

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Staff of the Public Service Commission of the State)	
of Missouri,)	
)	
Complainant,)	
v.)	Case No. TC-2007-_____
)	
Comcast IP Phone, LLC,)	
)	
Respondent.)	

**STAFF’S COMPLAINT AGAINST
COMCAST IP PHONE, LLC**

COMES NOW the Staff of the Missouri Public Service Commission (hereinafter Staff), pursuant to section 386.390.1 RSMo 2000¹ and Commission Rule 4 CSR 240-2.070 and for its complaint against Comcast IP Phone, LLC, states:

1. Section 386.390.1 RSMo provides that a “[c]omplaint may be made by the commission of its own motion, or by...any...person...by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility..., in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission [.]”

2. Commission Rule 4 CSR 240-2.070(1) provides that the “commission staff through the general counsel” may file a complaint.

3. Comcast IP Phone, LLC, (hereinafter Comcast) is a Pennsylvania limited liability company.

4. Comcast’s business address is 4700 Little Blue Parkway, Independence, Missouri 64057.

5. Comcast’s registered agent in Missouri is CT Corporation System, 120 South

¹ All statutory citations are to RSMo 2000, unless otherwise noted.

Central Avenue, Clayton, Missouri 63105.

6. Comcast has registered the fictitious name of Comcast Digital Voice with the Secretary of State of Missouri.

7. Comcast is offering and providing local exchange telecommunications service in Missouri in the Buckner, Lake Lotawana, Oak Grove, Odessa, and Pleasant Hill exchanges.

8. Comcast is also offering and providing interexchange telecommunications service in the listed exchanges.

9. The Staff recommendation filed on July 10, 2006 in Case No. IO-2006-0551, *In the Matter of the Application of Embarq Missouri, Inc., for Competitive Classification Under Section 392.245.5, RSMo 2005*, contains a signed affidavit by John G. Sullivan, Vice President of Comcast Phone of Missouri, LLC, stating "...an affiliate of Comcast Phone of Missouri, LLC, Comcast Digital Voice, which is a VoIP service provider, furnishes all-distance VoIP calling services to two or more residential customers in each of the Buckner, Lake Lotawana, Oak Grove, Odessa and Pleasant Hill exchanges, which is among VoIP service not yet classified by the FCC, is currently available at <http://www.comcast.com/Benefits/VoiceBenefits.ashx?LinkIK=59>."

10. The Commission's Report and Order for Case No. IO-2006-0551 states, "The Commission finds that the facts as submitted in the verified application, the verified Staff Recommendation, including the affidavits of competing carriers and the hearing testimony are reliable and support the grant of competitive classification in the requested exchanges. Based on that information, the Commission finds that Comcast is providing facilities-based local voice service to residential customers in the Buckner, Lake Lotawana, Oak Grove, Odessa, and Pleasant Hill exchanges."

11. Comcast is a telecommunications company as defined by section 386.020 (51) RSMo Supp. 2005.

12. Section 392.410.2 RSMo provides:

No telecommunications company offering or providing, or seeking to offer or provide, any interexchange telecommunications service shall do so until it has applied for and received a certificate of interexchange service authority pursuant to the provisions of subsection 1 of this section. No telecommunications company offering or providing, or seeking to offer or provide, any local exchange telecommunications service shall do so until it has applied for and received a certificate of local exchange service authority pursuant to the provisions of section 392.420.

13. Comcast has neither applied for nor received a certificate of local exchange service authority to offer or provide basic local exchange telecommunications service in Missouri.

14. Comcast has neither applied for nor received a certificate of interexchange service authority to offer or provide interexchange telecommunications service in Missouri.

15. Comcast officials have refused a Staff request for Comcast to apply for Commission authorization to provide the telecommunications services currently available in the Buckner, Lake Lotawana, Oak Grove, Odessa, and Pleasant Hill exchanges.

16. Section 392.360 RSMo provides:

Every telecommunications company, and all officers, agents and employees of any telecommunications company shall obey, observe, and comply with every order, direction or requirement made by the commission, under authority of this chapter, so long as the same shall be and remain in force. Any telecommunications company which shall violate any provision of sections 392.190 to 392.530, or which fails, omits, or neglects to obey, observe or comply with any order or decision or any direction or requirement of the commission, shall forfeit to the state of Missouri not to exceed the sum of five thousand dollars for each and every offense. Every violation of any such order or decision or direction or requirement, or of said sections, shall be a separate and distinct offense, and, in case of a continuing violation, every day's continuance thereof shall be and be deemed to be a separate and distinct offense.

17. Section 386.600 RSMo provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

18. The Missouri courts have imposed a duty upon the Public Service Commission to first determine matters within its jurisdiction before proceeding to those courts. As a result, “[t]he courts have ruled that the [Commission] cannot act only on the information of its staff to authorize the filing of a penalty action in circuit court; it can authorize a penalty action only after a contested hearing.” *State ex rel Sure-way Transp., Inc. v. Division of Transp., Dept. of Economic Development, State of Mo.*, 836 S.W.2d 23, 27 (Mo.App. W.D. 1992).

WHEREFORE, the Staff requests that the Commission:

- a) find that Comcast is offering and providing local exchange telecommunications service in violation of section 392.410.2 RSMo,
- b) find that Comcast is offering and providing interexchange telecommunications service in violation of section 392.410.2 RSMo, and

c) authorize the General Counsel of the Commission to bring an action in Circuit Court to recover from Comcast the maximum statutory forfeiture allowed by section 392.360 RSMo for each separate, distinct, and continuing violation.

Respectfully submitted,

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

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to the following this 21st day of September 2006.

/s/ William K. Haas

Office of the Public Counsel
200 Madison Street Suite 600
P.O. Box 2200
Jefferson City, MO 65102
opcservice@ded.mo.gov

Mark Johnson
Sonnenschein Nath & Rosenthal
4520 Main Street, Suite 1100
Kansas City, MO 64111
mjohnson@sonnenschein.com