

**Call Gapping Telecommunications Workshop**  
**Staff Counsel's Legal Analysis**  
**Cully Dale November 7, 2011**

**DISCLAIMER:** The Commission has yet to consider this matter. These materials and accompanying comments do not represent a Commission position, but merely give the opinion of the Staff Counsel's Office.

1. Companies that provide "wholesale" or "backbone" facilities or services are telecommunications companies under the definitions in §386.020.
  - a. They control and operate telecommunications facilities.
  - b. The facilities are used to provide telecommunications services.

**386.020. Definitions.** As used in this chapter, the following words and phrases mean:

(52) "Telecommunications company" includes telephone corporations as that term is used in the statutes of this state and every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any facilities used to provide telecommunications service for hire, sale or resale within this state;

(53) "Telecommunications facilities" includes lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used, operated, controlled or owned by any telecommunications company to facilitate the provision of telecommunications service;

(54) "Telecommunications service", the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does not include:

- (a) [... customer premises equipment...];
- (b) Answering services and paging services;
- (c) [ CMRS service regulated by the FCC];
- (d) [... hospital, hotel, motel, or other ...temporary lodging...];
- (e) ... a private telecommunications system;
- (f) Cable television service;
- (g) [... inside wire ...];
- (h) Electronic publishing services [internet service (see 392.201)];
- (i) ... broadcast radio or television license...
- (j) Interconnected voice over Internet protocol service;

2. Every telecommunications company and every IVoIP provider, including one that provides only “wholesale” or “backbone” services, has the duty to provide telecommunications service on a non-discriminatory basis, and is legally obligated to transport traffic on to its final destination, charging as it is entitled to do under its tariffs for receipt of the call and paying the next carrier the charges it is entitled to under its tariff.

**392.130. Companies to provide facilities to meet public needs--penalty for failure to deliver messages.** It shall be the duty of every ... telephone company... to receive dispatches from and for other telephone ... lines ..., and on payment or tender of their usual charges ..., to transmit and deliver the same to designated address ...with impartiality and good faith under a penalty of three hundred dollars for every neglect or refusal so to transmit and deliver [...].

**392.140. Duties in forwarding dispatches over other lines.** Where the person sending the dispatch desires to have it forwarded over the lines of other telephone ... companies, ... to the place of final destination, and shall tender to the first company the amount of the usual charges for the dispatch to the place of final delivery, it shall be the duty of the company to receive the same, and, without delaying the dispatch, to pay to the succeeding line the necessary charges for the remaining distance; ... and for omitting so to do the company or companies owning or operating such line or lines shall severally be liable to the penalty prescribed in section 392.130.

**392.185. Purpose of chapter.** The provisions of this chapter shall be construed to:

(1) Promote universally available and widely affordable telecommunications services;

(2) Maintain and advance the efficiency and availability of telecommunications services;

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(7) Promote parity of urban and rural telecommunications services;

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**392.200. Adequate service--just and reasonable charges--unjust discrimination--unreasonable preference--reduced rates permitted for federal lifeline connection plan--delivery of telephone and telegraph messages--customer--specific pricing--term agreements, discount rates.**

2. No telecommunications company shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to telecommunications or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a

like and contemporaneous service with respect to telecommunications under the same or substantially the same circumstances and conditions [...].

3. No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever except that telecommunications messages may be classified into such classes as are just and reasonable, and different rates may be charged for the different classes of messages.

6. Every telecommunications company operating in this state shall receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telecommunications company with whose facilities a connection may have been made.

7. The commission shall have power to provide the limits within which telecommunications messages shall be delivered without extra charge.

**3.** Every telecommunications company and every IVoIP provider, including one that provides only “wholesale” or “backbone” services, is required to be either certificated or registered with the Commission prior to providing telecommunications service in Missouri, and is legally obligated to pay properly tariffed access rates.

**392.410. Certificate of public convenience and necessity required, exception--certificate of interexchange service authority, required when--duration of certificates--temporary certificates, issued when--political subdivisions restricted from providing certain telecommunications services or facilities.**

1. ... No telecommunications company ... shall transact any business in this state until it shall have obtained a certificate of service authority from the commission pursuant to the provisions of this chapter [...].

2. No telecommunications company offering or providing, or seeking to offer or provide, any interexchange telecommunications service shall do so until it has applied for and received a certificate of interexchange service authority pursuant to the provisions of subsection 1 of this section. No telecommunications company offering or providing, or seeking to offer or provide, any local exchange telecommunications service shall do so until it has applied for and received a certificate of local exchange service authority pursuant to the provisions of section 392.420.

5. The commission may review and modify the terms of any certificate ... in order to ensure its conformity with the requirements and policies of this chapter. [...]

**392.440. Service authority, certificate of, approved when.** Any telecommunications company offering or providing the resale of either local exchange or interexchange telecommunications service must first obtain a certificate of service authority. Except as provided in section 392.450, the commission shall approve an application for a certificate for the resale of local exchange or interexchange telecommunications service upon a showing by the applicant, and a finding by the commission, after notice and hearing, that the grant of authority is in the public interest.

**392.470. Conditions, commission may impose, when--compensation to other companies, when, commission may order.**

1. The commission may impose any condition or conditions that it deems reasonable and necessary upon any company providing telecommunications service if such conditions are in the public interest and consistent with the provisions and purposes of this chapter, including, but not limited to, determining that any such company should provide just and reasonable compensation to one or more other certificated telecommunications companies operating in areas in which the compensating company is providing intrastate telecommunications service without commission authorization.

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2. An order of the commission issued under subsection 1 of this section which determines that compensation should be provided shall be enforced and subject to continuing enforcement by the circuit courts of this state, unless stayed pending review pursuant to section 386.520. The venue of such an action shall lie in any county in which the subject telecommunications company is providing unauthorized telecommunications service.

**392.550. Interconnected voice over Internet protocol service, registration required--charges to apply--procedure for registration--authority of commission.**

1. No person, corporation, or other entity shall offer or provide interconnected voice over Internet protocol service as defined in section 386.020 without first having obtained a registration from the commission allowing it to do so. [...]

2. Interconnected voice over Internet protocol service shall be subject to appropriate exchange access charges to the same extent that telecommunications services are subject to such charges. Until January 1, 2010, this subsection shall not alter intercarrier compensation provisions specifically addressing interconnected voice over Internet protocol service contained in an interconnection agreement approved by the commission pursuant to 47 U.S.C. Section 252 and in existence as of August 28, 2008.