

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

In the Matter of a Repository Case in Which to  
Receive Feedback and Other Suggestions  
Concerning Staff's Proposed Consolidation  
and Simplification of the Commission's  
Telecommunications Rules

**Case No. TW-2014-0295**

**COMMENTS OF THE MISSOURI CABLE TELECOMMUNICATIONS  
ASSOCIATION**

Comes now the Missouri Cable Telecommunications Association (the "MCTA") and submits these Comments in response to the Missouri Public Service Commission's (the "Commission" or "MoPSC") April 23, 2014, Order Opening Repository Case to Receive Feedback and Other Suggestions Regarding Staff's Proposal to Consolidate and Simplify the Commission's Telecommunications Rules.

The Commission Staff's proposed rule revisions would result in sweeping changes in the Commission's telecommunications rules, and appear to be motivated by the recent enactment of SB 651 and a desire to harmonize the Commission's treatment of interconnected Voice over Internet Protocol ("IVoIP") service and telecommunications services. Section 392.550 RSMo, which was enacted in 2008, presently governs the limited authority of the Commission regarding IVoIP service providers and IVoIP service. SB 651, which will take effect on August 28, 2014, removes broadband and IP-enabled services<sup>1</sup> from Commission jurisdiction under Chapters 386 and 392 and

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<sup>1</sup> Section 392.611.2. RSMo provides:

Broadband and other internet protocol-enabled services shall not be subject to regulation under chapter 386 or this chapter, except that interconnected voice over internet protocol service shall continue to be subject to section 392.550. Nothing in this subsection extends, modifies, or restricts the provisions of subsection 3 of this section. As used in this subsection, 'other internet protocol-enabled

substantially deregulates retail telecommunications service,<sup>2</sup> while retaining Commission jurisdiction concerning certain federal and state issues, including wholesale and interconnection obligations,<sup>3</sup>

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services' means any services, capabilities, functionalities, or applications using existing internet protocol, or any successor internet protocol, that enable an end user to send or receive a communication in existing internet protocol format, or any successor internet protocol format, regardless of whether the communication is voice, data, or video.

<sup>2</sup> Section 392.611.1. RSMo provides, in relevant part:

A telecommunications company certified under this chapter or holding a state charter authorizing it to engage in the telephone business shall not be subject to any statute in chapter 386 or this chapter (nor any rule promulgated or order issued under such chapters) that imposes duties, obligations, conditions, or regulations on retail telecommunications services provided to end user customers, except to the extent it elects to remain subject to certain statutes, rules, or orders by notification to the commission. Telecommunications companies shall remain subject to general, nontelecommunications-specific statutory provisions other than those in chapters 386 and this chapter to the extent applicable. . . .

Section 392.461 RSMo provides, in relevant part:

A telecommunications company may, upon written notice to the commission, elect to be exempt from certain retail rules relating to:

(1) The provision of telecommunications service to retail customers and established by the commission which include provisions already mandated by the Federal Communications Commission, including, but not limited to, federal rules regarding customer proprietary network information, verification of orders for changing telecommunications service providers (slamming), submission or inclusion of charges on customer bills (cramming); or

(2) The installation, provisioning, or termination of retail service. . . . Notwithstanding other provisions of this chapter or chapter 386, a telecommunications company may, upon written notice to the commission, elect to be exempt from any requirement to file or maintain with the commission any tariff or schedule of rates, rentals, charges, privileges, facilities, rules, regulations, or forms of contract, whether in whole or in part, for telecommunications services offered or provided to residential or business retail end user customers and instead shall publish generally available retail prices for those services available to the public by posting such prices on a publicly accessible website. . . .

<sup>3</sup> Section 392.611.3. RSMo provides:

Notwithstanding any other provision of this section, a telecommunications company shall not be exempt from any commission rule established under authority delegated to the state commission under federal statute, rule, or order, including, but not limited to, universal service funds, number pooling, and conservation efforts. Notwithstanding any other provision of this section, nothing in this section extends, modifies, or restricts any authority delegated to the state commission under federal statute, rule, or order to require, facilitate, or enforce any interconnection obligation or other intercarrier issue including, but not limited to, intercarrier compensation, network configuration or other such matters. Notwithstanding any other provision of this section, nothing in this section extends, modifies, or restricts any authority the commission may have arising under state law relating to interconnection obligations or other intercarrier issue including, but not limited to, intercarrier compensation, network configuration, or other such matters.

Section 392.461(2), in relevant part, provides:

Notwithstanding any other provision of this section, a telecommunications company shall not be exempt from any commission rule established under authority delegated to the state commission pursuant to federal statute, rule or order, including, but not limited to, universal service funds, number pooling and conservation efforts, or any authority delegated to the state commission to facilitate or enforce any interconnection obligation or other intercarrier issue, including, but not limited to, intercarrier compensation, network configuration or other such matters. . . . Nothing in this section

preserving the Commission's limited authority under Section 392.550 RSMo, and establishing a means by which telecommunications companies may seek registration with the Commission using the same process set forth in Section 392.550 RSMo.<sup>4</sup>

The MCTA appreciates the Commission Staff's proposal, which provides a basis for further proceedings, including, if possible, a workshop in advance of formal rulemaking. The MCTA provides these comments primarily to identify several issues affecting IVoIP service that will need to be addressed as the Commission acts to implement SB 651. The MCTA reserves the right to offer additional comments as this docket proceeds.<sup>5</sup>

#### **I. IVoIP Service Should Not Be Regulated as a Telecommunications Service**

Several of the proposed definitions in new 4 CSR 240-28.010 characterize "IVoIP service" as a "telecommunications service" for purposes of proposed Chapter 28 of the Commission's rules:

(11) Interexchange telecommunications service: Two-way switched voice telecommunications *or IVoIP* service between exchanges regardless of how the service is routed.

(12) Intrastate: A telecommunications *or IVoIP* service originating and terminating within Missouri regardless of how the service is routed.

(13) Local exchange service: A telecommunications *or IVoIP* service between points within an exchange regardless of how the service is routed.

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shall affect the rights and obligations of any entity, including the commission, established pursuant to federal law, including 47 U.S.C. Sections 251 and 252, any state law, rule, regulation, or order related to wholesale rights and obligations, or any tariff or schedule that is filed with and maintained by the commission.

<sup>4</sup> Section 392.611.4. RSMo provides:

After August 28, 2014, telecommunications companies seeking to provide telecommunications service may, in lieu of the process and requirements for certification set out in other sections, elect to obtain certification by following the same registration process set out in subsection 3 of section 392.550, substituting telecommunications service for interconnected voice over internet protocol service in the requirements specified in subdivisions (1) to (8) of subsection 3 of section 392.550.

<sup>5</sup> Although the proposed rules create issues affecting the regulation of retail telecommunications services that are similar to those discussed herein concerning IVoIP service, the MCTA focuses most of its comments on the effect of the proposed rules on IVoIP service and IVoIP service providers.

(Emphasis added.) The proposed definition of “IVoIP service” in 4 CSR 240-28.010(8) is identical to the statutory definition of “interconnected voice over internet protocol service” in Section 386.020(23) RSMo. New 4 CSR 240-28.010(20) defines “telecommunications service” as:

For purposes of this chapter [*i.e.*, proposed Chapter 28 of the Commission’s rules], the provisioning of basic local telecommunications service, non-switched local telecommunications service or interexchange telecommunications service provided through wireline facilities.

Characterizing IVoIP service as a telecommunications service, however, creates several legal issues.

First, Missouri law categorically provides that “IVoIP service” is *not* “telecommunications service.” Section 386.020(54)(j) RSMo expressly *excludes* “Interconnected voice over internet protocol service” from the definition of “telecommunications service.”<sup>6</sup> Moreover, Section 386.020(52) RSMo premises the definition of “telecommunications company” on “owning, operating, controlling or managing any facilities used to provide *telecommunications service* for hire, sale or resale within this state.” (Emphasis added.) Therefore, the requirements of Chapter 392 regarding “telecommunications service” and “telecommunications companies” do *not* apply to “IVoIP service” or IVoIP service providers, other than in the limited respects, discussed below, referenced in Section 392.550 RSMo and SB 651. The definitions proposed by Staff are at odds with Missouri’s clear statutory directives.

Second, because the Commission Staff proposes to define “IVoIP service” as a “telecommunications service,” and, by inference, a service provided by a “telecommunications company,”<sup>7</sup> some of the proposed rules would subject IVoIP service and IVoIP service providers to administrative requirements that the Commission lacks the authority to impose: *e.g.*, 4 CSR 240-

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<sup>6</sup> Subject to a number of exclusions, including “interconnected voice over internet protocol service,” section 386.020(54) 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. . . .”

<sup>7</sup> Proposed Chapter 28 does not set forth an express definition of “telecommunications company.”

28.040(4) (outage notification), 4 CSR 240-28.060(1) (safety), and 4 CSR 240-28.060(5) (slamming), all of which would apply to “telecommunications service” and “telecommunications companies.” Section 392.550 RSMo, however, does *not* authorize the imposition of such requirements on IVoIP service. And, while sections 392.461(2) RSMo and 392.611.3 RSMo in SB 651 expressly allow the Commission to impose rules on a “telecommunications company” if such rules are established “under authority delegated to the state commission [under] federal statute, rule, or order,” the proposed rules identified above – with one possible exception – are not apparently premised on any such delegations. The possible exception is 4 CSR 240-28.070(1), requiring a “telecommunications company” to “maintain a tariff for any wholesale” services, including switched access service.” To the extent, for example, 4 CSR 240-28.070(1) is premised on the obligations of local exchange carriers pertaining to VoIP-PSTN traffic pursuant to the FCC’s intercarrier compensation reforms,<sup>8</sup> the rule is based on a federal delegation with respect to IVoIP service. However, as written the rule appears to be overbroad. If Commission Staff maintains that other rules are premised on specific federal delegations, the MCTA is open to further discussion.

To the extent that the Commission’s rules address wholesale services and interconnection, SB 651 preserves the Commission’s authority.<sup>9</sup> However, it is far from clear that 4 CSR 240-28.040(4) (outage notification), 4 CSR 240-28.060(1) (safety) or 4 CSR 240-28.060(5) (slamming) have anything to do with wholesale or interconnection services. Instead, these proposed rules seem to affect only retail service<sup>10</sup> and are thereby at odds with SB 651’s treatment of retail telecommunications service as well as with the statutory treatment of IVoIP service.

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<sup>8</sup> See, *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“*USF/ICC Transformation Order*”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011).

<sup>9</sup> See the citations provided in footnote 3 above.

<sup>10</sup> Moreover, as referenced in footnote 2, Section 392.461(1) RSMo exempts electing telecommunications companies from Commission rules regarding slamming. In such respect, the Federal Communications Commission does not impose

Third, several proposed rules explicitly apply to IVoIP service providers. For example, 4 CSR 240-28.040(5) would require disaster relief plans, 4 CSR 240-28.060(2) would impose call completion requirements, and 4 CSR 240-28.030(8) would expressly require advance notice of name changes. If Commission Staff maintains that some of these rules are premised on the Commission's retained authority respecting "intercarrier issues," the MCTA is open to further discussion. Nowhere in Chapter 392, however, is there clear authority for such requirements to be imposed on IVoIP service.<sup>11</sup>

Similarly, proposed 4 CSR 240-28.020(1) and 4 CSR 240-28.030(1) use the terms "authorized" and "authorization" (e.g., "[t]he Commission grants the following forms of authorization") to describe the Commission's registration process for IVoIP service providers. The use of these terms could be read to suggest that the Commission has "authority" beyond its limited authority to register IVoIP service providers. In addition, 4 CSR 240-28.040(2) might be read to imply that the annual report and "Statement of Revenue" forms would be the same for IVoIP service providers as for telecommunications companies. The same form, however, should not necessarily be used by both types of providers, given the limitations in section 392.550.3(7) RSMo on reporting obligations of IVoIP service providers.

## **II. The Commission Rule Regarding the Ceasing of Operations Should Be Modified But Not Eliminated**

Under the Commission Staff's proposal, 4 CSR-3.560 (Procedure for Ceasing Operations) also would be repealed. However, because of possible effects on *wholesale* arrangements when a carrier ceases basic local exchange service, the MCTA suggests there should be some notification to

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its slamming rules on VoIP service. See *MediaCom Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order on Reconsideration, 24 F.C.C.R. 5697, 24 FCC Rcd. 5697, 2009 WL 1392550 (rel. May 19, 2009).

<sup>11</sup> With respect to 4 CSR 240-28.030(8), the registration of IVoIP service providers authorized by Section 392.550 RSMo suggests that notice to the Commission of name changes is justified; however, the statutes do not authorize the Commission to impose an *advance* notice requirement.

the Commission and other carriers when a carrier intends to discontinue basic local exchange service. The MCTA suggests the following amendments to the existing rule:

#### 4 CSR 240-3.560 Telecommunications Procedure for Ceasing Operations

(1) All telecommunications companies ceasing operation in Missouri or discontinuing basic local or interexchange telecommunications service to any geographic service area within the state shall provide to the commission at least thirty (30) days prior to cessation or discontinuance:

(A) A statement of reasons for ceasing or discontinuing service;  
(B) Date of planned service cessation or discontinuance;  
(C) Geographic areas affected by cessation or discontinuance of service;  
(D) A brief description of the service(s) to be ceased or discontinued;  
(E) A statement as to whether the company's tariff(s) and certificate shall remain in effect or be cancelled; and

(F) A statement that all companies having an interconnection agreement with the discontinuing telecommunications company for the affected area ~~customers~~ have been notified pursuant to the terms of the interconnection agreement or at least thirty (30) days prior to the cessation or discontinuance, whichever period is greater; ~~and~~

~~(G) A statement that all affected customers have been informed as to how they can select a new service provider.~~

~~(2) If the information provided in section (1) above is submitted electronically, it will be submitted as a non-case related submission in the commission's Electronic Filing Information System (EFIS).~~

~~(3) If the information provided in section (1) above is submitted in paper format, it will be submitted to the manager of the Telecommunications Department.~~

### **III. Some Proposed Rules May Be in Conflict with Other Rules**

The proposed definition of net jurisdictional revenue in 4 CSR 240-28.040(3) differs slightly from recently adopted 4 CSR 240-31.010(17). The rules could be harmonized to avoid the risk of conflicting provisions.

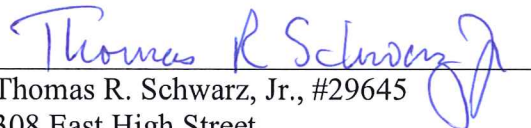
Finally, 4 CSR 240-28.040(3) refers to assuming revenue associated with "non-switched private line service" as net jurisdictional revenue; *i.e.*, intrastate telecommunications service

revenue. The proposed rule should be modified to recognize that most non-switched private line revenue is jurisdictionally interstate.<sup>12</sup>

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

By:

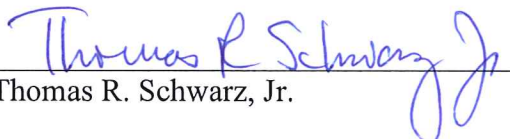
  
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**CERTIFICATE OF SERVICE**

I hereby certify that true and accurate copies of the above pleading were served electronically, this 22<sup>nd</sup> day of May, 2014, upon the following:

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<sup>12</sup> See 47 CFR 36.154(a).