

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

In the Matter of the Application of Time Warner)
Cable Information Services (Missouri), LLC for a)
Certificate of Service Authority to Provide Local) Case No. LA-2004-0133
and Interexchange Voice Service in Portions of the)
State of Missouri and to Classify said Services)
and the Company as Competitive.)

**SBC MISSOURI'S
BRIEF CONCERNING JURISDICTION**

SBC Missouri,¹ pursuant to the Missouri Public Service Commission (“Commission”) November 10, 2003, Order Directing Filing of Briefs, respectfully submits this Brief suggesting that: (1) while Voice Over Internet Protocol (“VoIP”) service has not been defined in this proceeding, the Commission would not have jurisdiction to regulate VoIP service offerings found to be information services under the federal Telecommunications Act (the “Act”); and (2) providers of Internet Protocol (“IP”) telephony, including VoIP providers, remain liable for paying appropriate Intercompany compensation, including switched access charges, when utilizing the Public Switched Telephone Network (“PSTN”) to originate or terminate their customers’ calls.

1. Commission Jurisdiction over VoIP Services

Due to the very early stage of this proceeding and VoIP’s nascent nature in general, the meaning of “VoIP services” has not been defined for the purposes of this proceeding. In general terms, however, the extent of the Commission’s jurisdiction over a particular VoIP service offering will depend upon whether the offering is classified as a

¹ Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as “SBC Missouri.”

“telecommunications service” under Missouri law² or an “information service”³ under the Act. Services that fall within the definition of “telecommunications services” remain subject to the Commission’s jurisdiction. Section 386.250 RSMo. (2000). Services classified as “information services,” however, would be beyond the scope of the Commission’s jurisdiction.

The determination of whether an offering is a “telecommunications service” under Missouri law or an “information service” under the federal Act should be a very fact-specific determination that focuses on what is actually being offered and provided to the subscriber. For example, some carriers claim to be providing VoIP services when they merely use Internet Protocol (“IP”) transport as part of their backbone transport network to carry plain old telephone service (“POTS”) traffic that originates and terminates on the circuit switched telephone network. Calls that originate and terminate on the circuit switched network are not properly characterized as VoIP traffic simply because, at some point, the traffic merely utilizes IP transport.

² Section 386.020(53) RSMo. (2000) defines “telecommunications service” as “the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, “information” means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications does not include: (a) The rent, sale, lease, or exchange for other value received of customer premises equipment . . . (b) Answering services and paging services; (c) The offering of radio communications services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations; (d) Services provided by a hospital, hotel, motel, or other similar business whose principal service is the provision of temporary lodging through the owning or operating of message switching or billing equipment solely for the purpose of providing at a charge telecommunications services to its temporary patients or guests; (e) Services provided by a private telecommunications system; (f) Cable television service; (g) The installation and maintenance of inside wire within a customer’s premises; (h) Electronic publishing services; or (i) Services provided pursuant to a broadcast radio or television license issued by the Federal Communications Commission.”

³ 47 USC Section 153(20) defines “information service” as meaning the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system of the management of a telecommunications service.”

In examining “phone-to-phone” IP telephony, the FCC in its Universal Service Report to Congress⁴ set out four factors to determine whether a service qualifies as phone-to-phone IP telephony and concluded that if these factors are met, the service “bear[s] the characteristics” of a “telecommunications service,”⁵ not an “information service.” Under the FCC’s four factors, a carrier is merely providing phone-to-phone IP telephony when it (1) “holds itself out as providing voice telephony or facsimile transmission service”; (2) “does not require the customer to use CPE different from the CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the [Public Switched Telephone Network, or ‘PSTN’]”; (3) “allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan, and associated international agreements”; and (4) “transmits customer information without change in form or content.”⁶

VoIP services that fall within the “information services” category, however, do not provide subscribers merely with an end-to-end transmission of voice telephony. While transmission of information would occur, the defining characteristic making the service an “information service” is the potential transformation of that information, as well as the end user’s ability to store it, retrieve it at the time and manner of the end user’s choosing, and process or manipulate it in a way that suits the end user’s individualized needs.

For example, some VoIP services provide integrated call management and call routing functionality that cannot be utilized over today’s circuit switched network or

⁴ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11,501 (1998) (Universal Service Report to Congress).

⁵ 47 USC Section 153(46) defines “telecommunications service” as meaning “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”

47 USC Section 153(43) defines “telecommunications” as meaning “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”

⁶ Universal Service Report to Congress, at 11543-44, para. 88.

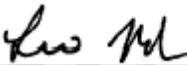
otherwise in the absence of computer mediation (e.g., such services allow subscribers to initiate calls from various numbers using an integrated web browser; to manage the manner in which various types of calls route to them, regardless of their physical location; to detect other users on the network; to filter unwanted messages; to listen on their computers to stored voice mail messages delivered through unified messaging functionality). Like Internet access, which the FCC concluded is an “information service,”⁷ such VoIP services combine computer processing, information provision and other computer-mediated offerings with data transport to offer users a level of information manipulation, storage and retrieval that is unlike the direct, unimpeded transmission path associated with circuit switched POTS.

2. Intercompany Compensation on VoIP Calls

All IP telephony services, including VoIP, whether classified as “telecommunications services” or “information services,” are subject to appropriate intercompany compensation, including switched access charges, when calls are originated or terminated using the PSTN.

Respectfully submitted,

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⁷ Universal Service Report to Congress, at 11536-39, paras. 73, 76.

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on November 20, 2003.



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