

**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-2007-0111
)	
Comcast IP Phone, LLC,)	
Respondent.)	

REPLY BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

The Office of the Public Counsel supports the position of the Staff of the Missouri Public Service Commission (Staff) in this Complaint and concurs in the Staff's Initial Brief. Public Counsel asks the Missouri Public Service Commission (PSC) to authorize the Staff to pursue the penalties provide by statute, but more importantly to issue an order directing that Comcast immediately commence the required certification or cease providing this service or suffer additional daily monetary penalties.

The Staff's complaint is well grounded in public policy and regulatory law and history which recognize that the regulation of telephone service is a partnership between the federal government and the states. Congress has made local service as a matter within the scope of state regulation. 47 U.S.C. §152(b). Missouri has the right as does all states to establish requirements and procedures for the certification of providers operating with the state (both local and interstate), and the right to regulate the prices, conditions and terms of service, the quality of service, safety, adequacy of service, billing and collection, and the rights and obligations of customers and telecommunications providers as a function of the police power of the state. These powers and duties are inherent in the state's right to protect the health, safety, and general welfare of the residents and promote the public interest the state. The state's regulatory power in

this area as in many others cannot be considered preempted by the federal government without clear and unequivocal intent of preemption. That has not occurred with respect to Digital Voice over fixed VoIP services.

In absence of federal regulation, the Missouri Public Service Commission has jurisdiction over telecommunications companies that offer or provide intrastate telecommunications services pursuant to Section 386.250(2) and Chapter 392, RSMo, (2000) relating to the regulation of all telecommunications companies. In matters this essential to telecommunications and the public interest, a vacuum in regulation should not exist given the nature of the state and federal partnership and authority in this field.

The arguments of Comcast and Amicus AT&T opposing PSC jurisdiction cannot overcome the specific ruling of the Federal District Court, Western District of Missouri in *Comcast IP Phone of Missouri, LLC, et al v. The Missouri Public Service Commission*, January 18, 2007 (Case No. 06-4233-CV-C-NKL) on this issue under these same facts:

While the absence of a federal regulation may "imply an authoritative federal determination that the area is best left unregulated," Arkansas Elec. Coop. Corp. v. Arkansas Public Serv. Comm'n, 461 U.S. 375, 384, 103 S. Ct. 1905, 76 L. Ed. 2d 1 (1983), the Court is unaware of any such intent by lawmakers in this instance. Indeed, federal courts, as well as the FCC, have discussed the characteristics and regulation of telecommunications services (including VoIP services). *See, e.g., Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 125 S. Ct. 2688, 162 L. Ed. 2d 820 (2005); Pulver.com Order, 19 F.C.C.R. 3307; AT&T Order, 19 F.C.C.R. 7457.

Accordingly, the Court finds that Congress did not intend for VoIP services to be completely unregulated. And, unless preempted or faced with a contrary decision from a relevant federal agency, a state agency may interpret a federal statute and apply its dictates. **Therefore, in the absence of preemption or a contrary determination by the FCC, the MoPSC has jurisdiction to decide whether Digital Voice is a telecommunications service.**
(Emphasis supplied)

Therefore, since federal law and relevant FCC rulemaking interpreting that law has not preempted the Missouri Public Service Commission's jurisdiction over fixed VoIP services and Comcast's Digital Voice (CDV), the Complaint is well taken and Public Counsel urges the Commission to enter its order to authorize the Staff to pursue the penalties provide by statute, and issue an order directing that Comcast immediately commence the application process to obtain the required certification or immediately cease providing this service or incur additional daily monetary penalties.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, emailed or hand delivered this 12th day of October, 2007 to the following attorneys of record:

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