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Witness: Beth Choroser
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Case No.: TC-2007-0111
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**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

**REBUTTAL TESTIMONY
OF
BETH CHOROSER
ON BEHALF OF COMCAST IP PHONE, LLC**

JUNE 1, 2007

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

AFFIDAVIT OF BETH CHOROSER

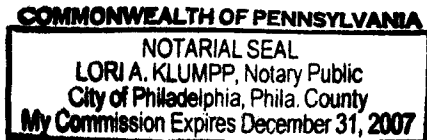
COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF PHILADELPHIA) ss.

Beth Choroser, of lawful age, on her oath states:

1. that she has read the foregoing Rebuttal Testimony;
2. that the answers in the foregoing Rebuttal Testimony were given by her;
3. that she has knowledge of the matters set forth in such answers; and
4. that such matters are true and correct to the best of her knowledge and belief.

Beth Choroser
Beth Choroser
Senior Director of Regulatory Compliance

Subscribed and sworn to before me this 24th day of May, 2007.



Lori A. Klumpp
_____, Notary Public in and for the State of
Pennsylvania, residing at Philadelphia County.
My Commission expires: 12/31/2007

1 **I. INTRODUCTION AND BACKGROUND**

2 **Q. Please state your name and business address.**

3 A. My name is Beth Choroser and my business address is 1500 Market Street,
4 Philadelphia, PA 19102.

5 **Q. Who is your employer and what is your professional capacity?**

6 A. I am employed by Comcast Cable Communications, LLC as the senior director of
7 regulatory compliance. In that role, I have responsibility for a wide variety of regulatory
8 matters related to Comcast's voice business. These include compliance at both the state and
9 federal levels.

10 **Q. What is the relationship between your employer, Comcast Cable**
11 **Communications, LLC, and Comcast IP Phone, LLC, the Respondent in this case?**

12 A. Comcast IP Phone, LLC is a direct subsidiary of Comcast Cable
13 Communications, LLC.

14 **Q. What is your educational and work background?**

15 A. I received a Bachelor of Arts Degree from Pennsylvania State University and a
16 Master of Business Administration from Syracuse University. I have worked in various
17 capacities in both the communications industry and the electric utility industry. My
18 experience includes work in the areas of rates, billing, taxation, regulatory reporting, tariffs,
19 interconnection, numbering, and overall regulatory compliance. From 1985 to 1988 I worked
20 for New England Electric System as a rate analyst and later as staff assistant to the Chief
21 Operating Officer. In those roles I performed cost of service studies, fuel cost studies, and
22 testified before the state commission on fuel cost charges. I also oversaw budgeting for the
23 Chief Operating Officer. From 1997 to 1999 I was with ATX Telecommunications. Initially
24 I had responsibility for billing specifications and revenue assurance. Subsequently, I
25 managed the end-user taxation and regulatory functions. I have been with Comcast since
26 2000. From 2000 to 2003 I was the Manager of Regulatory Compliance for the company's

1 start-up commercial voice business, Comcast Business Communications, LLC. I had
2 responsibility for tariffs, billing compliance, interconnection, regulatory reporting, end user
3 taxation and surcharging. From 2003 until the present, I have held positions of increasing
4 responsibility in the company's residential voice business, including promotions to my current
5 title of Senior Director.

6 **Q. Have you previously testified on behalf of Comcast?**

7 A. Yes. I have testified on behalf of Comcast Phone of Arizona, LLC in its recent
8 certification approval hearing before the Arizona Corporation Commission.

9 **EXECUTIVE SUMMARY**

10 **Q. Please provide a succinct summary of your rebuttal testimony.**

11 A. My testimony is intended to respond to the testimony of William L. Voight, filed
12 on behalf of Commission Staff.

13 Commission and federal court precedent are contrary to Staff's Complaint. Staff
14 alleges that Comcast Digital Voice ("CDV") is a telecommunications service, but this
15 Commission has determined that internet protocol to public switched telephone network (IP-
16 PSTN) traffic is an information service, and not a telecommunications service, under the
17 Telecommunications Act in Case No. TO-2005-0336.¹ Although the Commission dealt with
18 this issue in the context of an arbitration issue involving intercarrier compensation, the
19 decision does make it clear that IP-PSTN traffic is an information service because the form
20 and content of the information sent and received is altered through a net protocol conversion
21 from the digitized packets of the IP protocol to the time division multiplex (TDM) protocol
22 used on the PSTN.
23

24
25 ¹ *Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for a successor*
26 *Interconnection Agreement to the Missouri 271 Agreement ("M2A")*, July 11, 2005.

Staff's claim that Comcast is providing a "telecommunication service" under Missouri law is inconsistent with the Commission's and a Missouri federal court's earlier determination that IP-PSTN traffic is an information service, which is not subject to state regulation. Therefore, any order by this Commission that CDV is a telecommunications service would violate that precedent. Rather than granting Staff's Complaint and creating regulatory confusion, the Commission should deny Staff's Complaint and allow the FCC to continue its review in making the ultimate classification of interconnected voice over internet protocol (VoIP) service.

DESCRIPTION OF COMCAST IP PHONE, LLC SERVICE

Q. What is VoIP technology?

A. VoIP technology enables the real-time transmission of voice in the form of data packets, which are sent over the public Internet or over private managed Internet Protocol (IP) networks.

Q. Which type of VoIP does Comcast IP Phone, LLC provide?

A. Comcast provides its interconnected VoIP service over a private managed IP network.

Q. Please describe the configuration and equipment used as part of Comcast's VoIP service, which is known as Comcast Digital Voice.

A. A CDV customer is provided with customer premise equipment called an embedded multimedia terminal adaptor (eMTA). The eMTA includes a jack, into which the customer plugs a phone or in-house wiring. The eMTA contains a cable modem for use in accessing the Internet, as well as a device that converts phone signals and voice into IP packets. Both the voice packets and the data packets that are destined for the public Internet travel over the same coaxial cable which runs from the customer's home to the Comcast head end. All of the packets, whether voice-related or Internet-bound, terminate to the same equipment at the Comcast head end. That equipment is called a cable modem termination

1 system (CMTS). Voice signaling packets are then sent to a call management server (CMS),
2 which functions like a router on the Internet. This equipment is sometimes referred to as a
3 soft switch. From that point, voice calls can be routed in a variety of ways, depending upon
4 their destination. If a call is destined for an ILEC or CLEC subscriber, the IP packets must be
5 converted to TDM signals so that they can be sent to the public switched telephone network
6 (PSTN). This is called a net protocol change.

7 **Q. How does a VoIP service like Vonage differ from CDV and how is it similar**
8 **to CDV?**

9 A. Services like Vonage require the subscriber to purchase a separate broadband
10 connection because Vonage does not own a facility to the subscriber premise. Because these
11 services rely on a third party broadband connection, they are often referred to as over-the-top
12 services. Vonage does, however, provide a modem that performs a similar function to the
13 CDV eMTA. When a Vonage customer makes a call using a Comcast broadband connection,
14 that call travels over the same facility as a CDV call during its transmission from the customer
15 premise to the Comcast head end and it terminates to the same CMTS equipment in the
16 Comcast head end. CDV customers do not need to purchase a separate broadband connection
17 because CDV utilizes the connection that is already in place due to Comcast's broadband-
18 enabled (hybrid fiber coax) facility entering the customer's home. While CDV traffic remains
19 on a private managed IP network until it is sent to the PSTN, a Vonage call traverses the
20 public Internet before it is routed to the PSTN. Both CDV and Vonage offer the capability for
21 customers to manage their service and features over an Internet portal, and both portals permit
22 subscribers to listen to voicemails, view call logs, and manage vertical features. While
23 Vonage service is marketed as a portable service, which can be used nomadically, Comcast
24 chose to introduce a service that is intended to be used from a fixed location.

25 Another difference is that Vonage offers a choice of telephone numbers from a
26 variety of U.S. rate centers and CDV requires that a customer take a primary telephone

1 number that correlates to the physical location of the eMTA. While CDV does not have
2 technical differences from Vonage that preclude it from assigning telephone numbers outside
3 of the subscriber's rate center, Comcast voluntarily chooses not to engage in that practice due
4 to the implications for E911 service.

5 **Q. Do CDV and over-the-top VoIP services share any other common**
6 **characteristics?**

7 A. Yes. Both CDV and providers like Vonage rely on regulated CLEC's in order to
8 obtain certain functions for their service. These include interconnection to the PSTN, access
9 to telephone number resources, porting and access to 911 networks. Both services involve a
10 net protocol conversion from IP to TDM when calls are routed to the PSTN.

11 **Q. How is CDV service marketed and billed?**

12 A. CDV service is marketed and billed as an "any distance" service, whereby the
13 subscriber pays a flat monthly fee for an unlimited number of domestic calls, regardless of
14 duration, and regardless of whether the calling and called parties reside on the same street, or
15 whether they reside on opposite coasts of the United States. The CDV invoice also includes
16 charges for video and Internet access if the consumer subscribes to those services from other
17 Comcast affiliates, and the monthly recurring charge for all three products may be presented
18 as a single line item if the services were purchased in a discounted bundle. Comcast would
19 need to expend significant development dollars in order to bill for its services in a different
20 manner.

21 **LEGAL AND REGULATORY BACKGROUND**

22 **Q. Does Commission consideration of the issues in this docket require**
23 **knowledge of the legal context in which they arise?**

24 A. Yes.

25 **Q. Why?**

26 A. The prior Commission and federal court rulings on IP- PSTN traffic are key to
27
28

1 applying the facts in this docket to the allegations of Staff's Complaint and the question of
2 Commission jurisdiction over CDV.

3 **Q. Staff alleges that CDV is telecommunications, but by way of background,**
4 **what are information services?**

5 A. Section 3(20) of the Communications Act, 47 U.S.C. § 153(20) provides that an
6 information service is "the offering of a capability for generating, acquiring, storing,
7 transforming, processing, retrieving, utilizing or making available information via
8 telecommunications."

9 **Q. What is protocol conversion and what is the significance of net protocol**
10 **conversion in defining whether a service is an information service?**

11 A. Protocol conversion is when a call originates in a particular protocol and is
12 changed to a different protocol sometime during the transmission of a call. Net protocol
13 conversion is when the call originates in one protocol (for example IP, which is packet
14 switched protocol) and is completed to the recipient in another protocol (for example TDM,
15 which is a circuit switched protocol.)

16 The FCC has recognized that services that include net protocol conversion are
17 information services.² Moreover, as discussed later in my testimony, this Commission has
18 recognized that there is a net protocol conversion from packet switched protocol to circuit
19 switched protocol in IP-PSTN traffic and therefore IP-PSTN traffic is an "information"
20 service under the Telecommunications Act.

21 **Q. Are enhanced services the equivalent of an information service?**

22 A. Yes. The FCC in its ISP Remand Order³ indicated that the 1996 Act's definition
23 of information services is the same as the FCC's traditional definition of enhanced services.

24
25 ² *Nonaccounting Safeguards Order* 11 FCC Record 21905, section 104 (1996).

26 ³ *In the Matter of Intercarrier Compensation for ISP-Bound Traffic*, FCC 01-131 (April 27, 2001) fn.16.

1 **Q. Is CDV subject to the dictates of the FCC's orders for interconnected VoIP**
2 **providers?**

3 A. Yes. CDV is subject to the FCC's interconnected VoIP-related orders on
4 Universal Service, E911, CALEA and CPNI. Thus, the FCC has already imposed a
5 substantial level of control on VoIP services.

6 **Q. Has the FCC addressed the regulatory classification of VoIP in any of the**
7 **orders, that is, whether VoIP is an information service or a telecommunications service?**

8 A. No. In fact, the FCC very clearly indicated that it was not yet deciding the
9 regulatory classification of VoIP in the above-noted orders. Instead, the FCC imposed the
10 related requirements discussed above pursuant to its ancillary authority under Title I of the
11 Communications Act of 1934, as amended (the "Act"). The FCC did, however, describe
12 VoIP as a service that contains components of both "telecommunications" and "information"
13 services. In paragraph 15 of its First Report and Order and Further Notice of Proposed
14 Rulemaking on CALEA (F.C.C.R. 14,989, 2005), the FCC noted that it "does not recognize
15 the telecommunications component of an information service as a telecommunications service
16 under the Communications Act."

17 **Q. Does the FCC recognize that there are different forms of VoIP?**

18 A. Yes. In the FCC's order in AT&T's Petition for Declaratory Ruling that its
19 Phone-to-Phone IP Telephony Services are Exempt from Access Charges (19 F.C.C.R. 7457,
20 released April 21, 2004), the FCC noted that "VoIP can be transmitted over the public Internet
21 or over private IP networks, using a variety of media."

22 **Q. Has the FCC indicated that the way in which a service is billed and marketed**
23 **might have a bearing upon how the service is treated for regulatory purposes?**

24 A. Yes. In paragraph 29 of its *Vonage* order (19 F.C.C.R. 22404, 2004), the FCC
25 stated: "Vonage would have to change multiple aspects of its service operations that are not
26 nor were ever designed to incorporate geographic considerations, including modifications to

1 systems that track and identify subscribers' communications activity and facilitate billing; the
2 development of new rate and service structures; and sales and marketing efforts, just for
3 regulatory purposes." In a footnote to this statement, the FCC cited a decision in *Illinois Bell*
4 *Tel. Co. v. FCC*, 883 F.2d 104, 112-13 & n.7 (D.C. Cir. 1989) (referencing *Louisiana Public*
5 *Service Commission*, 476 U.S. 355), noting that "Marketing realities might themselves create
6 inseparability."

7 **RESPONSE TO MR. VOIGHT'S DIRECT TESTIMONY**

8 **Q. Is Mr. Voight's position that CDV provides telecommunications service in**
9 **Missouri conclusive with respect to the regulatory oversight of the Commission?**

10 A. No. While Section 386.020 (52), RSMo, defines "telecommunications service" as
11 the transmission of information by wire, radio, optical cable, electronic impulses, or other
12 similar means, this definition encompasses services which are clearly outside the purview of
13 the Commission. For example, Internet access services transmit information by the media
14 listed in the definition but they have been classified as information services by the FCC and
15 are indisputably outside the regulatory jurisdiction of the Commission.

16 More importantly, however, the crux of the matter is that both Mr. Voight and the
17 allegations contained in Staff's Complaint fly in the face of existing law. Staff is attempting
18 to apply telecommunications regulations to a service that has never been classified as a
19 telecommunications service. In fact, as I point out below, both this Commission and a
20 Missouri federal court have found that interconnected VoIP is not a telecommunications
21 service.

22 **Q. Has Mr. Voight provided conclusive evidence that CDV provides local**
23 **exchange and interexchange telecommunications service in Missouri, pursuant to**
24 **Sections 386.020 (31) and 386.020 (24), RSMo?**

25 A. No. While a CDV customer residing in Missouri can certainly reach other voice
26 service subscribers who are either in Missouri or outside Missouri, this is also true of
27

1 subscribers to other IP-PSTN capable services such as Vonage and peer to peer services such
2 as Skype. In fact, when a CDV customer initiates a call to a Vonage customer, a mobile
3 phone customer, or any other customer using a foreign exchange number, Comcast has no
4 idea where the terminating subscriber is located. In addition, as described further below,
5 these capabilities are irrelevant to the classification of CDV. Most importantly, the fact is that
6 whether or not a CDV customer in Missouri can place a call to another voice services user in
7 Missouri is irrelevant since both this Commission and a Missouri federal court have found
8 that interconnected VoIP, which offers IP-PSTN connectivity, is not a telecommunications
9 service. Therefore, the service is not subject to state regulation. Until the FCC makes it
10 ultimate classification, the Commission should abide by its prior order and the *Missouri VoIP*
11 *Order*.

12 **Q. Please explain why the capability of CDV subscribers to reach other voice**
13 **service subscribers within Missouri or outside of Missouri is irrelevant to the question of**
14 **whether CDV is providing local exchange or interexchange telecommunications service**
15 **in Missouri?**

16 A. While I am not an attorney, I have read the decision in *Southwestern Bell*
17 *Telephone v. Missouri Public Service Commission, et al.*, 461 F. Supp.2d 1055 (E.D. Mo.
18 2006) (*Missouri VoIP Order*). In the *Missouri VoIP Order*, the Court upheld this
19 Commission's ruling that IP-PSTN traffic should be charged intercarrier compensation at
20 reciprocal compensation rates, rather than switched access rates because "...IP-PSTN traffic
21 is an "enhanced service" that falls squarely within the 'net-protocol change' portion of the
22 FCC's multi-part enhanced service definition." *Id.* at 1079.

23 The Court concluded that the Commission's decision was consistent with the Act
24 and FCC rules, and that it was not arbitrary or capricious. The Court stated that: "The
25 decision is consistent with the FCC's orders because (1) federal law does not exempt IP-
26 PSTN traffic from reciprocal compensation obligations, and (2) federal access charges are

1 inapplicable to IP-PSTN traffic because such traffic is an ‘information service’ or an
2 ‘enhanced service’ to which access charges do not apply.” *See Missouri VoIP Order*, at p.
3 1079.

4 The *Missouri VoIP Order* makes Mr. Voight’s analysis irrelevant, and
5 demonstrates why the Staff’s Complaint should be denied, because Mr. Voight and Staff are
6 applying a state telecommunications statute to an interconnected VoIP service that this
7 Commission and a Missouri federal district court have determined is not a
8 telecommunications service.

9 **Q. Does CDV service fall within the FCC’s definition of interconnected VoIP**
10 **service which Mr. Voight cites in his testimony?**

11 A. Yes. CDV enables real-time, two-way voice communications. CDV is provided
12 over a broadband network. CDV service requires the use an eMTA, as described earlier in
13 my testimony, which is IP-compatible customer premises equipment. Finally, CDV permits
14 users to receive calls that originate on the PSTN and to terminate calls to the PSTN.

15 **Q. Are there other aspects of CDV which distinguish it from traditional voice**
16 **services?**

17 A. Yes. As Mr. Voight describes in his testimony, Comcast is able to offer its data,
18 video and voice services over the same wires. This converged network permits Comcast to
19 offer its services more efficiently, which translates to savings for Missouri consumers. This
20 efficiency extends to billing, installation, and customer service, so that CDV subscribers can
21 have questions about multiple services addressed by a single customer service representative,
22 and they need pay only one invoice each month. Convergence also allows Comcast to deploy
23 enhanced features, which integrate its data, video and voice services.

24 **Q. On p. 11 of his direct testimony, Mr. Voight discusses the advertising of**
25 **CDV. Are his statements accurate?**

26 A. No. Mr. Voight implies that Comcast offers Digital Phone service in Missouri.

1 Only CDV is offered in Missouri. Digital Phone is not offered in Missouri.

2 **Q. Are there inaccuracies in Mr. Voight's description of CDV on pp. 12-13?**

3 A. Yes. Mr. Voight has not considered the integration of Comcast's products
4 described above. Comcast engages in ongoing development to permit customers to leverage
5 access to their services across all platforms. In fact, on May 7, 2007, Comcast announced
6 plans to launch later this year its "SmartZone" communications center. This provides a fully
7 integrated, Web-based communications center that lets customers go to one central location to
8 receive email, check voicemail online, send instant messages and manage a new smart address
9 book that updates contacts on email, cell phones, personal digital assistants (PDAs) and
10 digital phones. Other planned applications for this tool include the ability to program a digital
11 video recorder from the Web and caller ID that appears on television and personal computer
12 screens.

13 In addition, during the May 2007 National Cable Telecommunications
14 Association show, Comcast announced plans that allows our network to enable an enhanced
15 cordless phone to be used in conjunction with CDV. Such a phone will permit on-screen
16 access to emails, voice mail, instant messaging, address books and Internet-based phone
17 directories. Our network will also allow integration of the phone with the eMTA device
18 described earlier in my testimony. (See Appendix A to my testimony.)

19 Also, Mr. Voight fails to point out that the provision of CDV involves net
20 protocol conversion, which takes place when a call is converted from IP format to TDM
21 format so that it can be sent to an end user on the PSTN. Clearly, that conversion
22 "transforms" information.

23 **Q. Does Mr. Voight recognize the nascent nature of CDV and VoIP services?**

24 A. Not at all. In fact, Comcast has been offering CDV for less than two years, and
25 like any nascent technology, it will evolve over time and develop features and enhancements
26 it does not have today, such as those described in my immediately prior answer.

Q. Why is CDV's nascent status important to its regulatory treatment and overall regulatory policy?

A. Given its nascent status, it is not surprising that the FCC has not yet classified VoIP service. Indeed, it is often prudent to allow services and technologies to develop prior to determining regulatory classification, particularly when a potential classification as telecommunications would prematurely burden a service with detailed and inappropriate regulatory obligations. Moreover, when regulations are applied to nascent services, regulatory clarity is important both for the development of the particular service and the market place. By being deliberative in its regulatory review of VoIP services, the FCC appears to recognize just that.

However, should the Commission grant Staff's Complaint and subject CDV to the resultant regulations despite the prior Commission and the *Missouri VoIP Order* findings, there would not only be a distinct lack of regulatory clarity, but the Commission itself would be creating regulatory confusion by contradicting itself and a federal court. That is simply not in the interest of the Missouri market place or the development of VoIP services and the competitive choice they offer Missouri consumers. The best course of action for the Commission is to allow the FCC to decide the ultimate classification of interconnected VoIP.

Q. Are Mr. Voight's citations to prior FCC orders on the subject of VoIP adequate to conclude that CDV should be regulated by the Commission?

A. No. Mr. Voight fails to cite to other relevant decisions by the FCC, as well as the *Missouri VoIP Order*, which is discussed earlier in my testimony. By way of further example, in paragraph 32 of the *Vonage* order, the FCC stated: "...the provision of tightly integrated communications capabilities greatly complicates the isolation of intrastate communication and counsels against patchwork regulation. Accordingly, 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." It is also notable that the FCC

1 has conspicuously made the point in each of its VoIP-related orders, that it was not classifying
2 the service for regulatory purposes.

3 **Q. In terms of the classification of interconnected VoIP service, the *Missouri***
4 ***VoIP Order* only addressed intercarrier compensation issues and not directly whether**
5 **state regulation is applicable. Are you extending the *Missouri VoIP Order* beyond its**
6 **applicability?**

7 A. No. Once IP-PSTN service is classified for a particular purpose, such as
8 intercarrier compensation, it is effectively classified for all purposes. There is no basis that
9 IP-PSTN could be classified as an information service for intercarrier compensation but
10 classified as telecommunications for the application of state Commission regulation.
11 Therefore, a service is classified as either one or the other, and while the FCC is the ultimate
12 authority on regulatory classification, the Commission and the *Missouri VoIP Order* have
13 already determined that IP-PSTN service is not telecommunications, thereby foreclosing the
14 Commission from issuing a contrary determination.

15 **Q. Are you advocating that CDV is an information service?**

16 A. No. I am saying that because both the Commission the *Missouri VoIP Order* has
17 found IP-PSTN service to be an information service, the Commission cannot now grant
18 Staff's complaint and find that an IP-PSTN is a telecommunications service. It is up to the
19 FCC to determine the classification of interconnected VoIP, and the Commission should deny
20 Staff's complaint and allow the FCC's process to take place.

21 **Q. Does the FCC's Universal Service VoIP Order⁴ provide conclusive evidence**
22 **that an interconnected VoIP provider who can track the originating and terminating**
23 **locations of a call is subject to state commission regulation as a telecommunications**
24 **service provider?**

25 ⁴ *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service, Report and Order and Notice of Proposed*
26 *Rulemaking*, 21 FCC Red 7518 (2006) "USF VoIP Order").

1 A. No. While the FCC stated in paragraph 56 of the *USF VoIP Order*: "...we note
2 that an interconnected VoIP provider with the capability to track the jurisdictional confines of
3 customer calls would no longer qualify for the preemptive effects of our *Vonage Order* and
4 would be subject to state regulation," the FCC still declined to classify VoIP as either an
5 information service or a telecommunications service. In paragraph 58 of the *USF VoIP*
6 *Order*, the FCC said: "As we stated earlier, we have not yet classified interconnected VoIP as
7 either a telecommunications service or an information service. Because we have not yet made
8 that classification, some interconnected VoIP providers may hold themselves out as
9 telecommunications carriers, but others do not, considering themselves instead to be 'end
10 users'."

11 Further, it is important to look carefully at the language that the FCC used. The
12 FCC did not say "would be subject to *state public utility commission* regulation," but rather
13 "state regulation" without any further definition, explanation or description of the extent of
14 such regulation. Any belief that the FCC necessarily meant state public utility commission
15 regulation is a leap beyond the plain words of the *USF VoIP Order*. I won't speculate on
16 what the FCC may have meant, but clearly, the FCC is fully aware of state public utility
17 commissions and could have clearly included a reference to them in this language had it
18 desired to do so.

19 Of course, regardless of the language in the *USF VoIP Order*, the Commission's
20 jurisdiction over CDV will be determined by the FCC's ultimate classification of
21 interconnected VoIP. To date, however, the *Missouri VoIP Order* is the only definitive ruling
22 on the matter, and that order is clear in its determination that interconnected VoIP is not a
23 telecommunications service.

24 Furthermore, the FCC clearly recognizes that some VoIP providers voluntarily hold
25 themselves out as telecommunications carriers and others do not, but that is not determinative
26 of the ultimate classification of the service. As discussed later in my testimony, Charter

1 Fiberlink-Missouri's and other cable companies' decision to hold themselves out as
2 telecommunications carriers under Missouri law is a voluntary action, and it does not set a
3 precedent for the way in which Comcast must offer its CDV service.

4 **Q. Can Comcast track the jurisdictional confines of customer calls?**

5 A. Comcast can make assumptions about the confines of customer calls using the
6 same method that Vonage and other over-the-top VoIP providers have at their disposal.
7 Comcast must rely on the NPA-NXX codes of the calling and called party telephone numbers.
8 As described earlier in my testimony, when a CDV customer initiates a call to a nomadic
9 VoIP customer, a mobile phone customer, or any other customer using a foreign exchange
10 number, the terminating NPA-NXX may not be indicative of the geographic endpoint of the
11 call. As such, the characteristic of a service as fixed or nomadic has no bearing on whether
12 the jurisdiction of calls can be conclusively tracked. Rather the classification of a service as
13 an information service or a telecommunications service is the relevant issue.

14 **Q. Does the Commission's decision in Case No. LT-2006-0162 provide adequate**
15 **evidence to conclude that CDV should be regulated by the Commission?**

16 A. No. That decision has also been appealed.

17 **Q. Historically, why were telephone companies regulated?**

18 A. Regulation was put in place to control the market power of the telephone
19 companies. Throughout most of the twentieth century most local exchanges were served by a
20 monopoly phone company, which was given an exclusive franchise to serve and in return was
21 subjected to traditional public utility regulation. Regulation, which was necessary to
22 constrain the telephone company's pricing and profits, required the attention and resources of
23 an expert public agency because of the complexity of the ratemaking process. In addition,
24 that agency needed to protect consumers from potential monopoly abuses or inadequate
25 service, because there was no other way for the harmed customer to receive essential
26 telecommunications services.

1 **Q. Does the traditional paradigm of telecommunications regulation still apply?**

2 A. For the most part it does not apply. Competition is now developing for many
3 customers in many geographical markets. As competition spreads, the incumbents' market
4 power will diminish, and this will eliminate the need to control the incumbents' prices and
5 quality of service. Over time, consumers will be protected adequately by marketplace forces,
6 and will not be "at the mercy" of a monopoly.

7 **Q. During this transition period is it necessary to apply traditional utility**
8 **regulation to the new entrants in voice services markets?**

9 A. No. The new entrants do not have market power and cannot overcharge
10 consumers or degrade service without losing customers and losing money. The consumer has
11 choices – between the incumbent and the entrant, and often among many new entrants. If an
12 entrant treats the customer badly, he or she can shop someplace else. Therefore, from a public
13 policy standpoint, it is appropriate to rely on the marketplace to discipline the new entrants.

14 **Q. Mr. Voight believes that subjecting CDV to state regulation is necessary for**
15 **consumer protection. Preventing any provider in this market from taking advantage of**
16 **consumers' lack of sophistication is necessary, but is the regulation Mr. Voight calls for**
17 **necessary?**

18 A. No. Missouri law has a statute in place to prevent "deception, fraud, false
19 pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or
20 omission of any material fact in connection with the sale or advertisement of any merchandise
21 in trade or commerce."⁵ This law applies to all businesses operating in the State of Missouri,
22 and is specifically designed to prevent a firm from taking advantage of a consumer's lack of
23 knowledge or susceptibility to fraud. This law serves as a safety net to prevent unfair
24 business conduct, and is premised on the concept that the marketplace provides the most
25 significant source of discipline over a firm's behavior.

26 ⁵ Missouri Revised Statutes, Chapter 407, Merchandising Practices, Section 407.020

1 Further, if Comcast were to receive any consumer complaints that are filed with
2 the Commission, Comcast would voluntarily cooperate with the Commission (as it does with
3 other state public utility commissions) to advise the Commission of the resolution of any such
4 consumer complaints. As Mr. Voight notes on page 16, line 2 of his testimony, "I am
5 comforted to find what appears to be very few instances of consumer dissatisfaction associate
6 with Comcast's service..." Despite Comcast's excellent service record, Mr. Voight then
7 proceeds to call for regulation to "protect consumers." "From what?" one might ask.

8 **Q. If a new entrant is not subjected to the Commission's regulations, where will**
9 **consumers be able to seek redress against unlawful business practices?**

10 A. The statute mentioned above provides for investigation of business practices by
11 the Office of the Attorney General. Indeed, the Attorney General regards the protection of
12 consumers' rights as one of his most important responsibilities.⁶ The Consumer Protection
13 Division of the Office of the Attorney General investigates consumer complaints against
14 businesses and has well-established and publicized procedures for consumers to follow,
15 including a Consumer Protection Hotline, sample complaint letters, and an informative
16 website.⁷ Among the industries that the Attorney General's Office investigates is cellular
17 telephone service. For example, several years ago, Attorney General Nixon obtained
18 agreements with telecommunications companies Nextel and Sprint requiring them to use
19 clearer and more explanatory language in their advertising for cell phone plans and in billing
20 statements sent to cell phone consumers in Missouri.⁸ I can see no reason why the same law
21 and mechanism that is used to protect the cellular telephone customer should not be adequate
22 to protect the customers of a new voice provider.

23 ⁶ Office of the Missouri Attorney General, "Know your Rights," January 2007, at 1. <http://www.ago.mo.gov/publications/knowyourrights.pdf>

24 ⁷ *Id.*

25 ⁸ <http://www.ago.mo.gov/newsreleases/2003/070303.htm>

1 **Q. What is Mr. Voight's position on whether generally applicable commercial**
2 **law will be sufficient to safeguard the interests of customers?**

3 A. Mr. Voight (p. 15) states that removing the telecommunications standards from
4 the "general oversight of an expert subject matter agency of state government is against the
5 public interest."

6 **Q. Do you agree with Mr. Voight?**

7 A. No. Mr. Voight identifies what he believes are two major problems. First he
8 states that consumers need protection. Second, he states that other carriers need to be
9 protected. I will address each of these arguments in turn.

10 **Q. Why is a subject matter agency not needed to protect consumers?**

11 A. As I explained earlier, because consumers can select and move among a variety of
12 voice providers, they need much less protection from entities that face competition, and that
13 degree of protection can be provided by the Merchandise Practice law and the intervention of
14 the Attorney General's Office when needed. Mr. Voight refers to the subject matter expertise
15 of the Commission, which may be needed for dealing with problems specific to regulated
16 utilities. However, consumer protection is not a matter requiring subject matter expertise.
17 Further, the Commission's Consumer Services Department expertise and attention appear to
18 be on matters that are unique to regulated utilities, not to the commercial practices of
19 competitive firms.

20 **Q. What is your basis for your understanding about the activities of the**
21 **Commission's Consumer Service Department?**

22 A. The Consumer Service Department highlights on its web page that "consumers
23 have certain rights to receive safe and adequate utility service, and the right to know the cost
24 of the service that is being provided."⁹ These are not concerns typically applicable to

25 _____
26 ⁹ http://www.psc.mo.gov/press/consumer_issues/Consumer_Services_Department.pdf

1 competitive industries. Consumers have a very good remedy to inadequate service or
2 ambiguous billing practices of a competitive voice service provider. As in any other
3 competitive market, the consumer can vote with his or her feet, and that will discipline the
4 market. Moreover, the market is disciplined not only by the consumer's ability to choose an
5 alternative provider, but also by Comcast's desire to retain its customers by providing superior
6 service. When Comcast risks losing a customer, it risks losing a 3-product subscriber. It is
7 unnecessary and very costly to force CDV to adhere to the highly specific billing and
8 discontinuation of service requirements of the Commission, when CDV has no underlying
9 market power. And, when circumstances warrant, a vehicle such as the Attorney General's
10 agreement with Nextel and Sprint are always available as a remedy.

11 **Q. What burdens and costs would be imposed on CDV by the Commission's**
12 **regulation?**

13 A. CDV would have to revamp its billing systems to comply with the Commission's
14 regulations and the modifications to existing systems would take many months of work. For
15 example, CDV would have to expend significant resources to record and track collections by
16 line of business, in order to comply with the Commission's requirements on customer
17 disconnects. In addition CDV would incur ongoing costs of updating the billing software and
18 responding to customer service inquiries concerning Missouri-specific bills.

19 Comcast's initial vendor estimates suggest that it would take several months and
20 cost in excess of \$4 million just to revamp Comcast's billing systems to comport with the
21 Commission's rules. Commission Staff's willingness to re-examine its rules, as suggested by
22 Mr. Voight on page 14 of his testimony, is not adequate to resolve this issue. First, any
23 decision to waive billing rules would likely come after the money had been spent by Comcast
24 because system development lead times are significant. Second, Mr. Voight only suggests a
25 willingness to review quality of service rules. In light of the systems development lead time,
26 billing development costs would continue to be passed to Missouri consumers even if a

1 potential rule waiver was granted.

2 In addition to billing system costs, Comcast, and consequently its customers,
3 would incur ongoing costs related to the Commission's quality of service rules. As discussed
4 earlier in my testimony, Comcast employs representatives who can answer a customer's
5 questions for all three Comcast products. If Comcast were required to employ separate
6 representatives to answer CDV-related questions, this would be costly as well as inconvenient
7 for consumers. Likewise, a requirement to answer all calls according to the Commission's
8 standards, would result in significant expense that would be borne by consumers. Instead of
9 engaging in the re-examination of rules, the more prudent course of action would be for the
10 Commission to simply wait until the FCC orders on the classification of interconnected VoIP
11 and, in the interim, respect the decision of the Missouri federal court, which did not find IP-
12 PSTN service to be a telecommunications service.

13 **Q. Even if not all of these regulations are necessary, shouldn't they be imposed**
14 **on CDV to "level the playing field" with the ILECs?**

15 A. No. While CDV believes that the Commission's service quality, billing and
16 tariffing rules are not applicable to VoIP providers, Comcast has every incentive to provide
17 high quality service at affordable prices to customers. Comcast is disciplined by something
18 far more effective than regulation; the marketplace. Comcast must either meet customer
19 demands or it will suffer in the marketplace.

20 Moreover, Comcast recognizes that as a voice services provider it should properly
21 shoulder certain responsibilities, so it voluntarily pays Commission assessments through its
22 regulated CLEC, Comcast Phone of Missouri, LLC. Comcast Phone of Missouri includes
23 CDV-related revenues in its assessment base for the Commission's annual assessment fee, as
24 well as for the state USF fee, municipal 911 fees and municipal license taxes. Comcast Phone
25 of Missouri also remits the state relay fee.

26 Comcast Phone of Missouri, which obtains telephone numbers on behalf of CDV,

1 is subject to the Commission's oversight of Missouri numbering resources and
2 interconnection, and the Comcast CLEC complies with porting rules on behalf of CDV in the
3 same manner as any CLEC.

4 CDV also adheres to the FCC's truth-in-billing standards (which is appropriate
5 for a nationally-priced service), and voluntarily provides many other public benefits such as
6 soft dial tone for delinquent accounts, free directory assistance calls for the visually-impaired,
7 and access to the relay system for the hearing- and speech-impaired. Comcast takes these
8 actions not because of regulatory obligation but because it recognizes the importance of
9 certain social obligations (as compared to retail regulation obligations).

10 While it is true the CDV does not file tariffs, subscribers acknowledge receipt of
11 the Comcast subscriber agreement, and tariffs may provide certain protections for a service
12 provider that a commercial contract does not provide. CDV does not have the protection of
13 the Filed Rate Doctrine (See 47 U.S.C. §203), which would make its rates presumptively
14 reasonable. Tariffs also provide certain limitations on liability that are enjoyed only by
15 regulated companies.

16 Finally, unlike incumbent carriers, Comcast does not have many of the unique
17 advantages enjoyed by Missouri incumbents in that it did not build its network using capital
18 that earned a guaranteed rate of return, and it has never served in the capacity of a monopoly
19 voice service provider.

20 **Q. Is Mr. Voight's suggestion on p. 14 that the Staff is willing to support a**
21 **re-examination of the Commission's rules for Comcast and other competitive facilities-**
22 **based voice service providers adequate to address the issues raised by Commission**
23 **regulation of CDV?**

24 A. No. In the first instance, and in light of the *Missouri VoIP Order's* precedent that
25 interconnected VoIP is not a telecommunications service, until a final FCC determination to
26 the contrary, the Commission has no jurisdiction over CDV. Any review of the

Commission's rules is therefore irrelevant to CDV unless and until a final classification of interconnected VoIP services by the FCC as telecommunications services that are subject to the Commission's jurisdiction occurs.

Mr. Voight cites Staff testimony in a cable company waiver request in Case No. TE-2006-0415. VoIP provider MCC Telephone of Missouri (MCC) filed its request for a waiver from a quality of service rule on April 25, 2006. Over a year later, there still is no decision in the case. Similarly, rule makings are also lengthy proceedings. Staff witness Henderson testified in Case No. TE-2006-0415 that if the Commission wished to open a rulemaking to revise its quality of service rules, Staff was not prepared to immediately submit rule revisions and wanted to consult with other parties before submitting revised rules.

The point is that while an examination of the service quality rules which were enacted before the advent of competition in Missouri may be a good idea and waivers of certain rules may be possible, neither can be realistically expected to help Comcast comply with existing service quality rules, which CDV was not designed to meet.

As discussed earlier in my testimony, were CDV to be subjected to Commission regulations, Comcast and its subscribers will shoulder significant and unnecessary expense to develop systems and processes that may later become obsolete as a result of the proposed rewrite of Commission rules, potential Commission rule waivers, or an FCC ruling on the classification of VoIP services.

Q. What is your response to Mr. Voight's argument that CDV must be regulated by the PSC to protect other voice service providers with whom CDV must interconnect?

A. I disagree with Mr. Voight's argument. He fails to take into account the fact that CDV does not itself interconnect with the PSTN. Rather, CDV obtains several functions from its regulated CLEC affiliate (Comcast Phone of Missouri, LLC). CDV's CLEC affiliate provides interconnection, telephone number resources, porting and access to the 911

1 networks. Since the CLEC is regulated by the Commission, any issues relating to the
2 “protection” of other carriers can and should be handled by the CLEC. Adding another layer
3 of regulation to this process would only complicate matters and increase everyone’s costs.

4 **Q. Mr. Voight points out that other cable providers of VoIP services are subject**
5 **to Commission regulation. Why should Comcast be treated differently?**

6 A. Comcast is not seeking different treatment. Comcast submits that no provider of
7 VoIP service should be subject to Commission regulation unless such provider decides for its
8 own reasons to voluntarily submit. Indeed, some cable VoIP providers, such as Charter
9 Fiberlink-Missouri, LLC, voluntarily submit to state regulation.

10 **Q. Has any other state Commission filed a similar complaint against Comcast?**

11 A. No. Missouri stands alone. In fact, in a growing number of states, the legislatures
12 have statutorily precluded the regulation of interconnected VoIP by the state commission.
13 These include Alabama, Delaware, Florida, Georgia, Indiana, Kentucky, Maryland, Ohio and
14 Virginia.

15 These states recognize that voice competition provides more benefits for
16 consumers than regulation, that a competitive marketplace is the best regulator of service
17 quality and consumer welfare, and that regulation imposes adverse economic impacts. As
18 evidenced by the FCC’s report entitled *Trends in Telephone Service Industry Analysis and*
19 *Technology Division Wireline Competition Bureau: February 2007* (Table 8.5, End-User
20 Switched Access Lines Served by Reporting Local Exchange Carriers (As of June 30, 2006)),
21 only 13% of Missouri end-user switched access lines were serviced by competitive voice
22 providers while the national average is 17%. It is disheartening that after eleven years of
23 phone competition, Missouri falls below the national average. Indeed, a glaring omission
24 from Mr. Voight’s testimony is any explanation of how imposing regulations on CDV will
25 increase voice services competition in Missouri, lead to lower rates for consumers, or produce
26 technological innovation.

1 **Q. Mr. Voight requests that the Commission authorize a civil action for**
2 **penalties against Comcast. Do you think fines are appropriate?**

3 A. No. As shown earlier in my testimony, interconnected VoIP has not been
4 classified as a telecommunications service by the FCC. Moreover, in the context of
5 access/reciprocal compensation payments this Commission has determined that VoIP service
6 is an information service and that determination was upheld on appeal. Given the above,
7 Comcast's decision not to apply for a certificate was reasonable and consistent with the law.
8 Even if the Commission were to ignore its earlier decision and find that interconnected VoIP
9 service is a telecommunications service under Missouri law, Comcast should not be penalized
10 for following Commission and federal court precedent.

11 **Q. Based on the foregoing, what action should the Commission take?**

12 A. The Commission should deny Staff's Complaint. Granting the Complaint would
13 not only violate existing Commission precedent but would also violate the *Missouri VoIP*
14 *Order*. Moreover, as a matter of policy, the costs of imposing unnecessary regulation on
15 CDV, the lack of any compelling need for regulatory protections and the fact that the FCC is
16 in the process of determining the classification of VoIP service, all lead to the conclusion that
17 the most prudent course for the Commission is to deny the Complaint and allow the FCC to
18 classify VoIP services.

19 **Q. Does this conclude your testimony?**

20 A. Yes.
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