

**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.)	

MOTION TO COMPEL DISCOVERY

COMES NOW the Staff of the Missouri Public Service Commission and for its motion states:

1. On September 21, 2006, the Staff filed its Complaint against Comcast IP Phone, LLC. The Complaint requests the Commission to find that Comcast is offering and providing local exchange telecommunications service in violation of Section 392.410.2 RSMo, to find that Comcast is offering and providing interexchange telecommunications service in violation of Section 392.410.2 RSMo, and to authorize the General Counsel of the Commission to bring an action in Circuit Court to recover from Comcast the maximum statutory forfeiture allowed by Section 392.360 RSMo for each separate, distinct, and continuing violation.

2. On December 26, 2006, Comcast filed its Answer to the Staff's Complaint. The Answer requests the Commission to dismiss Staff's Complaint and find that Comcast is not offering or providing local exchange or interexchange telecommunications service in violation of 392.410.2 RSMo. Comcast claims that the Commission lacks jurisdiction over its all distance VOIP services.

3. On January 18, 2007, the Staff issued its first set of data requests to Comcast. On January 29, 2007, Comcast timely served its objections.

4. By this motion, the Staff requests the Commission to overrule Comcast's objections and to order it to answer Staff Data Request Nos. 10, 11, 16 and 17.

5. Pursuant to Commission rule 4 CSR 240-2.090(8), Staff counsel certifies that he and Comcast's counsel have in good faith conferred by telephone concerning this matter. Counsel for Staff and counsel for Comcast have conferred by telephone with the presiding officer concerning this matter.

6. This section sets forth the Staff's data request in question, Comcast's objection, and the Staff's argument in support of its motion requesting the Commission to order Comcast to answer the data request.

DATA REQUEST NO. 10: All questions are directed to Comcast IP Phone, LLC's offering and provision of its all distance VOIP service to customers in Missouri. Does Comcast's all distance VOIP service transmit information by wire, radio, optical cable, electronic impulses, or other similar means between points within an exchange?

RESPONSE: Comcast objects to this data request as being vague and ambiguous in that Comcast does not offer its services based upon the concept of telephone exchanges.

STAFF ARGUMENT: Paragraph 7 of the Staff's Complaint asserts, "Comcast is offering and providing local exchange telecommunications service in Missouri in the Buckner, Lake Lotawana, Oak Grove, Odessa, and Pleasant Hill exchanges." In its Answer, "Comcast denies the allegations in Paragraph 7 that it is providing local exchange telecommunications service in Missouri in any of the exchanges listed in that Paragraph. Comcast does provide all distance VOIP services in the listed exchanges."

Section 386.020 (31) RSMo Supp. 2005 defines "local exchange telecommunications service" as "telecommunications service between points within an exchange." The relevant clause of Section 386.020 (52) defines "telecommunications service" as "the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means."

Although the Staff disagrees with Comcast's claim that Staff Data Request No. 10 is vague and ambiguous, the Staff offered Comcast two clarifications. First, the Staff offered to define "exchange" as it is defined in Section 386.020 (6): "a geographical area for the administration of telecommunications services, established and described by the tariff of a telecommunications company providing basic local telecommunications service." Second, the Staff offered to explain that the word "exchange" refers to the exchange of an "incumbent local exchange telecommunications company" as that term is defined in Section 386.020 (22). Comcast was unwilling to withdraw its objection even with these additional clarifications.

Comcast's "concept" of how it offers its service is irrelevant and does not make Staff Data Request No. 10 vague and ambiguous. Whether Comcast's all distance VOIP service transmits a call between a Comcast customer and another party in the same exchange is a clear, simple, and relevant question, and one which the Commission should order Comcast to answer.

DATA REQUEST NO. 11: All questions are directed to Comcast IP Phone, LLC's offering and provision of its all distance VOIP service to customers in Missouri. Does Comcast's all distance VOIP service transmit information by wire, radio, optical cable, electronic impulses, or other similar means between points in two or more exchanges?

RESPONSE: Comcast objects to this data request as being vague and ambiguous in that Comcast does not offer its services based upon the concept of telephone exchanges.

STAFF ARGUMENT: Paragraph 8 of the Staff's Complaint asserts, "Comcast is also offering and providing interexchange telecommunications service in the listed exchanges." In its Answer, "Comcast denies the allegation in Paragraph 8 that it is providing interexchange telecommunications service in the listed exchanges."

Section 386.020(24) RSMo Supp. 2005 defines "interexchange telecommunications service" as "telecommunications service between points in two or more exchanges. The relevant

clause of Section 386.020 (52) defines “telecommunications service” as “the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means.”

Although the Staff disagrees with Comcast’s claim that Staff Data Request No. 11 is vague and ambiguous, the Staff offered Comcast two clarifications. First, the Staff offered to define “exchange” as it is defined in Section 386.020 (6): “a geographical area for the administration of telecommunications services, established and described by the tariff of a telecommunications company providing basic local telecommunications service.” Second, the Staff offered to explain that the word “exchange” refers to the exchange of an “incumbent local exchange telecommunications company” as that term is defined in Section 386.020 (22). Comcast was unwilling to withdraw its objection even with these additional clarifications.

Comcast’s “concept” of how it offers its service is irrelevant and does not make Staff Data Request No. 10 vague and ambiguous. Whether Comcast’s all distance VOIP service transmits a call between a Comcast customer and another party in another exchange in Missouri is a clear, simple, and relevant question, and one which the Commission should order Comcast to answer.

DATA REQUEST NO. 16: All questions are directed to Comcast IP Phone, LLC’s offering and provision of its all distance VOIP service to customers in Missouri. State the average monthly revenue Comcast receives per customer for its all distance VOIP service.

RESPONSE: Comcast objects to this data request as it seeks the discovery of information which is irrelevant and inadmissible, and whose discovery is not reasonably calculated to lead to the production of relevant and admissible evidence.

STAFF ARGUMENT: The Staff’s Complaint requests the Commission to authorize the General Counsel of the Commission to bring an action in Circuit Court to recover from Comcast a forfeiture as a penalty for its continuing violations of Section 392.410.2 RSMo.

It is well settled that when a plaintiff seeks punitive damages against a defendant, evidence of the defendant's financial status is both relevant and admissible. A plaintiff seeking discovery of financial information in support of a punitive damage claim should be afforded an adequate opportunity to examine those materials prior to trial. Discovery cannot be forestalled until the requesting a party has made a submissible case at trial. To adopt a contrary approach would deprive the requesting party a meaningful attempt to review that information and investigate its veracity. *State ex rel. Newman v. O'Malley*, 54 S.W. 3d 695, 697-98 (Mo. App. W.D. 2001)

The Staff submits that financial status of the respondent Comcast is likewise relevant and admissible in this case.

Section 392.360 RSMo provides for a forfeiture of up to five thousand dollars for each offense, and in case of a continuing violation, every day's continuance thereof is a separate and distinct offense.

Evidence of the average monthly revenue Comcast receives per customer for its all distance VOIP service revenue provides one of several possible starting points to determine what is an appropriate forfeiture as a penalty for its violations of Section 392.410.2 RSMo.

DATA REQUEST NO. 17: All questions are directed to Comcast IP Phone, LLC's offering and provision of its all distance VOIP service to customers in Missouri. State the total amount of revenues received to date by Comcast for its all distance VOIP service since Comcast began providing that service.

RESPONSE: Comcast objects to this data request as it seeks the discovery of information which is irrelevant and inadmissible, and whose discovery is not reasonably calculated to lead to the production of relevant and admissible evidence.

STAFF ARGUMENT: The Staff's Complaint requests the Commission to authorize the General Counsel of the Commission to bring an action in Circuit Court to recover from Comcast a forfeiture as a penalty for its continuing violations of Section 392.410.2 RSMo.

It is well settled that when a plaintiff seeks punitive damages against a defendant, evidence of the defendant's financial status is both relevant and admissible. A plaintiff seeking discovery of financial information in support of a punitive damage claim should be afforded an adequate opportunity to examine those materials prior to trial. Discovery cannot be forestalled until the requesting a party has made a submissible case at trial. To adopt a contrary approach would deprive the requesting party a meaningful attempt to review that information and investigate its veracity. *State ex rel. Newman v. O'Malley*, 54 S.W. 3d 695, 697-98 (Mo. App. W.D. 2001)

The Staff submits that financial status of the respondent Comcast is likewise relevant and admissible in this case.

Section 392.360 RSMo provides for a forfeiture of up to five thousand dollars for each offense, and in case of a continuing violation, every day's continuance thereof is a separate and distinct offense.

Evidence of the total amount of revenues received to date by Comcast for its all distance VOIP service since Comcast began providing that service provides one of several possible starting points to determine what is an appropriate forfeiture as a penalty for its violations of Section 392.410.2 RSMo.

WHEREFORE, the Staff requests the Commission to order Comcast to answer Staff Data Request Nos. 10, 11, 16 and 17.

Respectfully submitted,

/s/ William K. Haas

William K. Haas
Deputy General Counsel
Missouri Bar No. 28701
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7510 (Telephone)
(573) 751-9285 (Fax)
william.haas@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 6th day of March 2007.

/s/ William K. Haas