

Frost Brown Todd^{LLC}

ATTORNEYS

WEST VIRGINIA · OHIO · KENTUCKY · INDIANA · TENNESSEE

Jared M. Tully
(304) 348-2404
JTULLY@FBTLAW.COM

March 22, 2010

Sandra S. Squire
Executive Secretary
WV State Public Service Commission
201 Brooks Street
Charleston, WV 25323

RECEIVED
10 MAR 22 PM 3:00
W VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

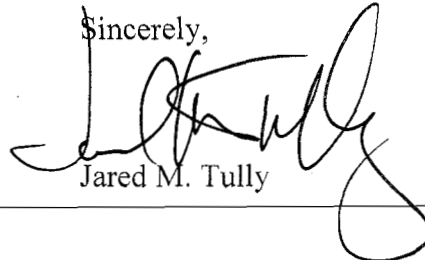
Re: **Metro 911 v. Magic Jack, LP** *10-0383-T-C*
State of West Virginia Public Service Commission

Dear Ms. Squire:

Enclosed please find a verified "Petition for Review of 911 Fee Collection and Remission" filed against Magic Jack, LP and YMAX Communications Corporation. This filing is made pursuant to WV Code §150-1-6.2. The same has been verified by W. Kent Carper on behalf of The Emergency Operations Center of Kanawha County and in his role as President of the Executive Board of The Emergency Operations Center of Kanawha County. I have mailed by first class mail a copy of this complaint to YMAX Communications and Magic Jack, both of whom have the same address.

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

Sincerely,



Jared M. Tully

JMT/fif

Enclosure

cc: YMAX Communications Corp
Magic Jack, LP

STATE OF WEST VIRGINIA PUBLIC SERVICE COMMISSION
CHARLESTON, WEST VIRGINIA

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

RECEIVED
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W VA PUBLIC SERVICE
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Complainants,

v.

Case No. _____

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

Defendants.

PETITION FOR REVIEW OF 911 FEE COLLECTION AND REMISSION

The Petition of the above named complainant respectfully shows:

1. That the above named YMAX Communications Corporation and Magic Jack, LP are engaged in the business of providing interconnected voice over internet protocol service ("VoIP"). And, to the extent of the provision of 911 service, is subject to the jurisdiction of this Commission pursuant to WV Code §7-1-3cc; 47 C.F.R §9.3; as well as the New and Emerging Technologies 911 Improvement Act. The regulatory rules governing this action are found, in the Rules and Regulations of the Federal Communications Commission, 47 C.F.R §9.3, at 150 C.S.R

2. Petitioner asserts this Complaint in compliance with the Rules of Practice and Procedure before the Public Service Commission contained at 150 C.S.R Series 1 as well as the Rules Governing Billing, Collection and Remission of E911 Fees by Providers of Voice Over Internet Protocol Service as found in Title 150 C.S.R 32-3.3.c.1. That section states, “The Commission also may entertain petitions from a County Commission, the Commission staff, or a third party regarding E911 fees that have not been properly remitted, where the Commission may investigate the matter on its own motion. Any such petitions must clearly explain what happened and specify any action that is requested of the Commission. Any such petition must be verified.

3. Said Defendants have violated the laws of the State of West Virginia as well as the United States of America governing Enhanced 911 service by failing or refusing to collect and remit Enhanced 911 fees imposed pursuant to WV Code §7-1-3cc, as specifically authorized by the New and Emerging Technologies 911 Improvement Act of 2008.

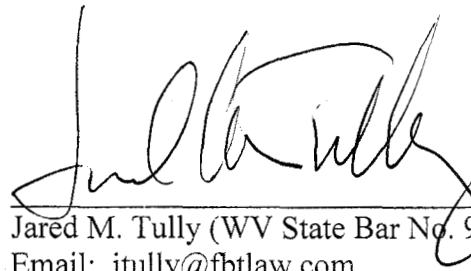
4. The Defendants are providers of interconnected voice over internet protocol as set forth in the Rules and Regulations of the Federal Communications Commission, 47 C.F.R §9.3 and 150 C.S.R 32-2.3.a.

5. The Petitioners request that this Commission take action to require respondents to comply with the provisions of state and federal law requiring them to collect and remit enhanced 911 fees as outlined in WV Code §7-1-3cc.

WHEREFORE, Your Petitioners respectfully request that the Public Service Commission take action, pursuant to the above cited statutory and regulatory authority, and compel Magic Jack, LP and YMAX Communications Corporation to properly collect and remit enhanced 911 fees pursuant to West Virginia Code §7-1-3cc and 150 C.S.R 32.

Petitioners,

By Counsel



Jared M. Tully (WV State Bar No. 9444)

Email: jtully@fbtlaw.com

FROST BROWN TODD LLC

Chase Tower, Suite 1200

707 Virginia Street East

Charleston, WV 25301

(304) 345-0111

STATE OF WEST VIRGINIA PUBLIC SERVICE COMMISSION
CHARLESTON, WEST VIRGINIA

EMERGENCY OPERATIONS CENTER
OF KANAWHA COUNTY and
W. KENT CARPER, in his capacity as
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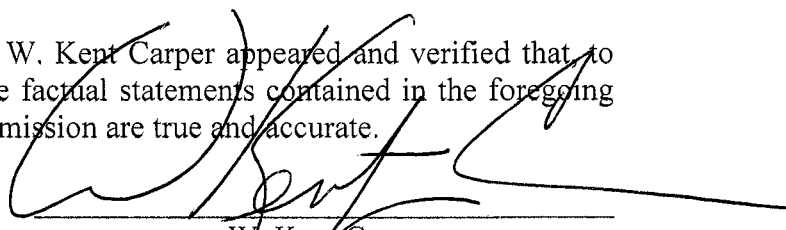
Defendants.

VERIFICATION

State of West Virginia,

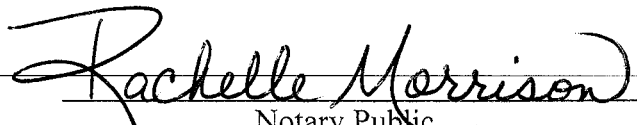
County of Kanawha, to-wit:

This 22nd day of March, 2010, W. Kent Carper appeared and verified that, to be best of his personal knowledge and belief, the factual statements contained in the foregoing Petition for Review of 911 Fee Collection and Remission are true and accurate.

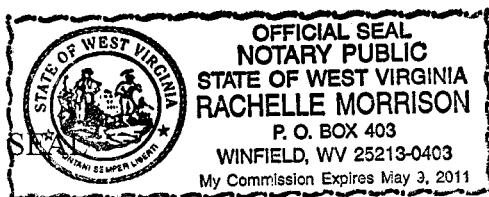


W. Kent Carper

Taken, subscribed and sworn to before me, a Notary Public in said county and state, this 22nd day of March, 2010.



Notary Public



STATE OF WEST VIRGINIA PUBLIC SERVICE COMMISSION
CHARLESTON, WEST VIRGINIA

EMERGENCY OPERATIONS CENTER
OF KANAWHA COUNTY and
W. KENT CARPER, in his capacity as
President of the EMERGENCY OPERATIONS
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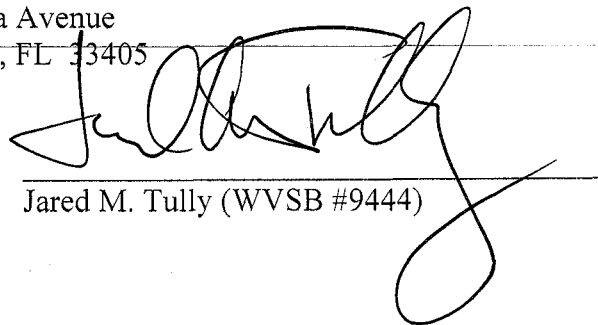
Defendants.

CERTIFICATE OF SERVICE

I, Jared M. Tully, hereby certify that a true copy of the foregoing "*Petition for Review of 911 Fee Collection and Remission*" was served by U.S. Mail, postage prepaid, on this 22nd day of March, 2010, to:

YMAX Communications Corporation
5700 Georgia Avenue
W. Palm Beach, FL 33405

Magic Jack, LP
5700 Georgia Avenue
W. Palm Beach, FL 33405



Jared M. Tully (WVSB #9444)

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered by the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 22nd day of March 2010.

CASE NO. 10-0383-T-C

EMERGENCY OPERATIONS OF KANAWHA
COUNTY, Charleston, Kanawha County,

Complainant,

v.

YMAX COMMUNICATIONS CORPORATION
and MAGIC JACK, LP, a public utility,

Defendant.

On March 22, 2010, Emergency Operations of Kanawha County filed a formal complaint, duly verified, against YMAX Communications Corporation and Magic Jack, LP.

IT IS THEREFORE ORDERED that the Defendant is required to satisfy the formal complaint or make answer thereto, in writing, within ten days of the service upon them by certified mail of a copy of the formal complaint and a copy of this order in accordance with the provisions of Rule 7 of the Rules of Practice and Procedure before this Commission, and after receipt thereof or default therein, the Commission will proceed to investigate the matters set forth in the formal complaint in such manner and by such means as may be deemed proper.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission is directed to serve a copy of the formal complaint on the Defendant, by delivering to them a copy of the formal complaint and a copy of this order by United States Certified Mail, return receipt requested.

A True Copy. Teste:


Sandra Squire
Executive Secretary

SS/cg
100383s.wpd