

**BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION**

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

**COMCAST’S RESPONSE IN OPPOSITION TO
STAFF’S MOTION TO COMPEL DISCOVERY**

Comes now Comcast IP Phone, LLC (“Comcast”) and for its response to Staff’s motion states:

DATA REQUESTS 10 AND 11

Staff states that questions concerning whether Comcast’s all distance VOIP service transmits a call between a Comcast customer and another party in the same exchange or in a different exchange are clear, simple, and relevant questions. While these questions may be relevant, they are by no means clear, even with Staff’s clarifications that they apply to a VOIP provider such as Comcast.

The definition of an exchange in section 386.010(6) RSMo. is “a geographical area for the administration of telecommunication services, established and described by the tariff of a telecommunications company providing basic local telecommunications service.” Comcast does not consider exchanges when it provides service to its customers, as it provides an all distance service. Comcast does not have a tariff that defines the exchanges it serves.

Comcast Missouri customers are able to call any phone number in Missouri or outside of Missouri irrespective of exchanges. Comcast believes that Staff's data requests 10 and 11 force it to use telecommunications definitions which do not apply to a VOIP provider. Further, Comcast believes that Staff has the information it needs on this issue due to Comcast's statement that it provides all distance service in Missouri.

DATA REQUESTS 16 AND 17

Data requests 16 and 17 ask for the average monthly revenue Comcast receives per Missouri customer and total revenues received in Missouri. Comcast objected to the data requests as they sought the discovery of information which is irrelevant and inadmissible and not reasonably calculated to lead to the production of relevant and admissible evidence.

The decision cited by Staff (State ex rel. Newman v. O'Malley, 54 S.W.3d 695 (Mo. App. 2001)) does not involve a case before the Commission. The case holds that a party claiming punitive damages is entitled to reasonable discovery of the opposing party's financial status and discovery cannot be forestalled until plaintiff makes a sustainable case at trial.

Unlike circuit court, the Commission has no authority to determine damages or award pecuniary relief, as the Commission does not exercise judicial power or authority. See, State ex rel. Fee Fee Trunk Server, Inc. v. Litz, 596 S.W.2d 466 (Mo. App. 1980). Staff admits that it wants Comcast's financial information because the information believes it is necessary to determine any penalties that Comcast must pay. Staff states that evidence of the average monthly revenue Comcast receives per customer for its all distance VOIP service and total amount of revenues received by Comcast provides one of several possible starting points to determine what is an appropriate forfeiture as penalty for violation of sections 392.410.2 RSMo. Staff does not need a starting point to determine penalties as the Commission cannot award penalties.

Should the Commission determine that Comcast has violated a statute, the circuit court would determine whether penalties are appropriate. Only if the circuit court concludes that penalties are appropriate would it need to determine the appropriate amount of such penalties. Therefore, Staff's data requests are not relevant to the instant proceeding before the Commission.

WHEREFORE, Comcast requests that the Commission deny Staff's motion to compel Staff Data Request Nos. 10, 11, 16 and 17.

Respectfully submitted,

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ATTORNEYS FOR COMCAST IP PHONE, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of this foregoing have been mailed, hand delivered, transmitted by facsimile or electronically mailed to all counsel of record this 16th day of March, 2007.

/s/ Roger W. Steiner