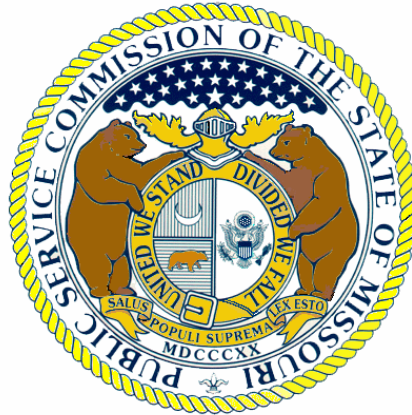


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of Tariff No. 3 of Time Warner)
Cable Information Services (Missouri), LLC,)
d/b/a Time Warner Cable)

Case No. LT-2006-0162
Tariff No. JL-2006-0231

REPORT AND ORDER

Issue Date: August 8, 2006

Effective Date: August 18, 2006

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OF THE STATE OF MISSOURI

In the Matter of Tariff No. 3 of Time Warner)
Cable Information Services (Missouri), LLC,) **Case No. LT-2006-0162**
d/b/a Time Warner Cable) Tariff No. JL-2006-0231

APPEARANCES

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Craig S. Johnson, Esq., 1648-A East Elm Street, Jefferson City, Missouri 65101-0537, for Intervenor Missouri Independent Telephone Company Group.²

Michael Dandino, Esq., Assistant Public Counsel, 200 Madison Street, Suite 650, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

David Meyer and William Haas, Esq., Associate General Counsels, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

SENIOR REGULATORY LAW JUDGE: **Ronald D. Pridgin.**

¹ The Small Telephone Company Group consists of: BPS Telephone Company, Citizens Telephone Company, Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Fidelity Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, KLM Telephone Company, Lathrop Telephone Company, McDonald County Telephone Company, Mark Twain Rural Telephone Company, Miller Telephone Company, New Florence Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Peace Valley Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

² The Missouri Independent Telephone Company Group consists of: Alma Communications Company d/b/a Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan DIAL, Inc., and Northeast Missouri Rural Telephone Company.

REPORT AND ORDER

Procedural History and Discussion

On September 23, 2005, Time Warner Cable Information Services (Missouri), LLC, d/b/a Time Warner Cable (“Time Warner”), filed a tariff, which bore an effective date of October 23, 2005. Time Warner offers “Digital Phone” service to residential customers within the exchanges where it offers cable television service. The company does not offer the same or similar service to business customers. Time Warner uses the cable television facilities of Time Warner Cable to connect to a residential customer’s premises. Time Warner supplies an adapter to each subscriber, which is placed at the subscriber’s residence. The adaptor interacts with the customer’s existing inside wiring so that the customer can use existing telephone equipment and jacks. Time Warner routes some calls through the public switched network; calls between Time Warner subscribers do not traverse the public switched network. In the tariff filing at issue, Time Warner sought, among other things, to implement customer-specific pricing for telecommunications services.

The Staff of the Commission filed a Motion to Suspend on October 13, asserting that the tariff’s pricing violated §§ 392.200.8, 392.220 and 392.450. The Commission granted the Staff’s motion on October 18. On October 25, 2005, Time Warner file a Motion for reconsideration of that suspension, asserting that the services provided used voice over internet protocol (“VoIP”), and as such the Commission was preempted from limiting Time Warner’s telecommunications service offerings. Time Warner quoted the FCC’s decision in

the *Vonage* matter,³ in which the FCC stated, “ To the extent other entities, such as cable companies, provide VoIP services, we would preempt state regulation to an extent comparable to what we have done in this Order.”⁴

Time Warner, the Staff of the Commission, the Small Telephone Company Group, the Missouri Independent Telephone Company Group, and the Office of the Public Counsel filed a Procedural History and Stipulation of Facts on December 23, 2005. The Commission held an on-the-record presentation on March 22, 2006.

At that proceeding and in subsequent filings, parties asserted that Time Warner’s service was distinguishable from Vonage’s service in that Vonage’s service could be used by customers anywhere and Time Warner’s service could only be used at the location at which the customer receives cable service. In its Post-Hearing Brief, Time Warner countered as follows:

To reiterate, the FCC identified the following characteristics that would render VoIP service offered by a cable operator subject to the same preemption applicable to Vonage’s service: “a requirement for a broadband connection from the user’s location; a need for IP-compatible CPE; and a service offering that includes a suite of integrated capabilities and features, able to invoked sequentially or simultaneously, that allows customers to manage personal communications dynamically, including enabling them to originate and receive voice communications and access other features and capabilities, even video. In extending the preemption it ordered with respect to Vonage to the IP-enabled voice services provided by cable operators, the FCC was clear that these three criteria constitute the entirety of the inquiry. Nowhere in the Order did the FCC indicate or refer to additional factors to be taken into account. In particular, the Vonage Order is devoid of indication that the FCC established as a fourth criteria [sic] a subjective assessment by state regulators regarding the similarities and differences between an IP-enabled voice service offered by a cable operator and the IP-enabled voice service offered by Vonage. [Footnote omitted] (at page 2).

³ *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC 22404 (2004) (cause submitted to U.S Court of Appeals in January, 2006).

⁴ *Vonage Order* at ¶32.

During the pendency of this matter, on June 27, 2006, the FCC released a *Report and Order and Notice of Proposed Rulemaking* in a combined docket that included WC Docket No. 04-36, In the matter of IP-Enabled Services. On page 29, ¶56 of that Order, the FCC stated,

Under this alternative, however, we note that an interconnected VoIP provider with the capability to track the jurisdictional nature of customer calls would no longer qualify for the preemptive effects of our Vonage Order and would be subject to state regulation.

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The Commission has considered the parties' positions and arguments. Failure to specifically address a piece of evidence, position, or argument does not mean that the Commission failed to consider it, but instead means that the omitted material was not dispositive of this decision.

Findings of Fact

1. Time Warner is a telecommunications company certificated in Missouri by the Commission. It offers a service called Digital Phone to its Missouri consumers through outside plant and facilities owned by its affiliates, Kansas City Cable Partners and Time Warner Entertainment, d/b/a Time Warner Cable using VoIP.

2. Time Warner's service is stationary. Its customers can only use the service at the subscriber's location, which must be a location served by Kansas City Cable Partners and Time Warner Entertainment d/b/a Time Warner Cable facilities.

3. Time Warner has the ability to track the jurisdictional nature of customer calls. Digital Phone subscribers obtain telephone numbers that correlate to the actual physical

location of the customer. Digital Phone can only be used at the subscriber's location, so calls to and from the Digital Phone subscriber have a discrete origination or termination point at which the call can be rated. Time Warner can identify a call as being either interstate or intrastate. Digital Phone service is identical to traditional telephone service in terms of identification of, and separation into, interstate and intrastate communications.

4. Time Warner's customers use telephone numbers associated with the customer's local rate center.

5. Time Warner offers service to residential customers within the incumbent local exchange company's exchanges where it offers cable television service. Time Warner routes some calls to Sprint Communications Company L.P. ("Sprint"), which interconnects to the public switched network. Calls between Time Warner subscribers do not traverse the public switched network. Time Warner owns and operates a softswitch and contracts with Sprint for additional switching, routing and termination of calls. Sprint also directs calls from the public switched telephone network to Time Warner's network.

Conclusions of Law

1. Time Warner is subject to the Commission's jurisdiction pursuant to Chapters 386 and 392, RSMo, in that it provides telecommunications services in the State of Missouri and is not excepted from the definition of a telecommunications company, nor is it exempt from such jurisdiction.

2. Section 392.220.1 RSMo 2000 requires telecommunications companies to have schedules on file with the Commission showing their rates, rentals and charges for service of each and every kind by or over its facilities.

3. Sections 392.220 and 392.450 mandate that telecommunications companies list the charges for their services, which Time Warner has not done for its Digital Phone service in its Tariff No. 3. Commission Rule 4 CSR 240-3.545(8)(G) requires that a telecommunications company include in its tariff a list of the services it provides and the specific rates and charges for those services in US dollars. The customer-specific pricing tariff filed by Time Warner does not list the charges for telecommunications service in US Dollars.

4. The *Vonage Order* discussed above does not serve to except or exempt Time Warner's telecommunications services offering from the jurisdiction of this Commission. Therefore, the Commission will reject the tariff.

IT IS ORDERED THAT:

1. The proposed tariff sheets submitted on September 23, 2005, by Time Warner Cable Information Services (Missouri), LLC d/b/a Time Warner Cable, and assigned Tariff No. JL-2006-0231, are rejected.

2. All pending motions are denied.

3. This Report and Order shall become effective on August 18, 2006.

4. This case may be closed on August 19, 2006.

(S E A L)

BY THE COMMISSION



Colleen M. Dale
Secretary

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur.

Dated at Jefferson City, Missouri,
on this 8th day of August, 2006.