

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

In the Matter of the Application of Comcast IP)
Phone of Missouri, LLC for Certificate of Service)
Authority to Provide Local Exchange and)
Interexchange Telecommunications Services)
Throughout the State of Missouri and to Classify)
the Company as Competitive)

Case No. LO-2008-0217

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission and for its recommendation states:

1. In Case No. TC-2007-0111, the Staff brought a complaint alleging that Comcast IP Phone is offering local exchange and interexchange telecommunications services in Missouri without a certificate of service authority from the Commission. Following a hearing and the submission of briefs, the Commission issued its Report and Order. The Commission held that Comcast IP Phone must have a certificate of service authority to offer its Digital Phone service. The Commission ordered that Comcast IP Phone shall either cease providing Comcast Voice Service or apply for an appropriate certificate of service authority to provide that service. Judicial review of the Commission's Report and Order is pending in federal District Court.

2. On December 31, 2007, Comcast IP Phone of Missouri, LLC d/b/a Comcast Digital Voice ("Comcast") applied to the Missouri Public Service Commission for a certificate of service authority to provide local exchange and interexchange telecommunications services in Missouri, and for designation as a competitive telecommunications carrier. Comcast sought the standard waivers, but also included a request for certain additional waivers.

3. The issue of whether Comcast has requested the appropriate certificate of service authority for the type of local service it intends to provide - - which issue is addressed in Staff's

Motion for More Definite Statement, in Comcast's Response thereto, and in the attached Memorandum - - remains unresolved. In the Staff's opinion, Comcast's service requires a certificate of service authority to provide basic local telecommunications service. Consequently, the Staff recommends that the Commission stay action on Comcast's application for local exchange and interexchange service until Comcast files an application for basic local telecommunication service.

4. If, however, the Commission determines to proceed at this time with Comcast's application for local and interexchange authority, the Staff's recommendations are also included in its Memorandum.

The Staff recommends that the Missouri Public Service Commission grant Comcast a certificate to provide local exchange telecommunications services in the service areas of Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri; Embarq Missouri, Inc. d/b/a Embarq; CenturyTel of Missouri, LLC d/b/a CenturyTel; and Spectra Communications Group, LLC d/b/a CenturyTel; conditioned upon certain standard provisions as set out in the Staff Memorandum.

The Staff also recommends that the Commission grant Comcast a certificate to provide intrastate, interexchange telecommunications services.

The Commission shall grant an application for a certificate of telecommunications service authority upon a finding that the grant of authority is in the public interest. §§ 392.430 and 392.440 RSMo. (2000).

The Staff also recommends that the Commission classify Comcast and the services it proposes to offer in its Application as competitive. The Commission may classify a telecommunications provider or its services as competitive if the Commission determines it is

subject to sufficient competition to justify a lesser degree of regulation. §392.361.4. All the services a competitive company provides must be classified as competitive. §392.361.3.

The Staff further recommends that the Commission grant the standard waivers listed in the Notice of Applications. As explained in its Memorandum, the Staff recommends that the Commission grant some, but not all, of the additional waivers requested by Comcast.

The Commission may waive the application of its rules and certain statutes if the Commission determines that waiver is consistent with the purposes of Chapter 392. §§ 392.185, 392.361.5 and 392.420.

The Applicant did not submit a tariff with the Application. The Staff notes that the Commission's rule at 4 CSR 240-3.510(1)(c) states that the Applicant cannot lawfully provide service until tariffs are effective.

WHEREFORE, the Staff recommends that the Commission stay action on Comcast's application until Comcast files an application to provide basic local telecommunications service. In the alternative, the Staff recommends that the Commission grant Comcast a certificate to provide local exchange telecommunications services, conditioned upon the provisions described in the Staff Memorandum; grant it a certificate of service authority to provide intrastate, interexchange telecommunications services; grant it the requested competitive classification; grant the standard waivers listed in the Commission's Notice of Application; and grant some of the additional waivers requested by Comcast.

Respectfully submitted,

/s/ William K. Haas

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 22nd day of April 2008.

/s/ William K. Haas

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No. LO-2008-0217
Comcast IP Phone of Missouri, LLC

From: John Van Eschen
Telecommunications Department

Subject: Staff Recommendation regarding Comcast IP Phone of Missouri's
Application

Date: April 22, 2008

On December 31, 2007, Comcast IP Phone of Missouri, LLC (Comcast) applied to the Missouri Public Service Commission (MoPSC or Commission) for certificates of service authority to provide Local Exchange and Interexchange Telecommunications Services throughout the state of Missouri. The company also requested competitive classification and a waiver of certain rules, which are discussed further in this memorandum. On January 17, 2008, Comcast filed a "Clarification of Application" in which it stated that it desired certification "only in the service territories of AT&T Missouri, Inc., Embarq, CenturyTel and Spectra.

Comcast's Failure to Apply for a Certificate to Provide Basic Local Telecommunications Service:

The Telecommunications Department Staff (Staff) previously filed a motion for a more definite statement as to the type of service Comcast intends to provide and the type of certificate of service authority it is requesting. In particular Staff questioned Comcast's failure to request a certificate of service authority to provide basic local telecommunications service. Comcast responded its service does not meet the statutory definition of "basic local telecommunications service" because it specifically conflicts with certain portions of Section 386.020(4) RSMo and 4 CSR 240-32.100. Comcast claims its all distance service technically does not comply with the portion of Section 386.020(4) RSMo that describes basic local telecommunications service as two way switched voice service within a local calling scope as determined by the Commission. In addition, Comcast does not offer equal access which Comcast cites is one of the minimum elements of basic local telecommunications service as defined by Commission rule 4 CSR 240-32.100.

In Staff's opinion, Comcast should be required to have a certificate to provide basic local telecommunications service. Comcast's rationale does not adequately justify its failure to apply for a certificate to provide basic local telecommunications service. Requiring Comcast to obtain a certificate to provide basic local telecommunications service will clarify what requirements, if any, apply to Comcast.

The issue of whether Comcast should be required to obtain a certificate to provide basic local telecommunications service needs be addressed before the Commission makes any decisions regarding the granting of certificates to provide local exchange and interexchange telecommunications services. In addition, the Commission should not address Comcast's waiver requests until the basic local certificate issue is resolved. The Commission should be aware that pending HB 1779, if passed, may make the certification issue and waiver requests moot. Nevertheless, if the Commission desires to immediately proceed with Comcast's pending certificate application, request for competitive classification and Comcast's waiver requests then Staff's recommendations are included in the remainder of this memorandum.

Comcast's Application for Certificates to Provide Local Exchange and Interexchange Telecommunications Services/Competitive Classification:

As previously stated, Staff recommends the Commission not grant certification until Comcast satisfactorily applies for a basic local certificate. If the Commission disagrees with Staff's recommendation and desires to proceed to grant certificates to provide local exchange and interexchange telecommunications services then Staff's recommendation is as follows. Comcast meets the requirements to obtain a certificates of service authority to provide interexchange and local telecommunications services. Consequently Staff also has no objections to granting Comcast competitive status. Such certification should be based on the condition such certificates become effective on the date Comcast's tariff becomes effective. To date, Comcast has not filed a proposed tariff. The Commission should state that pursuant to Section 392.410 RSMo, unless exercised within a period of one year from the issuance thereof, authority conferred by a certificate of service authority shall be null and void. The following additional conditions should be placed on Comcast if the Commission proceeds to grant the company a certificate to provide local exchange telecommunications service:

1. Comcast IP Phone's originating and terminating switched access rates shall be no greater than the lowest Commission-approved corresponding switched access rates in effect for each incumbent local exchange carrier within whose service area Comcast IP Phone provides switched access service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230 RSMo.
2. The certificate and service classification for switched access service is conditioned on the continued applicability of Section 392.200 RSMo, and the requirement that any increase in switched access services rates above the maximum switched access service rates set forth herein shall be made pursuant to Sections 392.220 and 392.230 RSMo, and not Sections 392.500 and 392.510 RSMo.
3. If the directly competing incumbent local exchange carrier, in whose service area Comcast IP Phone operates, decreases its originating and/or terminating switched access service rates, the Comcast IP Phone shall file an appropriate tariff amendment to reduce its originating and/or terminating switched access

rates in the directly competing incumbent local exchange carrier's service area within 30 days of the directly competing incumbent local exchange carrier's reduction of its originating and/or terminating switched access rates in order to maintain the cap.

Comcast Waiver Requests:

Staff recommends the Commission not address Comcast's waiver requests until the company applies for a certificate to provide basic local telecommunications service. In some respects the additional waivers requested by Comcast generate some confusion concerning applicability if the company fails to obtain a certificate to provide basic local telecommunications service. Nevertheless if the Commission desires to proceed with addressing Comcast's waiver requests, attached is Staff's recommendations.

Standard Waivers: Paragraph 10 of Comcast's Application requests the Commission grant Comcast the standard waivers previously granted to other certificated competitive local exchange telecommunications companies. Staff has no objections if the Commission grants these waivers, which are the same as those listed in the Commission's January 7th Notice.

Additional Waivers Not Previously Granted: Beginning in Paragraph 11 of its Application, Comcast requests the Commission grant waivers of various Commission rules which have not previously been granted. For convenience, Staff has numbered the waiver requests as 1-15.

(1) 4 CSR 240-3.510(1) (D) (3) – This rule requires Applicants to set forth the geographic area in which it proposes to offer service.

Comcast's reason for a waiver request: Comcast states that its "last mile" cable plant does not follow exchange boundaries of the incumbent local exchange carrier. Comcast officials have also expressed concern that this rule may require them to build facilities through-out the exchange.

Staff Recommendation: Reject this waiver request. Most companies do not have facilities throughout an entire exchange. The rule does not require a company to build-out facilities throughout the entire exchange; nevertheless companies are expected to still "offer" service in the entire exchange. If a customer requests service in an area without a company's facilities, a company has several options such as applying special construction charges to the customer and/or entering into an interconnection agreement with the incumbent local exchange company to serve areas without Comcast facilities. For example, presuming Comcast will be granted status as a competitively classified company, such special construction charges are determined by the company. From Staff's perspective, Comcast is already observing exchange boundaries in the sense that telephone numbers are assigned to Comcast customers on a rate center basis. Moreover, Comcast assesses exchange access charges on the basis of telephone exchange

boundaries. This rule is based on Section 392.455(3) RSMo so there is some debate whether the Missouri Commission even has the authority to waive this rule.

(2) 4 CSR 240-30.020 – Among other matters, this rule requires telephone lines in new subdivisions to be placed underground.

Comcast's reason for a waiver request: Comcast states that its system has aerial plant. Comcast officials claim this rule may require the company to convert its aerial plant to underground facilities.

Staff Recommendation: Reject this waiver request. In contrast to Comcast's belief this rule does not require a company to convert its aerial plant to underground facilities. This rule only requires a company to bury new facilities if the company is installing facilities in a new subdivision. Please also see response to Number 5 following.

(3) 4 CSR 240-32.060 (11) - This rule sets forth minimum electrical specifications for outside plant.

Comcast's reason for a waiver request: Comcast states that this rule is not applicable to its network.

Staff Recommendation: Approve this waiver request. The Staff is of the opinion that this rule should be waived because it is impractical if not impossible to apply traditional telecommunications electrical standards to cable telephony coaxial distribution systems.

(4) 4 CSR 240-32.060 (12) – This rule sets forth electrical characteristics of copper loops when measured from the central office to the customer premises with the loop disconnected (not terminated) from the Network Interface Device (NID).

Comcast's reason for a waiver request: Comcast states that this rule is not applicable to its network.

Staff Recommendation: Approve this waiver request. As with Number 3 above, the Staff agrees this rule is not applicable to Comcast or applications not using copper loops.

(5) 4 CSR 240-32.060 (15) (A) – This rule requires buried feeder and distribution cable to be buried to a minimum depth of 24 inches.

Comcast's reason for a waiver request: Comcast states that buried cable requirements do not apply to its network because cable TV systems do not contain voltage. Comcast officials also claim this rule will require the company to bury all feeder and distribution cable.

Staff Recommendation: Reject this waiver request. In contrast to the company's interpretation, this rule does not require all feeder and distribution cable to be buried. Rather, this rule simply states how deep the cable should be buried when it is, in fact,

buried. Staff notes this depth is actually less than that required in the National Electric Safety Code for telephone cables.

(6) 4 CSR 240-32.060 (15) (B) – This rule requires buried drop cable to be buried to a minimum dept of 12 inches.

Comcast's reason for a waiver request: Comcast officials claim the rule should not apply to Comcast because cable systems do not contain voltage. Comcast officials also claim this rule will require the company to bury all drops. In subsequent discussions with the company, Comcast officials expressed concern over burying drop wires (or cables) to the same depth as legacy telephone cables.

Staff Recommendation: Reject this waiver request. In contrast to the company's interpretation, this rule does not require all drop wires to be buried. Rather this rule simply states how deep the wire (coaxial cable) should be buried when it is, in fact, buried. This depth is actually less than that of the National Electric Code.

(7) 4 CSR 240-32.060 (16) - This rule pertains to placement of a Network Interface Device (NID).

Comcast's reason for a waiver request: Comcast states that NIDs are not part of a cable system.

Staff Recommendation: Reject this waiver request. The term "NID" is not currently defined by Missouri Commission rule. Nevertheless, Staff is of the opinion that Comcast terminates coaxial cable in a house box that could be considered similar to a NID. Staff understands that the demarcation aspects of a telephone-type NID are often replaced in cable telephony by use of a multimedia terminal adaptor, in which case Staff would not expect a house box to contain a traditional demarcation point. The Commission should reject the waiver request and simply consider Comcast's house box to be a NID.

(8) 4 CSR 240-32.080 (2) – This rule requires the Commission's service quality and surveillance level reporting to be done on an exchange specific basis and take corrective action if a company's quality of service within an exchange falls within the surveillance level.

Comcast's reason for a waiver request: Comcast states that it cannot measure the requirements at the exchange level; rather, the measurements would be taken on a community/market level.

Staff Recommendation: Reject this waiver request. Comcast has failed to justify the costs of monitoring quality of service on an exchange specific basis. Staff has previously recommended streamlining of the Commissions' service quality rules, which the Staff recommends should be done on an industry-wide basis, rather than on a company specific basis. In addition, as previously pointed out, Comcast is already observing exchange

boundaries in the sense that telephone numbers are assigned to Comcast customers on a rate center basis.

(9) 4 CSR 240-33.040 (8) (A) - This rule requires telephone bills to state the number of access lines being billed for.

Comcast's reason for a waiver request: Comcast states that its national billing system lacks the functionality to comply with this rule.

Staff Recommendation: Reject this waiver request. Staff has examined a copy of Comcast's electronic bill and Staff believes Comcast is in compliance with this rule. The Commission's rule defines a bill as either in written or electronic format. In Staff's opinion, the electronic version of Comcast's bill appears to comply with this rule.

(10) 4 CSR 240-33.040 (8) (G) – This rule requires telephone bills to itemize charges for regulated and non-regulated items and to do the same for toll charges, to the extent they may exist.

Comcast's reason for a waiver request: Comcast states that its national billing system lacks the functionality to itemize the date and duration of toll calls.

Staff Recommendation: Reject this waiver request. Staff has examined a copy of Comcast's electronic and paper bills. The Commission's rule defines a bill as either in written or electronic format. In Staff's opinion, the paper version of Comcast's bill appears to comply with this rule.

(11) 4 CSR 240-33.040 (8) (H) – This rule requires telephone bills to itemize each service included in a package.

Comcast's reason for a waiver request: Comcast states that its national billing system lacks the functionality to comply with this rule.

Staff Recommendation: Reject this waiver request. Staff has examined a copy of Comcast's electronic and paper bills. The Commission's rule defines a bill as either in written or electronic format. In Staff's opinion, the paper version of Comcast's bill appears to comply with this rule.

(12) 4 CSR 240-33.070 (6) (E) – This rule requires notices of discontinuance to inform customers that they have the right to enter into a settlement agreement for charges not in dispute.

Comcast's reason for a waiver request: Comcast states that its national billing system lacks the functionality to track deferred payment arrangements for solely telecommunications services.

Staff Recommendation: Reject this waiver request. Comcast's current payment policy applies partial payment amounts to the oldest account balances regardless of service products (i.e., Internet, entertainment, or telephony). For example, partial payments are applied to the balance outstanding for more than 90 days; to the balance outstanding for more than 60 days, and so forth. In the Staff's opinion, Comcast's policy is reasonable and does not warrant waiving the rule. See also Staff recommendation for Waiver Request No. 15.

(13) 4 CSR 240-33.070 (6) (H) – This rule requires notices of discontinuance to inform customers of an exception for medical emergencies.

Comcast's reason for a waiver request: Comcast officials state the company's current disconnection for nonpayment procedure places the customer's service into a "soft disconnect" status for approximately two weeks before totally disconnecting the customer's service. Soft disconnects allow a customer to still place "911" calls and make calls to Comcast's business office. In this respect, Comcast officials request a waiver of the rule requiring a company's disconnect notice to include a statement of the exception for medical emergencies.

Staff Recommendation: Approve this waiver request on the condition Comcast's current soft disconnect procedure continue for all customers. Although Comcast's two-week soft disconnect time period is less than the twenty-one days specified by 4 CSR 240-33.070(11) for postponing a discontinuance of service for a customer with emergency medical assistance needs, Comcast appears to substantially comply with the rule. Consequently Staff finds it reasonable for the company to avoid the requirement to notify customers in the disconnect notice a statement of the exception for medical emergencies.

(14) 4 CSR 240-33.070 (4) – This rule requires written notice in first class mail to be sent prior to disconnection and prohibits discontinuance of service from occurring during non-business hours and on the day before the business office is closed.

Comcast's reason for a waiver request: Comcast states it currently implements the previously discussed soft disconnect at any time, regardless of business hours and regardless if the company's business office is closed the next day.

Staff Recommendation: Approve this waiver request on the condition the company maintains its current soft disconnect procedure. In addition, the Commission should clarify that approval of this waiver request should not extend to the elimination of the requirement to send written notice in first class mail prior to disconnection. As discussed in comments to Waiver Request Number 13 above, Staff is of the opinion that Comcast's 2-week interval for its "soft disconnect" policy sufficiently warrants a waiver of this rule.

(15) 4 CSR 240-33.090 – This rule establishes a procedure for settlement agreements.

Comcast's reason for a waiver request: Comcast states that its national billing system lacks the functionality to itemize this and other items required by the Commission's rules.

Staff Recommendation: Reject this waiver request. As discussed in comments to Waiver Request Number 12 above, Staff notes its understanding of Comcast's payment policy which is to apply partial payment amounts to the oldest account balances regardless of which products (i.e., Internet, entertainment, or telephony) are subscribed to. 4 CSR 240-33.090(1) describes how such settlement agreements may be paid "...as mutually agreed to by both parties...." In this respect Comcast has the flexibility to structure the terms of a settlement agreement to apply to all services without obtaining a waiver.

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

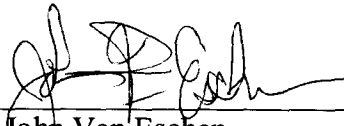
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Case No. LO-2008-0217

AFFIDAVIT OF John Van Eschen

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

John Van Eschen, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in preparing the accompanying document and that the facts therein are true and correct to the best of his knowledge and belief.



John Van Eschen

Subscribed and affirmed before me this 22nd day of April, 2008
I am commissioned as a notary public within the County of Cole,
State of Missouri and my commission expires on 10-23-2010



NOTARY PUBLIC

