

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

Staff of the Public Service Commission of the State)	
of Missouri,)	
)	
Complainant,)	
v.)	Case No. TC-2007-0111
)	
Comcast IP Phone, LLC,)	
)	
Respondent.)	

**SUGGESTIONS IN OPPOSITION TO RESPONDENT'S
APPLICATION FOR REHEARING,
MISSOURI INDEPENDENT TELEPHONE COMPANY GROUP**

The Missouri Independent Telephone Company Group submits the following suggestions in opposition to the November 12, 2007 Application of Respondent Comcast for Rehearing:

Comcast's arguments were fully presented and decided.

Comcast's arguments for rehearing are first, that the Commission improperly applied the test for preemption set forth in the *Vonage Order*, second that preemption is required due to "net protocol conversion", third that the Commission erred in concluding the 8th Circuit's *Minnesota* decision precluded preemption, and fourth that the Commission should defer to market forces instead of regulation imposed by Missouri statutes.

Each of these arguments was briefed to the Commission, and addressed by the Commission in its November 1, 2007 Report and Order. Comcast presents no new legal argument, and no new fact, that justifies rehearing.

The Commission properly applied the *Vonage* preemption test.

The Commission's Report and Order, at conclusions of law 13 through 15 extensively considered the *Vonage* preemption test. The parties fully briefed the question of what the FCC's the test for preemption was. The Commission found, not for the first time, that the test was the inability to separate interstate and intrastate communications. This inability exists for nomadic VoIP providers, but not for fixed providers such as Comcast. The Commission did not accept Comcast's argument that the preemption test was the paragraph of the *Vonage* decision listing typical service characteristics of VoIP products.

Net protocol conversion does not dictate preemption.

Comcast attempts to make hay concerning the Commission's alleged failure to distinguish an arbitrator's decision from its decision in this case. In the arbitration the Commission referenced net protocol conversion in deciding what type of compensation ISP traffic should be subject to in arbitrating an interconnection agreement dispute. In that dispute the parties had decided ISP traffic would be included within the scope of that agreement, but could not agree whether ISP traffic would be subject to reciprocal or access compensation. The Commission was not asked to determine if it had jurisdiction over VoIP providers who might transmit traffic to ISPs.

Comcast's argument assumes that traffic which undergoes a net protocol conversion somehow escapes Missouri's jurisdiction even if it otherwise meets the statutory definition of telecommunications. Comcast's assumption is incorrect.

As the Commission decided, and as indicated in the FCC *Vonage* decision, subsequent FCC decisions, and court decisions affirming *Vonage*, the test for preemption is not whether a call undergoes net protocol conversion. The test is whether there is an inability to separate interstate from intrastate calls due to the caller being nomadic, as opposed to being located at a fixed geographic point.

The Commission correctly interpreted the 8th Circuit *Minnesota* decision.

Comcast asserts the Commission erred in interpreting the *Minnesota* decision to preclude federal preemption. Comcast's assertion is an inaccurate portrayal of the Commission's decision. In conclusion of law 14, the Commission interpreted the *Minnesota* decision as meaning the FCC has not yet exercised any power to preempt state regulation of fixed VoIP service. The Commission did not state that the *Minnesota* decision precluded federal preemption.

Missouri statutes determine when regulation is required, not market forces.

Comcast again asks that regulation be left to market forces, not state law. The Commission's Report and Order, at conclusions of law 1 through 11, held that Comcast and its service were required to be regulated pursuant to Missouri statutes currently in force. At conclusion of law 17 the Commission considered and rejected Comcast's request. The Commission correctly concluded that Missouri statutes do not grant the Commission discretion to ignore statutes. The Commission did invite Comcast to seek waivers pursuant to the Commission's authority to grant waivers.

WHEREFORE, on the basis of the foregoing, the MITG requests that the Commission enter an order denying Comcast's Application for Rehearing.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading was electronically mailed to the following attorneys of record in this proceeding this 14th day of November, 2007:

William Haas
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/s/ Craig S. Johnson
Craig S. Johnson