

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of

E911 Requirements for IP-Enabled Service Providers)	PS Docket No. 07-114
)	WC Docket No. 05-196
)	
)	

**Adams County E-911 Emergency Telephone Service Authority;
Arapahoe County E-911 Emergency Communications Service Authority;
Jefferson County E-911 Emergency Communications Service Authority
Colorado**

COMMENTS

In response to the FCC’s Notice of Proposed Rulemaking regarding E911 Requirements for IP-Enabled Service Providers, the Adams County E-911 Emergency Telephone Service Authority, Arapahoe County E-911 Emergency Communications Service Authority and Jefferson County E-911 Emergency Communications Service Authority (collectively, the “Authority Boards”) of the state of Colorado, submit their comments through their undersigned counsel, Dennis Tharp and Leah Ann Akin with Stevens, Littman, Biddison, Tharp & Weinberg L.L.C..

The three Authorities (the Jefferson Authority includes the City and County of Broomfield) represent approximately 1,616,276 citizens. (From the Colorado Department of Public Health and Environment, for 2009.) Each Authority sets and receives the emergency

telephone charge authorized in C.R.S. § 29-11-102, and uses the monies collected to fund 911 services provided by the public safety answering points (“PSAPs”) within their jurisdiction. The sole source of revenue for E-911 Authorities in Colorado is from the emergency telephone charge (“ETC”). The ETC is paid by each service user who is provided exchange telephone service, or telecommunications service via wireless carrier, or **interconnected VoIP** service.

The Authorities submit their comments in response to the FCC’s inquiry as to whether the FCC should extend 911 and E-911 obligations to providers of **non-interconnected VoIP** services that are not currently covered by the Commission’s VoIP 911 rules. The Authorities urge the FCC to require all **non-interconnected VoIP** services that can call 911 to comply with the same requirements as **interconnected VoIP** services. The **non-interconnected VoIP** providers are growing in number and replacing traditional landline and wireless telephones. At least one **non-interconnected VoIP** service provider, magicJack, advertises that over two million units have been sold, and advertises the availability of 911 access.

In Colorado **non-interconnected VoIP** does not pay the emergency telephone charge. This is so because the state legislature adopted the definition of “interconnected voice-over-internet-protocol service” used by the FCC when the funding legislation was last updated to require VoIP providers to pay the emergency telephone charge. See C.R.S. § 29-11-101(4.3) and 47 C.F.R. § 9.3. When the FCC requires **non-interconnected VoIP** service providers to meet the same criteria and requirements as **interconnected VoIP** service providers, state legislators across the country will have a solid basis to extend their funding legislation to **non-interconnected VoIP** providers. The principal of competitive neutrality is better served by requiring all VoIP service providers to operate under the same rules. **Non-interconnected VoIP** service providers receive a competitive advantage by not being required to comply with the

operational and funding obligations imposed on **interconnected VoIP**. Customer expectation is that they will be able to call 911 from a VoIP telephone. The customer does not know the distinction between **interconnected** and **non-interconnected VoIP**. This is especially true in that several **non-interconnected VoIP** providers make 911 calls available as a selling point to purchase their product.

It is too easy for a company to organize its VoIP business model to avoid being subject to the 911 mandates established for **interconnected VoIP** service providers. One company with a growing presence in Colorado and around the country is the YMax Communications Corporation (“YMax CC”), which sells a device called magicJack (“MJ”). The MJ device plugs into the USB port of any computer. WWW.magicJack.com advertises the MJ device and one year of service for a cost of \$39.95. You can purchase an additional year of service for \$19.95. YMax CC makes 911 services available to its customers. YMax CC expressly asserts that it is not subject to the FCC E911 VoIP Order, FCC 05-116. (See the attached **Exhibit A**, from the magicJack website, for further discussion of magicJack’s 911 capabilities and limitations.)

YMax CC gives customers the option of obtaining a phone number and of receiving calls, by subscribing to magicIn® service provided by YMAX CC. MJ gives customers the option of making free outgoing calls to the U.S., Canada, Puerto Rico and the Virgin Islands, by subscribing to magicOut® service provided by magicJack, L.P. Both YMax CC and magicJack, LP are wholly owned subsidiaries of the YMax Corporation. (For further explanation of the relationship of these companies, see the attached **Exhibit B**, Verified Answers filed by YMax CC to discovery requests submitted by the Staff of the Public Service Commission for State of West Virginia.) It is the division of the incoming call service from the outgoing call service that magicJack relies on in asserting that it is not an interconnected VoIP provider. The FCC

recognized in FCC 06-94 “*that the definition of interconnected VoIP services may need to expand as new VoIP services increasingly substitute for traditional phone service.*” YMax CC and similar businesses meet the four criteria previously used by the FCC to determine which entities should be subject to some form of 911/E-911 regulation. (See FCC Order 05-116, footnote 56.)

Neither YMax CC nor magicJack, LP collect and remit any Enhanced 911 fees to any jurisdiction in the USA. (**Exhibit B**, page 7) This is so because YMax CC and magicJack, LP argue they do not fall under the Commission’s definition of an interconnected VoIP service provider, since one company does not provide to purchasers both the ability to receive calls that originate on the public switch telephone network (“PSTN”) *and* to terminate calls to the PSTN. Thus, through corporate structuring alone, YMax is able to avoid collecting and remitting any 911 fees from its customers.

By placing itself just outside the definition of an interconnected VoIP service provider, YMax CC is also able to avoid the Commission’s E-911 rules regarding the provision of geographic location identification to the PSAP. YMax’s corporate strategy in avoiding payment of E-911 fees has the potential to become widespread as more and more households give up the traditional landline telephones and turn to less expensive, broadband based options for voice communication. Thus, customers will rely on the YMax CC phone service as their sole telephone service, without the same protection afforded customers of other VoIP providers that are interconnected. YMax CC could decide at any time to discontinue provision of 911 services, to the detriment of its customers’ safety. The definition of which VoIP service providers should be subject to FCC E-911 regulation should be expanded to include businesses such as YMax CC. The magicJack devices can connect to 911 and future such devices will be able to offer 911

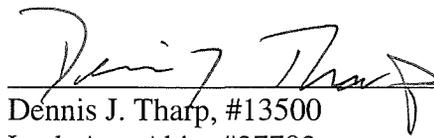
service and should be subject to all the same operational and financial rules as other VoIP service providers.

In conclusion, the Authorities urge the Commission to broaden the definition of VoIP service providers to eliminate the loophole currently being leveraged by companies such as YMax CC. Such a step is consistent with the Commission's tentative conclusion in its Order FCC-05-116, when the Commission tentatively concluded that a VoIP service provider that permits users to receive calls that originate on the PSTN and separately makes available a different offering that permits users generally to terminate calls to the PSTN should be subject to the rules adopted in that Order, if a user can combine the separate service offerings, use them simultaneously or use them in immediate succession. Such an expanded definition would encompass YMax CC and other similar companies that now escape regulation while utilizing the services of the PSAPs (through the voluntary provision of 911 capabilities) free of charge.

Dated: January 3, 2011.

Respectfully submitted,

STEVENS, LITTMAN, BIDDISON, THARP
& WEINBERG, L.L.C.



Dennis J. Tharp, #13500

Leah Ann Akin, #37793

Attorneys for Plaintiffs Adams County ETSA,
Arapahoe County ECSA, Jefferson County ECSA

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Boulder, CO 80302

Tel: (303) 443-6690

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akin@slblaw.com

**Your Question**

IMPORTANT ENHANCED 911 DISCLOSURE FOR magicJack CUSTOMERS.

Category: [All](#) > [911 and 411 Services](#)

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Answer

Please read and review the following information carefully:

911 Emergency Services are for United States addresses ONLY.

The Federal Communications Commission (FCC) recently adopted an ENHANCED 911 (E911) VoIP Order that requires some service providers, to inform their customers of any differences between the E911 access capabilities available with their service as compared to the E911 access capability available with traditional telephone service. magicJack, LP ("magicJack") is not obligated to provide E911 service under the recently adapted FCC E911 VoIP Order, but it has chosen to voluntarily offer E911 service where available. There are important differences between magicJack's E911 service and E911 access capabilities of traditional telephone service. It is important that you understand how these differences affect your ability to access E911 services. For example, in certain circumstances, you may not be able to contact emergency services by dialing 9-1-1 using the "magicJack" device and must inform your "magicJack" device users of this.

We ask that you carefully read this E911 Disclosure and follow our advice and instructions strictly for your safety's sake.

The FCC's E911 VoIP decision also requires some service providers to obtain and keep a record on file showing that you have received and understood this E911 Disclosure. magicJack respectfully requests your assistance in our voluntarily E911 service offering by checking the applicable box on the "registration screen."

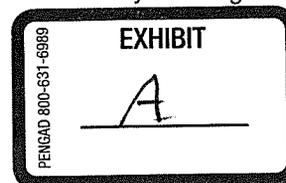
You may obtain a copy of the FCC regulation and accompanying E911 VoIP decision in Docket No. 05-196 at the following link: <http://www.fcc.gov/cgb/voip911order.pdf>.

You should never Dial 9-1-1 or "test" your 911 service unless it is an actual emergency.

Dialing 9-1-1 in a non-emergency situation is a crime and many locales prosecute offenders.

LIMITATIONS ON ACCESS TO E911 SERVICES:

1) You should consider maintaining an alternate means of contacting E911 services. The magicJack E911 service differs from traditional E911 service. You understand and acknowledge that you should consider having an alternate means of contacting E911 services and inform your magicJack" device users of this.



2) magicJack emergency services may not operate during a power outage. You understand and acknowledge that you may not be able to use your magicJack" device to contact E911 services if your power is disrupted. Once power service is restored, you may be required to reset or reconfigure your Internet service before you will be able to use it to contact E911 services. You are responsible for providing an uninterruptible backup power supply to ensure continued operation of electrical equipment, including customer premises equipment necessary to provide Internet service, in the event of a power outage.

3) magicJack E911 services will not operate if your broadband connection is disrupted. You understand and acknowledge that you will not be able to use your magicJack" device to contact E911 services if your broadband connection is disrupted. Once your broadband connection has been restored, you may be required to reset or reconfigure your Internet equipment before you will be able to use the magicJack" device to contact E911 services.

4) magicJack E911 services will not operate unless you register your correct service address with magicJack. You understand and acknowledge that you must provide magicJack with your correct service address in order for E911 services to work. If you notice that the location information identified in your 911 registration section of the magicJack menu is inaccurate, you can correct your service address by going to the magicJack menu and selecting E911.

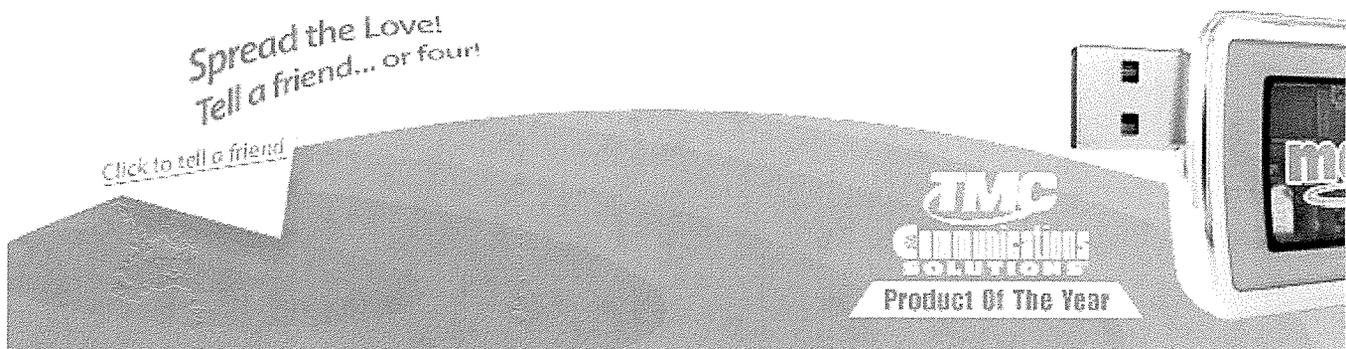
5) magicJack E911 services will not operate correctly if you disable, damage or move the magicJack" device to another location. If you disable, damage or move the magicJack" device to a location other than the service address you provided when it was registered, it will not function. If you wish to move to a new address, go to the magicJack menu and select the E911 option.

6) magicJack E911 service will not operate outside of the United States and Canada.

7) magicJack is only able to provide E911 service in cities and towns where the local Public Safety Answering Point, or PSAP, is technically capable of receiving your address information with your E911 call. If the PSAP that serves your area is not equipped to receive your magicJack registered address, you will need to provide the 911 operator with your address information orally.

We want to make sure we have given you the tools to keep you, your families and your coworkers safe each time you dial 911.

Last Update: Jul 2, 2009





Your Question

Does 911 Emergency Service work with magicJack?

Category: [All](#) > [911 and 411 Services](#)

Answer

YES! 911 Emergency Services works with magicJack.

In an emergency, Dial 9-1-1.

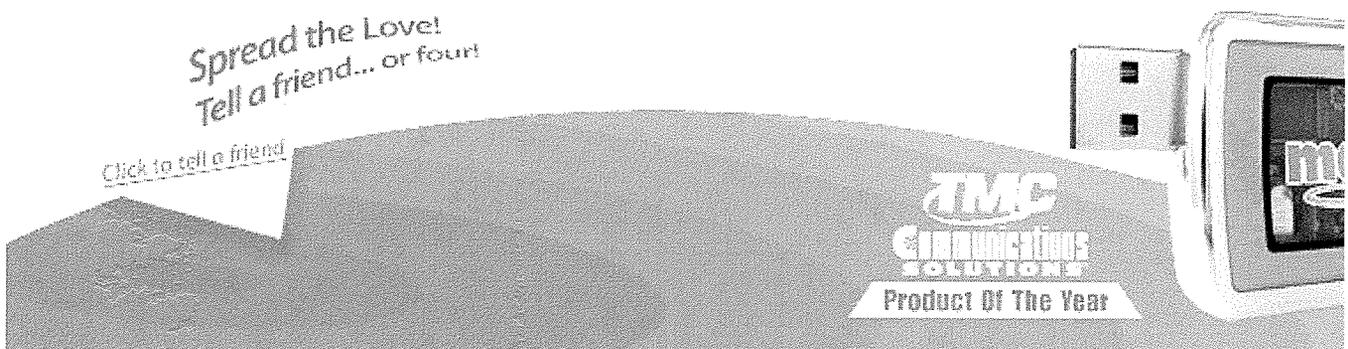
NOTE: magicJack may not work during a power or internet outage.

Dialing 9-1-1:

1. REQUIRES prior activation on your part. You must register your current service address and update your registered address if you use your magicJack from another location.
2. WILL NOT function during a broadband or power disruption/outage.
3. WILL NOT function if the magicJack is damaged or disabled.
4. IS subject to the limitations of the 911 emergency response system where your registered address is located.

You should maintain an alternate means of dialing 911 and make sure other users of your magicJack know this.

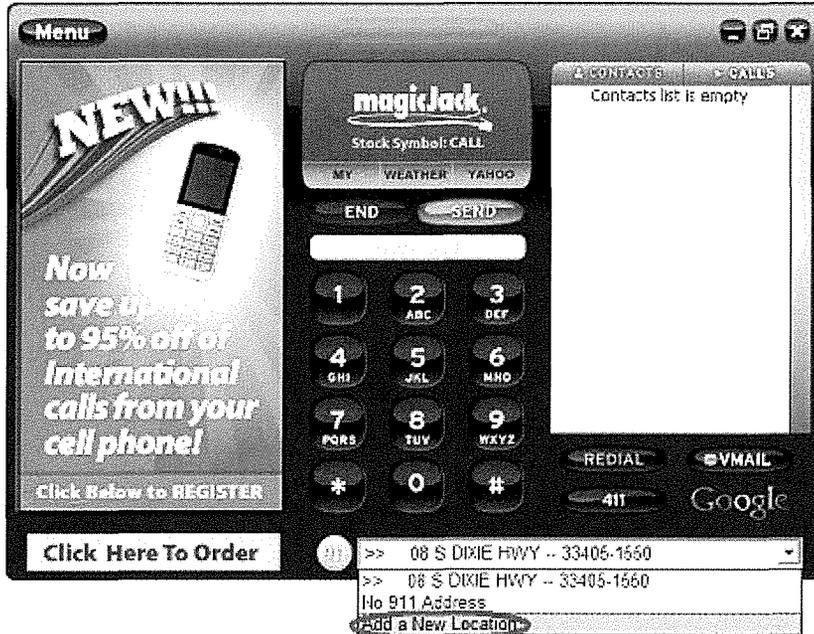
Last Update: Aug 17, 2010





Adding a new 911 location

A. Click the 911 box and select “Add a New Location”



B. Enter your new 911 address and click

Next →



ONLINE

magicJack 911 Address Setup

911 Information

Please verify your 911 address below and save with the correct information. They are required to provide Emergency Service only your location street address & 911 call.

Name (First Last) _____
Country: UNITED STATES OF AMERICA
Zip Code: _____
City: _____
State/Province: _____
Street Address: _____
Additional Detail: _____
(if applicable (e.g. Apt #, Floor #, Suite #, Unit #, etc.)

Using 911 for non-emergency purposes may result in a fine or imprisonment or both.

Are you using Cable, DirecTV or Dish for television?

Cable DirecTV Dish None

Are you using DSL or Cable internet services?

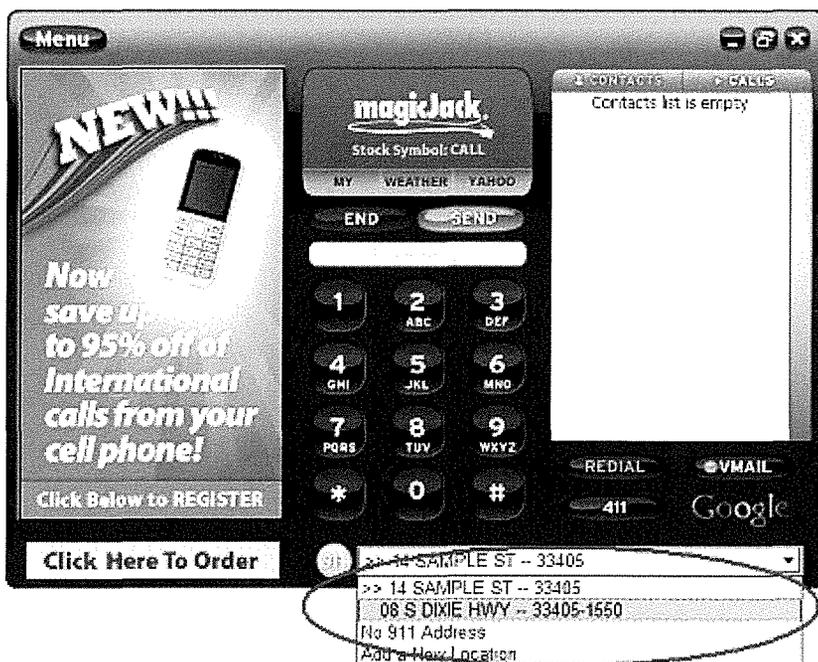
DSL Cable Other

Cancel

Next →

Need help adding a 911 address? Click [here](#) for assistance.

C. Click the 911 box to toggle between addresses





Your Question

Can I delete a 911 Emergency Service location?

Category: [All](#) > [Frequently Asked Questions](#)

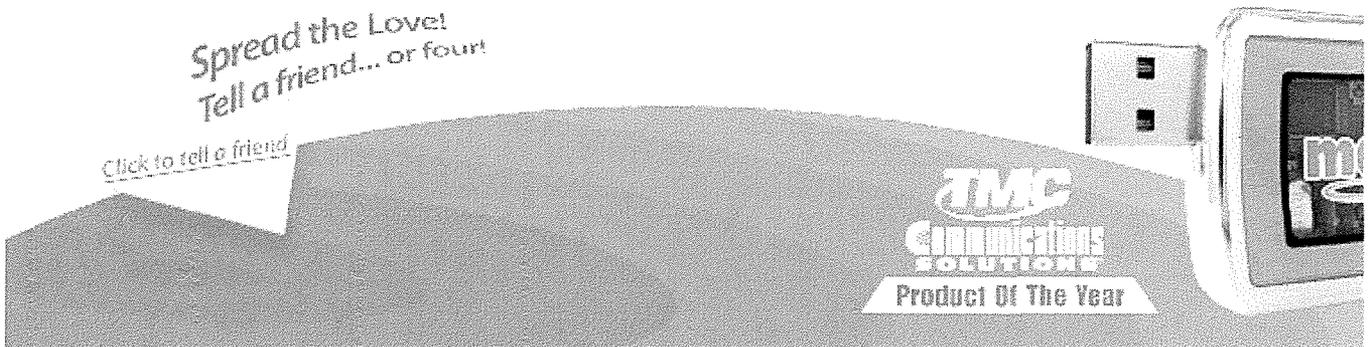
Answer

Currently, you may not delete a 911 Emergency Service location.

We will have this functionality soon.

Last Update: Jul 21, 2009

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Your Question

911 Emergency Service Location Address

Category: [All](#) > [911 and 411 Services](#)

Answer

911 Emergency Services are for United States addresses ONLY.

We validate each of the civic or physical location that has been entered.

You will notice your physical location address on the SoftPhone on your computer.

A color coded symbol will identify the status of your physical location:

RED: We can NOT identify your physical location. Click on the red light in <http://my.magicJack.com> to fix the information.

BLACK: Any black location shown is a non-US location. If a non-US location is selected, no services will respond if you dial 911. You don't need to change these; they are shown for your information.

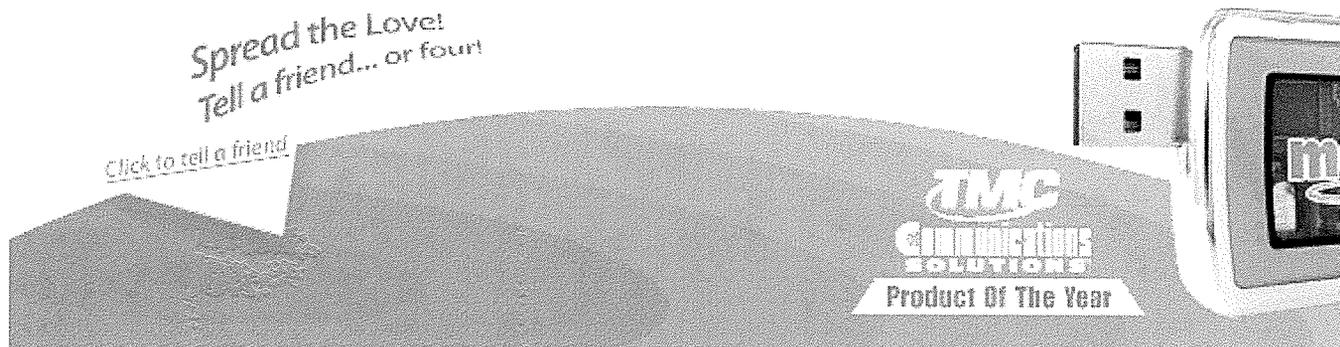
YELLOW: We can not immediately identify your physical location. Verification may take a few days.

GREEN: Your physical location address is VERIFIED.

To view or select your current location or to enter a new location, use the softPhone display on your computer to select your current physical location.

We recommend that you always keep your 911 Emergency Address up-to-date.

Last Update: Dec 30, 2010



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

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WVA PUBLIC SERVICE
COMMISSION
SEC. 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.

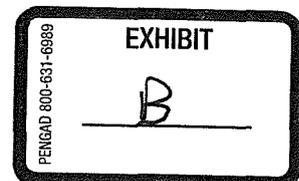
Should the Commission, staff or legal have any questions, please feel free to contact me.

Sincerely,



Peter Russo

cc: Ms. Sandra Squire
Mr. Jared M. Tully



ANSWER

RECEIVED

State of West Virginia
Public Service Commission
Charleston

2010 MAY 18 AM 8 31
W VA PUBLIC SERVICE
COMMISSION
RECEIVED'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.

Peter Russo – CFO, prepared the response on May 17th 2010, and can testify to the response.

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.

Peter Russo – CFO, prepared the response on May 17th 2010, and can testify to the response.

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

Peter Russo – CFO, prepared the response on May 17th 2010, and can testify to the response.

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® 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® service and related features of the service.

Peter Russo – CFO, prepared the response on May 17th 2010, and can testify to the response.

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.

Peter Russo – CFO, prepared the response on May 17th 2010, and can testify to the response.

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.

Peter Russo – CFO, prepared the response on May 17th 2010, and can testify to the response.

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.

Peter Russo – CFO, prepared the response on May 17th 2010, and can testify to the response.

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

See answer above

Peter Russo – CFO, prepared the response on May 17th 2010, and can testify to the response.

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.

Peter Russo – CFO, prepared the response on May 17th 2010, and can testify to the response.

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

Peter Russo – CFO, prepared the response on May 17th 2010, and can testify to the response.

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.

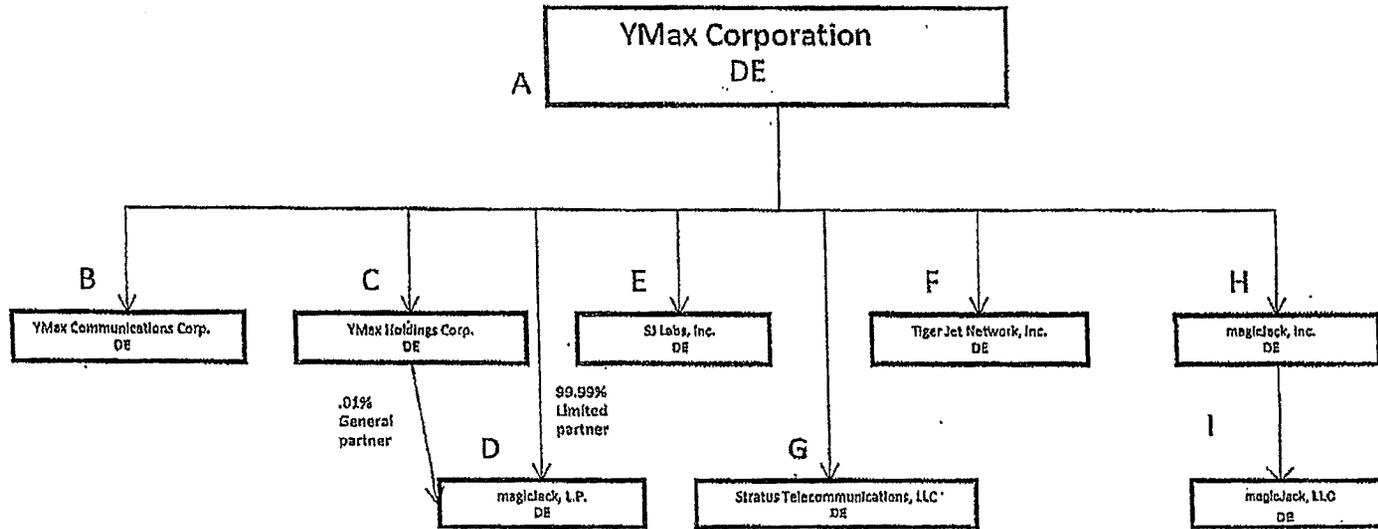
Peter Russo – CFO, prepared the response on May 17th 2010, and can testify to the response.

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 item stating the amount of the fee levied, even if there were interconnected VoIP services being offered. There are no bills rendered at all, let alone in each county in order to act as a billing agent for each county.

Peter Russo – CFO, prepared the response on May 17th 2010, and can testify to the response.

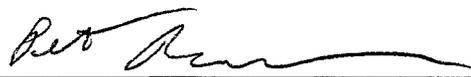
CORPORATE STRUCTURE



- 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

Attachment A

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).

(Signed) 
Signature of authorized representative of Defendants

By CEO
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

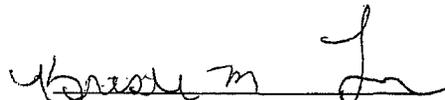
County of Hunterdon, ss.

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,

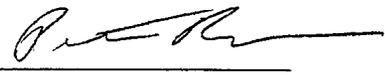
CERTIFICATE OF SERVICE

I, Peter Russo, hereby certify that a true copy of the foregoing "Answer" to the "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." was served via Federal Express, on this 17th 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