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Issues: Telephone Specific
Witness: William L. Voight
Sponsoring Party: MO PSC Staff
Type of Exhibit: Surrebuttal Testimony
Case No.: TC-2007-0111
Date Testimony Prepared: June 29, 2007

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

SURREBUTTAL TESTIMONY

OF

WILLIAM L. VOIGHT

CASE NO. TC-2007-0111

Jefferson City, Missouri

June 2007

Staff Exhibit No. 2
Date 7/25/07 Case No. TC-2007-0111
Reporter MV

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

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

Complainant,)

v.)

Comcast IP Phone, LLC,)

Respondent)

Case No. TC-2007-0111

AFFIDAVIT OF WILLIAM L. VOIGHT

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

William L. Voight, of lawful age, on his oath states: that he has participated in the preparation of the following Surrebuttal Testimony in question and answer form, consisting of 15 pages of Surrebuttal Testimony to be presented in the above case, that the answers in the following Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.

Bill Voight

William L. Voight

Subscribed and sworn to before me this 28th day of June, 2007.



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086

Susan Sundermeyer
Notary Public

My commission expires 9-21-10

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SURREBUTTAL TESTIMONY

OF

WILLIAM L. VOIGHT

CASE NO. TC-2007-0111

Q. Are you the same William L. Voight who filed direct testimony in this case?

A. Yes.

Q. What is the purpose of your surrebuttal testimony?

A. My purpose is to respond to the rebuttal testimony of Comcast IP Phone, LLC (Comcast) witness Beth Choroser.

Q. Please summarize your testimony.

A. The Staff has examined the rebuttal testimony of Comcast witness Choroser and Staff continues to maintain that Comcast is in violation of Missouri law requiring certification of those providing telecommunications services to the general public. In contravention to Comcast's testimony, the Staff does not accept that the Commission has made any policy decisions to the contrary.

Q. Ms. Choroser states that the Missouri Public Service Commission (MoPSC or Commission) has declared IP to PSTN traffic to be an "information service" under the Telecommunications Act of 1996 (rebuttal testimony; page 6, line 19). What is your response?

A. The Staff disagrees that the Commission has made any binding policy declarations in this regard. Ms. Choroser, on several occasions, makes reference to the "Missouri VoIP Order". To my knowledge, the Commission has never issued a "VoIP" order

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1 or a generic "VoIP" decision. It appears Ms. Choroser is using the term to describe the VoIP-
2 related intercarrier compensation decisions in the M2A arbitration and the subsequent appeal
3 of those decisions. The issue referenced by Ms. Choroser was but one issue among hundreds
4 of issues in the M2A arbitration. In reviewing the Commission's decision, the District Court
5 noted that the Final Arbitrator's Report consisted of some 2,075 pages; yet the narrative on
6 this issue covered roughly only one page and the Commission's arbitration order
7 reconsidering the issue covered only approximately two pages. Thus, in the Staff's view, it is
8 inappropriate for Ms. Choroser to characterize the arbitration order and subsequent appeal as
9 a "Missouri VoIP Order".

10 Even conceding that the Commission used the "information services" statement to
11 address a prior *intercarrier compensation issue*, the Commission is not bound to that decision
12 in deciding the *certification issue* at issue in the instant complaint case. As will be discussed
13 further, this is especially true given that Comcast admits its service offering is *not* an
14 information service.

15 **Q. Do you agree with Ms. Choroser's characterization of the Missouri M2A**
16 **arbitration decision and appeal?**

17 A. No, I do not. While a writer is free to use any acronym or similar abbreviated
18 citation as a shortcut to quoting an entire reference each time the item is discussed, referring
19 to the M2A arbitration and the subsequent appellate decision as the "Missouri VoIP Order" is
20 somewhat misleading to a reader not familiar with Missouri arbitration proceedings.

21 **Q. Please describe the Commission's role in an arbitration proceeding.**

22 A. The arbitration procedures are set forth in 4 CSR 240-36.040. Unless the
23 parties request otherwise, the Commission appoints members of its personnel as the arbitrator

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1 and its advisory staff. The arbitrator is required to use "final offer" arbitration unless one or
2 more parties submits an offer that does not comply with the arbitration regulations or if the
3 arbitrator determines a result other than those submitted would better comply with the
4 provisions of Section 252(c) of the Telecommunications Act ("Act"). In other words, each
5 party to the arbitration submits a final offer (in the form of a final decision point list) as its
6 resolution of a disputed issue. Pursuant to 4 CSR 240-36.040, the arbitrator must choose one
7 of those positions unless it is determined that another solution would better implement the
8 requirements of the Act. (Based on my experience with Missouri arbitrations, an arbitrator
9 has only exercised the option to resolve an issue with a non-final offer position in very limited
10 circumstances, and only after explaining that neither final offer was acceptable.) Once the
11 arbitrator issues his recommendations, the parties have the opportunity to address the
12 Commission. The Commission considers the evidence and either supports the arbitrator's
13 recommendations or makes changes as it deems appropriate.

14 **Q. You reference a decision point list. What is a decision point list?**

15 **A.** In most cases, the parties to the arbitration agree on how to phrase each
16 disputed issue. (On occasion, there will be competing language as to how to describe the
17 parties' dispute.) Each party submits proposed language to resolve the dispute. This is done
18 in narrative format in the proposed interconnection agreement and also in matrix format in the
19 decision point list. Throughout the arbitration, parties may change their positions or
20 language, but ultimately must submit "final" language, in other words, a final offer, for the
21 arbitrator's consideration. Typically, the final decision point list includes the disputed issue,
22 each party's final offer suggested language to address the issue and a summary of each party's
23 position on the issue.

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1 **Q. Please describe the M2A arbitration.**

2 A. The M2A arbitration was a mega arbitration involving SBC Missouri and
3 several competitive local exchange carriers ("CLECs"). (SBC has since merged with AT&T,
4 however since pre-merger AT&T was part of the arbitration with SBC, I will continue to
5 reference SBC by its former name to avoid confusion). The M2A arbitration was the
6 negotiation and arbitration of a successor agreement for those CLECs that had previously
7 operated under the Missouri 271 agreement, which was a result of Case No. TO-99-227 et al.
8 As such, there were several arbitrated topics.

9 On the particular issue being addressed by Ms. Choroser, similar disputes were put
10 forth by AT&T, the CLEC Coalition, MCI, Navigator and Wiltel. After the arbitrator issued
11 his resolution of the similar disputes, the CLEC Coalition asked the Commission to review
12 the resolution of its issues related to IP-PSTN traffic when compared to the MCI resolution of
13 the issue. For purposes of this testimony, I will concentrate on only the SBC, CLEC
14 Coalition and MCI disputed issue language, since that is the language applicable to Ms.
15 Choroser's reference to the "Missouri VoIP Order".

16 **Q. What was the disputed issue related to IP-PSTN traffic as referenced by**
17 **Ms. Choroser's characterization of the Missouri VoIP Order?**

18 A. SBC characterized the issue as:

19 What is the proper routing, treatment, and compensation for **Switched Access**
20 **Traffic** including, without limitation, any PSTN-IP-PSTN Traffic and IP-
21 PSTN Traffic? (SBC MO IC 1b and c, CC/SBC MO IC 15b, SBC MO 15(a))
22 (emphasis added)
23

24 The CLEC Coalition characterized the issue as:

25 What is the proper routing, treatment, and compensation for **Switched Access**
26 **Traffic** including, without limitation, any PSTN-IP-PSTN Traffic and IP-
27 PSTN Traffic? (CC ITR 5a) (emphasis added)
28

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1
2 SBC and the CLEC Coalition also characterized the issue as:

3
4 Should reciprocal compensation arrangements apply to Information Services
5 traffic, including IP Enabled Services Traffic? (CC/SBC MO IC 15a)

6
7 MCI characterized the issue as:

8
9 What terms and conditions should apply for **switched access traffic**? (SBC
10 MO 15(a)) (emphasis added)

11
12 Additional issues were identified by the parties, but these are the issues applicable to
13 the Comcast discussion where the arbitrator's recommended decision was presented to the
14 Commission for reconsideration, and ultimately presented on appeal. It is important to note
15 that in all instances, except CC/SBC MO IC 15a, the parties characterize the issue as what
16 compensation, terms and conditions apply to **access** traffic. The issues were not phrased as
17 whether IP traffic is information or telecommunications services, but merely what
18 compensation is appropriate for **switched access traffic**, including IP-PSTN traffic.

19 **Q. What is the significance of noting the phrasing of the issues and that the**
20 **issues generally reference "switched access traffic"?**

21 A. My main objective in stating the various phraseologies for the issue and also
22 highlighting the references to "switched access traffic" is to point out that the parties had
23 unique characterizations of the issues and in many cases classified the traffic at issue as
24 "switched". This is important because it was in this context that the "final offers" were put
25 forth by each party and the issues were decided. In other words, although an arbitration
26 decision, and any resulting appellate decision, can provide guidance on the resolution of an
27 issue in other Commission cases, an arbitration decision cannot be viewed as dispositive of a
28 particular issue (in other words, as the "Missouri VoIP Order") since an arbitration is limited
29 in scope by the issue as presented, the parties' competing disputed language and the

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1 requirement that the arbitrator, and ultimately the Commission decide the dispute through the
2 "final offer" methodology.

3 **Q. Ms. Choroser cites to the Commission's M2A arbitration order and states**
4 **that the type of "traffic" addressed by the Commission in that order was declared to be**
5 **an information service (rebuttal testimony; page 2, line 20 and page 9, line 18). What is**
6 **meant by the term "traffic?"**

7 A. Traffic customarily means telecommunications voice traffic. It stems from the
8 telecommunications services which are regulated by the Commission pursuant to statutory
9 authority. Traffic is measured as minutes of use (or attempted use) or, as commonly occurs, in
10 terms of bits per second when voice traffic is converted into data for transmission and
11 switching purposes. This is the same kind of communications which commonly falls under
12 the jurisdiction of the MoPSC.

13 **Q. On page 6 of her rebuttal testimony, Ms. Choroser discusses information**
14 **services and enhanced services. What is your response?**

15 A. Ms. Choroser correctly recognizes that enhanced services have never come
16 under the oversight of state regulatory bodies such as the MoPSC. Enhanced services
17 customarily include items such as financial transaction services, alarm monitoring, voice mail
18 and E-mail. Enhanced Service Providers (ESPs) are defined as "end users" and obtain access
19 to other carriers' networks by purchasing a local business line and paying tariffed rates.¹

20 Ms. Choroser cites to the FCC's ISP Remand Order to "indicate" that information
21 service and the traditional definition of enhanced service are "the same" under the
22 Telecommunications Act of 1996 (rebuttal testimony; page 6, line 23). Ms. Choroser appears

¹ Southwestern Bell Telephone, L.P. v. Missouri Public Service Commission. United States District Court, Missouri Eastern Division. 461 F.Supp.2d 1055. page 20, citing the FCC.

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1 to conclude that information services and enhanced service should be "equivalent" for
2 regulatory purposes. Hence, it would appear that Ms. Choroser is at first describing Comcast's
3 service as an information service that does not fall under the jurisdiction of the MoPSC, just
4 as enhanced services did not fall under its jurisdiction. However, on page 13, line 16 of her
5 rebuttal testimony, Ms. Choroser states that Comcast's service is *not* an information service;
6 rather, it appears Comcast is heavily relying on a prior MoPSC arbitration decision (and
7 subsequent court decision) as the basis for its position that it should not be required to obtain
8 local exchange certification issued by the Commission.

9 **Q. Has the FCC ever deemed a VoIP service like Comcast's to be an**
10 **information service or a telecommunications service?**

11 A. No. The FCC has described VoIP service as one containing components of
12 both telecommunications and information, and as yet remains undecided on a regulatory
13 classification. Ms. Choroser correctly notes as much on page 7, line 12 of her rebuttal
14 testimony. Ms. Choroser also notes correctly that the FCC has recognized different forms of
15 VoIP service (rebuttal testimony; page 7, line 17).

16 **Q. How do you respond to Ms. Choroser's citations and use of the**
17 **Southwestern Bell Telephone v. Missouri Public Service Commission court decision (461**
18 **F. Supp2d 1055) as support for Comcast's position in the matter?**

19 A. I would not place as much emphasis as Ms. Choroser on the court's decisions
20 because the court was primarily addressing a compensation matter, which is not at issue in the
21 instant case. More specifically, and as discussed on page 25 of the District Court's Order, the
22 primary issue leading to the citations offered by Ms. Choroser was whether switched
23 exchange access charges should be applied to IP to PSTN telephone calls (both "local" and

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1 | interexchange). In making its decision, the court described the current and historical interplay
2 | between issues such as net protocol conversion, telecommunications, information and
3 | enhanced services. From my perspective, any analysis of the court's rational should avoid
4 | taking any one discussion item out of context.² The District Court is but one venue where
5 | regulatory and legal classification of VoIP telephone service has been addressed, and it is
6 | doubtful that the final verdict has yet to be rendered. For instance, the FCC preempted an
7 | order of the Minnesota Public Utilities Commission (Minnesota Commission) applying its
8 | traditional state "telephone company" regulations to Vonage's DigitalVoice service, which
9 | provides VoIP service and other communications capabilities. The FCC concluded that
10 | DigitalVoice cannot be separated into interstate and intrastate communications for compliance
11 | with Minnesota's requirements without negating valid federal policies and rules.³ In contrast,
12 | the FCC in a subsequent order determined that Vonage was required to contribute to the
13 | universal service fund, a mechanism that traditionally received funding from the
14 | telecommunications sector. The Act mandates contributions from "[e]very
15 | telecommunications carrier that provides interstate telecommunications services...Moreover,
16 | under its permissive contribution authority, the Commission may demand USF contributions

² For example, although Ms. Choroser is correct in describing the court's upholding of the MoPSC's compensation decision as consistent with the Act and FCC rules, and that it was not arbitrary and capricious, it is equally correct to state that the court stated that reciprocal compensation applies to IP-PSTN because when a CLEC acts as a VoIP provider, it uses "telecommunications" to transmit IP-PSTN traffic (footnote 17). Similar analysis has been used to require VoIP contributions to Universal Service, E-911, CALEA and CPNI. Also, in denying SBC's argument, the court observed that the FCC reversed course after the DC Circuit reviewed its ISP Remand Order, such that going forward, access charges did not automatically apply to interexchange IP-PSTN traffic (footnote 18). Arguably, the Staff could use these and similar comments in support of our contention that Comcast's service is "telecommunications." Moreover, the court's observance of the FCC's access charge reversal is but one example of the dynamics inherent to VoIP telephone regulation. Staff's point is simply that the Commission should recognize the dynamics of VoIP telephone service as an ever evolving legal and regulatory atmosphere, and apply current law when making its own decision on whether or not to require Comcast to obtain a Missouri certificate of service authority.

³ In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission. WC Docket No. 03-211

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1 from "[a]ny other provider of interstate **telecommunications**...if the public interest so
2 requires." This would seem to imply that at least in this instance the FCC determined Vonage
3 was a telecommunications provider. This decision was upheld by the United States Court of
4 Appeals, D.C. Circuit.⁴ (emphasis added)

5 In the Staff's view, it is most important to understand that the FCC has yet to issue its
6 final determination on the regulatory classification of the type of VoIP telephone service
7 provided by Comcast, and that until it does, the MoPSC should apply its customary
8 certification requirements to Comcast's Missouri telephone service.

9 **Q. Ms. Choroser cites to the potential for a "lack of regulatory clarity" and**
10 **states that the best course in this proceeding would be for the Commission to wait for**
11 **the FCC to decide the ultimate classification for interconnected VoIP service (rebuttal**
12 **testimony; page 12, line 17). How do you respond?**

13 **A.** The Staff does not deny the authority of the FCC or the courts to eventually
14 rule on the regulatory classification of interconnected VoIP telephone service in general, and
15 "fixed" VoIP telephone service in particular. However, as I cited in my direct testimony, other
16 cable TV telephone companies providing fixed VoIP telephone service in Missouri are
17 already certificated by the MoPSC (Voight direct testimony; page 17, line 1). Ms. Choroser
18 denies that Comcast is seeking special treatment, and advocates for a system of voluntary
19 adherence to the MoPSC's authority pursuant to a carrier's own reasons (rebuttal testimony;
20 page 23, line 7). The Staff believes a system of voluntary compliance would exacerbate the
21 problem of regulatory clarity which, in addition to bringing about consumer issues, could also
22 potentially lead to a certain amount of increased market uncertainty. The notion of voluntary

⁴ F.3d, 2007 WL 1574611 (C.A.D.C.)

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1 regulation appears to be one of the more significant areas of disagreement between the Staff
2 and Comcast.

3 **Q. Mr. Choroser describes what she characterizes as burdens and costs of**
4 **state regulation (rebuttal testimony; page 19, line 11). Does everyone in the VoIP**
5 **industry agree that state oversight of VoIP is all bad for VoIP service providers?**

6 A. Apparently not. Attached as Schedule 6 is an article from the June 19, 2007
7 issue of Xchange online magazine entitled "*State Regulation of VoIP Services: Get Ready,*
8 *it's Coming.*" In addition to describing numerous benefits of state regulation, the article offers
9 insight into how VoIP providers are already subject to certain federal telecommunications
10 requirements, and offers that "VoIP [may have] moved beyond an emerging service and is
11 well down the road to being established as a broadly accepted addition to the telecom
12 marketplace."

13 **Q. Has Ms. Choroser's testimony changed your mind on the Staff's concerns**
14 **regarding consumer safeguards and protection?**

15 A. No. Ms. Choroser maintains that the services of non-dominant carriers such as
16 Comcast should not be subject to oversight by an expert subject matter agency of government
17 such as the MoPSC. Ms. Choroser exhorts the Commission to rely on the marketplace as a
18 more fitting incentive to protect consumers and businesses from traditional monopoly abuses
19 as described on page 16, line 5 of her rebuttal testimony.

20 In responding to this critique I wish to first unequivocally recognize the power of the
21 invisible hand of a competitive marketplace to best establish reasonable and affordable prices
22 and service quality for telecommunications services. I would also state that the issues
23 separating the Staff and Comcast have little or nothing to do with prices to be charged for

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1 telephone service. However, in terms of service quality and interconnection issues, I would
2 also point out that by no means have all of the complaints received by Staff come from those
3 who are at the mercy of a monopoly as discussed on page 16, line 5, and page 21, line 16, of
4 Ms. Choroser's rebuttal testimony. I have read Ms. Choroser's testimony and Staff continues
5 to maintain that consumers and businesses should continue to have an informal dispute
6 resolution process at their disposal, rather than having to retain counsel and file a lawsuit to
7 obtain equitable remedy, as Ms. Choroser seems to advocate.

8 **Q. Please explain.**

9 A. Ms. Choroser points to the general laws of "deception, fraud, false pretense,
10 false promise, misrepresentation, unfair practice or the concealment, suppression, or omission
11 of any material fact" as a proper and fitting means of consumer telephone protection (rebuttal
12 testimony; page 16, line 18). Ms. Choroser points to the Attorney General as the proper
13 agency to protect telephone consumers (rebuttal testimony; page 17, line 13). As I previously
14 discussed in my direct testimony (page 15, line 4), there are numerous consumer and business
15 protection functions performed by the Commission. Few, if any, of these protections have
16 anything to do with the investigations into the fraudulent business activities of retail
17 merchandizing companies as are customarily performed by the Attorney General's office.
18 Staff continues to maintain that the role of the Commission and that of the Attorney General
19 should not change simply because some carriers offer telephone service via packet switching
20 instead of circuit switching.

21 **Q. Ms. Choroser maintains that Comcast is not seeking preferential**
22 **treatment over other carriers (rebuttal testimony; page 23, line 6). Does the Staff agree**
23 **with this statement?**

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1 A. No. The Staff is concerned that Comcast is indeed seeking preferential
2 treatment among other carriers. With minimal exceptions which are explicitly set forth in law,
3 such as those involving carrier of last resort obligations, the Commission is charged with
4 treating all carriers in a like manner. The approach Ms. Choroser advocates appears at least
5 somewhat contrary to the principles of fairness to other similarly situated service providers in
6 Missouri. The Commission is empowered to recognize unique circumstances, and may use
7 forbearance authority for its rules and any number of statutes. From the Staff's perspective,
8 this case is simply about Comcast's unwillingness to comport to the same treatment as other
9 similarly situated carriers. The Staff cannot accept that Comcast should be treated differently
10 with respect to obtaining a certificate of operating authority.

11 **Q. Ms. Choroser states that the Commission's service quality rules were**
12 **enacted prior to the advent of competition (rebuttal testimony; page 22, line 11). Is this a**
13 **true and accurate statement?**

14 A. No. The Commission's basic local telephone service quality and billing rules
15 were enacted well after the onset of local exchange competition. Those rules were revised in
16 1999 and 2004, respectively, and continue to be re-examined to meet changing marketplace
17 demands. Ms. Choroser is simply incorrect to imply that rules are only necessary to dampen
18 the effects of a monopoly environment.

19 **Q. Ms. Choroser discounts Staff's concern that consumer laws of general**
20 **applicability are not sufficient to safeguard the interests of other carriers with whom**
21 **Comcast interconnects (Choroser rebuttal testimony; page 22, line 23). How do you**
22 **respond?**

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1 A. After twice mischaracterizing my statement as one of "protection" for the other
2 LECs, Ms. Choroser's response explains that "CDV does not itself interconnect with the
3 PSTN."

4 **Q. What does Ms. Choroser's testimony reveal about the operating practices**
5 **of Comcast in Missouri?**

6 A. It reveals that one *non-certificated* legal entity, Comcast IP Phone, LLC
7 provides telephone service to the general public and another *Commission-certificated* legal
8 entity, called Comcast Phone of Missouri, Inc. d/b/a Comcast Digital Phone provides "several
9 functions" that permit the non-certificated legal entity to bill for and otherwise provide
10 telephone service to the general public.

11 **Q. Please describe what sort of "functions" the certificated entity provides**
12 **for the non-certificated entity.**

13 A. Those functions are described on page 22, line 26 of Ms. Choroser's testimony.
14 They include what I would consider to be the normal back-office type functions necessary to
15 provide telephone service to the general public and in particular, interconnection to other
16 carriers for the purposes of originating and terminating telephone calls.

17 **Q. Please describe in your own words what sort of an arrangement this**
18 **presents.**

19 A. One side of Comcast has obtained a certificate from the state commission in a
20 manner consistent with other competitors. This permits Comcast to avail itself of certain
21 rights, such as the ability to obtain telephone numbers, interconnect with other carriers
22 including obtaining access to 9-1-1 tandem switching facilities, to port telephone numbers

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1 and, equally important, to obtain the bottleneck monopoly revenue streams inherent to call
2 termination vis-à-vis switched access charges.

3 **Q. Mr. Voight, do you have a particular concern with the certificated/non-**
4 **certificated telephone service arrangement employed by Comcast?**

5 A. Yes. In addition to the equal treatment and consumer safeguard concerns
6 expressed previously in relation to the non-regulated entity, I am also concerned over two
7 matters involving the regulated entity.

8 **Q. Please explain.**

9 A. My first concern is over Section 392.410.5 RSMo, which holds that certificates
10 of service authority become null and void one year from the date of the issuance of the
11 certificate, unless the company exercises its authority under the certificate. As I stated in my
12 direct testimony (page 4, line 8), Comcast Phone of Missouri d/b/a Comcast Digital Phone
13 was granted certificates by the Commission to provide non-switched local, basic local, and
14 interexchange telecommunications service effective July 7, 2005 in Case No. LA-2005-0417.
15 In the Staff's opinion, these certificates have never been exercised and are subject to
16 revocation. Moreover, Comcast Digital Phone never complied with the Commission's order to
17 file tariff sheets reflecting its local exchange service offerings.⁵

18 My second concern is with the certificated entity's switched access tariff. Consistent
19 with industry practice, it could be argued that Comcast Digital Phone's switched access rates
20 should apply only to the services it provides in permitting other carriers to reach Comcast
21 Digital Phone's end user customers. However, Comcast Digital Phone has no end user

⁵ In the May 12, 2005 verified Application signed by Mark P. Johnson, Comcast requested a temporary waiver of the tariff filing requirements: "Comcast Phone-Mo finds it impossible at this time to develop tariffs... [A]t such time as all the facts necessary for the development of such tariffs are known to Comcast Phone-Mo., it will promptly file said tariffs with the Commission in a manner consistent with the Commission's practice in similar cases." Paragraph 11. *Application for Certificate of Service Authority*. Case No. LA-2007-0417.

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1 customers. Stated differently, it could be argued that Comcast Digital Phone is charging for
2 services it is not providing; and, in particular, the carrier common line charges as shown on
3 Page 8, Section 3 of its Missouri P.S.C. No.1 Tariff.

4 **Q. Does this conclude your Surrebuttal Testimony?**

5 **A. Yes, it does.**

State Regulation of VoIP Services: Get Ready, It's Coming



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State Regulation of VoIP Services: Get Ready, It's Coming

By Michael W. Fleming, Edward S. Quill Jr. and Brian McDermott

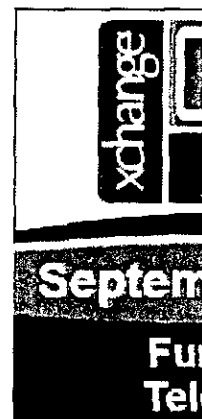
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In July, in a hearing room at the Missouri Public Service Commission, state regulators will try to make the case that Comcast's "Digital Voice" VoIP service should be regulated as a competitive telephone service.

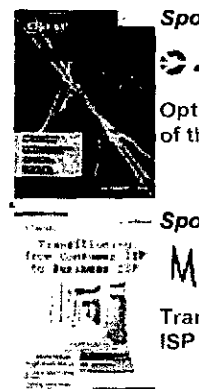
If they succeed, the Missouri Commission may not only take a significant step toward establishing VoIP — or at least some types of VoIP — as a regulated service in Missouri, the commission also may set the precedent to allow the commission to collect significant penalties from Comcast. The regulators maintain that penalties should be assessed against Comcast for its provision of a regulated "telephone service" without proper state authority. And as much as the Missouri proceeding could result in a decision with significant business and regulatory consequences in Missouri, it may be only the tip of the iceberg as many more state regulatory commissions move to assert jurisdiction over VoIP providers.

Although VoIP long has been viewed by some as "unregulated," federal regulation applicable to VoIP providers has been expanding steadily. The FCC already has extended three of its central regulatory programs to interconnected VoIP service providers. Interconnected VoIP service providers must comply with the federal wire-tapping requirements under the Communications Assistance to Law Enforcement Act (CALEA). They must comply with federal emergency dialing requirements so that subscribers can access the 911 networks. And they must collect and make substantial contributions to the Federal Universal Service Fund that provides subsidies to companies serving telephone subscribers in high-cost service areas (such as rural areas with low population density) and telephone subscribers with very low incomes. The FCC even recently has asked for comments from the industry about whether VoIP providers should pay regulatory fees to the FCC.

By contrast, VoIP providers haven't been subject to many of the state rules and regulations that apply to traditional phone companies, such as state certification requirements. But that may be changing. In 2003, the Minnesota Public Service Commission tried to regulate Vonage as a telephone company. In its defense, Vonage claimed that its operations were "information services," so that its operations were subject only to FCC regulation and that as a result, states had no regulatory authority over Vonage's VoIP services. Without determining the nature of the service, two



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federal courts and the FCC agreed on the grounds that, at least for nomadic VoIP services (which utilize a compact VoIP modem to allow portable use of the service), it is not possible to separate the interstate components of the service from the intrastate components.

While the Vonage decision forestalled the application of state regulation to nomadic services, it left unresolved the question of state regulation of fixed VoIP services. In the absence of a clear decision, many fixed VoIP providers simply took the position that the Vonage decision applied to them as well. Recent FCC and federal court decisions suggest, however, that the Vonage decision may not extend so far and that state regulation of VoIP may be permissible. For example, the FCC has stated that if a VoIP service provider has the ability to identify interstate from intrastate traffic, it would become subject to state regulation. Appeals to legislators to limit the authority of state commissions over VoIP providers have to date yielded few results. For the great majority of VoIP services that could be considered "fixed," significant state regulation may be around the corner.

In light of these changes, many VoIP providers are considering what state regulation might mean. The answer likely will be drawn substantially from the regulations that now cover wireline competitive telephone carriers. Competitive phone companies generally are required to obtain authorization from state regulatory agencies prior to providing service, file tariffs or price sheets of their generally available rates, terms and conditions, and comply with various state reporting requirements.

The news is not all bad for VoIP service providers because state regulation offers certain benefits. Certification as a competitive telephone carrier allows VoIP providers to gain additional valuable rights. For example, certified VoIP providers would be able to require interconnection of their networks directly to those of other carriers, to obtain certain rights to deploy facilities inside Bell company switching offices, to obtain telephone numbers from the telephone numbering administrator, and to lease certain transmission circuits at cost from the Bell telephone companies. In many cases, a VoIP service provider certified as a carrier could exercise certain privileges on its own that it currently must obtain through another phone company providing wholesale service. Certified carriers also have a forum at state regulatory agencies to help resolve certain disputes with other phone companies, with an eye toward minimizing the disruptive consequences that might be felt by their customers, something Vonage might have found quite valuable in the midst of its patent dispute with Verizon.

In short, interconnected VoIP service providers already are subject to new and expanding federal regulatory requirements. State regulatory commissions are pushing to assert their jurisdiction in new ways on VoIP service providers, and reaching into their bank accounts to impose penalties and to collect regulatory fees. But the impact of that new regulation may not be as bad as advertised, and indeed, may be only one additional sign that VoIP has moved beyond an emerging service and is well down the road to being established as a broadly accepted addition to the telecom marketplace.

Michael W. Fleming, Edward S. Quill, Jr., and Brian McDermott are partners in the Telecommunications Group of Williams Mullen, PC. They have practiced before the Federal Communications Commission, the United States Department of Justice, and numerous state regulatory commissions representing the interests of competitive carriers. Michael W. Fleming can be reached at +1 703 760 5248 or mwfleming@williamsmullen.com.

User Comments !

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Rich Mon, 25 Jun 2007 08:01:41 PDT

It should give Vonage allot more power during their next court date. This will all settle down. Regulations however mean Vonage should pay some taxes

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