

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

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

COMCAST’S STATEMENT OF POSITION

1. Does federal law preempt the Commission’s jurisdiction over Comcast IP Phone’s voice over internet protocol (VoIP) service?

Yes. VoIP services are a burgeoning area of communication. The FCC opened a proceeding in 2004 to determine whether VoIP services should be regulated and, if so, to what extent and by whose authority. *See In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28, 2004 WL 439260, 10 F.C.C.R. 4863 (F.C.C. March 10, 2004) (the “*IP-Enabled Rulemaking Proceeding*”). The FCC explained that the purpose of the *IP-Enabled Rulemaking Proceeding* is to facilitate the transition from traditional legacy networks to this new type of internet-based communication, “relying wherever possible on competition and applying discrete regulatory requirements only where such requirements are necessary to fulfill important policy objectives.” *IP-Enabled Rulemaking Proceeding*, ¶ 5.

The FCC has issued several VoIP-related Orders since opening the *IP-Enabled Rulemaking Proceeding*, but has not authorized any state to impose on VoIP service providers certification or tariff regulations such as those raised in Staff’s Complaint. To the contrary, the FCC has explained that the *IP-Enabled Rulemaking Proceeding* “will resolve important regulatory matters with respect to IP-enabled services generally, including . . . the extent to which states have a role in such matters.” *In re the Matter of Vonage Holdings Corporation*

Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211 (Nov. 12, 2004) (the “Vonage FCC Order”).

The FCC has ruled against other state commissions that have similarly attempted to regulate VoIP services. In the Vonage FCC Order, the FCC found that the Minnesota Public Utilities Commission’s attempt to regulate the Vonage VoIP service “directly conflicts with our pro-competitive deregulatory rules and policies governing entry regulations, tariffing, and other requirements arising from these regulations for services such as Digital Voice.”

The FCC, “not the state commissions, has the responsibility and obligation to decide whether certain regulations apply to [Vonage’s] Digital Voice and other IP-enabled services having the same capabilities.” Vonage FCC Order, ¶ 1. The same is true for VoIP services that differ from Vonage’s: “To the extent other entities, such as cable companies, provide VoIP services, we would preempt state regulation to an extent comparable to what we have done in this Order.” Vonage FCC Order, ¶¶ 32, 46.

In its Vonage decision, the FCC identified the following characteristics that would render VoIP service offered by a cable operator subject to the same preemption applicable to Vonage’s service: “a requirement for a broadband connection from the user’s location; a need for IP-compatible CPE; and a service offering that includes a suite of integrated capabilities and features, able to be invoked sequentially or simultaneously, that allows customers to manage personal communications dynamically, including enabling them to originate and receive voice communications and access other features and capabilities, even video.” Vonage FCC Order at ¶ 32. Comcast’s VoIP service meets all three preemption criteria. See pp. 3-4 of Choroser rebuttal testimony.

The FCC, not the Commission, has jurisdiction to determine whether, to what extent, and under whose authority VoIP services such as Comcast’s Digital Voice may be subject to

regulation. Until these issues are resolved by the FCC, this Commission lacks jurisdiction to categorize as telecommunications and, as a result, regulate Comcast's Digital Voice service. Staff's assertions regarding the applicability of Missouri statutes are at least premature, as an FCC classification of CDV as an information service would give rise to an intolerable conflict of policy prerogatives, and federal primacy in such matters is clear.

2. If the Commission is not preempted by federal law, should the Commission refrain from taking any action concerning Comcast IP Phone's VoIP service until the FCC classifies VoIP services?

Yes. As discussed above, the FCC, not this Commission should first define and then make the determination of how VoIP services are regulated. However, if the Commission believes that the FCC has not preempted the Commission, the Commission should nevertheless, refrain from adding regulatory uncertainty by imposing state regulation on Comcast's VoIP services absent *clear* authority to do so. This lack of clarity is evidenced, as discussed on pp. 9-10 of Choroser's rebuttal testimony, by this Commission's own findings in the context of reciprocal compensation payments where it has already been determined that VoIP service is an information service. A federal court upheld the Commission's decision.

While the Commission's service quality, billing and tariffing rules are not applicable to VoIP providers, Comcast is effectively disciplined by market forces. It is unnecessary and costly to force Comcast to adhere to the Commission's requirements because Comcast has no market power and consumers enjoy an unfettered ability to change providers. Comcast's behavior is properly and effectively disciplined by the consumer's ability to choose an alternative provider and by Comcast's desire not to lose a subscriber who likely also subscribes to video and internet services.

Comcast recognizes the importance of certain social obligations that regulatory commissions oversee. For example, Comcast voluntarily pays Commission assessments as well

as the state USF fee, municipal 911 fees, state relay fees and municipal license taxes. Comcast adheres to the FCC's truth-in-billing standards and voluntarily provides other public benefits such as free directory assistance for the visually impaired.

Granting Staff's complaint would contradict existing Commission precedent and federal case law. In addition, the lack of any compelling need for regulatory protections and the fact that the FCC is in the process of determining the classification of VoIP service, lead to the conclusion that the Commission and Missourians are best served by the denial of Staff's complaint.

Respectfully submitted,

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ATTORNEYS FOR COMCAST IP PHONE, LLC

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been transmitted electronically to all counsel of record this 19th day of July, 2007.

/s/ Mark P. Johnson

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