

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SPRINT COMMUNICATIONS COMPANY)	
L.P.,)	
)	Case No. 11-cv-2683 JAR/GLR
Plaintiff,)	
)	
v.)	
COX COMMUNICATIONS, INC.,)	
COXCOM, LLC,)	
COX KANSAS TELCOM, LLC, and)	
COX COMMUNICATIONS KANSAS,)	
LLC,)	
Defendants.)	
)	
)	

CCI'S SUPPLEMENTAL BRIEF CONCERNING PERSONAL JURISDICTION

Sprint's August 9 closing argument raises three arguments as to why Cox Communications, Inc. (CCI), the corporate parent of CoxCom LLC and grandparent of Cox Kansas Telcom, LLC, and Cox Communications Kansas, LLC, is *directly* liable for patent infringement in the District of Kansas.

- Sprint's first argument is a defective syllogism: CCI owns cox.com; cox.com directs business activities to Kansas residents; and therefore CCI directs business activities to Kansas residents. *See* Sprint closing slides at 8-10. What Sprint fails to acknowledge is that the entity directing business activities to Kansas via cox.com is not CCI but rather Cox Kansas Telcom, LLC, a point Ms. Sangston made repeatedly in her testimony.
- Sprint's second argument is that CCI controls Cox Communications Kansas and Cox Kansas Telcom and is therefore responsible for Cox Kansas Telecom's alleged acts of infringement. *See id.* at 13-15. But Sprint certainly did not elicit any evidence to support that notion as a general proposition. Indeed, the evidence was that the allegedly

infringing activities are independently performed by the Cox Kansas entities. The “divided infringement” case law Sprint relies upon has no applicability here. If a parent’s mere ability to control its subsidiary was enough to trigger *direct* infringement liability because of the subsidiary’s conduct, every parent would be liable for the allegedly infringing (or other tortious) actions of every subsidiary nationwide. That is not the law.

- Sprint’s final argument is, in effect, that a pair of errors in CCI’s briefs mean that CCI should be deemed to have waived its arguments against personal jurisdiction in Kansas. *See id.* at 17-20. But a lawyer’s drafting error cannot somehow waive a Constitutional guarantee rooted in the bedrock concept of due process of law. Besides, this is no longer a situation where the Court is merely weighing competing briefs. The Court conducted a full-fledged half-day evidentiary hearing, including live testimony. The Court need not rely on lawyer arguments when it has had a chance to hear admissible evidence and weigh the credibility of witnesses. That **evidence** is all that matters here. And all of it confirms that CCI is not amenable to jurisdiction in Kansas.

This last point bears particular emphasis. At Sprint’s request (*see* Dkt. No. 38), the Court entered an order allowing jurisdictional discovery, to be followed by an evidentiary hearing. Dkt. No. 44. After this order issued, Sprint requested and received documents and interrogatory answers (Dkt. No. 50); and also conducted both a personal and a Rule 30(b)(6) deposition of CCI. Sprint, in short, elected to test the accuracy of Cox’s pleadings. In a few instances, following the completion of jurisdictional discovery (including a motion to compel, *see* Dkt. No. 53) and a hearing with a live witness (*see* Dkt. No. 54), the evidence disproved what the pleadings said. Sprint cannot unring the bell that Sprint itself tolled. The evidence that Sprint elicited should be dispositive, not mere allegations or materials that are not of record.

It is not as though Cox is trying to run from the Kansas forum. CoxCom, Cox Communications Kansas, and Cox Kansas Telcom all have answered Sprint's amended complaint, admitting personal jurisdiction. And it is not as though Cox is trying to run from this dispute. The entire Cox family of businesses, including CCI, has initiated a declaratory judgment action in Delaware, where all of them are present and where all claims can be adjudicated. But the evidence shows that CCI is not at home in Kansas nor does it direct activity to Kansas residents. As Ms. Sangston explained, CCI made the conscious corporate decision to structure its businesses so that it is only subject to jurisdiction in certain places:

In the 17 years I've been in the company, our policy and practice has always been that CCI would be subject to jurisdiction in a lawsuit in Delaware, where we're incorporated, or in Atlanta, where we have our principal place of business, but that we're not subject to suit in any other jurisdiction. And we always seek to remove CCI from any lawsuit outside of those jurisdictions. And typically we're successfully able to do so.

Hr'g Tr. at 30:20-31:5. Thus, by design, CCI can only be sued in Georgia or in the forum where it has sought declaratory relief in connection with Sprint's infringement allegations – Delaware. As such, Sprint's claims against CCI should be dismissed in this jurisdiction, so that they can be litigated in a forum that has the power to hear this dispute.

1. CCI Owns cox.com But The Kansas Entities Direct Offers To Sell The Accused Telecommunications Services Into Kansas

Roughly a quarter of Sprint's closing slides contend that CCI is subject to Kansas jurisdiction because it owns cox.com. *See* Sprint closing slides 6, 8-11. But this argument fails to grapple with Ms. Sangston's testimony, which is that, while CCI owns and controls the Cox web platform, the Kansas entities (not CCI) create, direct, and control all Kansas-specific advertising and functionality. Her evidence was unambiguous: the Kansas entities, not CCI, advertise to Kansas residents via the Internet and otherwise. Hr'g Tr. 70:4-71:5; 73:4-21, Aug. 9, 2012. They, not CCI, determine the substantive content – the products, terms of service, and

pricing – of the offers that are made on cox.com. *Id.* at 27:23-28:7. The Kansas entities, not CCI, receive orders placed on cox.com and enter them in to a Kansas-specific customer database. *Id.* at 73:22-75:19. The Kansas entities, not CCI, service those Kansas residents who sign up and pay for Cox Digital Telephone. *Id.* Indeed, CCI does not *and cannot* offer telecommunications services in Kansas because it lacks a license to do so. *Id.* at 77:1-78:16. CCI merely provides a nationwide platform from which its locally licensed subsidiaries are able to solicit and serve their customers in the regions where they operate. *Id.* at 27:15-22.

The Tenth Circuit has adopted a “somewhat ... restrictive approach” to the question of whether a defendant has expressly aimed its conduct at the forum. *Dudnikov v. Chalk & Vermillion Fine Arts, Inc.*, 514 F.3d 1063, 1074 n. 9 (10th Cir. 2008). Thus, unsurprisingly, both of the cases cited by Sprint (p. 10 of its closing slides) *reject* the assertion of personal jurisdiction over out-of-state defendants based on Internet activities similar to those of CCI.

In *ALS Scan v. Digital Serv.*, a Georgia Web host (analogous to CCI) was not subject to jurisdiction in Maryland even though a user (analogous to the Cox Kansas entities) had violated the intellectual property rights of the Maryland plaintiff. 293 F.3d 707, 709-710 (4th Cir. 2002).

In *Shrader v. Biddinger*, the Tenth Circuit was dealing with general, not specific jurisdiction, so the case is of limited relevance here. In that case, the court of appeals affirmed a dismissal of all defendants despite evidence of Internet activity accessible to and directed at Oklahoma residents. 633 F.3d 1235, 1249-1250 (10th Cir. 2011). The Tenth Circuit explained that “as we are dealing with general jurisdiction, the commercial contacts here must be of a sort that ‘approximate physical presence’ in the state” *Id.* at 1243. The *Shrader* court thus anticipated the Supreme Court’s subsequent decision (issued some four months later) that, for general jurisdiction to satisfy Constitutional requirements of due process, an out-of-state

defendant must be “essentially at home” in the forum. *Goodyear Dunlop Tire Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011). As Ms. Sangston demonstrated, CCI is not “essentially at home” in Kansas. Hr’g Tr. 78:15-16.

Instead, in cases where jurisdiction is based on Internet activities, the focus is on whether *a specific defendant* has directed its Internet activities toward the forum state: “the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that *an entity* conducts over the Internet.” *ALS*, 293 F.3d at 713 (emphasis added); *accord, Shrader*, 633 F.3d at 1240 (“it is necessary to adapt the analysis of personal jurisdiction to this unique circumstance [Internet web sites accessible from anywhere] by placing emphasis on the internet user or site *intentionally directing his/her/its activity* or operation *at* the forum state”) (boldface emphasis added; other emphasis original). Here, the undisputed evidence shows that the Cox entities that direct commercial activity to Kansas residents are Cox Communications Kansas and Cox Kansas Telcom – not CCI.

CIVIX-DDI LLC v. Microsoft Corp. is particularly instructive because its facts are so similar. In that patent infringement case, the court dismissed the parent company (BellSouth Corporation, “a Georgia-based holding company for over 130 subsidiaries”) for want of personal jurisdiction even though BellSouth owned the bellsouth.com website, which in turn had hypertext links to the accused Yellow Pages product. 52 U.S.P.Q.2d 1501, 1503 (D. Colo. 1999). The court in Colorado rejected the argument that the bellsouth.com website conferred personal jurisdiction because the accused Yellow Pages portion of the website was operated by “a legally distinct subsidiary of BellSouth.” *Id.* Like BellSouth Corporation and the accused Yellow Pages product, CCI “does not ‘make, use, sell, publish, or offer to sell’” Cox Digital Telephone; CCI “does not maintain an office, telephone number, or bank account within”

Kansas, and the accused website functionality “is controlled by a subsidiary.” *Id.* at 1504-5. Providing a platform for BellSouth’s *subsidiaries* to do business in Colorado was not enough to create personal jurisdiction over *BellSouth*, just as providing a platform for CCI’s *subsidiaries* to do business in Kansas is not enough to create personal jurisdiction over *CCI*.

2. Owning A Kansas Subsidiary Does Not Create Personal Jurisdiction In Kansas

Sprint’s closing argument also asserts that CCI’s ownership of and control over the Kansas entities is sufficient to subject it to personal jurisdiction in Kansas. This is not the law.

As Ms. Sangston testified, Cox’s corporate structure, in relevant part, is as follows: Cox Enterprises owns CCI, which owns CoxCom LLC, which owns the two Kansas subsidiaries that provide Cox Digital Telephone service in Kansas. Hr’g Tr. 25:11-32:4. Within this architecture, CCI provides back-office functionality – accounting, legal support, and so on – and also handles system-wide technical issues. *Id.* at 27: 15-22. Each entity higher up the corporate chain owns (and thus at some basic level has the right to control) the companies below it. But each operating entity has independent management and employees. *Id.* at 33:7-34-8. The Kansas subsidiaries pay their own taxes and own the assets needed to run their business. *Id.* at 60:18-64:14. They separately manage the marketing and sale of their products, and they independently purchase and maintain their own equipment. *Id.* at 67:8-69:25. That type of relationship does not confer jurisdiction up and down the entire Cox enterprise. If it did, the corporate form would be meaningless. “[C]orporate veils exist for a reason and should be pierced only reluctantly and cautiously. The law permits the incorporation of businesses for the very purpose of isolating liabilities among separate entities.” *Boughton v. Cotter Corp.*, 65 F.3d 823, 836 (10th Cir. 1995).

For purposes of asserting personal jurisdiction over an accused patent infringer, the question is whether the parent controls *the infringing activity*. Controlling the company that performs the infringing activity is not enough. *See Desenberg v. Google, Inc.*, No. 2010-1212, 392 Fed. Appx. 868, 870 (Fed. Cir. Aug. 31, 2010) (“The court in *BMC Resources* held that direct infringement could not be found unless the defendant performed, or directed or controlled the performance, of all of the steps of the claimed method”) (citations omitted). Thus, in *CIVIX-DDI*, the court carefully addressed “whether BellSouth, as a parent corporation of a subsidiary that operates the Yellow Pages, can be bound by its subsidiary for purposes of Colorado’s personal jurisdiction,” and concluded that it could not: “A holding or parent company has a separate corporate existence from its subsidiary and is thus treated separately in the absence of circumstances justifying the disregard of the corporate entity.” *CIVIX-DDI*, 52 U.S.P.Q.2D 2d at 1505 (citing *Quarles v. Fuqua Indus., Inc.*, 504 F.2d 1358 (10th Cir. 1974)). Sprint adduced no facts to support piercing the corporate veil or to suggest that CCI “controls the day-to-day time, manner, and method of executing the work” of its Kansas subsidiaries. *Seltzer v. I.C. Optics, Ltd.*, 399 F. Supp. 2d 601, 610 (D. N.J. 2004). CCI cannot be liable for the acts of its subsidiaries unless such a relationship is established. *Id.* at 609-610.

Ms. Sangston’s uncontested testimony was that CCI does not direct or control whether or how the Kansas entities offer or maintain Cox Digital Telephone to Kansas residents. Hr’g Tr. 32:5-33:6; 61:17-64:4. The Kansas entities have their own management, marketing, and technical executives and personnel; they make their own purchasing, marketing, and pricing decisions; they execute all internet purchase orders; they own all of the personal and real property associated with the accused business; and they maintain an engineering staff of 110 to maintain the physical plant that supports Cox Digital Telephone in Kansas. *Id.* at 51:3-51:8,

64:5-64:14; 67:12-75:19. CCI, in contrast, merely sets overall strategy and targets, provides marketing templates and legal and administrative support, and provides engineering support to troubleshoot network issues that do not have local Kansas origins. *Id.* at 27:6-24:14; 63:1-24. This simply is not on par with cases where the corporate form has been disregarded and, accordingly, CCI's separate legal personhood should be honored in this case. *See Contracom Commodity Trading AG v. Seaboard Corp.*, 94 F. Supp. 2d 1189, 1197 (D. Kan. 2000) (VanBebber, J.) (rejecting a veil-piercing theory when the parent did not "possess[] such domination of finances, policy, and practices ... that [the subsidiary] has no separate mind, will, or existence of its own and is but a business conduit for [its parent]"). Put differently, Sprint "never posits that [CCI] had control over [the Kansas entities]," but instead provides "mere conclusory statements" that cannot give rise to personal jurisdiction over CCI in Kansas. *Ablulimir v. U-Haul Co. of Kan., Inc.*, No. 11-4014-EFM, 2011 WL 2746094, at *3 (D. Kan., July 13, 2011) (Melgren, J.); *Ashcroft v. Iqbal*, 556 U.S. 662, 668 (2009) (citations omitted) .

Finally, it needs to be emphasized that the case cited by Sprint on the question of CCI's responsibility for the allegedly infringing acts of its subsidiaries addresses the issue of "control" in the context of so-called "joint infringement" cases; that is, cases where no single actor carries out the infringing acts, but two or more combined do. And that case, moreover, rejects a finding of joint infringement. In *Golden Hour v. emsCharts*, cited at p. 13 of Sprint's closing slides, the Federal Circuit affirmed a judgment as a matter of law that *rejected* joint infringement: "Where the combined actions of multiple parties are alleged to infringe process claims, the patent holder must prove that one party exercised 'control or direction' over the entire process such that all steps of the process can be attributed to the controlling party, i.e., the 'mastermind.' ... We agree

with the district court that the evidence here was insufficient for [the] jury to infer control or direction.” 614 F.3d 1367, 1380 (Fed. Cir. 2010) (citations omitted).

Typically, no infringement can be found under such circumstances, because infringement occurs only when a single entity performs the entire patented process. *BMC Res., Inc. v. Paymentech, L.P.*, 498 F.3d 1373, 1378-9 (Fed. Cir. 2007) (“Direct infringement requires a party to perform or use each and every step or element of a claimed method or product”). The courts recognize an exception to this rule where there is one entity which “controls or directs” each of the other entities in performing the claimed steps of the patented process. *Centilion Data Sys. LLC v. Quest Commc’n Int’l, Inc.*, 631 F.3d 1279, 1287 (Fed. Cir. 2011); *see also BMC Res.*, 498 F.3d 1373, 1381 (Fed. Cir. 2007) (“the law imposes vicarious liability on a party for the acts of another in circumstances showing that the liable party controlled ***the conduct of the acting party***”) (emphasis added). As a preliminary matter, there is no allegation of divided or joint infringement in this case, and no allegation that CCI controls or directs any particular conduct of the Cox Kansas subsidiaries constituting an element of any claimed process. Instead, the evidence is that Cox’s Digital Telephone services are independently sold and offered for sale by the Kansas Entities, and that CCI has no role in those activities or in making or using the accused services. *See Contracom Commodity*, 94 F. Supp. 2d at 1196 (“The fact that one corporation is the parent of the other ... without a showing that the one exercises undue control over the internal affairs of the other, is insufficient to warrant treating the two corporations as one”).

Sprint’s closing argument emphasized Ms. Sangston’s description of the Cox Network Operations Center as “Big Brother” or the “mastermind.” But as Ms. Sangston made clear in her testimony, she was referring to the NOC’s role in identifying and addressing system-wide technical failures, while the Regional Operations Center in Oklahoma handles issues affecting

Cox Digital Telephone in the Central Region and Cox Communications Kansas handles technical issues specific to Kansas:

- Q. And you referred, correct me if I'm wrong, but I think you referred to earlier in your testimony, your questioning by Mr. Bloch, you referred to the NOC as the mastermind; is that correct?
- A. I think that's fair because it has the 60,000 foot level view across-- across the country as opposed to the ROC, which is a regional look across the markets that are incorporated within that Oklahoma ROC that covers Kansas and Arkansas and Nebraska as well as Oklahoma. And then you have the local technical people who have their own-- their own look, which is a very local look. They're not going to see-- I mean, if you think about it like a periscope. If you're a Kansas engineer, you're not going to have any visibility into what's going on over in California, right? Nor should you need to because you're responsible for your local market. The ROC that covers Kansas and Arkansas and Nebraska and Oklahoma doesn't have any reason-- or the ROC doesn't have any reason to see what's going on in our Virginia operations. So the NOC is that 60,000 foot capability of looking across the footprint.

Hr'g Tr. 123:17-124:17. Troubleshooting network-level problems is not the same as making, using, selling, or offering to sell Cox Digital Telephone within the meaning of 35 U.S.C. § 271.

3. The Court Should Consider Only And All Of The Facts In Evidence

The Court should not decide Sprint's motion based on attorney assertions or on materials Sprint cited in its closing argument but did not introduce into evidence. On multiple occasions, Sprint cites either to Ms. Sangston's deposition transcript or to documents and discovery responses that it did not offer into evidence. Moreover, in each instance, the material relied on by Sprint was contradicted by the *admitted evidence* that was presented at the hearing. The Court should disregard any Sprint statement that is not supported by evidence properly submitted during the August 9 evidentiary hearing. Specifically:

Sprint closing argument	Evidence cited
Allegations that CCI sells Cox Digital Cable to Kansas residents through Best Buy and other	Ms. Sangston did not testify about CCI's relationship with Best Buy or any other third

retail outlets (pp. 6, 11).	party retail outlet. Neither the cited document (Sprint Hearing Ex. K) nor Ms. Sangston's deposition transcript relied upon by Sprint for these allegations were offered into evidence by Sprint. The only evidence offered on this point showed that advertisements used in the Kansas market are specific to Kansas. <i>See</i> Cox Exhibit 7 and Hr'g Tr. 70:15-73:3.
Allegations concerning Cox Digital Telephone revenue attributable to the Kansas market from 2007-2011 (p. 9).	Ms. Sangston did not testify to these numbers and CCI's response to Interrogatory No. 8 was not offered into evidence by Sprint. Rather, Ms. Sangston testified, and Cox tax filings confirmed, that CCI realizes no income in Kansas. Hr'g Tr. 61:18-25.
Allegations concerning the number of Cox Digital Telephone subscriptions made by Kansas residents through the cox.com website (pp. 9, 11).	Ms. Sangston did not testify concerning the number of Cox Digital Telephone subscribers in Kansas nor the number of subscriptions made through cox.com. Neither Ms. Sangston's deposition transcript nor CCI's response to Interrogatory No. 1 (the two items cited by Sprint) was offered into evidence by Sprint. Rather, Ms. Sangston testified that all Kansas telephone subscriptions entered through the cox.com website are subject to terms and pricing set by the Kansas entities, enrolled in the Cox customer database for Kansas by Kansas personnel, and serviced by the Kansas entities' equipment and technicians. Hr'g Tr. 64:5-14; 67:8-69:25.
"Cox's Digital Telephone was designed and developed (and is managed) by CCI employees in CCI's Atlanta headquarters" (p. 14).	Sprint's only citation for this proposition is the McLeod Declaration, which it did not offer into evidence. Ms. Sangston's testimony was that the Kansas business is managed by the Kansas entities. Hr'g Tr. 27:23-28:7. The equipment comprising it is selected, purchased, installed and maintained by the Kansas entities. <i>Id.</i> at 63:25-64:14. CCI merely supports them in a number of ways. <i>Id.</i> at 63:1-19. ¹

¹ Though Sprint often refers to the fact that CCI designed Cox's national telecommunications network, it is unclear what this is supposed to show. Ms. Sangston testified that Cox got into the telephone business in the late 1990s, and documents submitted with Sprint's motion papers suggest that Cox implemented a packet-based phone system more than seven years before the filing of this lawsuit (see Dkt. No. 38-3 (Cox whitepapers attached to Sprint's opposition to CCI's motion to dismiss)), and thus outside of the applicable six-year statute of limitations (35 U.S.C. §286), not to mention outside the state of Kansas.

Failing to introduce these materials into evidence is no mere formalism. It goes to the heart of the Court's decision to take evidence in an adversarial setting. By failing to move these materials into evidence and thereby foreclosing CCI's ability to raise objections, arguments, or to offer testimony in response, Sprint has now waived its right to rely on them.

At the same time that it sought to rely on non-record evidence, Sprint's closing argument took the position that CCI made erroneous statements during the briefing process that must now be held against it. Sprint argues for a form of judicial estoppel based on lawyer argument. But that doctrine does not apply because a judgment has not been entered in reliance on a position taken by CCI. *See generally New Hampshire v. Maine*, 532 U.S. 742, 742 (2001). To the contrary, courts in this District have routinely held that an attorney's arguments are not evidence at all. *See e.g., Sprint Commc'ns Co. v. Vonage Holdings Corp.*, 500 F. Supp. 2d 1290, 1303–04 (D. Kan. 2007) (attorney argument and commentary, legal conclusions not facts admissible in evidence under Federal Rule of Civil Procedure 56 (e)) (Lungstrum, J.); *Stouder v. M & A Tech., Inc.*, No. 09-4113-JAR-KGS, 2012 WL 28066, at *2 (D. Kan. Jan. 5, 2012) ("The Court disregards facts presented by the parties in the from of legal conclusions or argument, facts based solely on conclusory opinions") (Robinson, J.); *Ryan Dev. Co., L.C., v. Ind. Lumbermens Mut. Ins. Co.*, 2011 WL 5080309, at *2 (D. Kan. Oct. 25, 2011) ("counsel's arguments were not evidence") (Melgren, J.).

This case law is particularly apt here, where the Court has no need to rely on assertions in briefs because it has had the opportunity to hear live testimony and review supporting documents that were subject to cross examination have been admitted into evidence. Indeed, to the extent that Sprint's closing argument purported to rely on factual assertions, those assertions consisted of the *ipse dixits* of Sprint's counsel and fly in the face of the actual evidence:

Sprint's assertions of fact	The actual evidence
CCI pays taxes in Kansas (pp. 4, 15).	CCI writes checks to the Kansas tax authorities to cover the Kansas entities' tax obligations, and bills the Kansas entities for the amount paid. Hr'g Tr. 91:11-18. CCI signs Kansas tax forms on behalf of the Kansas entities and as their tax preparer. <i>Id.</i> at 126:5-129:19. Internal Cox documents confirm that Cox Kansas is charged for and has the responsibility for funding its own tax obligations. Cox Exhibits 5 (property tax payment and chargeback) and 6 (income tax returns).
CCI controls and/or owns telecommunications equipment in Kansas (pp. 4, 14, 18).	Cox asset ledgers show this property is owned by Cox Kansas. Cox Exhibit 2. Real property transaction documents confirm ownership by Cox Kansas. Cox Exhibit 4. The testimony further confirmed that this was because the Kansas business was purchased from Multimedia Cablevision in 2000 by and is operated by Cox Communications Kansas, LLC, which also selects and pays for the capital plant supporting that business. <i>E.g.</i> , Hr'g Tr. 24:19-25:9, 33:7-34:8, 43:12-44:1, 49:12-50:21, 61:17-64:4.
CCI makes sales of Cox Digital Telephone to Kansas residents (p. 11).	CCI does not and cannot make such sales in Kansas; it lacks the legal authority, asset base, and personnel to do so. Hr'g Tr. 77:1-78:7. The terms of any offers made on cox.com are determined by the Kansas entities, which execute the transactions solicited on that site, and fulfill the obligation to provide telephone services to those customers. <i>Id.</i> at 67:8-76:3 and Cox Exhibit 7.
CCI admits that it makes money on the sale of digital telephone services to Kansas residents and that income from the Kansas telecommunications business rolls up to CCI (pp. 12, 19).	CCI receives no income from telephony sales in Kansas and that it cannot receive such income. CCI's tax records confirm this testimony. Hr'g Tr. 90:25-91:10 and Cox Exhibit 6. Income "rolls up" to CCI only in the sense that consolidated income statements are prepared as a managerial tool for Cox Enterprises showing the income of all of its subsidiaries. <i>Id.</i> 90:25-91:10, 128:24-131:3.
CCI specifies the types of equipment that can be used by its Kansas subsidiaries (p. 14).	The testimony (at 63:1-19) was directly to the contrary:

	<p>Q: Can you describe for me in general the process by which Cox Communications Kansas buys telephony equipment for use to provide telecommunications services in Kansas ... But the actual purchase is done by Cox Communications Kansas?</p> <p>A: The local market makes its determinations consistent with its budget and its projected business needs.</p>
CCI makes tariff filings for Kansas subsidiaries (p. 15).	The testimony (at 36:12-19) was directly to the contrary: "part of the certificate of convenience and necessity also required that we submit tariffs to the state or the public utility commission that would lay out the prices and the terms of sale of our service. And those were filed with the state and those were filed in the name of Cox Kansas Telcom, LLC."

Based on that undisputed *evidence*, the Court should grant CCI's motion to dismiss.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2012, I electronically filed **CCI's Supplemental Brief Concerning Personal Jurisdiction** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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