If it is, then I think we'll need to take that  
12 to the Commission to a ruling on your motion. If it  
13 isn't, then it's something that can probably be done by  
14 delegation. So that's what I was attempting to ascertain  
15 there.

16 It sounds like -- it sounds like the positions  
17 -- it sounds like I understand what all the parties'  
18 positions are. Again, OPC, I just want to make sure, your  
19 -- your position that you -- you really don't have a  
20 problem with -- with postponing or -- or suspending this  
21 evidentiary hearing for a 30-day period as long as the  
22 data gets provided?

23 MR. DANDINO: That's correct, your Honor.

24 JUDGE LANE: All right. All right. Very good.  
25 All right. Well, I -- I'm going to go ahead and say that

1 -- that we're not going to proceed any further today  
2 because two of the three parties either don't have their  
3 witnesses present or are no longer planning to produce  
4 them in the case of OPC.

5 I realize that may be tantamount to granting the  
6 motion to postpone this evidentiary hearing. And if it  
7 is, so be it. But -- but why -- I don't -- I don't see a  
8 whole lot of use in conducting a proceeding where we get  
9 one side's witness and there's no other witnesses, and  
10 especially where this matter sounds like it could be  
11 resolved. And it -- it certainly does.

12 If we can get everybody on the same page and --  
13 and -- and just get those details ironed out. So I guess  
14 before -- before we terminate or end this proceeding, has  
15 anybody else got any -- anything that -- any statements  
16 they wish to make or anything for the Commission to  
17 consider in making a formal ruling on the motion to  
18 postpone this hearing to 30 days, approximately 30 days  
19 for now? Any -- any other issues you want the Commission  
20 to consider in -- in ruling on that request?

21 MS. HEINTZ: If the hearing is postponed, I  
22 would just like us to set a date certain today and not  
23 leave it sort of vague.

24 JUDGE LANE: All right. I actually thought  
25 about that coming in here, and there are some dates that

1 are open. If you've got your calendar out, take a look at  
2 -- I'm thinking the -- the week after Thanksgiving is --  
3 is open for me. And the hearing rooms are also open in  
4 there.

5 MS. HEINTZ: The 27th would be better

6 JUDGE LANE: The 27th, 28th, 29th, 30th. Any of  
7 those days will be okay.

8 MS. HEINTZ: I have a hearing on the 29th.

9 JUDGE LANE: You have a hearing on 29th?

10 MS HEINTZ: Yes.

11 JUDGE LANE: How about Time Warner?

12 MS. DAVENPORT: Those days are open.

13 JUDGE LANE: OPC?

14 MR. DANDINO: That's fine, your Honor.

15 JUDGE LANE: I tell you what -- again, is  
16 everyone in agreement that should this be rescheduled that  
17 the matter could be handled in one day?

18 MS. HEINTZ: Yes.

19 MR. BAKER: Yes.

20 JUDGE LANE: All right. I'll tell you what,  
21 should the Commission grant the motion, the hearing will  
22 be rescheduled for November the 30th. All right? I'll go  
23 ahead and say that to give everybody some certainty.

24 MR. BROWN: Your Honor, we're assuming we can  
25 produce our witness on that date.



1 JUDGE LANE: All right. I understand that. I  
2 would hope that you would make every effort to do that.  
3 And if that's going to be a possibility to let the  
4 Commission know right away so we don't have any further  
5 delays in this because this has been pending for a number  
6 of months.

7 And, you know, I -- I think everyone would  
8 really like to get this taken -- you know, to get this  
9 settled and move on. But right now, I'm saying November  
10 the 30th. I know the hearing rooms are available. I'm  
11 available, and it sounds like everyone is available with  
12 their witnesses

13 MS. DAVENPORT: Yes.

14 JUDGE LANE: Except for you're not entirely sure  
15 about yours.

16 MS. DAVENPORT: I will know shortly -- I will  
17 know right after this.

18 MS. HEINTZ: Will that be at 10 a.m. your Honor?

19 JUDGE LANE: Yes. 10 a.m. Same time. And  
20 let's go ahead -- we'll be in the big hearing room, 310.

21 All right. I want to thank you for being here  
22 today. I'm sorry that we -- we couldn't have proceeded as  
23 planned. It sounds like some things kind of happened at  
24 the last second that maybe got things muffed up. I'm not  
25 -- I'm still not 100 percent sure even after having talked

1 to everyone here for 40 minutes.

2 But the Commission will consider the motion to  
3 postpone the hearing. Should it be -- should it be  
4 denied, I would imagine they would reschedule post-haste.  
5 So --

6 MS. DAVENPORT: Your Honor, one last question.  
7 Speaking as to Commissioner Murray's question on  
8 quantifying the costs, the company would be happy to file  
9 that with -- with the Commission if -- if that's how you  
10 want that handled.

11 JUDGE LANE: Well, we're not doing any pre-filed  
12 testimony. That's already been decided in the procedural  
13 schedule. So if it's going to be in the form of  
14 testimony, I think we'd like to have all that information  
15 live.

16 MS. DAVENPORT: Okay.

17 JUDGE LANE: That's certainly the type of  
18 information, though, that you might want to have your  
19 witness to be prepared to discuss at the hearing. I mean,  
20 I don't know.

21 Commissioner Murray, would you like to see that  
22 information in the form of an affidavit or something like  
23 that before the hearing?

24 COMMISSIONER MURRAY: Well, it appears that this  
25 is not going to hearing. This is the appearance at this

1 point. And -- and I would be interested in seeing some.  
2 Quantification of the costs that we are creating that are  
3 different than -- than the same type of service has  
4 required in other states. So I -- I would like to see  
5 that in an affidavit form if that's available.

6 JUDGE LANE: Very good. Thank you very much.  
7 Commissioner Clayton, anything? Any comments?

8 COMMISSIONER CLAYTON: Can I -- can I ask Staff  
9 just a couple of real clarifying questions on position?

10 JUDGE LANE: Please do.

11 COMMISSIONER CLAYTON: In terms of the  
12 complaint, is Staff asking for relief for past  
13 non-compliance and future non-compliance? I mean future  
14 -- demanding future compliance? Are there two pieces? I  
15 mean, it's the past and then also going forward?

16 MR. BAKER: Yes. And the -- the past -- the  
17 only remedy available to us is penalties that would go on  
18 to the school fund.

19 COMMISSIONER CLAYTON: And how many -- when  
20 was this case filed?

21 MR. BAKER: This was -- I think it was April or  
22 May. I've got it here. Just a moment.

23 JUDGE LANE: April 23rd.

24 MR. BAKER: April 23rd.

25 COMMISSIONER CLAYTON: So this case has been

1 pending six months. And at the time it was continued or  
2 -- or a hearing was set -- see, I'm not sure of the  
3 procedural schedule on this. Was there a consensus of --  
4 among the parties of waiting for the outcome of either the  
5 Circuit Court Time Warner case or this Commission in the  
6 Comcast case?

7 MR. BAKER: No.

8 COMMISSIONER CLAYTON: Was that contemplated?

9 MR. BAKER: That was never contemplated. It was  
10 just kind of pushed back in back because we were trying to  
11 resolve it.

12 COMMISSIONER CLAYTON: Because both those cases  
13 would be dispositive on those cases, wouldn't they?

14 MR. BAKER: I don't believe so, no.

15 COMMISSIONER CLAYTON: No? Is this a different  
16 type of service than what -- than what --

17 MR. BAKER: This is --

18 COMMISSIONER CLAYTON: -- than what the Time  
19 Warner service in the other case is?

20 MR. BAKER: I don't know if it's a different  
21 type of service. But in the other cases, they said --  
22 they ruled that the Commission has jurisdiction. So I  
23 don't remember --

24 COMMISSIONER CLAYTON: I understand. But if the  
25 Circuit Court would have gone the opposite way, that would

1 have nullified -- that would moot out this case; is it  
2 not?

3 MR. BAKER: Possibly.

4 MS. DAVENPORT: That is our position.

5 COMMISSIONER CLAYTON: So the service is the  
6 same. It's the same type of IP based service, correct? I  
7 mean, do you agree -- would you all agree to that?

8 MR. BAKER: Yes.

9 COMMISSIONER CLAYTON: Is this service any  
10 different than the Comcast service that we recently dealt  
11 with, at least in agenda? I don't know if we have an  
12 order on it yet.

13 MR. BAKER: I'm -- I'm unaware of the issues in  
14 the Comcast case.

15 COMMISSIONER CLAYTON: Do you know? You don't  
16 know the Comcast case?

17 MR. BROWN: I've had some -- I'm not certain,  
18 but my understanding is our position has been that they  
19 are essentially identical for our purposes.

20 COMMISSIONER CLAYTON: Identical. So if the  
21 Commission would have made a finding -- I mean -- and I  
22 think Commissioner Murray may have been gone last week.  
23 Didn't we talk about this case last week?

24 COMMISSIONER MURRAY: The agenda notes say you  
25 did. And you're correct. I was absent.

1                   COMMISSIONER CLAYTON: I don't mean to bring  
2 that up. But I just -- it was just having a hint of an  
3 idea of where Commissioner Murray would have been had she  
4 -- if -- if we would have decided that case or if we  
5 decided that case in the opposite direction of what was  
6 suggested during agenda, it would moot out this case?

7                   MR. BROWN: It's always been our position we  
8 should be treated the same as Comcast.

9                   COMMISSIONER CLAYTON: Same as Comcast.  
10 So you -- is it fair to say you all have been waiting  
11 until we make that decision?

12                  Mr. BROWN: We've had interest in that decision.  
13 Yes.

14                  COMMISSIONER CLAYTON: Yeah. So does Staff have  
15 a position -- if -- if the Appellate Court reverses that  
16 decision, does Staff agree that that would moot this case?

17                  MR. BAKER: I -- it -- it possibly could. I --  
18 I -- I'm not real sure, but it possibly could. But the --  
19 I would like to point out that the -- the date for filing  
20 that appeal has passed by about a week. So --

21                  COMMISSIONER CLAYTON: The date for what?

22                  MR. BAKER: For final notice of appeal in that  
23 Time Warner case has passed by about a week. So --

24                  COMMISSIONER CLAYTON: So it has not been  
25 appealed?

1 MR. BAKER: No.

2 COMMISSIONER CLAYTON: So was it a final order?

3 MR. BAKER: It was -- it was final on October  
4 5th, ten days from then.

5 COMMISSIONER CLAYTON: I did not realize that.

6 MR. BAKER: So it was final on September -- it  
7 was filed on September 5th. They have 30 days before it's  
8 final and then ten days after that. So the notice of  
9 appeal --

10 COMMISSIONER CLAYTON: Let me ask you this. Let  
11 me ask you this: Let's say the Commission renders a  
12 decision in the Comcast case, asserts jurisdiction.  
13 Presumably, it would be appealed.

14 If a Court reverses the Commission, that would  
15 moot this case. Would you agree with that statement? If  
16 you don't know, that is fine.

17 MR. BAKER: I don't know. I'm unaware of the  
18 issues in the Comcast, so I -- I couldn't -- I couldn't  
19 say for sure.

20 COMMISSIONER CLAYTON: Let me ask Public Counsel  
21 -- and I don't know your level of involvement, Public  
22 Counsel. So Public Counsel and Staff, is there new merit  
23 to waiting to resolve those issues?

24 MR. BAKER: I don't believe so.

25 MR. DANDINO: Well, I probably wouldn't want to

1 go forward with an evidentiary hearing if they're willing  
2 to comply and get that -- get that -- get that resolved.  
3 I -- you know, I feel that's important. You just never --  
4 you know, it would -- may moot it out.

5 But like I always said, we want to get  
6 compliance with the current rules right now. And I  
7 believe that they said that they're willing to comply with  
8 it.

9 COMMISSIONER CLAYTON: Okay. Okay. No further  
10 questions. I apologize for taking the time.

11 JUDGE LANE: Thank you very much. That helped a  
12 lot. I don't think we have anything further to -- to --  
13 to do here today, so we're off the record. Thank you very  
14 much.

15 MS. HEINTZ: Thank you, your Honor.

16 MS. DAVENPORT: Thank you.

17 MR. BAKER: Thank you.

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## 1 REPORTER'S CERTIFICATE

2

3 STATE OF MISSOURI )  
 ) ss.  
4 COUNTY OF OSAGE )

5

6 I, Monnie S. VanZant, Certified Shorthand Reporter,  
7 Certified Court Reporter #0538, and Registered  
8 Professional Reporter, and Notary Public, within and for  
9 the State of Missouri, do hereby certify that I was  
10 personally present at the proceedings as set forth in the  
11 caption sheet hereof; that I then and there took down in  
12 stenotype the proceedings had at said time and was  
13 thereafter transcribed by me, and is fully and accurately  
14 set forth in the preceding pages.

15

16 IN WITNESS WHEREOF, I have hereunto set my hand and  
17 seal on October 23, 2007.

18

19

20

21 \_\_\_\_\_  
Monnie S. VanZant, CSR, CCR #0539

22 Registered Professional Reporter

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