## YMax Communications Corp. 5700 Georgia Avenue West Palm Beach, FL 33405 561 586 3380

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W VA PUBLIC SERVICE

COMMISSION
SEGRETARY'S OFFICE

May 17, 2010

C. Terry Owen Staff Attorney WV State Public Service Commission 201 Brooks Street Charleston, WV 25323

10-0383 - T-C

Re:

Emergency Operations of Kanawha County v. YMax Communications

Corporation and magicJack, LP

State of West Virginia Public Service Commission

Dear C. Terry Owen,

Enclosed please find an original and 12 copies of the verified "Answer" to the "First Set of Interrogatories, Data Request or Request for Information By the Staff of The Public Service Commission for YMax Communications Corp. and MagicJack, LP." I have also sent a copy of this response to Ms. Sandra Squire and Mr. Jared M. Tully via Federal Express.

Should the Commission, staff or legal have any questions, please feel free to contact me.

Sincerely,

Peter Russo

Ms. Sandra Squire

Mr. Jared M. Tully

cc:

#### ANSWER

RECEIVED

2010 MAY 18 AM 8 31 State of West Virginia Public Service Commission W VA PUBLIC SERVICE Charleston

COMMISSION SECRETARY'S OFFICE

Case No. 10-0383-T-C

EMERGENCY OPERATIONS CENTER OF KANAWHA COUNTY and W. KENT CARPER, in his capacity as President of the EMERGENCY OPERATIONS CENTER OF KANAWHA COUNTY, Executive Committee 200 Peyton Way Charleston, WV 25309 Telephone: 304-746-7911

Complainants,

v.

YMAX COMMUNICATIONS CORPORATION And MAGIC JACK, LP 5700 Georgia Avenue W. Palm Beach, FL 33405 Telephone: 561-722-0433

Defendants,

The above-named defendants, for answer to the complaint in this proceeding, say:

1. Is magicJack, LP, an affiliate of YMax Communications Corp.?

Yes, magicJack and YMax Communications Corp. are both subsidiaries of YMax Corporation.

2. If so, how are the two companies related? Please provide an illustration of the corporate relationship as well as the number and percentages of ownership of primary shareholder.

magicJack and YMax Communications Corp. are each subsidiaries of YMax Corporation. YMax Communications Corp. is directly owned by YMax Corporation. magicJack is a limited partnership of which YMax Corporation is the limited partner and YMax Holdings Corporation is the general partner. YMax Holdings Corporation is a subsidiary of YMax Corporation. See Attachment A for the corporate structure and ownership.

3. Is YMax Communications Corp. as referenced in the Answer the same YMax Communications Corp., which applied for and received a certificate of convenience and necessity to provide resold interexchange and facilities based and resold local exchange telecommunications service throughout the State of West Virginia in Case No. 06-0361-T-CN (Recommended Decision entered May 4, 2006)?

Yes

4. Are magicIn® and magicOut® services provided by YMax Communications Corp.?

YMax Communications Corp. gives customers the option of getting a phone number and of receiving calls, by subscribing to magicIn<sup>®</sup> service and related features. magicJack gives customers the option of making free outgoing calls to the US, Canada, Puerto Rico and the Virgin Islands, by subscribing to magicOut<sup>®</sup> service and related features of the service.

5. Are magicIn® and magicOut® used by YMax to provide the telecommunication services provided under the authority granted by the Public Service Commission of West Virginia in Case No. 06-0361-T-CN?

magicIn is provided by the regulated company YMax Communications Corp. magicOut is provided by the unregulated entity magicJack.

6. Does either magicJack, LP or YMax Communications Corp. collect and remit any Enhanced 911 fees in any jurisdiction in the United States of America?

No.

7. Has any state regulatory agency concluded as a matter of law that the business model of magicJack and YMax customers exempt them from the payment of E911 fees?

We have had discussions with regulatory agencies and explained our unique product offering and how it's not applicable to bill and collect these fees at this time with the current regulations in place. We are working with a few regulatory agencies to propose how such a fee would be administered if at all.

8. If any state regulatory agency has made the conclusion described in Question 7, please provide a copy of the order.

See answer above

9. Are any cases currently in progress before any state or federal regulatory forum regarding the payment of E911 fees by magicJack and YMax customers or by the companies themselves?

Currently the only case involving E-911 fees at the state level is with the West Virginia Public Service Commission based upon the complaint of Kanawha County.

10. If the Answer to Question 9 is Yes, then please provide the docket numbers of the cases and the forums, as well as any pleadings filed by magicJack and/or YMax in those proceedings.

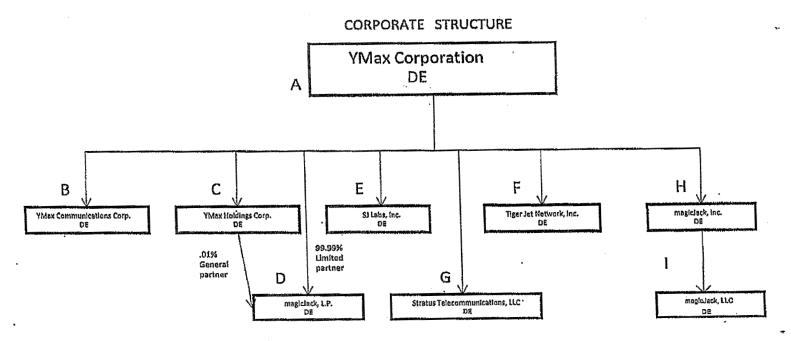
N/A

11. What purpose would it serve for magicJack and YMax subscribers to preregister 911 locations unless E911 call protection is desired and can be made available?

As we have previously described, YMax Communications Corp. and magicJack LP are not engaged in the business of providing interconnected VoIP service, as defined by the Federal Communications Commission (FCC) and as set forth in their rules and regulations, 47 C.F.R. § 9.3 (see 150 C.S.R. 32-2.3.a), and therefore are not governed by WV Code § 7-1-3cc. Neither magicJack nor YMax Communications Corp. is therefore required by the FCC to provide 911 services to their customers. Nevertheless, magicJack has to date voluntarily chosen to make this capability available. Should voluntarily providing this service to our customers become too costly or problematic, we would have to reevaluate that decision.

12. Why would it not be possible for magicJack or YMax to require the payment of \$36.00 in E911 fees by the customer as a condition precedent to initiating the one year of magicIn® and magicOut® service as described in your Answer?

The vast majority of retail sales of the magicJack® device are at stores like Walmart, Radio Shack and Best Buy all across the country. The magicJack® device weighs less than an ounce and is about the size of a cigarette lighter. It plugs into the USB port of any computer wherever located. It is a completely nomadic, or portable device that a customer can use wherever in the country, or the world for that matter, they have a broadband connection. Neither we nor the retailer knows where a purchaser intends to use the device, whether the purchaser may be the user or bought the device as a gift, where the user may live, whether they intend to use the device from their home, their office, their vacation cabin, the hotels they stay at when they travel, or where they may use it next. Indeed, parents have, for example, bought magicJacks specifically for a daughter away at college or a son in Iraq so they can call family and friends. Neither we nor the retailer would know what county, or even state for that matter, E911 fees might be applicable to any given purchaser. Once the customer has bought their magicJack device from the retailer, which includes a software license for the first year, there are no initiation fees; they are not billed for any interstate or intrastate calls; nor are they billed any monthly fees. There is no invoice to the customer on which to include a separate line the levied. even if stating the amount of fee services being offered. There are no bills rendered interconnected VoIP at all, let alone in each county in order to act as a billing agent for each county.



- A Incorporated in Delaware and Foreign Status in Florida
- B Incorporated in Delaware and Foreign Status in other 49 states
- C Incorporated in Delaware and Foreign Status in Florida
- D Delaware Limited Partnership and status in Florida
- E Incorporated in Delaware and Foreign Status in Ohio and Florida
- F Incorporated in CA
- G Incorporated in Delaware and Foreign Status in TX and MA
- H Incorporated in Delaware
- I Incorporated in Delaware

Wherefore, the said defendants pray that the complaint in this proceeding be dismissed (or, pray for such affirmative relief as the facts alleged may justify).

(Signe	ed) Ret Ren
`	Signature of authorized representative of Defendants
By	CFO
•	Title of signer (President or other officer)

# STATE OF WEST VIRGINIA PUBLIC SERVICE COMMISSION CHARLESTON, WEST VIRGINIA

Case No. 10-0383-T-C

EMERGENCY OPERATIONS CENTER OF KANAWHA

Complainants,

v.

YMAX COMMUNICATIONS CORPORATION And MAGIC JACK, LP

Defendants,

### **VERIFICATION**

State of New Jersey

County of Hunterdon, ss.

Peter Russo, the CFO of YMax Communications Corporation and magicJack, LP, the defendants named in the foregoing Case No. 10-0383-T-C being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on the information, and that, so far as they are therein stated to be on information, he believes them to be true.

Peter Russo

Taken, subscribed and sworn to before me, a Notary Public in said county and state, this 17th day of May, 2010.

Notary Public

KRISTINA M. TECCE
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES MARCH 2, 2015

# STATE OF WEST VIRGINIA PUBLIC SERVICE COMMISSION CHARLESTON, WEST VIRGINIA

Case No. 10-0383-T-C

EMERGENCY OPERATIONS CENTER OF KANAWHA COUNTY

Complainants,

v.

YMAX COMMUNICATIONS CORPORATION And MAGIC JACK, LP

Defendants,

### **CERTIFICATE OF SERVICE**

I, Peter Russo, hereby certify that a true copy of the foregoing "Answer" to the "<u>First Set of Interrogatories</u>, <u>Data Request or Request for Information By the Staff of The Public Service Commission for YMax Communications Corp. and MagicJack, LP.</u>" was served via Federal Express, on this 17<sup>th</sup> day of May, 2010 to:

Ms. Sandra Squire, Executive Secretary
Public Service Commission of West Virginia
201 Brooks Street
Charleston, WV 25323

and

Mr. Jared M. Tully Frost Brown Todd, LLC Chase Tower, Suite 1200 707 Virginia Street East Charleston, WV 25301-2705

Peter Russo