

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 24th day of April, 2007.

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

**ORDER DENYING MOTION TO SUSPEND PROCEDURAL SCHEDULE
BUT RESCHEDULING HEARING**

Issue Date: April 24, 2007

Effective Date: April 24, 2007

The Commission's Staff has filed a complaint against Comcast IP Phone, LLC, alleging that, by offering a telecommunications service known as Digital Voice in several Missouri exchanges, Comcast IP Phone is providing basic local and intrastate interexchange telecommunications services without the required certificates of service authority. Digital Voice, the telecommunications service offered by Comcast IP Phone, is a Voice Over Internet Protocol (VoIP) service.

The hearing on Staff's complaint is currently scheduled for June 20-22, 2007. That hearing date conflicts with other matters on the Commission's calendar, so on April 12, the Commission ordered the parties to recommend a new hearing date. On April 19, Staff filed

a pleading indicating that the parties have agreed that, if the Commission wishes to do so, the hearing could be rescheduled for July 25 and 26.

However, on April 17, Comcast IP Phone and an intervenor, Missouri Independent Telephone Company Group (MITG), filed a motion asking the Commission to suspend the procedural schedule. The motion explains that the Missouri legislature is currently examining the question of state regulation of VoIP telecommunications services. The Movants suggest that the legislature could resolve that question in a way that would trump any contrary decision that the Commission might issue. Therefore, they ask the Commission to suspend the procedural schedule until the legislature completes its consideration of the issue.

On April 18, the Missouri Small Telephone Company Group (STCG), which has previously been allowed to file *amicus* comments in this case, filed a comment supporting the requested suspension of the procedural schedule. The STCG indicated that a joint study group has been formed that will address the question of VoIP regulation after the end of the legislative session. The STCG recommends suspending the procedural schedule in this case while that study group meets. On April 19, the Missouri Cable Telecommunications Association requested leave to file *amicus* comments that also support a suspension of the procedural schedule.

The Commission's Staff responded in opposition to the motion to suspend the procedural schedule on April 19. Staff argues that its complaint should be allowed to move forward. Staff contends that even if a statute deregulating VoIP telecommunications services ultimately emerges from the legislature, it should still be allowed to prove that

Comcast IP Phone is violating the law as it now exists and that financial penalties should be imposed against the company for those violations.

After considering the arguments of the parties, the Commission recognizes that the legislature could ultimately pass a statute that would overturn any decision that the Commission might make in favor of Staff or Comcast IP Phone. However, the Commission cannot know what kind of law will eventually be passed, and it is also possible that the legislature will never take any action on this issue. The mere possibility that the legislature may take an action at some time in the future is not sufficient reason to delay the resolution of the complaint that is now before the Commission. The Commission concludes that the motion to suspend the procedural schedule should be denied.

Although the Commission will not entirely suspend the procedural schedule, it will reschedule the hearing and amend the procedural schedule in the manner requested by the parties in a joint motion filed on April 23.¹

IT IS ORDERED THAT:

1. The Missouri Cable Telecommunications Associations' request for leave to file *amicus* comments in support of continuance is granted.
2. The Joint Motion to Suspend Procedural Schedule filed by Comcast IP Phone, LLC, and the Missouri Independent Telephone Company Group is denied.
3. The hearing of this case is continued from June 20, 21, and 22, 2007, and shall instead be held on July 25 and 26, 2007.

¹ The Commission will move up the dates for filing a list of issues and statements of position by one day to allow the Commission more time to consider those filings before the hearing.

4. The remaining procedural schedule is amended to provide as follows:

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| Rebuttal Testimony – Comcast & Intervenor | - | June 1, 2007 |
| Surrebuttal Testimony – All Parties | - | June 29, 2007 |
| List of Issues, List of Witnesses, and Order of Cross-Examination | - | July 12, 2007 |
| Statements of Position | - | July 19, 2007 |
| Hearing | - | July 25 & 26, 2007, beginning at 8:30 a.m. |

5. This order shall become effective on April 24, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Gaw, Clayton and Appling, CC., concur
Murray, C., dissents

Woodruff, Deputy Chief Regulatory Law Judge