

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 11th day of
April, 2007.

Staff of the Public Service Commission of the
State of Missouri,

Complainant,

v.

Comcast IP Phone, LLC,

Respondent.

)
)
)
)
)
)
)
)
)
)
)

Case No. TC-2007-0111

ORDER GRANTING MOTION TO COMPEL DISCOVERY

Issue Date: April 11, 2007

Effective Date: April 11, 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. Staff's complaint is set for hearing beginning on June 20, 2007.

On March 6, Staff filed a motion asking the Commission to compel Comcast IP Phone to answer four specific data requests to which Comcast IP Phone had filed timely objections. Comcast IP Phone filed a response opposing Staff's motion to compel on March 16.

Staff Data Requests Nos. 10 and 11

The first two data requests to which Staff seeks an answer concern the nature of the telecommunication service that Comcast IP Phone is offering to its Missouri customers. Specifically, Staff's Data Request No. 10 asks "Does Comcast's all distance VOIP service transmit information by wire, radio, optical cable, electronic impulses, or other similar means between points within an exchange?" Similarly, Staff's Data Request No. 11 asks "Does Comcast's all distance VOIP service transmit information by wire, radio, optical cable, electronic impulses, or other similar means between points in two or more exchanges?" Comcast IP Phone objected to both data requests as being "vague and ambiguous in that Comcast does not offer its services based upon the concept of telephone exchanges."

Digital Voice, the telecommunications service offered by Comcast IP Phone, is a Voice Over Internet Protocol (VOIP) service. That means that it uses signals that travel partially or exclusively over internet protocol networks rather than over the switched telecommunications network. Comcast IP Phone indicates that it offers an all-distance service, meaning that it does not consider traditional exchanges when providing services to its customers. That means a Comcast IP Phone customer can call a neighbor across the street or a friend across the country in exactly the same manner. Thus, according to Comcast IP Phone, the question of whether it connects calls within or between exchanges is a meaningless attempt to apply old definitions to a new technology.

In effect, as Comcast IP Phone points out in its response to Staff's motion, Comcast IP Phone's statement that it provides all-distance service in Missouri answers Staff's data request. From that answer it can be inferred that Comcast IP Phone does transmit

information both within and between exchange boundaries. Nevertheless, Staff continues to ask for an unequivocal answer to its data requests and Comcast IP Phone is hesitant to provide the answer that Staff seeks.

It is not hard to understand why the parties are sticking to their positions. Staff's complaint alleges that Comcast IP Phone is offering basic local exchange and interexchange telecommunications service in Missouri without the necessary certificate of service authority from this Commission. Section 386.020(53), RSMo Supp. 2005, defines Telecommunications Service in part as "the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means." Subsection (31) of that same statute defines Local Exchange Telecommunications Service as "telecommunications service between points within an exchange," and subsection (24) defines Interexchange Telecommunications Service as "telecommunications service between points in two or more exchanges." Combining those statutory definitions creates the question that Staff demands Comcast IP Phone answer. In effect, through its data requests, Staff is asking Comcast IP Phone to admit that it meets the statutory definitions of a local exchange and interexchange carrier. Not surprisingly, Comcast IP Phone is hesitant to make that admission.

Despite Comcast IP Phone's concerns, there is nothing vague or ambiguous about Staff's questions. Staff merely asks whether Comcast IP Phone's VOIP service is used to transmit information between certain points. Nor do Staff's questions force Comcast IP Phone to accept a telecommunications definition that does not apply to a VOIP provider. In answering Staff's questions, Comcast IP Phone is certainly able to explain its views about why such exchange boundaries do not apply to the services it offers. In sum, there is no

good reason why Comcast IP phone should not provide a clear and unequivocal answer to Staff's questions and it will be ordered to do so.

Staff Data Requests Nos. 16 and 17

The second two data requests to which Staff seeks an answer concern the amount of revenue that Comcast IP Phone receives for its all-distance VOIP service. Staff's Data Request No. 16 asks for "the average monthly revenue Comcast receives per customer for its all distance VOIP service." Similarly, Staff's Data Request No. 17 asks for "the total amount of revenues received to date by Comcast for its all distance VOIP service since Comcast began providing that service." Comcast IP Phone refuses to answer either question and objects that the data requests "seek[s] the discovery of information which is irrelevant and inadmissible, and whose discovery is not reasonably calculated to lead to the production of relevant and admissible evidence."

Comcast IP Phone contends that the amount of revenue it derives from its VOIP service is not relevant to any issue in Staff's complaint. Staff counters that the amount of revenue Comcast IP Phone derives from its VOIP service is relevant because its complaint asks for authority to seek statutory forfeiture penalties as allowed by Section 392.360, RSMo 2000. Comcast IP Phone replies by pointing out that only the circuit court can impose financial forfeiture penalties and argues that since the Commission cannot set the amount of any penalty, Staff has shown no need to discover the amount of revenue Comcast IP Phone earns.

While the Commission cannot directly impose a forfeiture penalty against Comcast IP Phone, Staff has an interest in determining the amount of any possible forfeiture before presenting its case to the Commission. Only by discovering the amount of revenue that

Comcast IP Phone is deriving from its VOIP services can Staff reasonably decide whether it is appropriate to ask the Commission for authority to seek financial penalties in circuit court. Therefore, the financial information that Staff seeks is relevant and Comcast IP Phone will be ordered to answer Staff's data requests. Of course, if Comcast IP Phone wants to protect its financial information from public disclosure, it may designate those answers as proprietary or highly confidential under the terms of Commission Rule 4 CSR 240-2.135.

IT IS ORDERED THAT:

1. Staff's Motion to Compel Discovery is granted.
2. Comcast IP Phone, LLC, shall answer Staff Data Request Nos. 10, 11, 16, and 17.
3. This order shall become effective on April 11, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

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

Woodruff, Deputy Chief Regulatory Law Judge