

**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.	)	

**REPLY BRIEF  
MISSOURI INDEPENDENT TELEPHONE COMPANY GROUP**

Comcast and ATT take the position that, until the FCC issues a final order in its IP Enabled Services Docket, the state of Missouri is preempted from regulating any aspect of VoIP service. This position is directly contradicted by the FCC’s statement in its *Universal Service Contribution Order*<sup>1</sup> that “an interconnected VoIP provider with the capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our *Vonage Order* and would be subject to state regulation”.

These quoted words “would be subject to state regulation” direct that the FCC has not preempted states from regulating all aspects of VoIP service, as Comcast and AT&T contend. Therefore the position of Comcast and ATT cannot be correct. In the above quotation the FCC used the words “customer calls” in discussing the voice communications functionality of VoIP service. The FCC recognized that voice communications can be separated from other VoIP functionalities. The only rational

---

<sup>1</sup> *In the Matter of Universal Contribution Methodology, before the Federal Communications Commission*, WC Docket No. 06-122, et al., released June 27, 2006, at ¶ 56.

reading of the FCC's Order is that VoIP customer voice calls, which are capable of having have their jurisdictional confines tracked, are subject to state regulation.

The claims of Comcast and ATT that all functions of VoIP service must be considered integrated into a single service which can only be information service is contrary to the FCC's decision. The FCC has been very willing to separate voice call functionalities for purposes of regulatory obligations. The FCC has imposed upon VoIP providers several obligations which are also "traditional regulations" imposed on providers of traditional voice telecommunications services, such as 911 and E911 obligations, USF contribution obligations, CALEA obligations, and CPNI obligations.

ATT's interpretational argument would leave it to the VoIP provider to impose preemption merely by deciding it has no "service-driven" reason to separate intrastate from interstate traffic. See ATT brief, pp 4-5. Allowing providers to decide if and to what extent they are subject to regulation is ill-advised.

ATT opines the FCC order creating a "safe harbor" for universal service contributions was to further the principle of competitive neutrality. But ATT fails to explain how competitive neutrality between fixed-based wireline VoIP providers and traditional wireline LEC providers would be furthered by exempting VoIP providers from the burdens of state regulations LECs are subject to.

Comcast relies upon the United States District Court, Eastern District Missouri's September 14, 2006 decision in *AT&T v MoPSC*, 461 F. Supp 2<sup>nd</sup> 1055, at page 1079.<sup>2</sup> In this case the Court addressed whether access compensation or reciprocal compensation should apply to IP-PSTN (Internet Protocol to Public Switched Telephone Network)

---

<sup>2</sup> Comcast Initial Brief, p. 11.

traffic. This was a disputed intercompany compensation issue in an arbitration agreement between an ILEC and consortium of CLECs. The Court held IP-PSTN traffic was subject to reciprocal compensation.

*AT&T v MoPSC* does not stand for the proposition that the state of Missouri has been preempted from regulating fixed base wireline VoIP providers. No VoIP provider was a party to that case. *AT&T v MoPSC* cannot stand for the proposition Missouri is preempted from regulating fixed VoIP service. No such claim was presented to, or decided by, the Eastern District.

As set forth in the Initial Brief of the MITG, controlling precedent as to the preemption precedent is found in the *Vonage* decision, the *Universal Service Contribution Order*, *Minnesota PUC v. FCC*, 483 F.3d 570 (8<sup>th</sup> Cir. 2007), the DC Circuit's decision on appeal in *Vonage Holdings Corporation v FCC*, et al., June 1, 2007 Case No. 06-1276, slip opinion pages 14-16, and the January 18, 2007 decision of Judge Laughrey denying Comcast's injunction request concluding there was no preemption.<sup>3</sup> Missouri has not been preempted from regulating fixed base wireline VoIP service.

WHEREFORE, on the basis of the foregoing, the MITG requests that the Commission enter an order granting the relief requested in Staff's Complaint.

---

<sup>3</sup> Case No. 06-4233-CV-C-NKL.

/s/ Craig S. Johnson  
Craig S. Johnson, Atty.  
Mo Bar # 28179  
1648-A East Elm St.  
Jefferson City, MO 65101  
(573) 632-1900  
(573) 634-6018 (fax)  
[craig@csjohnsonlaw.com](mailto:craig@csjohnsonlaw.com)

**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 11<sup>th</sup> day of October, 2007:

William Haas  
Michael Dandino  
Roger Steiner/Mark Johnson  
W.R. England III and Brian McCartney  
Kevin Zarling  
Leo Bub

/s/ Craig S. Johnson  
Craig S. Johnson