

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

July 25, 2007  
Jefferson City, Missouri  
Volume 2

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

MORRIS L. WOODRUFF, presiding  
DEPUTY CHIEF REGULATORY LAW JUDGE

JEFF DAVIS, Chairman,  
CONNIE MURRAY,  
STEVE GAW,  
ROBERT M. CLAYTON, III,  
LINWARD "LIN" APPLING,  
COMMISSIONERS

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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: All right. Good morning,  
3 everyone. Let's go ahead and get started. It's a little  
4 after 8:30.

5 We're on the record. Good morning. We're here  
6 for Case No. TC-2007-0111, the evidentiary hearing in that  
7 case, which is Staff's complaint against Comcast IP Phone.

8 We're going to begin today by taking entries of  
9 appearance. But before I do that, I want to mention a  
10 couple things about this hearing room.

11 First of all, we had to move into 305 instead of  
12 310 because of the conflict with the AmerenUE hearing.  
13 One of the unusual things about this room is, as you look  
14 around, you don't notice any microphones on the tables or  
15 in front of the witnesses or anything.

16 There are microphones in the ceiling. And I've  
17 been told that they are quite sensitive so that whispered  
18 asides in the audience can be picked up by the microphones  
19 even if you don't necessarily hear them in the hearing  
20 room. So until you want it to be recorded, be careful  
21 what you say.

22 Let's begin by taking entries of appearance,  
23 then, beginning with Staff.

24 MR. HAAS: Good morning, your Honor. William K.  
25 Haas appearing on behalf of the Staff of the Public

1 Service Commission. My address is Post Office Box 360,  
2 Jefferson City, Missouri, 65102.

3 JUDGE WOODRUFF: And for Comcast IP Phone?

4 MR. MARK JOHNSON: Thank you, your Honor. May  
5 it please the Commission. On behalf of the Respondent,  
6 Comcast IP Phone LLC, Mark Johnson and Roger Steiner of  
7 the law firm of Sonnenschein, Nath & Rosenthal. Our  
8 address is 4520 Main Street, Suite 1100, Kansas City,  
9 Missouri, 64111.

10 JUDGE WOODRUFF: Thank you. For MITG?

11 MR. CRAIG JOHNSON: Thank you, your Honor.  
12 Craig Johnson, 1648-A East Elm, Jefferson City, Missouri,  
13 65101, appearing today for Missouri Independent Telephone  
14 Company Group.

15 JUDGE WOODRUFF: And for Public Counsel?

16 MR. DANDINO: Good morning, your Honor. Michael  
17 Dandino, Deputy Public Counsel, Post Office Box 2230,  
18 Jefferson City, Missouri, 65102, representing the Office  
19 of Public Counsel and the Public.

20 JUDGE WOODRUFF: Thank you. And I believe  
21 that's all the parties. Normally, at this point in  
22 hearing, we would stop to premark exhibits. But I believe  
23 there are only, I believe, three items to be marked, so  
24 we'll just wait and mark those at the time they're going  
25 to be offered into evidence.

1                   So we'll begin with opening statements. And  
2 first on the list would be Staff.

3                                   OPENING STATEMENT

4 BY MR. HAAS:

5                   MR. HAAS: Good morning. In this complaint  
6 case, the Staff asks the Commission to find that Comcast  
7 IP Phone, LLC, is offering and providing intrastate  
8 telecommunications services without having obtained from  
9 the Commission the necessary Certificate of Service  
10 Authority.

11                   The Staff asks the Commission to authorize the  
12 General Counsel to pursue a penalty action in court.  
13 Section 392.410.2 of the Revised Statutes of Missouri  
14 forbids a telecommunications company to offer or provide  
15 interexchange telecommunications service or local exchange  
16 telecommunications service until it has received a  
17 Certificate of Service Authority from the Commission.

18                   Section 386.020, Subsection 53, generally  
19 defines telecommunications service as the transmission of  
20 information by wire, radio, optical cable, electronic  
21 impulses or other similar means.

22                   Section 386.020, Subsection 24 defines  
23 interexchange telecommunications service as  
24 telecommunications service between points in two or more  
25 exchanges.

1           And Section 386.020, Subsection 31 defines local  
2   exchange service as telecommunications service between  
3   points within an exchange.

4           Comcast denies that it provides local exchange  
5   and/or interexchange telecommunications service. However,  
6   the evidence will show that Comcast does transmit  
7   information by wire, radio, optic cable, electronic  
8   impulses or other similar means, that is, it provides  
9   telecommunications services between points in two or more  
10   exchanges and between points within -- within an exchange.

11          Comcast admits that it does not have Certificate  
12   of Service Authority from the Commission but denies that  
13   it is required to obtain such authority.

14          Comcast describes its service as an all distance  
15   Voice Over Internet Protocol service. Comcast service is  
16   provided over cable TV wires.

17          Comcast argues that the FCC has preempted State  
18   Commission jurisdiction over such service. As one  
19   authority for its preemption argument, Comcast cites to  
20   the FCC's Vonage order.

21          In that order, the FCC preempted the Minnesota  
22   PUC's jurisdiction over Vonage's VOIP service. Comcast  
23   relies on Paragraph 32 of the Vonage order for its  
24   preemption argument.

25          In Paragraph 32, the FCC stated, The provision

1 of tightly integrated communications capabilities greatly  
2 complicates the isolation of intrastate communications and  
3 counsels against password regulation. Accordingly, to the  
4 extent other entities such as cable companies provide VOIP  
5 services, we would preempt State regulation to an extent  
6 comparable to what we have done in this record.

7 On the appeal of the FCC's Vonage order, the  
8 Federal Eighth Circuit Court of Appeals affirmed the FCC's  
9 preemption of the Minnesota PUC's regulation of Vonage's  
10 nomadic VOIP services.

11 Nomadic VOIP service is one where a customer can  
12 use the service anywhere by connecting with a broadband  
13 connection. Also, on that appeal, the New York PSC argued  
14 that the FCC's apparent preemption of State regulation of  
15 fixed VOIP services exceeded the FCC's jurisdiction.

16 With fixed VOIP service, the customer uses the  
17 service from a fixed location. For example, cable  
18 television companies offer fixed VOIP service to their  
19 customers using the cable running to and from the  
20 customer's residence.

21 The FCC itself responded that the New York PSC's  
22 issue was not right for appeal because the Vonage order  
23 did not specifically address fixed VOIP services.  
24 The Court held that paragraph 32 does not purport to  
25 actually preempt regulation of fixed VOIP services,

1 Paragraph 32 is a mere prediction and that a prediction  
2 does not constitute final agency action.

3 The record will show that Comcast provides a  
4 fixed VOIP service and not a nomadic VOIP service.  
5 Therefore, the Vonage order does not preempt the  
6 Commission's jurisdiction over Comcast service.

7 As another authority for its preemption  
8 argument, Comcast cites to the FCC's IP enabled services  
9 rule-making proceeding. On March 10, 2004, the FCC opened  
10 a rule-making to comprehensively address the regulatory  
11 and policy issues related to VOIP services.

12 In Comcast v. Missouri Public Service  
13 Commission, an action brought by Comcast to enjoin the  
14 Commission from proceeding with this complaint, the  
15 Federal Court held that the fact that the FCC has opened a  
16 rule-making proceeding is not an expression of the FCC's  
17 intent to -- to preempt the entire field of VOIP services.

18 The Court was unable to find that the FCC had  
19 preempted the entire field of VOIP services or that  
20 allowing State regulation of intrastate telecommunications  
21 services, which also happened to be VOIP services, stands  
22 as an obstacle to the accomplishment and execution of the  
23 goal and objective of Congress.

24 In summary, the evidence will show that Comcast  
25 is offering and providing intrastate telecommunications



1 services without the statutorily required Certificate of  
2 Service Authority.

3 Accordingly, the Commission should authorize the  
4 General Counsel's office to pursue a penalty action.

5 Thank you.

6 JUDGE WOODRUFF: Commissioner Murray, do you  
7 have some questions?

8 COMMISSIONER MURRAY: I would like to ask you,  
9 Mr. Haas, if the FCC has not preempted the states from  
10 regulating nomadic VOIP services, do the states still have  
11 discretion to forebear regulating such services?

12 MR. HAAS: No, commissioner, I do not believe  
13 they do because we are operating under State law. And the  
14 State law says that a company providing telecommunications  
15 service intrastate shall have a certificate and shall  
16 comply with the other regulations and statute.

17 COMMISSIONER MURRAY: But isn't it true that  
18 nomadic VOIP service has not -- it has not been fully  
19 determined whether that is telecommunications service or  
20 information service?

21 MR. HAAS: It has not been determined by the FCC  
22 whether that is a telecommunications service under Federal  
23 Law. But the first question is, is this a  
24 telecommunications service under State law? And if the  
25 answer is yes, then the State regulates that service until

1 such time as there is actual preemption.

2 COMMISSIONER MURRAY: And what has determined  
3 that nomadic VOIP service under State law is  
4 telecommunications service?

5 MR. HAAS: The -- the definition of  
6 telecommunications service under State law is, as I read  
7 before, the transmission of information by wire, radio,  
8 optical cable, electronic impulses or other similar means.

9 And the -- the evidence in this case will show  
10 that that is what Comcast does.

11 COMMISSIONER MURRAY: But does -- isn't the same  
12 thing occurring when you have a VOIP service that has not  
13 -- has been declared to be an information service by the  
14 FCC?

15 MR. HAAS: Yes. And in that instance, the  
16 nomadic service would be subject to State regulation under  
17 State law, except for the fact that there had been federal  
18 preemption.

19 COMMISSIONER MURRAY: And you're saying that  
20 until such time as there is actual federal preemption, we  
21 have no choice but to treat this type of service as a  
22 telecommunications service under Missouri law? Is that  
23 your position?

24 MR. HAAS: Yes.

25 COMMISSIONER MURRAY: All right. Thank you.

1 JUDGE WOODRUFF: Commissioner Clayton?

2 COMMISSIONER CLAYTON: Mr. Chairman?

3 JUDGE WOODRUFF: Mr. Chairman?

4 CHAIRMAN DAVIS: I'll pass at this time.

5 COMMISSIONER CLAYTON: Mr. Haas, you're a long  
6 way away over there

7 MR. HAAS: Good morning.

8 COMMISSIONER CLAYTON: Good morning. I wanted  
9 to ask, can you point me by citation where Staff  
10 principally relies for its position in either the IP  
11 enabled PRM order or the Vonage order? Are there any  
12 specific provisions that you can point to?

13 MR. HAAS: The State -- pardon me. The Staff's  
14 position begins with the State law that this is a service  
15 under State law.

16 COMMISSIONER CLAYTON: Well, I got the State  
17 law. I don't need that. I need the -- I need the  
18 citation that clearly -- from Staff's position clearly  
19 shows that this service is not preempted, that State law  
20 is not preempted.

21 MR. HAAS: I will need to get you the page  
22 number. But in the Eighth Circuit review of the FCC's  
23 Vonage order, the Eighth Circuit specifically addresses  
24 Paragraph 32 and says that that paragraph did not act to  
25 preempt regulation of the fixed VOIP services, that it was

1 a mere prediction. But I don't have the page number here,  
2 and I apologize.

3 COMMISSIONER CLAYTON: Okay. I'm assuming that  
4 the Eighth Circuit opinion is included in probably your  
5 response to the Motion to Dismiss?

6 MR. HAAS: The Eighth Circuit decision may have  
7 come out after that. I'm not certain.

8 COMMISSIONER CLAYTON: Okay. Well, do you have  
9 it listed -- is it anywhere in your pleadings? Where can  
10 I get the cite, Bill? Where can I find it?

11 MR. HAAS: I will get it to you.

12 COMMISSIONER CLAYTON: Great. Great. Thank  
13 you. No other questions.

14 JUDGE WOODRUFF: All right. Commissioner  
15 Applling?

16 COMMISSIONER APPLING: No questions.

17 JUDGE WOODRUFF: Chairman Davis, do you have  
18 any?

19 CHAIRMAN DAVIS: No.

20 JUDGE WOODRUFF: All right. Thank you, sir.  
21 Then for MITG?

22 OPENING STATEMENT

23 BY MR. CRAIG JOHNSON:

24 MR. CRAIG JOHNSON: Thank you, your Honor. May  
25 it please the Commission.

1           Missouri Independent Telephone Company Group is  
2 interested in parity of regulation between competitors  
3 that are offering like services.

4           And the service we're talking about here today  
5 is a phone service. It's marketed as a phone service.  
6 The Comcast customer has a fixed -- geographically fixed  
7 location for its phone and phone number.

8           When he makes a call, it goes from his phone  
9 through a multi-media terminal adapter, which converts the  
10 call to an IP protocol. Then it goes out through the  
11 cable TV co-axial cable lines, and then the call completes  
12 as a normal call does.

13           So what I would ask you to remember is that the  
14 only difference between Comcast calls in this case and the  
15 calls that my clients make is that the call gets converted  
16 to IP protocol.

17           So all we're talking about in this case that  
18 makes it different from every other phone call is this IP  
19 conversion, which is merely a protocol that's used to  
20 transform the mode in which the voice communication exits  
21 the customer's premises.

22           I would tell you that with the days' technology,  
23 even the ILECs, some of them have soft switches or they're  
24 getting ready to require soft switches. And when they do,  
25 they also can convert a phone call from the customer's

1 premise to IP technology.

2           So I ask you to keep in your mind, what is the  
3 real difference we're talking about here that would even  
4 justify Comcast's request to be preempted from State  
5 regulation? And I suggest there is little or none.

6           In the Vonage preemption order, the basis for  
7 preempting Minnesota was that the Vonage phones, which are  
8 from the customer's -- the originating caller's  
9 perspective are nomadic.

10           They can make a call from a Vonage IP phone  
11 anywhere around the world. Because they couldn't identify  
12 the originating location of calls, the FCC said it's  
13 impossible to separate interstate from intrastate traffic.  
14 And since it was impossible, they would not allow the  
15 State commission to regulate that service because it would  
16 frustrate the FCC's jurisdiction over deciding what is  
17 interstate.

18           In this case, that's not -- that's not true. In  
19 the testimony, Comcast has suggested that they meet this  
20 impossibility test that of the Vonage order because when  
21 their fixed geographically based customers make a call,  
22 some of those calls terminate to wireless customers, and  
23 some of those calls may terminate to a computer or  
24 Vonage-type phone that has an IP address but not  
25 necessarily a fixed geographical address.

1           I suggest to you that is exactly what the ILECs  
2 are doing today. Any time a call goes from an ILEC  
3 customer and terminates to a mobile customer or it  
4 terminates to a computer that can be moved, we have the  
5 same situation today.

6           So, again, my question to you is, what is the  
7 difference between a Comcast IP Phone voice call than an  
8 ILEC customer's voice call? and I suggest to you there is  
9 none. And there certainly is nothing that would bring a  
10 Comcast IP voice call within the FCC's Vonage  
11 impossibility test.

12           So we concur in Staff's opening statement. I'd  
13 be happy to answer any questions.

14           JUDGE WOODRUFF: Commissioner Murray, do you  
15 have any questions?

16           COMMISSIONER MURRAY: I don't believe so.

17           JUDGE WOODRUFF: Commissioner Clayton?

18           COMMISSIONER CLAYTON: Mr. Johnson, can you --  
19 do you agree that the Eighth Circuit opinion in Vonage is  
20 -- gives clear direction to this Commission on whether or  
21 not we are preempted?

22           MR. CRAIG JOHNSON: I don't think you have any  
23 clear direction anywhere. The best you've got is the  
24 Vonage case as amplified by the FCC in the USF  
25 contributions order wherein they stated that -- something

1 to the effect it was only those nomadic type services that  
2 qualify for preemption.

3 But the Vonage order, there was FCC language  
4 suggesting -- this was a case by case decision. And they  
5 said they would only preempt other State Commissions from  
6 regulating services that were like Vonage, nomadic like  
7 Vonage. And this service is not nomadic.

8 COMMISSIONER CLAYTON: Okay. So the -- you  
9 disagree with Mr. Haas that the Eighth Circuit opinion in  
10 Vonage sets out at least some guidance on whether a  
11 non-nomadic --

12 MR. CRAIG JOHNSON: Mr. Clayton, I apologize. I  
13 don't disagree with him. I'm just not sufficiently  
14 familiar with the details of that decision here today to  
15 be able to confidently tell you.

16 COMMISSIONER CLAYTON: Well, let me ask you this  
17 question: You spent a great part of your opening  
18 statement discussing the -- the factual characteristics of  
19 the type of service, giving us information on the  
20 difference between this type of service and that type of  
21 service.

22 And I -- I guess my question is today, are we  
23 making a decision based on law or based on fact?

24 MR. CRAIG JOHNSON: Both. The law is the Vonage  
25 case. The fact is whether this service is nomadic or not.



1                   COMMISSIONER CLAYTON: Okay. So the factual  
2 issue is whether or not it's nomadic?

3                   MR. CRAIG JOHNSON: I don't think there's any  
4 dispute in this case that it's not. So I view this  
5 hearing as basically addressing a question of law.

6                   COMMISSIONER CLAYTON: Well, does Comcast agree  
7 that it is a non-nomadic service? Is that disputed?

8                   MR. CRAIG JOHNSON: I think their testimony is  
9 correct that it's a fixed geographically-based phone. I  
10 think they have tried to squeeze under the Vonage analysis  
11 by suggesting that you can't identify the location -- the  
12 terminal location of the calling point when the call goes  
13 to a wireless customer or to a Vonage phone, for example,  
14 which could be nomadic on the terminating end.

15                   But like I suggested, that's no different from  
16 an ILEC call today.

17                   COMMISSIONER CLAYTON: Do you believe the  
18 Commission -- this Commission has the ability to -- if we  
19 find that we are not preempted, does this Commission have  
20 the ability to forebear or to waive regulation of this  
21 type of service?

22                   MR. CRAIG JOHNSON: I'm not aware of any statute  
23 authority for this Commission to forebear from regulation  
24 as I believe was the case with the FCC.

25                   COMMISSIONER CLAYTON: Forebear is a big word

1     used at the FCC. And I think --

2                 MR. CRAIG JOHNSON: I think it's the statute  
3     authority.

4                 COMMISSIONER CLAYTON: Okay. Okay. I don't  
5     think I have any other questions. Thank you.

6                 JUDGE WOODRUFF: Commissioner Appling?

7                 COMMISSIONER APPLING: I don't think I have any  
8     questions.

9                 JUDGE WOODRUFF: Chairman Davis?

10                CHAIRMAN DAVIS: How is -- what makes the -- the  
11     Vonage service nomadic and, thus, distinguishable from  
12     what we have here?

13                MR. CRAIG JOHNSON: The Vonage service is a  
14     service you buy from Vonage. And you can put it on your  
15     laptop. And as long as you have a broadband connection  
16     anywhere in the world, a hotel room, coffee shop in Spain,  
17     you can make a call from the Vonage computer.

18                In this case, the customer has to have a phone  
19     in his home. It has to be connected to his inside wiring.  
20     It has to be connected to this multi-media terminal  
21     adapter that Comcast installs, which is connected inside  
22     the hard-wiring of the house.

23                And the call goes through this multi-media  
24     terminal adapter before the call goes out to the co-axial  
25     cable of the cable TV company. So you cannot wander when

1     you originate a call as a Comcast customer like you can  
2     with a Vonage phone.

3                 CHAIRMAN DAVIS: Thank you, Judge.

4                 JUDGE WOODRUFF: All right. Thank you,  
5     Mr. Johnson.

6                 MR. CRAIG JOHNSON: Thank you.

7                 JUDGE WOODRUFF: Commissioner Appling, did you  
8     have a question?

9                 COMMISSIONER APPLING: Mr. Johnson, what -- I'm  
10    sorry. I apologize for coming in late and staying up late  
11    last night, too. But anyway, are you saying that we have  
12    jurisdiction?

13                MR. CRAIG JOHNSON: Yes.

14                COMMISSIONER APPLING: Okay.

15                MR. CRAIG JOHNSON: This is a telephone service  
16    under Missouri statutes, and you've got jurisdiction and  
17    an obligation to make sure it's properly regulated. I  
18    don't think the Commission wants to go down the road of  
19    deciding not to regulate an entity that requires a  
20    certificate.

21                And the other concern I have in this case, when  
22    I was comparing an ILEC call to the Comcast service call,  
23    if the ILEC has IP technology and we decide not to  
24    regulate Comcast, does that mean that the ILECs service  
25    isn't regulatable either?

1           COMMISSIONER APPLING: And Staff is saying that  
2 we don't have jurisdiction, is that correct?

3           MR. CRAIG JOHNSON: Staff is saying that you do  
4 have jurisdiction, that you're not preempted by the Feds.

5           COMMISSIONER APPLING: Okay. I'm straight now.  
6 Thank you.

7           JUDGE WOODRUFF: Go ahead, Commissioner.

8           COMMISSIONER MURRAY: Mr. Johnson, we're just  
9 not going to let you get away from there, are we?

10           Is there any -- any different consideration  
11 because of the fact that Comcast is offering theirs as a  
12 cable service?

13           MR. CRAIG JOHNSON: I don't think they're  
14 offering it as a cable service. They're offering it as a  
15 phone service that happens to go out over a different type  
16 of line. But under this Missouri statute, it's a  
17 transmission of information over any wire. It doesn't  
18 distinguish between coaxial or fiber or copper.

19           COMMISSIONER MURRAY: So you think there's no  
20 distinction there?

21           MR. CRAIG JOHNSON: Not under Missouri statute.

22           COMMISSIONER MURRAY: All right. Thank you.

23           JUDGE WOODRUFF: All right. Move on to Public  
24 Counsel.

25           MR. DANDINO: Thank you, your Honor.

1                                   OPENING STATEMENT

2   BY MR. DANDINO:

3                   MR. DANDINO: May it please the Commission.  
4   Public Counsel agrees with the Staff, supports the Staff.  
5   And we think that the -- Mr. Johnson made remarks --  
6   especially his last remarks about jurisdiction was  
7   basically the direction I was going to come on behalf of  
8   Public Counsel.

9                   I think you can decide how important this case  
10   is by looking who is in the audience, the companies that  
11   are represented here. We've gotten to the point in the  
12   day where we all knew would come that when technology so  
13   far ran ahead of the law that we're -- that it's uncertain  
14   -- or at least to reasonable folks that is uncertain where  
15   -- you know, what to call this, where to go and who has  
16   jurisdiction.

17                  I think -- or Public Counsel believes that this  
18   Commission has jurisdiction. And as a telephone service,  
19   the Commission -- Public Counsel urges the Commission not  
20   to give up its jurisdiction unless there is absolutely  
21   clear preemption by the FCC.

22                  I don't think that exists at this time. The  
23   technology is -- is one asp -- is one aspect of it. But  
24   also look at -- at -- at the nature of how -- how -- the  
25   business rather than just look at the technology.

1           As -- Mr. Johnson pointed out that you have some  
2   of the telephone companies that will be using the same  
3   type of in net protocol or -- or -- to transfer --  
4   transmit their telephone calls.

5           It's important that you look beyond just the  
6   technology and look at what is actually occurring. Do we  
7   have a cable company offering telephone service? Or --  
8   when Southwestern -- or when -- excuse me. Now it's AT&T  
9   offers video service. Is that a telephone company  
10  offering video? You know, I -- I think -- you know, you  
11  have to make the distinctions.

12          You're regulating a service. You're regulating  
13  a type of company. And I think the -- whoever falls  
14  within the category of that service or that company falls  
15  within your jurisdiction.

16          I believe it's -- it's important that consumers  
17  have protection, have some assurance that this is going to  
18  be regulated under the Missouri law until such time as --  
19  as the -- I guess it will have to be the Federal Court of  
20  -- eventually which will determine whether -- one, whether  
21  it has been preempted -- preempted by the FCC, and then,  
22  secondly, whether there is clear authority for the FCC to  
23  preempt this service.

24          This is a -- this is an issue of the -- of the  
25  partnership of regulation of telecommunications services

1     that was -- has long served this nation, this -- this  
2     state and the consumers as well. And I believe it's  
3     important for this Commission to maintain and protect its  
4     jurisdiction and in that way, protect consumers in the  
5     state of Missouri. Thank you.

6             JUDGE WOODRUFF: Thank you. Commissioner  
7     Murray, did you have any questions?

8             COMMISSIONER MURRAY: No, thank you.

9             JUDGE WOODRUFF: Commissioner Clayton?

10            COMMISSIONER CLAYTON: No questions.

11            JUDGE WOODRUFF: Commissioner Appling?

12            COMMISSIONER APPLING: No questions.

13            JUDGE WOODRUFF: Chairman Davis?

14            CHAIRMAN DAVIS: Mr. Dandino?

15            MR. DANDINO: Yes, sir.

16            CHAIRMAN DAVIS: So you are not buying the  
17     argument that this is competition entering the market and  
18     this is good for consumers and that you ought to just, you  
19     know -- just be -- this choice will -- will ultimately  
20     benefit consumers?

21            MR. DANDINO: Oh, I certainly don't buy that. I  
22     believe that -- that -- you don't have to tell this  
23     Commission to get out of the way to stop -- to promote  
24     competition.

25            I think this Commission has to be there to

1 ensure that -- to ensure that the protection will be  
2 there. I don't think competition -- you'll find  
3 competition on your own terms, you know, one way or the  
4 other. I don't -- but I think it's more important in --  
5 in how much protection the competitor -- or the -- this  
6 can offer to competitors.

7           What it basically boils down to, this Commission  
8 says there's no -- that they don't have jurisdiction. I'm  
9 not very confident that there will be any regulation at  
10 the FCC. I have much more confidence in this Commission  
11 to oversee something that's here in the State of Missouri  
12 than the FCC to regulate anything.

13           CHAIRMAN DAVIS: If we do find Comcast has been  
14 providing unregulated phone service and do authorize that  
15 -- the General Counsel's office to seek penalties, what  
16 penalties do you think we ought to seek?

17           MR. DANDINO: Rather than penalties, I'm more  
18 interested in compliance. I think the penalties -- you  
19 know, ask for their income statements. If you want to  
20 look -- if you want to -- but you're limited in what the  
21 statute says.

22           That isn't really the -- the interest of Public  
23 Counsel is going to make sure they comply and make sure  
24 that they get a certificate, that they follow the --  
25 follow the law.



1           If -- you know, if after that or after this  
2   Commission makes its ruling and they still refuse to, I  
3   think that the Commission should look at the point of each  
4   day as a separate violation.

5           CHAIRMAN DAVIS: Thank you, Mr. Dandino.

6           JUDGE WOODRUFF: Commissioner Gaw, did you have  
7   any questions for Mr. Dandino?

8           COMMISSIONER GAW: Not at this time. Thank you.

9           JUDGE WOODRUFF: Thank you. Then we'll move on  
10   over to Comcast IP Phone.

11                           OPENING STATEMENT

12   BY MR. MARK JOHNSON:

13           MR. MARK JOHNSON: Good morning. May it please  
14   the Commission.

15           In April 2006, Comcast IP Phone, LLC, began  
16   providing Voice Over Internet Protocol service in the  
17   portions of the Kansas City area served by its cable  
18   affiliate, Comcast.

19           VOIP services rely on a new technology that  
20   allows customers to communicate using signals that travel  
21   partly or exclusively over the Internet rather than over  
22   typical switched telecommunications networks.

23           In traditional circuit switched communications,  
24   an electrical circuit must be kept clear of other signals  
25   for the duration of the telephone call. Package switched

1   communications over the Internet, by contrast, use digital  
2   packets carried over shared circuits with other packets,  
3   thus making packet switching more efficient.

4               But efficiency is not VOIP's only advantage over  
5   traditional telephone service. Comcast VOIP service  
6   offers a suite of enhanced services. For example,  
7   customers can -- can access a digital voice center with  
8   any computer located anywhere in the world to retrieve  
9   voice mail, view call detail and manage their account.

10              Comcast's VOIP service interconnects with the  
11   published -- public switched telephone number, PSTN for  
12   short, so it's called IP to PSTN traffic.

13              The advent of IP to PSTN traffic has raised  
14   uncertainty. That's why we're here today. Some believe  
15   that this VOIP traffic is an information service and  
16   should be free from almost all Federal and State  
17   regulations.

18              Others believe that VOIP is a telecommunications  
19   service and should be subject to many of the same  
20   regulations as circuit switch telephone service. These  
21   debates caused the FCC to open a proceeding in 2004 which  
22   Mr. Haas addressed called the IP enabled rule-making  
23   procedure to determine whether VOIP services should be  
24   regulated, and, if so, to what extent and under whose  
25   authority.

1           The FCC has issued several orders in that case.  
2   It's also issued the Vonage order where the PS -- where  
3   the FCC preempted the Minnesota PUC from asserting its  
4   tariff and certification requirements against Vonage's  
5   services.

6           To date, however, the FCC has not conclusively  
7   determined whether VOIP is an information service or  
8   telecommunications service. That's -- that's why we're  
9   here.

10          Many observers believe that the FCC is being  
11   prudent in its deliberate review of VOIP services. They  
12   argue that it makes sense to let products and services  
13   develop before they are classified for regulatory  
14   services, especially where a classification as a  
15   telecommunications service would burden a service with  
16   inappropriate regulatory obligations.

17          Now, at the time Comcast began providing service  
18   in Missouri -- and here I'm talking about Comcast IP phone  
19   VOIP service -- the FCC has determined in its Vonage order  
20   that it would preempt State regulation of VOIP services  
21   that have the following basic characteristics. And this  
22   is in paragraph 332 of the Vonage order that are -- it's  
23   already been addressed this morning.

24          First, a broadband connection from the user's  
25   location. Second, a need for IP compatible computer -- or

1   pardon me -- consumer premises equipment. And, third, a  
2   service offering that includes a suite of integrated  
3   capabilities and features that enable customers to manage  
4   personal communications inhabitable.

5               Comcast VOIP service meets all these criteria.  
6   This communication (sic) has itself dealt with the VOIP  
7   issue in the context of the M2A proceeding in 2005.

8               The Commission found in the context of the issue  
9   of reciprocal compensation that IP to PSTN traffic is an  
10   enhanced or information service, and, thus, not subject to  
11   access charges.

12              This Commission and the reviewing Federal Court,  
13   U.S. District Court for the Eastern District of Missouri,  
14   and which affirmed the Commission's decision both have  
15   already determined that VOIP is not a telecommunications  
16   service.

17              Now, given the FCC's IP enhanced rule-making  
18   proceedings, its decision in the Vonage case and this  
19   Commission's M2A arbitration rule, it isn't surprising  
20   that Comcast did not apply for a certificate when --  
21   before it began to provide service in Missouri.

22              Comcast's actions were also consistent with the  
23   fact that no other state in which it provides VOIP service  
24   requires Comcast to obtain certification or to file  
25   tariffs.

1           Staff's complaint is premised on its belief that  
2 Comcast service is a telecommunications service. Comcast  
3 maintains that this key question is for the FCC to decide.  
4 Until the classification issue is settled by the FCC, we  
5 believe that this Commission doesn't have authority to  
6 act.

7           But even if this Commission doesn't accept that  
8 the FCC has the primary authority to classify VOIP  
9 service, it should still be wary of attempting to impose  
10 State regulation on Comcast.

11           If you examine the Staff's case closely, one  
12 thing that stands out is the absence -- the absence of any  
13 consumer complaints against Comcast service in Missouri.  
14 This isn't surprising. Comcast is a new entrant and has  
15 no market power. Consumers can vote with their feet if  
16 they aren't satisfied with Comcast service.

17           Unlike a monopoly provider, Comcast has every  
18 incentive to keep its customers happy. Most of its VOIP  
19 customers also subscribe to it's cable, too, Comcast cable  
20 and Internet service, which are provided by affiliates of  
21 Comcast IP Phone.

22           Entry regulation such as certification, tariffs  
23 and service quality standards serve -- they serve the same  
24 purpose as competition. More properly, competition serves  
25 the same purpose of those entry standards. They ensure

1 good customer service.

2           Since Comcast has to earn every customer that it  
3 acquires, these types of regulations simply aren't  
4 necessary. The Commission should also keep in mind that  
5 Comcast already voluntarily complies with many of the  
6 social obligations that the Commission has imposed on --  
7 on carriers.

8           For example, Comcast pays the Commission's  
9 assessment, Universal Service Fund fees, TRS fees and  
10 municipal 911 fees.

11           And I'd like to close with a quote. And I  
12 suspect what has occurred with people preceding me at the  
13 podium, I'll get a few questions. But let me -- let me  
14 close with this quote.

15           Conversion from a packet switch data  
16 transmission protocol to the traditional circuit switch  
17 protocol that is used in the PSTN changes the form of the  
18 transmitted information. In short, there is a net  
19 protocol conversion from packet switch protocol to service  
20 switch protocol from IP to PSTN traffic. Therefore, IP to  
21 PSTN traffic is an enhanced service under 47 CFR  
22 64.702(a).

23           Why -- that's the end of the quote. Why is that  
24 important? This isn't a quote from an FCC decision. This  
25 isn't a quote from some brief or presentation made by

1 Comcast.

2 In fact, it's a quote taken from the brief filed  
3 by the Commission in November 2005 in the U.S. District  
4 Court for the Eastern District of Missouri in response to  
5 AT&T's appeal of the Commission's M2A order.

6 The Commission has already recognized that VOIP  
7 is an information service in the context of carrier  
8 compensation. It doesn't stand to reason that the  
9 Commission should rule differently in this case.

10 The best course of action is to allow the FCC to  
11 answer the qualification question. Ipso facto, Comcast  
12 will ask you to reject Staff's complaint and to close this  
13 proceeding.

14 That's all I have, and I'd be happy to respond  
15 to any questions that you have.

16 JUDGE WOODRUFF: Commissioner Murray?

17 COMMISSIONER MURRAY: Yes. Between the  
18 definitions of enhanced service and VOIP, are you  
19 indicating that they are -- that those definitions are one  
20 in the same?

21 MR. MARK JOHNSON: Oh, no. There are many  
22 enhanced -- VOIP is -- would simply be one example of the  
23 myriad of enhanced services.

24 COMMISSIONER MURRAY: Yeah.

25 MR. MARK JOHNSON: So I guess if you -- if you

1 wanted to talk -- use the, you know, say, mathematical  
2 analogy, VOIP service is simply a subset of enhanced  
3 services.

4 COMMISSIONER MURRAY: And when this Commission  
5 determined that -- did this Commission determine that VOIP  
6 was not subject to intercarrier compensation?

7 MR. MARK JOHNSON: Well, the -- the -- the  
8 issue, as I remember in the M2A was whether the traffic  
9 was subject to access charges.

10 And because the Commission determined that this  
11 type of service was enhanced, it was not subject to access  
12 charges. What I don't -- what I don't remember then is  
13 consequently whether they were subject to reciprocal  
14 compensation, exclusive of access charges.

15 COMMISSIONER MURRAY: All right. And then the  
16 definition -- or the four points that you indicated that  
17 Comcast meets, that was from the Code of Federal  
18 Regulations defining VOIP; is that correct?

19 MR. MARK JOHNSON: Well, he -- in the -- in the  
20 Vonage order -- paragraph 32 of the Vonage order that's  
21 already been alluded to, the FCC set forth the elements  
22 that constitute a VOIP service which gets -- said would be  
23 preempted.

24 I'll just read this. It says, Specifically,  
25 these basic characteristics include a requirement for



1 broadband connection from the user's location, a need for  
2 IP compatible CPE, and a service offering that includes a  
3 suite of integrated capabilities and features.

4 So that comes straight out of the -- the FCC's  
5 Vonage order.

6 COMMISSIONER MURRAY: But is that broadband  
7 connection from the user's location, is that necessarily  
8 from one fixed location or from wherever the user is  
9 located?

10 MR. MARK JOHNSON: Well, I think -- I think  
11 both. And I know when -- I believe that you asked  
12 Mr. Johnson about the characteristics of Vonage service.  
13 For Vonage, you have to have a broadband connection.

14 If you are -- if you are traveling and you're  
15 staying at a hotel, you have to have Internet access at  
16 the hotel in order to take advantage of your Vonage  
17 service.

18 For Comcast, IP phone, you also have to have a  
19 broadband connection. But that generally is -- but that's  
20 a broadband connection coming into your home. Cable modem  
21 service is probably the example that would apply here.

22 COMMISSIONER MURRAY: And this service that  
23 Comcast offers, a subscriber could not take his or her  
24 laptop to a different location and receive that same VOIP  
25 service; is that correct?

1           MR. MARK JOHNSON: That's my understanding.  
2   Other -- I just wanted to make sure. Let me address an  
3   issue that I think Commissioner Clayton brought up. Are  
4   we deciding this on the facts or the law?

5           Mr. Johnson was correct that it was both. But  
6   here's how I think it -- here's I think where the analysis  
7   goes. The facts that are important here are what does  
8   Comcast IP phone's service consist of? What are its  
9   technical characteristics?

10          You take those facts and then apply it to the  
11   law, which I think we'll all concede is in -- in a state  
12   of confusion. You know, there's one reason perhaps that  
13   the Commission at this point should decide sort of to stay  
14   on the sidelines for the moment.

15          COMMISSIONER MURRAY: Let me ask you this: If  
16   we determined that -- and agreed with you, what about the  
17   ILECs who are currently certificated who are providing  
18   telecommunications service over the publish switched  
19   network but then begin using IP -- I can't remember the  
20   exact term, but the IP protocol.

21          MR. MARK JOHNSON: Right.

22          COMMISSIONER MURRAY: What should we do in terms  
23   of their services using IP?

24          MR. MARK JOHNSON: Well, I -- there's no  
25   question you need to be consistent. And there are

1 numerous examples of companies which provide regulated and  
2 non-regulated services in any industry you can think of.  
3 And I'd be the last person to say that the Commission  
4 should regulate the type of service that my client  
5 provides if it's -- in the case of, you know, a competing  
6 company. So I think you do need to be consistent.

7 COMMISSIONER MURRAY: Thank you.

8 JUDGE WOODRUFF: Commissioner Gaw?

9 COMMISSIONER GAW: I'll pass right now. Thank  
10 you.

11 JUDGE WOODRUFF: Commissioner Clayton?

12 COMMISSIONER CLAYTON: Does the Chairman -- so  
13 you're -- you're making a commitment today on behalf of  
14 the entire cable industry --

15 MR. MARK JOHNSON: Just one company.

16 COMMISSIONER CLAYTON: -- that if we do not  
17 assert jurisdiction and claim preemption of this type of  
18 service, if an ILEC starts offering an IP enabled service  
19 that you will not come in and say that they're not  
20 preempted, also?

21 MR. MARK JOHNSON: Well, since Comcast is one of  
22 the largest corporations in -- in the country, I -- you're  
23 asking me to stick my neck out quite a bit.

24 COMMISSIONER CLAYTON: I understand.

25 MR. MARK JOHNSON: I would be terribly -- all I

1 can say at this point is I would be terribly surprised if  
2 we would do something like that, and you would be  
3 completely within your rights to take me to task and  
4 explain why it appears that I'm being inconsistent. It's  
5 just hard for me at the moment to see why we would do  
6 something like that.

7 COMMISSIONER CLAYTON: They'd probably send Time  
8 Warner, so don't worry about that. I understand.

9 MR. MARK JOHNSON: Yeah.

10 COMMISSIONER CLAYTON: Let me -- let me ask you  
11 some questions about the facts. I'm trying to get a  
12 handle on what is in dispute, what is not in dispute.

13 MR. MARK JOHNSON: Sure.

14 COMMISSIONER CLAYTON: It's -- is there any  
15 dispute among the parties, from your perspective, of  
16 whether or not this type of service is a non-nomadic VOIP  
17 service? Is there any dispute on that fact?

18 MR. MARK JOHNSON: No. There's no dispute on  
19 that fact. But we don't think that fact is relevant.

20 COMMISSIONER CLAYTON: Okay. You don't think  
21 it's relevant. That's okay. So -- so there's no dispute  
22 that the service is different, at least in some fashion,  
23 from the Vonage service?

24 MR. MARK JOHNSON: Yes. I would agree with  
25 that. Yes.

1                   COMMISSIONER CLAYTON: Okay. Now, does -- does  
2 your client have the ability to track the jurisdictional  
3 confines of customer calls? Is that -- is that fact in  
4 dispute?

5                   MR. MARK JOHNSON: On some calls, but not all.  
6 Where our customers originate calls from their homes, from  
7 where they're -- you know, they get service. Certainly,  
8 we can track where a call originates.

9                   But these days with calls going to all sorts of  
10 different users, wireless, nomadic VOIP users and the  
11 like, it -- it makes it very difficult to track both the  
12 originating and the terminating of the call.

13                  COMMISSIONER CLAYTON: Help me understand that  
14 if your client is able to track the jurisdictional  
15 confines of customer calls why the IP enabled services  
16 report and order in PRM doesn't make it clear that your  
17 client would be subject to state regulation.

18                  MR. MARK JOHNSON: Okay. Well, because --  
19 because we use the Internet. And I think that's one point  
20 that hasn't been addressed up to now.

21                  COMMISSIONER CLAYTON: But don't all VOIP  
22 providers -- what -- what VOIP providers would they be  
23 talking about? Because they all use the Internet. That's  
24 the nature of an IP call.

25                  MR. MARK JOHNSON: Right. And what we've --

1    what I haven't heard up to now is anything more than the,  
2    Looks like a duck, quacks like a duck argument.  You --  
3    you have somebody placing a call and somebody answering  
4    the call.  That's a telephone call.  That's subject to  
5    regulation.

6               What hasn't been addressed and what we're asking  
7    the Commission to look at is how does the call get from  
8    the originating -- from the caller to the call party?  
9    What technology is used to -- to communicate?

10              We think that's -- that's the crucial fact.  It  
11    isn't so much whether it's nomadic versus non-nomadic,  
12    whether it's interstate versus intrastate.  It's the  
13    technology that's used to carry the call.

14              And our belief is that if there is an Internet  
15    factor, if the Internet is part of the technology utilized  
16    to transmit the call, then it -- the FCC has granted that.

17              COMMISSIONER CLAYTON:  Okay.  Do you believe  
18    that your client and the FCC disagree on past orders on  
19    whether this service is preempted or not?  And I'll cite  
20    as the example the brief filed in -- with the New York  
21    Public Service Commission.  And I don't have the case  
22    number.  Do you know what I'm referring to?

23              MR. MARK JOHNSON:  Yes.  I know what you're  
24    referring to.

25              COMMISSIONER CLAYTON:  Is there -- is there a

1 disagreement between your client and the FCC as to the  
2 scope of the FCC's preemption?

3 MR. MARK JOHNSON: Well, I think -- I think  
4 they're -- are you referring to what the Eighth Circuit  
5 said, that the -- that the issue of preemption of  
6 non-nomadic service wasn't right? I just want to make  
7 sure I -- I understand your request.

8 COMMISSIONER CLAYTON: Well, I'm -- I'm reading  
9 this section here that refers to the FCC's brief that says  
10 that the FCC did not have before it any particular state  
11 regulation seeking to regulate fixed VOIP services, which  
12 suggests that it is not clear from the FCC's position that  
13 -- that states are preempted on regulating this service.

14 MR. MARK JOHNSON: Okay. I -- I understand your  
15 question. I'm just going on what the FCC said in its  
16 orders. And the FCC's order doesn't make that  
17 distinction.

18 You know, they -- they may have decided  
19 internally that they may have gone too far or that there  
20 were -- may have been stated in terms that were too  
21 general.

22 All I'm going on is the -- what the FCC said in  
23 Paragraph 32 of the Vonage order. And they don't make  
24 that distinction.

25 COMMISSIONER CLAYTON: But they -- you would

1 agree they make other factual distinctions --

2 MR. MARK JOHNSON: Oh, sure.

3 COMMISSIONER CLAYTON: -- relating to the  
4 ability to track calls --

5 MR. MARK JOHNSON: Sure.

6 COMMISSIONER CLAYTON: -- or the ability to  
7 identify Missouri only calls? You would agree that there  
8 are factual distinctions --

9 MR. MARK JOHNSON: Uh-huh.

10 COMMISSIONER CLAYTON: -- With that regard?  
11 Well, let me -- you said that no other state in the  
12 Comcast service territory has asserted State jurisdiction.

13 MR. MARK JOHNSON: That's my understanding.

14 COMMISSIONER CLAYTON: Okay. Have any states  
15 specifically found federal preemption in an order that  
16 would suggest that -- that -- that kept them from  
17 asserting jurisdiction, or have all those states or some  
18 of those states just remained silent, have taken --

19 MR. MARK JOHNSON: Well, I would suspect, you  
20 know, that it's mostly silence or inaction. You know, the  
21 company starts to provide service and the Commission  
22 doesn't do anything.

23 COMMISSIONER CLAYTON: Okay. So you're not  
24 aware of any states that have found specific -- or any  
25 type of preemption on this type of service?



1                   MR. MARK JOHNSON: At the moment, no. I'd be  
2 happy to provide that for you.

3                   COMMISSIONER CLAYTON: All right. Are you aware  
4 of any states that have found preemption for any type of  
5 comparable IP service offered by a cable company around  
6 the country regardless of Comcast? I mean, Time Warner?  
7 Cox? Charter?

8                   MR. MARK JOHNSON: At the moment, I'm not aware  
9 of it. I'll find out for you and hopefully be able to get  
10 you an answer to that by the end of the day.

11                  COMMISSIONER CLAYTON: Have -- are you aware of  
12 any states that have asserted jurisdiction over this type  
13 of IP enabled service offered by a cable company?

14                  MR. MARK JOHNSON: Well, in our view from a --  
15 well, from the relevant point of view that this commission  
16 has with the Time Warner -- in other words, we don't  
17 believe that the distinction between nomadic and  
18 non-nomadic service is a relevant distinction.

19                  And so we think that the Commission's orders in  
20 the Time Warner matter are erroneous, and, obviously,  
21 that's on an appeal now. So at least this Commission has.  
22 There may be others. I don't know. But I can find that  
23 out.

24                  COMMISSIONER CLAYTON: But you don't know.  
25 Okay. Is it fair to put all cable offerings such as this

1 in the same category? Are there -- are there significant  
2 factual differences between cable/IP enabled phone service  
3 among the various carriers? Or are they all sufficiently  
4 similar? Do you know? If you don't know, that's --  
5 that's --

6 MR. MARK JOHNSON: I don't know.

7 COMMISSIONER CLAYTON: Okay. So are you telling  
8 me that Missouri is the -- to the best of your knowledge  
9 is the only state that has asserted some level of  
10 regulation on this type of carrier and this type of  
11 service?

12 MR. MARK JOHNSON: As far as I know. But I'll  
13 -- I'll be happy to, you know, get you a conclusive  
14 answer.

15 COMMISSIONER CLAYTON: Can I ask -- can I ask  
16 Staff or any of the other parties do they know the answer  
17 to that question? Are we -- are we the only state getting  
18 in on the action?

19 MS. CHOROSER: Yes.

20 MAN IN AUDIENCE: Yes.

21 COMMISSIONER CLAYTON: Feel the power.

22 MR. MARK JOHNSON: I'm the only one standing up  
23 here whose -- whose words are being taken down by the  
24 court reporter, so --

25 COMMISSIONER CLAYTON: I know. But you're far

1 enough away, we can't do anything to you. That's okay.

2 MR. MARK JOHNSON: Are you --

3 COMMISSIONER CLAYTON: Go ahead. Go ahead.

4 I'll let you finish.

5 MR. MARK JOHNSON: I'm going to make one final  
6 point. As recently as yesterday, you said in the context  
7 of the FCC's telephony decision, in effect, that this  
8 state -- this area is -- is in great flux.

9 Because in that decision, you essentially said  
10 that now is not the time to look at the -- the  
11 Commission's service quality rules because of your  
12 apparent concern that pending FCC -- or pardon me --  
13 pending legislative initiatives and possible FCC and court  
14 decisions could material -- materially affect or even  
15 supplant your power to regulate in this area.

16 And I think, quite candidly, you were absolutely  
17 right. You're absolutely right. I may disagree with  
18 other aspects of the FCC. But at least with respect to  
19 that paragraph, you hit a home run.

20 COMMISSIONER CLAYTON: Thank you.

21 MR. MARK JOHNSON: Thank you very much.

22 JUDGE WOODRUFF: Commissioner Appling?

23 COMMISSIONER APPLING: No questions.

24 JUDGE WOODRUFF: Chairman Davis?

25 MR. MARK JOHNSON: Uh-oh.

1           CHAIRMAN DAVIS: Sure. Counsel, do you recall  
2 Commissioner Clayton's first question to you?

3           COMMISSIONER CLAYTON: I don't remember my first  
4 question to him.

5           MR. MARK JOHNSON: I don't think that I do.

6           CHAIRMAN DAVIS: Remember Commissioner Clayton  
7 asked you something to the effect that, you know, Comcast  
8 would -- wouldn't be coming in here to argue that somehow,  
9 I guess, your traditional ILECs -- you wouldn't be  
10 prohibited from providing these services, that if they  
11 were seeking, you know, to be deregulated that you would  
12 be somewhat shocked if Comcast would take that position in  
13 a future proceeding? Do you remember that?

14          MR. MARK JOHNSON: Yes. I do now.

15          CHAIRMAN DAVIS: Okay. Would it surprise you  
16 that Comcast has already taken that position in the  
17 Missouri General Assembly this past year?

18          MR. MARK JOHNSON: I know that there was a lot  
19 of controversy with the -- the VOIP deregulation, you  
20 know. I wasn't personally involved in it, but, obviously,  
21 was an interested observer.

22                 If -- if the General Assembly chose to write  
23 along that said such a distinction can be made, then  
24 Commissioner, obviously, we'd be bound by it. I think the  
25 law as it exists today would -- would I think candidly

1 make any argument on our part that IP service provided by  
2 an ILEC should be regulated whereas IP service that we  
3 provide shouldn't be regulated. That's just the way the  
4 law exists today, the State law exists today.

5 CHAIRMAN DAVIS: Okay. Does Comcast want a  
6 level playing field for everyone?

7 MR. MARK JOHNSON: No one can disagree with that  
8 proposition. And -- sure. We want a level playing field.

9 CHAIRMAN DAVIS: Okay. Thank you.

10 JUDGE WOODRUFF: All right.

11 MR. MARK JOHNSON: Mr. Wolfe may not like the  
12 people who have said that.

13 JUDGE WOODRUFF: All right. Well, thank you,  
14 sir.

15 MR. MARK JOHNSON: Thank you, Judge Woodruff.

16 JUDGE WOODRUFF: All right. I believe we're  
17 ready to go ahead with our first witness, then. And I  
18 believe that would be Mr. Voight for the Staff.

19 While Mr. Voight is taking the stand, I will  
20 actually mention that we are actually triple booked for  
21 the hearing rooms today, and we have to vacate this room  
22 at 10:00 for a prehearing conference that shouldn't take  
23 more than ten, fifteen minutes. So we'll be due for a  
24 break at that point anyway. But we will take a break  
25 shortly before 10:00. All right.

1 WILLIAM VOIGHT,  
2 being first duly sworn to testify the truth, the whole  
3 truth, and nothing but the truth, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. HAAS:

6 JUDGE WOODRUFF: You may be seated.

7 MR. HAAS: Your Honor, I would like to have the  
8 direct testimony of Mr. Voight marked as an exhibit, and,  
9 also, the surrebuttal testimony of Mr. Voight.

10 JUDGE WOODRUFF: All right. The direct will be  
11 1, and surrebuttal will be 2.

12 (Exhibit Nos. 1 and 2 were marked for  
13 identification.)

14 JUDGE WOODRUFF: Proceed when you're ready.

15 Q (By Mr. Haas) Mr. Voight, will you please state  
16 your name?

17 A William L. Voight.

18 Q Where are you employed?

19 A With the Missouri Public Service Commission.

20 Q And what is your position?

21 A I am the Rate & Tariffs Supervisor in the  
22 Telecommunications Department.

23 Q And are you the William L. Voight who has  
24 prepared the direct testimony that's been marked Exhibit  
25 No. 1 in this case?

1           A     Yes.

2           Q     And have you -- and have you also prepared a  
3     surrebuttal testimony that's been marked Exhibit No. 2?

4           A     Yes.

5           Q     If I were to ask you the questions in here, do  
6     you have any additions or corrections to make to that  
7     pre-filed testimony?

8           A     No.

9           Q     And if I were to ask you the questions that are  
10    asked in your direct and surrebuttal testimony, are those  
11    answers true to the best of your knowledge, in fact and  
12    belief?

13          A     Yes.

14               MR. HAAS: Your Honor, I would move for the  
15    admission of Exhibit No. 1, Mr. Voight's direct testimony,  
16    and Exhibit No. 2, Mr. Voight's surrebuttal testimony.

17               JUDGE WOODRUFF: All right. Exhibits 1 and 2  
18    have been offered into evidence. Are there any objections  
19    to its receipt?

20               MR. MARK JOHNSON: No objection.

21               JUDGE WOODRUFF: Hearing none, they will be  
22    received into evidence.

23               (Exhibit Nos. 1 and 2 were admitted into  
24    evidence.)

25               MR. HAAS: I tender the witness for

1 cross-examination.

2 JUDGE WOODRUFF: Thank you. And for  
3 cross-examination, we'll begin with Public Counsel.

4 MR. DANDINO: I have no questions. Thank you,  
5 your Honor.

6 JUDGE WOODRUFF: MITG?

7 MR. CRAIG JOHNSON: No questions, your Honor.

8 JUDGE WOODRUFF: Comcast? If the parties wish,  
9 they can speak from their table, question from the table.

10 MR. MARK JOHNSON: Okay. I was getting  
11 comfortable up there.

12 JUDGE WOODRUFF: Well, if you prefer being over  
13 there, you're welcome.

14 MR. MARK JOHNSON: What I'm afraid is I'll trip  
15 on the way over there, so I'll -- I'm happy right here.  
16 Thank you.

17 CROSS-EXAMINATION

18 BY MR. MARK JOHNSON:

19 Q Mr. Voight, could I refer you to page 2 of your  
20 surrebuttal testimony?

21 A I'm there.

22 Q Specifically, I'd like you to look at lines 10  
23 through 12.

24 A Yes.

25 Q Is it correct that in those lines you are



1 addressing Ms. Choroser's testimony concerning the  
2 classification of Comcast service as an information  
3 service --

4 A Yes.

5 Q -- or telecommunications service?

6 A Yes. Yes. She had, I believe, characterized a  
7 Commission arbitration order as the Missouri VOIP order,  
8 and that's what I was addressing.

9 Q And is it correct that you're responding to her  
10 testimony that the Commission should follow its earlier  
11 decision in the M2A arbitration with respect to the  
12 classification of interconnected VOIP services?

13 A I -- I don't believe so, if I understand your  
14 question. I believe my testimony is that it's not bound  
15 by that decision.

16 Q No. My question was, in your testimony here,  
17 you're responding to her testimony on that issue?

18 A Yes.

19 Q And isn't it true that in the decision in the  
20 M2A arbitration the Commission said that interconnected  
21 VOIP is an information service?

22 A I -- I'm unable to find her citation to that.

23 Q Okay. Well, okay. Then I'll ask you a --

24 A So I don't know. I don't believe the Commission  
25 said that.

1           Q     Well, as I understand it, your testimony is that  
2     in the -- in the portions of the M2A arbitration decision  
3     that are at issue here, the Commission was -- the point  
4     you make is the Commission addresses it in the context of  
5     intercarrier compensation; is that right?

6           A     That's part of the point.  Yes.

7           Q     Okay.  And -- and you make a -- a point of  
8     emphasizing that the Commission was not addressing the  
9     issue of information service versus telecommunications  
10    service in the context of a certification case.

11          A     Correct.

12          Q     And -- and, obviously, it's the Staff's position  
13    today that the case before the Commission involves a  
14    certification question?

15          A     Correct.  Tariff general regulatory compliance,  
16    yes.

17          Q     And -- and one of the issues is whether Comcast  
18    IP Phone should -- should be certificated by the  
19    Commission?

20          A     Yes.

21          Q     And as I understand your testimony, you -- you  
22    say that the Commission is not bound by its ruling in the  
23    M2A case?

24          A     Correct.

25          Q     Is -- and that's because the Commission's ruling

1 in the M2A case was made in the context of an intercarrier  
2 compensation issue, not a certification issue?

3 A No. It would be my understanding that as -- as  
4 an administrative agency, this Commission is not bound by  
5 prior Commission decisions as a legal matter.

6 Q In reviewing your testimony, I'd like to ask you  
7 this: Does your testimony include an example of the  
8 situation where the Commission has classified a service as  
9 an information service for one purpose and a  
10 telecommunications service for another purpose?

11 A I don't believe so.

12 Q In fact, isn't it true that the Commission has  
13 never classified a service as an information service for  
14 one purpose and a telecommunications service for another  
15 purpose?

16 A That would be my understanding. I -- I'm not  
17 aware that the Commission has ever classified any service  
18 as an information service, including the issues involved  
19 in the M2A case.

20 Q Now, let me move you to the next line in your  
21 surrebuttal testimony. That would be Line 13. Have you  
22 had a chance to review that now?

23 A You're still on page 2?

24 Q Yes.

25 A Very well.

1           Q     And on line 13 of page 2 of your surrebuttal,  
2     you say that, quote, Comcast admits its service offering  
3     is not an information service; is that correct?

4           A     Yes.

5           Q     Now, let me refer you to page 7 of your  
6     surrebuttal, specifically lines 4 through 8.

7           A     Very well.

8           Q     Looking at lines 4 through 8, isn't it correct  
9     that you refer to Ms. Choroser's testimony as support for  
10    your statement that Comcast admits this service offering  
11    is not an information service?

12          A     Can -- could you rephrase? I'm not sure what --  
13    what you're stating I'm trying to assert here.

14          Q     Sure. Probably the best thing -- could you read  
15    the question back?

16                     (The previous question was read back.)

17          A     I'll -- I'll answer by saying yes.

18          Q     (By Mr. Mark Johnson) Now, in your testimony,  
19    do you point to any other support for your statement that  
20    Comcast has admitted that its service is not an  
21    information service?

22          A     I don't believe so.

23          Q     Do you refer to Comcast responses to any data  
24    requests which Staff served?

25          A     I don't believe so. I don't recall that.

1           Q     Or do you refer to Comcast response to any data  
2 requests served by any other party in this case?

3           A     I don't recall that.

4           MR. MARK JOHNSON: That's all I have. Thanks  
5 very much.

6           JUDGE WOODRUFF: Questions from the Bench, then?  
7 Commissioner Murray?

8                               CROSS-EXAMINATION

9 BY COMMISSIONER MURRAY:

10          Q     Good morning, Mr. Voight.

11          A     Good morning.

12          Q     Can you tell me what -- in that no other states  
13 have attempted to regulate this type of service, what was  
14 the motivation or the impetus for Staff to file this  
15 motion, file this -- this proceeding?

16          A     The very short answer would be level playing  
17 field. It would be the Staff's understanding that, I  
18 believe, in the approximately 20 or so other jurisdictions  
19 -- we have heard the discussion this morning that no other  
20 state has exerted jurisdiction.

21                But I would point out our understanding that  
22 Comcast has voluntarily sought -- gotten certificates in  
23 these other jurisdictions and so on and so forth.

24                So it's not so much that Missouri's the only  
25 state attempting to exert jurisdiction. I would

1 characterize it as the Staff of the Missouri Commission as  
2 being the only Staff that's attempting to level the  
3 playing field.

4 Q Doesn't Comcast have serv -- isn't Comcast  
5 certified in Missouri?

6 A One entity -- at least one entity is. The --  
7 the company providing the -- the telephone service is not.  
8 Com -- that was part of our -- our issue.

9 Q And are you saying that Comcast is voluntarily  
10 certified to provide the very type of service that is at  
11 issue here in other states?

12 A That would be my understanding. Yes.

13 Q Was there any encouragement to Staff by the ILEC  
14 community to go forward with this proceeding?

15 A No, ma'am. It was entirely -- the -- the  
16 decision was made entirely at the Staff level with me and  
17 John and Natelle in conjunction with counsel.

18 Q And how was it initially determined that Comcast  
19 was providing this type of service?

20 A Well, in some of the competition cases, we had  
21 sent data requests to the company and had discovered that  
22 they were providing service. They -- they admitted that  
23 to us in data requests. We at one point --

24 Q Excuse me. Let me interrupt you. The data  
25 requests were in relation to a -- a report that was being

1     done by Staff? Is that --

2             A     Well, when -- and I wasn't personally involved.  
3     But when Southwestern Bell or Embark or perhaps CenturyTel  
4     asked for -- for exchanges to be declared competitive, one  
5     of the criterion that we look at is the -- the amount of  
6     competition occurring in those areas.

7             And, oftentimes, the incumbent will say, hey,  
8     so-and-so cable TV company is providing service, and then  
9     we will follow up and attempt to get our own independent  
10    verification with that cable TV company. And I believe  
11    that occurred with Comcast.

12            So they answered affirmatively that they were  
13    providing service in one or more exchanges. That was the  
14    first indication.

15            After that, at some point, we had a meeting  
16    where Mr. Steiner was present and some other Comcast  
17    officials. And so we -- we knew based on those meetings  
18    and their affidavits or their -- their answers to our data  
19    requests pretty much what -- what the situation was before  
20    we filed the complaint.

21            Q     All right. Are you finished with that answer?

22            A     Yes.

23            Q     With your experience in telecommunications over  
24    the years and as you have seen competition develop, in  
25    order to level the playing field, what is your opinion

1 about leveling the playing field by removing regulation  
2 versus bringing in more carriers to be regulated?

3 A My own opinion, my professional and personal is  
4 that the Commission should be given more broad-based  
5 authority to -- to engage in forbearance. And in  
6 particular, that forbearing from enforcing certain  
7 statutes and rules that might be not conducive to where --  
8 where we need to be going.

9 Q And I know you're not a lawyer, but do you  
10 interpret our Missouri statutes to require that we  
11 regulate this type of service that is at issue here and  
12 prior to any definitive action by the FCC preempting us?

13 A Yes. I really did. What -- what we keep  
14 hearing is Internet protocol. I believe our statutes were  
15 intentionally written to be technology neutral.

16 In my view, what we're talking about is packet  
17 switching, which is something that's been around for  
18 probably 30 years. It has been tariffs. It's always been  
19 a regulated item. The only difference here is rather than  
20 data communications, we're now conversing. We're talking  
21 with packet switched technology, talking over it.

22 And I've never seen anything in our statutes  
23 that says you regulate or you have jurisdiction over  
24 certain types of digital technology but not other types of  
25 digital technology.



1           So, yes, I believe Missouri statutes have always  
2   been and continue to be technology neutral, and the  
3   Commission has no -- really no choice. Absent some  
4   definitive preemption, the Commission really has no choice  
5   other than to exert its jurisdiction.

6           Q     Has Staff considered approaching the Commission  
7   to suggest that perhaps it's time that we go talk to the  
8   Missouri legislature and have the legislature look at  
9   whether or not there should be revisions to our statutes?

10          A     Well, I should probably best answer by speaking  
11   solely for myself. The answer is yes. Every year about  
12   this time, the Staff, through the proper channels, is  
13   asked to submit suggestions and ideas for proposed  
14   legislation.

15                And every year for the past several years, I've  
16   suggested what I call the forbearance changes to our  
17   statute. I've also, beginning many years ago, always  
18   advocated that the Commission approach the General  
19   Assembly with detariffing language, forbearance in that  
20   area. Those are some of my personal efforts. Yes.

21          Q     And has there been opposition to that -- to any  
22   of that by various carriers?

23          A     I think the reception to those suggestions has  
24   -- has been met with less than enthusiasm from the  
25   incumbent industry, yes. I would -- I would say not a

1 whole lot of enthusiasm from people I've talked to.

2 Q And has there been opposition to going in that  
3 direction from Office of Public Counsel, or have you had  
4 any discussions with Office of Public Counsel regarding  
5 proposed changes to the statutes?

6 A Oh, I -- I've -- I really haven't had a whole  
7 lot of discussion with them. I -- I don't know how they  
8 might feel about that.

9 COMMISSIONER MURRAY: Okay. Thank you,  
10 Mr. Voight.

11 JUDGE WOODRUFF: All right. It's now ten  
12 minutes till ten. And with the Commissioners' indulgence,  
13 I'm going to have to take a break at this point and allow  
14 Judge Pridgin's prehearing conference to proceed. We'll  
15 take a break, and we'll come back and resume this case at  
16 10:30.

17 (Discussion off the record.)

18 JUDGE WOODRUFF: If everyone would come to  
19 attention again, Commissioner Gaw indicates that he would  
20 like to ask a few questions before we take our break, so  
21 we'll go ahead and do that. Good ahead, Commissioner.

22 COMMISSIONER GAW: Thank you.

23 CROSS-EXAMINATION

24 BY COMMISSIONER GAW:

25 Q Mr. Voight, is there -- is there -- would you

1 describe for me the service that Comcast offers to a  
2 customer?

3 A The shortest answer --

4 Q Briefly. Yeah.

5 A -- that I could give to that would be -- is  
6 telephone service would be the shortest answer. I've  
7 heard some dis -- characterization that it is provided  
8 over, quote, the Internet.

9 Q I'm not -- right now, I'm not interested in  
10 that.

11 A Okay.

12 Q I'm interested in the -- the difference between  
13 this service from a customer's eyes, an end use customer's  
14 eye, and what they get from this service as compared to  
15 what they could get from, say, Embark.

16 A Well, Embark -- I've seen their advertisements  
17 bundles.

18 Q No. Don't talk about prices. I just want to  
19 know things like can I get 911 service?

20 A Oh, sure. Yeah. You can -- Comcast provides,  
21 from what I know, very highly -- highly reliable 911  
22 service.

23 Q All right. Do you get a telephone number?

24 A You get a telephone number. You pick up the  
25 phone. You get a dial tone. You can dial local telephone

1 calls. You can dial across the country. You can call  
2 Relay, Missouri. Your phone can ring normally. You can  
3 have extensions in the bedroom. You can have even -- from  
4 the testimony, you can have a cordless phone back in the  
5 bedroom. And that's very -- same thing types of services  
6 Embark or any other carrier would offer.

7 Q Okay.

8 A Beyond that, they -- they bundle broadband and  
9 -- and video services --

10 Q Okay.

11 A -- into one package.

12 Q Is it -- is that something that -- that, say,  
13 AT&T might do today?

14 A Very definitely. Yes.

15 Q Do you have -- is your number -- is it listed?  
16 Or do you know?

17 A Yes. You would have a listing in the white  
18 pages of the telephone directory. You could port the  
19 number to -- to you when you -- when you switch to  
20 Comcast, or hopefully you could port it away from Comcast  
21 if you went back to someone else.

22 Q Okay. You know for sure you can port in?

23 A Yes.

24 Q The question, then, for you is -- is whether you  
25 can port out?

1           A     I would suspect the answer to that would be yes,  
2     you can port out. But I can't say definitively.

3           Q     Well, if they're -- if they're under our  
4     regulation, could we ensure that that took place?

5           A     Yes. I believe so.

6           Q     Is -- is there -- is there, then, really any --  
7     any difference to an end use customer as far as the  
8     service that they're able to receive?

9                     Without comparing quality of service from one  
10    company to another, is there any real difference between  
11    the service that Comcast customer can receive and someone  
12    -- somebody from CenturyTel, for instance?

13          A     I would say no without comparing the quality of  
14    their -- their --

15          Q     I'm not -- I don't want to get into that.

16          A     I was going to say their quality is better, but  
17    the answer is no, there's --

18          Q     I'm trying to get -- I'm sorry.

19          A     The answer is no, there's no difference.

20          Q     So is the only issue here in your -- from your  
21    standpoint that's being raised as to -- as to the  
22    transportation of that call from one point to another,  
23    what happens to it as far as the -- the electronics or  
24    energy -- energy -- it's in while it's being transited?  
25    Is that the only question as to distinguishing these --

1 these services?

2 A Yes. That is the only question. The net  
3 protocol conversion at the customer premise that Comcast  
4 testifies about, the fact that it utilizes packet  
5 switching as contrasted with circuit switching.

6 One particular form of digital technology versus  
7 another particular form of digital technology is the only  
8 difference.

9 Q Okay. Is -- is it true that in -- with some  
10 other carriers such -- of the type of AT&T or perhaps some  
11 others that -- that they -- that sometimes their signals  
12 are converted into packets as a part of the trans --  
13 transfer of -- of a call from one point to another?

14 A Yes. The most recognizable case would be the  
15 AT&T IP in the middle case that was addressed by the  
16 courts. Yes. It would appear from a reading of the --  
17 that record that it's quite -- it's common.

18 It's certainly not unheard of that -- that  
19 carriers would transport telecommunications traffic via  
20 Internet protocol between various points.

21 Q And -- and has anyone -- has there ever been a  
22 determination, a final determination, that that was  
23 somehow a creation of an exemption from regulation?

24 A Yes. There has been a final determination. And  
25 -- and the FCC determined that that did not constitute an

1 exemption from regulation.

2 COMMISSIONER GAW: Okay. That's all I have,  
3 Judge. Thank you for the time. Thank you.

4 JUDGE WOODRUFF: All right. Thank you. And  
5 with that, then, we will take our break and come back at  
6 10:30.

7 (Break in proceedings.)

8 JUDGE WOODRUFF: Welcome back from your break.  
9 And we're ready to begin again. When we took our break,  
10 Mr. Voight was on the stand, and we were asking questions  
11 from the Bench.

12 No Commissioners have rejoined me after the  
13 hearing, and I don't believe there are any other questions  
14 from the Commissioners. So we'll go to recross based on  
15 questions from the Bench, beginning with Public Counsel.

16 MR. DANDINO: No questions, your Honor.

17 JUDGE WOODRUFF: MITG?

18 MR. CRAIG JOHNSON: Just a couple, your Honor.

19 RECROSS EXAMINATION

20 BY MR. CRAIG JOHNSON:

21 Q Mr. Voight, in response to one of Commissioner  
22 Murray's questions about State decisions where State  
23 Commissions have asserted jurisdiction over this type of a  
24 service, I wanted to ask you a couple questions in regard  
25 to that.

1                   Is it correct that in Missouri, at least, some  
2   cable TV VOIP affiliates have requested certification in  
3   Missouri?

4           A     Yes.

5           Q     And received it?

6           A     Yes.

7           Q     And is it also true that in some of those, they  
8   have put savings clauses in their filings that suggest to  
9   the extent the FCC ever settles this area and they are not  
10  -- that they are preempted that they would reserve the  
11  right to withdraw their certification and tariffs?

12          A     Yes.  Something to that effect.  Yes.

13                   MR. CRAIG JOHNSON:  Thank you.

14                   JUDGE WOODRUFF:  Okay.  Comcast?

15                   MR. MARK JOHNSON:  Nothing.

16                   JUDGE WOODRUFF:  All right.  Any redirect?

17                   MR. HAAS:  Yes, your Honor.

18                                 REDIRECT EXAMINATION

19  BY MR. HAAS:

20          Q     Mr. Voight, you were having a discussion with  
21  Commissioner Gaw about the differences and similarities  
22  between Comcast and Embark.  Do you recall that?

23          A     Yes.

24          Q     And in his opening, Mr. Johnson said that  
25  Comcast service uses the Internet.  Would that be a



1 similarity or a difference between Embark and Comcast?

2 A Yes. What I was attempting to respond --  
3 include as part of my response to Commissioner Gaw was  
4 that -- was an attempt to address opening statements that  
5 said that Comcast uses the Internet to provide its  
6 telephone service.

7 And I would agree that they use an Internet  
8 protocol, but I would not agree that this is the public  
9 Internet as that word is commonly used. That was my  
10 point.

11 I just didn't want the -- the Commission to  
12 think that Comcast or any similarly situated carrier uses  
13 the Internet, the public Internet to provide telephone  
14 service.

15 MR. HAAS: That's my only question.

16 JUDGE WOODRUFF: All right. Thank you.  
17 Mr. Voight, you can step down. And I believe that's the  
18 only witness for Staff.

19 MR. HAAS: Yes, your Honor.

20 JUDGE WOODRUFF: The Next witness on the list,  
21 then, is for Comcast.

22 MR. STEINER: Do you want to mark the rebuttal  
23 testimony of Beth Choroser?

24 JUDGE WOODRUFF: All right. That will be No. 3.

25 (Exhibit No. 3 was marked for identification.)

1                               BETH CHOROSER,  
2   being first duly sworn to testify the truth, the whole  
3   truth, and nothing but the truth, testified as follows:

4                               DIRECT EXAMINATION

5   BY MR. STEINER:

6                               JUDGE WOODRUFF:   And you can inquire.

7               Q     (By Mr. Steiner)   Please state your name for the  
8   record.

9               A     Beth Choroser.

10              Q     By whom are you employed?

11              A     Comcast Cable Communications.

12              Q     Did you prepare rebuttal testimony that's been  
13   marked as Exhibit 3 in this case?

14              A     Yes, I did.

15              Q     Are the answers contained in Exhibit 3 true and  
16   correct to the best of your information, knowledge and  
17   belief?

18              A     Yes, they are.

19                      MR. STEINER:   Your Honor, I would move the  
20   admission of Exhibit 3 and tender the witness for cross.

21                      JUDGE WOODRUFF:   Okay.   Thank you.   Exhibit 3  
22   has been offered.   Are there any objections to its  
23   receipt?   Hearing none, it will be received into evidence.

24                               (Exhibit No. 3 was admitted into evidence.)

25                      JUDGE WOODRUFF:   And for cross-examination, we

1     begin with Public Counsel.

2                 MR. DANDINO:  No questions, your Honor.

3                 JUDGE WOODRUFF:  MITG?

4                 MR. CRAIG JOHNSON:  No questions, your Honor.

5                 JUDGE WOODRUFF:  Staff?

6                 MR. HAAS:  Okay.  Yes, your Honor.

7                                 CROSS-EXAMINATION

8     BY MR. HAAS:

9             Q     Good morning, Ms. Choroser.

10            A     Good morning.

11            Q     Comcast IP Phone, LLC, is the respondent in this  
12 case, correct?

13            A     That is correct.

14            Q     And Comcast IP Phone, LLC, provides an all  
15 distance VOIP service to its customers in Missouri; is  
16 that correct?

17            A     Yes.

18            Q     And that service is provided under the brand  
19 name of Comcast Digital Voice; is that correct?

20            A     That is correct.

21            Q     And can we agree that the primary issue in this  
22 case is whether Comcast Digital Voice is subject to the  
23 Missouri Commission's jurisdiction?

24            A     Yes.

25            Q     Do you have your rebuttal testimony in front of

1     you?

2           A     I do.

3           Q     Would you turn to page 2, please?

4           A     Okay. I'm there.

5           Q     In a clause beginning on line 15, you state  
6     that, This Commission has determined that Internet  
7     protocol to public switch telephone network IP-PSTN  
8     traffic is an information service and not a  
9     telecommunications service under the Telecommunications  
10    Act in Case No. T0-2005-0336. And then there's a footnote  
11    that refers to the Southwestern Bell Telephone arbitration  
12    dated July 11, 2005. Do you see that?

13          A     Yes, I do.

14          Q     Would you please point out the page or pages in  
15    that Order where the Commission determined that Internet  
16    protocol to public switch network traffic is an  
17    information service and not a telecommunications service?

18          A     I don't have the order in front of me. But it  
19    was the section dealing with intercarrier compensation for  
20    IP to PSTN traffic.

21          Q     Please turn to page 8. In response -- in  
22    response to the question at the bottom of page 8, and then  
23    turning to page 9, line 2, you state, In fact, when a CDV  
24    customer initiates a call -- initiates a call to a Vonage  
25    customer, a mobile phone customer or any other customer

1 using a foreign exchange number, Comcast has no idea where  
2 the terminating subscriber is located.

3 When an AT&T traditional land line customer  
4 initiates a call to a Vonage number, does AT&T know where  
5 the terminating subscriber is located?

6 A Not necessarily.

7 Q When an AT&T traditional land line customer  
8 initiates a call to a mobile phone customer, does AT&T  
9 Missouri know where the terminating subscriber is located?

10 A No, they do not always know.

11 Q When an AT&T traditional land line customer  
12 initiates a call to a customer using a foreign exchange  
13 number, does AT&T Missouri know where the terminating  
14 subscriber is located?

15 A Not in every case.

16 Q When a CDV customer initiates a call to a  
17 traditional land line customer, does Comcast know where  
18 the terminating customer is located?

19 A Comcast does not track that for billing  
20 purposes.

21 Q Would Comcast's affiliate, Missouri -- Comcast  
22 Missouri, the company that provides the access service,  
23 have that information?

24 A They would track the information on an aggregate  
25 basis for billing intercarrier compensation, but not

1 necessarily a customer by customer basis.

2 Q Also, on page 9, you refer to the Court's order  
3 in Southwestern Bell Telephone versus Missouri Public  
4 Service Commission as the Missouri VOIP order; is that  
5 correct?

6 A Yes.

7 Q Does the Court's order give itself that name?

8 A No, it does not.

9 Q Generally, what is the subject matter of that  
10 court case?

11 A It's the M2A interconnection agreement  
12 arbitrations.

13 Q And will you agree with me that the Court's  
14 discussion of VOIP telecommunications in that case was  
15 part of a larger discussion of compensation for IP to PSTN  
16 traffic?

17 A Yes, it was.

18 Q And will you agree with me that the Court  
19 recognized that the FCC had not yet issued regulations  
20 addressing the classification and treatment of VOIP  
21 traffic?

22 A That is correct.

23 Q Please turn to page 10 of your testimony. In a  
24 sentence that begins on line 19, you're answering part of  
25 your -- or giving part of your answer to a question of how

1 CDV is distinguished from traditional voice service  
2 advice. And in that sentence that begins at 19, you say,  
3 This efficiency issues extends to billing, installation  
4 and customer service so that CDV subscribers can have  
5 questions about multiple services addressed by a single  
6 customer service representative, and they need only --  
7 they need pay only one invoice each month. Do you see  
8 that?

9 A Yes, I do.

10 Q Is there a requirement or a Missouri Commission  
11 telecommunications regulated company to have separate  
12 service customer representatives for its regulated  
13 telecommunications services and for its non-regulated  
14 services?

15 A I'm not aware of such a regulation.

16 Q Is there a requirement for a Missouri Commission  
17 regulated telecommunications company to have separate  
18 installation crews for its regulated teleservices and for  
19 its non-regulated services?

20 A I don't know the answer to that question.

21 Q Is there a requirement for a Missouri Commission  
22 regulated telecommunications company to have separate  
23 bills for its regulated telecommunications services and  
24 for its non-regulated services?

25 A There are regulations that deal with how the

1 regulated portion has to be itemized.

2 Q Is there a requirement that there be separate  
3 bills?

4 A I don't know of a requirement for separate  
5 bills.

6 Q At page 11 in the question and answer beginning  
7 at line 23, you refer to the nascent, n-a-s-c-e-n-t,  
8 nature of voice services. How long has VOIP telephony  
9 been in use?

10 A Are you asking in general or at Comcast?

11 Q In general.

12 A I don't know the answer in general. I can tell  
13 you the answer for Comcast.

14 Q Okay. How long at Comcast?

15 A Two years.

16 Q Would that be Comcast in Missouri or Comcast  
17 across the country?

18 A Comcast across the country.

19 Q Please turn to page 13 of your testimony. I  
20 seem for have written down the wrong page number. Do you  
21 recall what page number you discuss paragraph 32 of the  
22 Vonage order?

23 A I don't recall offhand what page it's on.

24 Q I'm sorry. Would you please turn to page 12 of  
25 your testimony? And in the question and answer beginning



1 on line 18, you refer to and quote from paragraph 32 of  
2 the Vonage order where the FCC said, Accordingly, to the  
3 extent other entities such as cable companies provide VOIP  
4 services, we would preempt State regulation to an extent  
5 comparable to what we have done in this order. Do you see  
6 that?

7 A Yes, I do.

8 Q The Federal Eighth Circuit Court of Appeals  
9 reviewed the Vonage order, didn't it?

10 A Yes, it did.

11 Q And the Eighth Circuit held that paragraph 32  
12 did not preempt State regulation affixed VOIP services,  
13 didn't it?

14 A I don't recall that exact wording.

15 Q Please turn to page 17. At the top of page 17,  
16 you state, Further, if Comcast were to receive any  
17 consumer complaints that are filed with the Commission,  
18 Comcast would voluntarily cooperate with the Commission as  
19 it does with other State Public Utility Commissions to  
20 advise the Commission of the resolution of any such  
21 consumer complaints. Do you see that?

22 A Yes, I do.

23 Q Are you aware of two consumer complaints that  
24 Comcast customers submitted to the consumer services  
25 around the first part of July?

1           A     No, I'm not.

2           Q     Do you know whether Comcast's policy of  
3 voluntary cooperation with the Commission to advise the  
4 Commission of the resolution of any such consumer  
5 complaints would include the refusal by Comcast to  
6 disclose to the Commission's Consumer Services Department  
7 the terms of the resolution of the consumer complaint?

8           A     Could you repeat the question again, please?

9           Q     Let me try to rephrase that. Under Comcast's  
10 policy, will Comcast disclose to the Commission's Consumer  
11 Services Department the terms of a resolution of a  
12 consumer complaint?

13          A     It is the general policy to disclose a general  
14 resolution as long as it doesn't give any customer  
15 proprietary information.

16          Q     And would you describe a refund to a customer as  
17 customer proprietary information?

18          A     Potentially, if it dealt with the amount on the  
19 bill.

20          Q     Please turn to page 19. On that page, you're  
21 addressing the burdens and costs that would be imposed by  
22 -- on CDV by the Commission's regulation.

23                 And at line 14, you begin a sentence, For  
24 example, CDV would have to expend significant resources to  
25 record and track collections by line of business in order

1 to comply with the Commission's requirements on customer  
2 disconnects.

3 First, can you identify the Commission rule  
4 you're referring to?

5 A I don't know the exact rule number.

6 Q Generally describe the rule, then, please.

7 A A rule that would require a regulated entity to  
8 apply a partial payment to a basic service before an  
9 unregulated service or a non-basic service.

10 Q Are you of the opinion that no Missouri  
11 Commission regulated telecommunications company bundles  
12 its basic services with non-basic services and with  
13 unregulated services?

14 A I don't have an opinion on that because I'm not  
15 aware of what other companies are doing.

16 Q Is Comcast IP Phone an affiliate of other  
17 Comcast companies?

18 A Yes.

19 Q And do one or more of those affiliates offer, in  
20 other states, a traditional circuit switch telephone  
21 service?

22 A Yes, they do.

23 Q And the brand name of that traditional circuit  
24 switch telephone service is Comcast Digital Phone,  
25 correct? Pardon me. Yes. Is it Comcast Digital Phone?

1           A     Yes, it is.

2           Q     Have those affiliates that offer Comcast Digital  
3     Phone obtained certificates from the Public Utility  
4     Commissions in the states where they operate?

5           A     Yes, they have.

6           Q     Have those affiliates that offer Comcast Digital  
7     Phone filed tariffs with the Public Utility Commissions in  
8     the states where they operate?

9           A     Yes, they have.

10          Q     Do those affiliates that offer Comcast Digital  
11     Phone comply with Public Utility Commission quality of  
12     service standards in the states where they operate?

13          A     In the states where -- where they're required to  
14     do so, they certainly do.

15          Q     Do those affiliates that offer Comcast Digital  
16     Phone have a billing system that complies with Public  
17     Utility Commission billing standards in the states where  
18     they operate?

19          A     Yes, they do.

20          Q     Please turn to page 20 of your testimony. In a  
21     sentence that begins on line 20, you testified that,  
22     Comcast Phone IP voluntarily pays Commission assessments  
23     through its regulated CLEC Comcast Phone in Missouri; is  
24     that correct?

25          A     That's correct.

1           Q     Commission Rule 4 CSR 243.550 directs companies  
2     providing basic local service to submit quarterly quality  
3     of service reports. Does Comcast of Missouri voluntarily  
4     comply with this rule on Comcast IP Phone's behalf?

5           A     No. Comcast of Missouri is a cable company.

6           Q     What was the name of the regulated affiliate?

7           A     Comcast Phone of Missouri.

8           Q     Let me re-ask my question. Does Comcast Phone  
9     of Missouri voluntarily comply with the -- that rule on  
10    behalf of Comcast IP Phone?

11          A     No, it does not.

12          Q     Commission Rule 4 CSR 32.070 sets forth quality  
13    of service standards. Does Comcast Phone of Missouri  
14    voluntarily comply with its rule on Comcast Phone IP's  
15    behalf?

16          A     No.

17          Q     How does Comcast IP Phone decide which  
18    Commission requirements it will voluntarily comply with  
19    and those which it won't?

20          A     Comcast takes the position that it has a certain  
21    social responsibility to provide some of the services that  
22    are associated with some of these funds, and so we  
23    voluntarily remit payments into those funds.

24          Q     And if that compliance is voluntary, then  
25    Comcast IP Phone or its affiliate could stop at any time?

1           A     In certain cases, that's probably true. But  
2     there's no reason for us to change our position.

3           Q     Please turn to page 22. On line 24, you note  
4     that, CDV obtained certain -- pardon me -- obtained  
5     several functions from its regulated CLEC affiliate,  
6     Comcast Phone of Missouri, LLC, including interconnection,  
7     telephone number, resources, porting access to 911. Do  
8     you see that?

9           A     Yes, I do.

10          Q     Does Comcast Phone of Missouri have a local  
11     exchange tariff?

12          A     No, it does not.

13          Q     Does Comcast Phone of Missouri have an  
14     intrastate exchange access tariff?

15          A     Yes, it does.

16          Q     Does Comcast Phone of Missouri have any local  
17     exchange customers?

18          A     No.

19          Q     Will you agree with me that Comcast Phone of  
20     Missouri's local exchange certificate and its access  
21     tariff should be canceled because Comcast Phone of  
22     Missouri has no local exchange customers?

23          A     No, I wouldn't --

24                MR. STEINER: I'm going to object to this  
25     question as beyond the scope of this proceeding. This is

1 a complaint against Comcast IP Phone and whether it should  
2 receive a certificate or not should obtain a certificate.

3 He's asking questions about Comcast Phone of  
4 Missouri and whether its certificate should be revoked.

5 JUDGE WOODRUFF: Well, what is the relevance of  
6 this question?

7 MR. HAAS: Comcast IP Phone, the Respondent in  
8 this case, says they don't need to be regulated. They are  
9 acting in some cases through their regulated affiliate.  
10 Well, let's find out if their regulated affiliate is  
11 meeting the standards, if its complying.

12 MR. STEINER: And that would be the subject of a  
13 new complaint, not this complaint. The Commission --  
14 that's beyond what the Staff has asked for in this  
15 complaint. It's not an issue in this case.

16 JUDGE WOODRUFF: I'm going to have to sustain  
17 the objection.

18 MR. HAAS: Your Honor, I'd like to have five  
19 exhibits marked. They will -- they will be the responses  
20 to -- to Staff data requests.

21 JUDGE WOODRUFF: All right. Beginning with No.  
22 4, then.

23 MR. HAAS: The -- the first one would be DR No.  
24 10. The second one is DR-11. The third one is DR-12.  
25 The fourth one is DR-16. And the fifth one is DR-17. And

1 I would note that the answers to 16 and 17 are marked HC.

2 JUDGE WOODRUFF: Okay. If you want to go ahead  
3 and give copies to the court reporter, we'll let her mark  
4 them. DR-10 would be 4. DR-11 is 5. DR-12 is 6. DR-17  
5 would be 7-HC, and DR-18 would be 8-HC.

6 MR. DANDINO: What was the first one?

7 MR. HAAS: Four.

8 MR. DANDINO: Four.

9 (Exhibit Nos. 4 through 8 were marked for  
10 identification.)

11 JUDGE WOODRUFF: Are we marked and ready to go?

12 THE COURT REPORTER: Yes.

13 JUDGE WOODRUFF: You may proceed.

14 Q (By Mr. Haas) Ms. Choroser, can you identify  
15 the exhibit that's been marked Exhibit No. 4?

16 A Is that the first data request you handed me?

17 Q Yes.

18 A Yes.

19 Q And what is that?

20 A It is a data request asking whether Comcast all  
21 distance VOIP service transmits information by wire,  
22 radio, optical cable, electronic impulses or other similar  
23 means between points within an exchange.

24 Q And what was -- and you answered this, correct?

25 A Yes, I did.



1 Q And what was your answer?

2 A Our answer was that, Like all other voice over  
3 IP services, including Vonage, AT&T, Verizon or Skype  
4 (ph.) that Comcast Digital Voice service transmits  
5 information by wire, radio and optical cable that can be  
6 between points within an exchange defined by AT&T.

7 Q Would you please next turn to Request No. 11  
8 that's been marked as Exhibit No. 5?

9 A Yes.

10 Q Are you able to identify that document?

11 A Yes.

12 Q And what is it?

13 A It's a data request that asks whether Comcast  
14 all distance VOIP service transmits information by wire,  
15 radio, optical cable, electronic impulses or other similar  
16 means between points in two or more exchanges.

17 Q And you answered that question, correct?

18 A Subject to objection, yes, we did.

19 Q And that -- what was your answer?

20 A That Comcast, like all Voice Over Internet  
21 Protocol services, including those of Vonage, Verizon on,  
22 AT&T and Skype, Comcast Digital Voice Service transmits  
23 information by wire, radio and optical cable that can be  
24 between two points -- between points in two or more  
25 exchanges defined by AT&T.

1           Q     Would you please turn to the next document?

2     It's Request No. 12, and it's been marked as Exhibit No.

3     6. Can you identify that document?

4           A     Yes.

5           Q     Please do.

6           A     It asks the question of Comcast to list each  
7     exchange where Comcast offers or provides its all distance  
8     VOIP service. If Comcast does not have this information  
9     by exchange, list each municipality and unincorporated  
10    area where Comcast offers or provides its all distance  
11    VOIP service.

12          Q     And what was your answer?

13          A     We listed by municipalities because we can't  
14    identify exchanges. And they were Baldwin Park, Bates  
15    City, Blue Springs, Buckner, Grain Valley, Greenwood,  
16    Independence, Lake Lotawanna, Lake Winnebago, Lake  
17    Tappawingo, Lee's Summit, Oak Grove, Odessa, Pleasant  
18    Hill, Raymore, Raytown, Sibley, Sugar Creek.

19               MR. HAAS: Your Honor, I would move for the  
20    admission of Exhibits 4, 5 and 6.

21               JUDGE WOODRUFF: All right. Exhibits 4, 5 and 6  
22    have been offered into evidence. Are there any objections  
23    to their receipt?

24               MR. STEINER: No, your Honor.

25               JUDGE WOODRUFF: Hearing no objections, they

1 will be received into evidence.

2 (Exhibit Nos. 4, 5 and 6 were admitted into  
3 evidence.)

4 JUDGE WOODRUFF: Has --

5 MR. STEINER: Bill, are you planning to do the  
6 same thing for the next two exhibits, have her read them  
7 into the record?

8 MR. HAAS: No. Because they're HC.

9 MR. STEINER: Oh, okay. I just want to caution  
10 that because we would need to clear some of the room out.

11 Q (By Mr. Haas) Has Comcast IP Phone expanded  
12 into any other additional municipalities since the time  
13 that this answer was given?

14 A I don't know the answer to that question.

15 Q When did Comcast begin offering its all distance  
16 VOIP service in those municipalities?

17 A A little over a year ago.

18 Q And if we can be more precise, your answer to  
19 Staff Data Request No. 13 said that date was April 17,  
20 2006?

21 A That sounds accurate.

22 Q And on what date did Comcast begin providing its  
23 all distance VOIP service in those municipalities?

24 A It was the same time.

25 Q Do you know how many customers subscribe in

1 Missouri to Comcast all distance VOIP service?

2 MR. STEINER: I want to caution the witness.

3 That could be HC information.

4 A And I do not know. So --

5 MR. STEINER: Well, Roger, it is -- it is highly  
6 confidential. You can do it the way you were going to do  
7 the other ones.

8 Q (By Mr. Haas) Do you recall answering Staff  
9 Data Request No. 15 that asked, question, All questions  
10 are directed to Comcast IP Phone, LLC's offering in  
11 provision of its all distance VOIP service to customers in  
12 Missouri. State the current numbers of subscribers  
13 subscribing to Comcast all distance VOIP service.

14 A Yes, I do.

15 Q And do you recall the answer you gave to that?

16 A I recall the approximate number, not the exact  
17 at that point in time.

18 MR. HAAS: Well your Honor, I guess -- I have an  
19 additional document I would like to have marked as an  
20 exhibit. I don't have copies for everyone. I wasn't  
21 planning to offer it before.

22 JUDGE WOODRUFF: Okay.

23 MR. HAAS: And it would be the response to  
24 Staff's Data Request No. 15.

25 JUDGE WOODRUFF: And that will also be HC; is

1     that correct?

2                 MR. STEINER: That's true, your Honor.

3                 MR. HAAS: Yes. That will be HC.

4                 MR. STEINER: My copy's marked. I'm not sure  
5     what happened, but it is an HC number.

6                 JUDGE WOODRUFF: All right. And that was DR-15.  
7     If you want to have the court reporter go ahead and mark  
8     that, and we can get copies of it later.

9                 (Exhibit No. 9-HC was marked for  
10    identification.)

11                JUDGE WOODRUFF: And, Mr. Haas, could you show  
12    me a copy of it so I can see what it says? Commissioner,  
13    did you want to see that? That's the number of customers.  
14    Okay. Thank you.

15                Q     (By Mr. Haas) I'm going to hand you what has  
16    been marked Exhibit No. 9-HC and ask if you can identify  
17    that document.

18                A     Yes.

19                Q     What is it?

20                A     State the current number of customers  
21    subscribing to Comcast all distance VOIP service.

22                Q     And you provided that answer?

23                A     Yes.

24                MR. HAAS: Your Honor, I would move the  
25    admission of Exhibit 9-HC.

1 JUDGE WOODRUFF: 9-HC has been offered. Are  
2 there any objections to its receipt? Hearing none, it  
3 will be received into evidence.

4 (Exhibit No. 9-HC was admitted into evidence.)

5 MR. HAAS: And I will need to get additional  
6 copies made.

7 Q (By Mr. Haas) Do you recall the date at which  
8 you counted the customers for that answer?

9 A No. I don't recall the exact date.

10 Q Let's next turn to Data Request No. 16, which  
11 has been marked as Exhibit No. 7-HC. And can you identify  
12 that document?

13 A Yes.

14 Q And what is that document?

15 A The average monthly revenue per subscriber for  
16 all distance VOIP service.

17 Q Will you please turn to the next document, which  
18 is Request No. 17, which has been marked 8-HC? Can you  
19 identify that document?

20 A Yes.

21 Q And what is it?

22 A Total amount of revenues received to date by  
23 Comcast for its all distance VOIP service.

24 Q Do you recall the -- the date on which that was  
25 calculated?

1           A     No, I do not.

2           MR. HAAS: Your Honor, I move for the exision --  
3 admission of Exhibit Nos. 7-HC and 8-HC.

4           JUDGE WOODRUFF: All right. 7-HC and 8-HC have  
5 been offered into evidence. Are there any objections to  
6 its receipt?

7           MR. STEINER: No objection.

8           JUDGE WOODRUFF: Hearing none, they will be  
9 received into evidence.

10           (Exhibit Nos. 7-HC and 8-HC were admitted into  
11 evidence.)

12           MR. HAAS: Your Honor, did I already move for  
13 the admission of Exhibit 9-HC?

14           JUDGE WOODRUFF: Yes. And it was admitted.

15           MR. HAAS: Thank you.

16           Q     (By Mr. Haas) I don't know if you have Staff  
17 Data Request No. 36 in front of you, but I can --

18           A     I do not.

19           Q     I will read from it, and then follow up with my  
20 question. Staff data Request 36 asks, The following  
21 question pertains to the descriptions of Vonage's service  
22 taken from the Federal Communications Commission's order  
23 in Vonage Holdings Corporation, Petition for Declaratory  
24 Ruling concerning an order of the Minnesota Public Utility  
25 Commission's 19 FCC RCD 22040-2004 Memorandum and Order,

1 Vonage Order. In Paragraph 5 of the Vonage order, the FCC  
2 stated that Vonage subscribers must obtain a broadband  
3 connection, the Internet, from another provider. Please  
4 indicate whether or not subscribers to all distance VOIP  
5 services are required to obtain a broadband connection  
6 from a provider other than Comcast IP Phone. And you  
7 answered that question, yes is that correct?

8 A That's correct.

9 Q Staff Data Request 39 asks, Are subscribers to  
10 all distance VOIP service able to use the service when a  
11 broadband connection is provided by an entity other than  
12 Comcast or Comcast IP Phone, LLC? If so, please provide  
13 an example of the name of the entity providing any such  
14 broadband connection. You answered yes. An example is  
15 Comcast of Missouri, Inc.; is that correct?

16 A Yes.

17 Q Can a customer who has obtained a bare broadband  
18 service from someone other than a Comcast company work  
19 purchase Comcast's all distance VOIP service for use over  
20 that broadband connection?

21 A Are you asking whether -- could you repeat the  
22 question again?

23 Q Can a customer who has obtained a bare broadband  
24 connection from someone other than a Comcast company  
25 purchase Comcast's all distance VOIP service for use over



1     that broadband connection?

2           A     I'm not sure what a bare broadband connection  
3     is. Could you define that?

4           Q     Well, let's drop the word bare from it, then.  
5     Can a customer who has obtained a broadband connection  
6     from someone other than a Comcast company purchase Comcast  
7     all distance VOIP service for use over that broadband  
8     connection?

9           A     No.

10          Q     Does a customer purchasing Comcast Digital Voice  
11     have two contracts, one contract with Comcast of Missouri,  
12     Inc. for a broadband connection, and a second contract  
13     with Comcast IP Phone, LLC, for the all distance service?

14          A     I'm sorry. I don't know how our contracts are  
15     set up.

16                   MR. HAAS: Thank you. That's all my questions.

17                   JUDGE WOODRUFF: All right. We'll move to  
18     questions from the Bench. Commissioner Murray, do you  
19     have any questions for this witness?

20                               CROSS-EXAMINATION

21     BY COMMISSIONER MURRAY:

22          Q     Good morning. I may have a couple of questions  
23     for you.

24          A     Okay. Good morning.

25          Q     I'll try to get organized here. As the Senior

1 Director of Regulatory Compliance with Comcast, you  
2 obviously have had experience with Federal regulations and  
3 with other states' regulations. Is that accurate?

4 A That's accurate.

5 Q In terms of the type of services that Comcast is  
6 providing in Missouri -- and I believe you go into a  
7 little more detail about that on pages 4 and 5 of your  
8 testimony.

9 A Okay.

10 Q In that -- the service that Comcast is providing  
11 you're referring to as CDV; is that correct?

12 A That's correct. That's the same thing.

13 Q And it utilizes the connection that's already in  
14 place due to Comcast's broadband enabled facility to  
15 entering the customer's home?

16 A Right.

17 Q And then you say that -- that CDV traffic  
18 remains on a private managed IP network until it's sent to  
19 the PSTN. Is that -- that also accurate?

20 A That's correct.

21 Q In other states, do you offer -- does Comcast  
22 offer that same type of service?

23 A Yes, we do. And I might correct the earlier  
24 statement that we offered under regulated entity. We do  
25 not do that in any state.

1           Q     Okay.  So how many other states do you offer  
2     this same type of service?

3           A     We're in more than 20 states today.  
4     Approximately 25.

5           Q     And are -- is Comcast offering that service in  
6     those 25 states the same way that it is offering it in  
7     Missouri?

8           A     Yes, it is.

9           Q     And is it also by an unregulated affiliate?

10          A     Yes.  It is an unregulated entity.  Same entity  
11     that's offered the service in Missouri.

12          Q     And that entity has not applied for  
13     certification as a telecommunications provider in any of  
14     those 25 states; is that correct?

15          A     That's correct.

16          Q     And have any of those 25 states brought any kind  
17     of a complaint against the entity providing the service?

18          A     No.  Absolutely none.

19          Q     And when did Comcast first become aware that the  
20     Missouri Commission was attempting to require regulation  
21     of the -- the service at issue here?

22          A     It wasn't until we received the Staff complaint.

23          Q     So you were not contacted by anyone by  
24     telephone, by letter or any other manner --

25          A     No.

1           Q     -- indicating that your services were not in  
2 compliance with our regulations?

3           A     Well, I wasn't personally, but I can't speak for  
4 whether anybody contacted our counsel.

5           Q     Okay. You talked about leveling the playing  
6 field. I believe -- I believe you talked about that. I  
7 know several people have.

8           A     Yes.

9           Q     And I think in your testimony you discuss  
10 historically why tele -- telecom companies were regulated;  
11 is that correct?

12          A     Yes.

13          Q     And I believe that begins on page 15 of your  
14 testimony. And on page 16 at lines 12 and 13, you make  
15 the statement, Therefore, from a public policy standpoint,  
16 it is -- it is appropriate to rely on the marketplace to  
17 discipline the new entrance.

18                 Do you think it is also today appropriate today  
19 to rely on the marketplace to demonstrate -- to discipline  
20 the traditional telecommunications carriers?

21          A     I think in those areas where there's  
22 competition.

23          Q     All right. And how do you define competition?

24          A     As a choice of -- a choice of voice service  
25 providers. But it needs to be, you know, more than a

1 small percentage of competitors.

2 Q If a -- an Incumbent Local Exchange Company is  
3 able to offer service over an IP network, would there be  
4 anything that would prevent that kind of competition to  
5 that local exchange carrier?

6 A No. Not in that arena.

7 Q So if a local exchange carrier offers IP enabled  
8 service -- voice service, would it be your position that  
9 there is sufficient competition -- that the  
10 telecommunications carrier should also be able to offer IP  
11 enabled voice service without regulation by State  
12 Commission?

13 A If they don't have a dominant number of  
14 customers or a -- organization, you know, a guaranteed  
15 rate of return or things of that nature, yes.

16 Q We -- we never guarantee anyone's rate of  
17 return, by the way. A lot of people think we do, but --  
18 so if a carrier is no longer regulated -- rate of return  
19 regulated, you would still look at -- think it would still  
20 be necessary for the State Commission to look at the -- in  
21 some way the percentages in customers that -- that that  
22 carrier controls? Or not control, but has --

23 A I -- I think that's more important from the  
24 wholesale level than the retail level.

25 Q To your knowledge, has Comcast taken any

1 position in the State of Missouri regarding  
2 telecommunications deregulation?

3 A I believe we have.

4 Q But you have not personally been involved in  
5 that?

6 A But I've not been involved. No.

7 Q You also, in your testimony, talked about  
8 consumer protection issues and if a service is offered by  
9 Comcast, we're not regulated by this Commission how  
10 consumers could be protected. Is that correct?

11 A Yes.

12 Q And you drew some analogy to the cellular  
13 telephone industry.

14 A That's correct.

15 Q Now, the Staff is taking the position, as you've  
16 heard, that because Missouri law defines  
17 telecommunications service as the transmission of  
18 information by wire, radio, optical cable, electronic  
19 impulses or other similar things that the service that  
20 Comcast is providing is a telecommunications service. Is  
21 that your understanding?

22 A Yes.

23 Q The statute describes -- defining  
24 telecommunications service also goes on to say that tele  
25 -- telecommunications service does not include, and then

1 it lists A through I, of non-included services, one of  
2 which is services provided pursuant to a broadcast radio  
3 or television license issued by the Federal Communications  
4 Commission.

5 Comcast -- the Comcast company that is providing  
6 the IP enabled VOIP service is -- is it licensed as a  
7 broadcast radio or television service?

8 A No, it's not.

9 Q One of the exceptions to the definition under  
10 the statute of telecommunications service is services  
11 provided by a private telecommunications system.

12 Now, I assume you're not claiming that this is a  
13 service provided by a private telecommunications system?

14 A No. We're not claiming that.

15 Q So you've heard the arguments of Staff, and  
16 you've obviously read them. And you're not an attorney;  
17 is that correct?

18 A That's correct.

19 Q But is it your position that the FCC has already  
20 made it clear that all VOIP services are information  
21 services, not subject to State regulation?

22 A No. That's not our position. Our position is  
23 that the FCC has not yet decided whether all types of VOIP  
24 services, or any type of voice service for that matter, is  
25 telecommunications or information.

1           Rather, they've taken a very measured approach  
2 to -- slow and measured approach to -- to applying  
3 regulations only where they deem them to be expressly  
4 necessary as they've been doing with the CALEA order and  
5 the 911 order and, most recently, the Disabilities Access  
6 Order.

7           But they've also said in the same paragraph  
8 where in their MPRM where they deal with speaking -- where  
9 they speak about those particular -- those particular  
10 functions.

11           They also talk about making a decision  
12 eventually with regard to the role of the states. So we  
13 feel that, you know, they've not yet decided the  
14 classification. And -- but they are taking this measured  
15 approach to making various decisions with regard to the  
16 service because of its nascent nature.

17           Q     And the FCC has taken the position that certain  
18 types of VOIP service are preempted from state  
19 regulation --

20           A     Right.

21           Q     -- has it not?

22           A     They've taken -- they've taken the position that  
23 Vonage's service definitively is exempt from State  
24 regulation and that services that have the same  
25 characteristics, which they -- which they list in



1 Paragraph 32.

2 I also should correct -- with regard to peer to  
3 peer services that don't touch the public switch Internet,  
4 they have deemed those to be information such as Pulper's  
5 (ph.) Free World Dial-up.

6 Q So do you believe that the other 25 states in  
7 which you operate with this type of service are not  
8 attempting to regulate because they think it is  
9 inappropriate to do so or they think it is premature prior  
10 to the FCC making a definitive statement about that  
11 particular type of service?

12 A I think premature is a very good description.

13 Q And if we were to -- if this Commission were to  
14 order that the service that Comcast provided is a  
15 telecommunications service and that, therefore, you have  
16 to be certificated to provide that service, then in the  
17 near future, within the next year or two, the FCC decides  
18 that the service that it provides is an information  
19 service, not subject to state regulation, can you tell me  
20 what -- what that interim period would create for Comcast?

21 A We would be required to make significant  
22 upgrades to the billing system that we use for our bundled  
23 products to be able to accommodate the billing rules and  
24 payment allocation rules.

25 It would impact our -- our customer service

1 centered to a large -- large extent. We would have to  
2 potentially train agents on Missouri specific rules.

3 We would have to -- have to put aside separate  
4 groups of agents to deal with Missouri specific rules.  
5 And we would have to track statistics in different ways  
6 than we track them today.

7 We would have to -- to modify our service  
8 offerings and modify, you know, the way in -- the way in  
9 which we offer service.

10 Q Is there any way you can quantify that  
11 monetarily?

12 A We put one statistic in our -- in my testimony,  
13 which we know that the -- the billing costs would be  
14 significant and would exceed \$4 million.

15 Q And you said you would have to modify the offer.  
16 Give me an example.

17 A So today, for instance, we provide a bundle of  
18 -- a bundle of services where you get the any distance  
19 VOIP over and cable and high speed Internet access all  
20 together.

21 If a customer were to only pay a portion of  
22 their bill, we would have to create a separate basic local  
23 service offering in order to keep that service up in the  
24 event of a partial payment. We don't have that today.

25 Q Do you know if that would -- would cause an

1     increase customer -- the cost to the customer?

2             A     I don't know if it would cause an increased cost  
3     to the customer. The basic local service portion,  
4     obviously, if they're not getting the other services, we  
5     wouldn't be able to offer the same discounts.

6                     It might cause an inconvenience to the customer.  
7     I mean, for instance, today, we have customers that would  
8     prefer to have their voice service terminated before their  
9     cable because then they just use their wireless phone. So  
10    we're taking away that choice from the customer.

11                    COMMISSIONER MURRAY: I think that's all I have.  
12    Thank you.

13                    JUDGE WOODRUFF: I don't have any questions, so  
14    we'll go to recross, beginning with Public Counsel.

15                    MR. DANDINO: Yes, your Honor. Thank you.

16                                 RE CROSS EXAMINATION

17    BY MR. DANDINO:

18             Q     Good morning. It's still morning.

19             A     Good morning.

20             Q     Commissioner Murray was asking you some  
21    questions about what it would take to, I guess, adapt your  
22    system -- present system to the Missouri requirements. Is  
23    that correct? You remember that?

24             A     Yes.

25             Q     And as you go into other states, don't you have

1 to adapt your system to the way the State requires you to  
2 operate?

3 A Well, not today because we're operating on --  
4 just a consistent -- under a consistent national policy.

5 Q In the states that you're -- you have  
6 certificates under, right, how many of those certificates  
7 as a telecommunications?

8 A That's a -- a separate service. You're talking  
9 about our digital phone service?

10 Q Yes. Uh-huh.

11 A Yes.

12 Q So you -- how many states are you regulated  
13 under that?

14 A I'm not sure of the exact number. It's around  
15 20.

16 Q Okay. Now, when you went into those states, you  
17 had -- your system had to adapt your system -- you had to  
18 build your system to -- to fit in with the requirements of  
19 that state, don't you?

20 A That's a completely different type of system,  
21 though. It's not the same system that we use for our VOIP  
22 service.

23 Q That's not a system you could use in this state?

24 A It's not a system that we plan to continue to  
25 use.

1           Q     Well, isn't it a matter of planning rather than  
2     capability?

3           A     It wouldn't be financially viable.

4           MR. DANDINO:   Okay.   I think that -- I think  
5     that's all I have.   Thank you.

6           JUDGE WOODRUFF:   Okay.   MITG?

7           MR. CRAIG JOHNSON:   No questions, your Honor.

8           JUDGE WOODRUFF:   Thanks.   Staff?

9                         RE CROSS EXAMINATION

10          BY MR. HAAS:

11           Q     Commissioner Murray asked you some questions  
12     about regulation of this type of service in other state.  
13     Do you recall that?

14           A     Yes.

15           Q     And -- and in your rebuttal testimony, you --  
16     you note that the legislatures of Alabama, Delaware,  
17     Florida, Georgia, Indiana, Kentucky, Maryland, Ohio and  
18     Virginia have statutorily precluded the regulation of  
19     interconnected VOIP by the State Commission.

20                         To your knowledge, has the Missouri legislature  
21     precluded the regulation of interconnection VOIP by the  
22     State Commission?

23           A     No.

24           MR. HAAS:   Thank you.

25           JUDGE WOODRUFF:   All right.   Any redirect?

1 MR. STEINER: Yes, your Honor.

2 REDIRECT EXAMINATION

3 BY MR. STEINER:

4 Q I believe Mr. Haas took you through some  
5 questions where you were talking about difficulties in  
6 tracking jurisdiction, and you used the example of  
7 difficulties that AT&T would also use in tracking  
8 jurisdictional calls. Do you recall that?

9 A Yes.

10 Q What differences does Comcast face from AT&T  
11 when it's trying to track jurisdiction of calls?

12 A Well, it -- in addition to the fact that we --  
13 we had the same issues with tracking termination of calls,  
14 Comcast also has a -- a digital voice center that allows  
15 our customers to go in from an Internet connection  
16 anywhere in the world in order to -- to modify features of  
17 the service such as turning on and off a privacy manager  
18 or -- or forwarding -- forwarding voice mails via e-mail  
19 or listening to your voice mails on the web.

20 And at that point, Comcast customers are  
21 interacting with servers that could be, you know, anywhere  
22 in the United States. And I believe that the FCC, in the  
23 Vonage order, recognized that, you know, that was an  
24 element of geography that was associated with -- with  
25 voice over IP services and that such -- that -- you know,

1     that this technology was operating in a way that was  
2     trying to look less at geography than about imposing  
3     regulations that would require us to take geography into  
4     consideration.

5           Q     Do you recall Mr. Haas mentioning to you  
6     consumer complaints in the first part of July --

7           A     Yes, I do recall that.

8           Q     -- with Comcast? Are receiving and documenting  
9     customer complaints part of your job responsibilities?

10          A     Not my direct responsibilities.

11          Q     There were some questions regarding the --  
12     Comcast Digital Phone products. Do you recall those?

13          A     Yes.

14          Q     Is the Comcast digital voice billing system the  
15     same billing system as the digital phone billing system?

16          A     No, it is not.

17          Q     Was the digital phone billing system designed  
18     for a regulatory environment?

19          A     Yes, it was.

20          Q     So would it be fair to say that that product --  
21     that billing system took into account that there would be  
22     variations in how states regulate phone service; is that  
23     correct?

24          A     Absolutely. It -- it did. That system required  
25     constant modifications to keep up-to-date with -- with

1 state regulation.

2 Q And the billing system for CDV, did that system  
3 have that capability?

4 A That system is not configured with those  
5 capabilities.

6 Q Okay. Commissioner Murray was asking you some  
7 questions about the service, and it goes on a -- voice  
8 over IP service goes on a private managed network until it  
9 gets to the PSTN. Do you recall that?

10 A Yes, I do.

11 Q Do all of the calls or traffic for CDV, does all  
12 of it terminate to the PSTN?

13 A No, it does not.

14 Q Can you give us an example of what would happen?

15 A If a Comcast customer calls another Comcast  
16 customer somewhere in Missouri, that would stay all on  
17 Comcast's managed IP network, and it would not hit the  
18 PSTN, the Public Switch Telephone Network, at all.

19 It would essentially be a computing equipment to  
20 computing equipment call that stays in the IP format the  
21 whole way, never hits the Public Switch Telephone Network.

22 And Comcast is able to do that now between  
23 markets as well. So a customer in Missouri who is a  
24 Comcast subscriber calls a Comcast subscriber in -- in  
25 Chicago, and that same type of transmission can occur



1 where it's essentially a computing device, modem to modem,  
2 computing device to computing device, never hits the  
3 Public Switch Internet.

4 Comcast is also trialing that type of  
5 transmission with other voice service providers and will  
6 shortly be doing that with other providers as well.  
7 So there is -- you know, will be a growing amount of  
8 traffic that never even hits the Public Switch Telephone  
9 Network and is all computer to computer, much more like a  
10 -- a free world dial-up or a Skype type service.

11 Q Commissioner Murray asked you some questions  
12 about leveling the playing field. Can you give us some  
13 examples of advantages that ILECs currently enjoy that  
14 Comcast does not?

15 A Well, for instance, the ILECs can take from the  
16 Universal Service Fund whereas Comcast Digital Voice is  
17 required to pay into that fund and doesn't receive  
18 anything from that fund.

19 We also have regulatory requirements or burdens  
20 that are placed on us that in some cases may be required.  
21 We're required to obtain a 911 acknowledgment every time  
22 we sign up a new subscriber.

23 Q Commissioner Murray mentioned that she -- she  
24 talked about the 25 or states that have not attempted to  
25 regulate. And I think you agreed that at this stage you

1 thought it was premature. Can you tell the Commission  
2 what Vermont has done with the docket that addresses this  
3 issue?

4 A Yes. Vermont has opened a docket to -- to look  
5 at regulation of voice over IP providers, but they  
6 immediately suspended the document because they are trying  
7 to give the FCC time to make a decision.

8 Q Commissioner Murray took you through a scenario  
9 where if the Commission said this was a -- CDV was a  
10 telecom service and had to be certified and then a year  
11 later the FCC says it was an information service, she went  
12 through some scenarios of what that would mean for  
13 Comcast. Do you recall that?

14 A Yes.

15 Q Would you have to put systems in place to ensure  
16 that the -- the quality recording that the Commission  
17 requires goes to the Commission?

18 A Yes, we would.

19 MR. STEINER: That's all I have. Thank you.

20 JUDGE WOODRUFF: Thank you. And you may step  
21 down.

22 MS. CHOROSER: Okay. Thank you.

23 JUDGE WOODRUFF: I believe that's all the  
24 witnesses, then. Mr. Haas, do you have those Exhibit 9  
25 copies?

1 MR. HAAS: Yes, I do.

2 JUDGE WOODRUFF: All right. The other matter we  
3 want to deal with is, Commissioner Murray, I believe you  
4 had something you wanted to indicate.

5 COMMISSIONER MURRAY: Yes. I -- in the  
6 briefing, I would like the parties to address the  
7 statutory requirements in the 25 other states in which  
8 Comcast provides this same service.

9 Staff indicated in questioning the witness a  
10 moment ago that there were something like seven other  
11 states that have statutorily precluded the regulation by  
12 State Commissions.

13 I'd like the parties to address the States that  
14 have not statutorily precluded regulation by -- by its  
15 State Commission and how -- what is required by those  
16 state statutes. Is that clear?

17 MR. STEINER: You mean what is a  
18 telecommunication service in those states? Is that what  
19 you're looking for?

20 COMMISSIONER MURRAY: Yes. Yes. That would be  
21 -- because it is the -- the definition of  
22 telecommunications service in the Missouri statutes that I  
23 understand Staff is based its requirements on. Is that --  
24 Mr. Haas, is that accurate?

25 MR. HAAS: Yes. That's correct.

1                   COMMISSIONER MURRAY: It is that statute, the  
2 definition?

3                   MR. HAAS: Yes.

4                   COMMISSIONER MURRAY: Okay. Yes. Then would  
5 you please address how the other states in which Comcast  
6 provides a service define telecommunications service?

7                   MR. STEINER: I'm sorry to interrupt. Some  
8 dates -- would you like it broader than that? How they  
9 require -- what are the requirements for getting a  
10 certificate? Would you like it to be that broad or --  
11 some states may not define telecom -- there might be a  
12 variety of ways that they say, You need to come in and get  
13 a certificate. So -- I'm not trying to make it more  
14 complicated. It's just --

15                  COMMISSIONER MURRAY: Yes. I understand what  
16 you're saying. If -- unless the State requires all  
17 telecommunication service providers to have a certificate,  
18 then I assume that in order to get the answer to my  
19 question, I would need the requirements that indicate what  
20 they do. Say, hey, you have to have a certificate.

21                  MR. STEINER: Okay.

22                  JUDGE WOODRUFF: All right. On the subject of  
23 briefs, what we're going to do is order that a single  
24 round of briefs 20 days after the transcript is filed.  
25 The transcript is normally going to be filed within ten

1 days of the end of the hearing.

2 So we'd be looking at probably the first part of  
3 September before a brief is -- before the briefs are due.  
4 What I'll do is, after the transcripts come in, I'll send  
5 -- put out a notice establishing an exact date.

6 MR. STEINER: Your Honor, would the Commission  
7 have an objection to two rounds of briefs? Because of the  
8 nature of the legal issues, I think it would be helpful if  
9 we could respond to what other parties say the legal  
10 nature of this matter is.

11 JUDGE WOODRUFF: I think I would probably be  
12 helpful in this case.

13 MR. STEINER: Okay.

14 JUDGE WOODRUFF: So we'd have a second round of  
15 briefs ten days after the first.

16 MR. STEINER: That short?

17 JUDGE WOODRUFF: Did you want more than that?

18 MR. MARK JOHNSON: I think ten days is probably  
19 a little optimistic given the complexity of some of the  
20 issues that are faced here. Could we have at least 20 for  
21 -- for replies?

22 JUDGE WOODRUFF: 20 and 20? 20 for the initial  
23 and then 20 after that for the reply?

24 MR. MARK JOHNSON: Yeah. One issue that Roger  
25 and I face on a personal level is that, in August, we have

1 two rather extensive proceedings at the Kansas Commission  
2 that for about two and a half weeks are absolutely going  
3 to monopolize us. So it may be difficult -- if you say  
4 that the first round of briefs are due the first day after  
5 Labor Day, that will be difficult for us. If you could  
6 just give us an extra week something like that?

7 JUDGE WOODRUFF: All right. We'd be looking at  
8 mid -- mid September and around October 1st then.

9 MR. MARK JOHNSON: Okay. That would be -- that  
10 would be great, then. Appreciate that.

11 JUDGE WOODRUFF: Let me pull out my calendar.  
12 If we're going to be going that far out, I'll just pick  
13 exact dates here. Let's say initial briefs due on  
14 September 14th, which is a Friday. Reply briefs due,  
15 then, October 5th which is again a Friday. Anybody have  
16 any difficulties with those dates?

17 All right. The initial briefs are due on  
18 September 14th and reply briefs on October 5th. Anything  
19 else anyone wants to bring up while we're on the record?

20 MR. HAAS: Your Honor, at the close of my  
21 opening statement, Commissioner Clayton had asked for a  
22 citation to the Eighth Circuit decision in the Vonage  
23 case, and that is set forth in Footnote 3 of the Staff  
24 Statement of Position. It's the Minnesota Public  
25 Utilities Commission v. Federal Communications Commission,

1 Case No. 05-1069 opinion filed March 21, 2007.

2 JUDGE WOODRUFF: Okay. Thank you. Anything  
3 else? Then we are adjourned.

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## 1 REPORTER'S CERTIFICATE

2

3 STATE OF MISSOURI )  
 ) ss.  
4 COUNTY OF OSAGE )

5

6 I, Monnie S. VanZant, Certified Shorthand Reporter,  
7 Certified Court Reporter #0538, and Registered  
8 Professional Reporter, and Notary Public, within and for  
9 the State of Missouri, do hereby certify that I was  
10 personally present at the proceedings as set forth in the  
11 caption sheet hereof; that I then and there took down in  
12 stenotype the proceedings had at said time and was  
13 thereafter transcribed by me, and is fully and accurately  
14 set forth in the preceding pages.

15

16 IN WITNESS WHEREOF, I have hereunto set my hand and  
17 seal on July 30, 2007.

18

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Monnie S. VanZant, CSR, CCR #0539

22 Registered Professional Reporter

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## E X H I B I T S

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EXHIBIT

DESCRIPTION

OFFERED

ADMITTED

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Direct Testimony of  
William Voight

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(Original exhibits were returned to Ms. Lonnell Boyce  
at the Public Service Commission.)

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