

# ATTACHMENTS

TO

THE STAFF'S INITIAL REPORT  
REGARDING THE IMPACT OF THE  
ALLEGATIONS OF CRIMINAL ACTIVITIES  
BY KENNETH MATZDORFF ON  
MISSOURI UTILITY CONSUMERS

JANUARY 31, 2005

NP

## LIST OF ATTACHMENTS

<b>Attachment Number</b>	<b>Description of Attachment</b>
1.	Mr. Matzdorff Guilty Plea in United States Eastern District Court of New York
1a.	Mr. Matzdorff Guilty Plea in United States Western District Court for the District of Missouri Western Division
2.	Companies/Organizations Noted in Staff's Investigation
3.	Individuals/Trusts Noted in Staff's Investigation
4.	Missouri Utilities Noted in Staff's Investigation
5.	States Noted in Staff's Investigation
6.	Addresses Noted in Staff's Investigation
7.	Mr. Matzdorff Investigation Chronology
8.	Federal Indictment in United States Eastern District Court of New York
9.	Description of Cramming Scheme
10.	Description of Internet Fraud Scheme
11.	Mr. Lovern's March 29, 2004 Memorandum
12.	Fidelity Communications, Inc. Organizational Structure
13.	Mr. Matzdorff MPSC testimony on 4/19/04
14.	Cass County Telephone Company LP's 11/30/04 response to Staff Data Request Number 22.
15.	Cass County Telephone Company LP's 11/30/04 response to Staff Data Request Number 6.
16.	Cass County Telephone Company LP's 11/30/04 response to Staff Data Request Number 8.
17.	Southwestern Bell Telephone Company Brief
18.	Mr. Matzdorff's Federal Arrest Warrant
19.	Oregon Farmers' Comments to the Staff's Report
20.	New Florence Telephone Company's Comments to the Staff's Report
21.	Cass County Telephone's Comments to the Staff's Report

## Attachment 1

Mr. Matzdorff Guilty Plea in US Eastern  
District Court of New York

EOC:ERK/TAF/JAG  
F.#2003r00446  
MATZDORFF.INFORMATION.wpd

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA

I N F O R M A T I O N

- against -

KENNETH MATZDORFF,

Defendant.

- - - - - x

Cr. No. \_\_\_\_\_  
(T. 18, U.S.C., §§ 371,  
981(a)(1)(C), 982,  
1956(h) and 3551 et  
seq.; T. 21, U.S.C.,  
§ 853(p); T. 28, U.S.C.,  
§ 2461(c))

THE UNITED STATES ATTORNEY CHARGES:

INTRODUCTION

At all times relevant to this Information, unless  
otherwise stated:

I. Billing for "Enhanced" Telecommunications Services

1. Telecommunications services such as voicemail,  
call forwarding and private "1-800" numbers were sometimes  
referred to in the telecommunications industry as "enhanced" or  
"premium" services. Local telephone companies, which were also  
known as local exchange carriers, or "LECs," provided basic  
telephone services and some enhanced services to consumers.  
Third-party service providers also offered enhanced services  
directly to consumers, often in competition with LECs.

2. In order to enhance competition in the  
telecommunications industry, LECs were required by law, under  
certain circumstances, to allow third-party service providers to

include charges for their services on the LECs' telephone bills to consumers. When LECs included these charges, consumers paid the entire amount of the bills to the LECs, which were then obligated to pass along to the third-party service providers the amount paid for the enhanced services they provided.

3. Telephone billing "aggregators" were companies that acted as intermediaries between LECs and third-party service providers. Among other things, aggregators (a) transmitted billing data relating to the enhanced services from service providers to LECs, and (b) collected from LECs money paid by consumers for the enhanced services. The aggregators charged their clients, the service providers, a fee for the billing and collection services they provided.

4. Before LECs would accept charges for inclusion on their bills, they typically required the billing aggregators to provide copies of the advertising material and descriptions of the services and programs offered by the service providers. In addition, the entries on telephone bills that described the services for which consumers were being charged, commonly referred to as "Bill Phrases," were subject to approval by the LECs and were generally required to be clear and concise descriptions of the service. The LECs imposed these requirements on the billing aggregators, among other reasons, to combat the placement of unauthorized charges on their customers' local

telephone bills - a fraudulent practice commonly known in the telecommunications industry as "cramming."

## II. The Defendant and USP&C

5. USP&C, Inc. ("USP&C") was a telephone billing aggregator. USP&C was secretly controlled by Richard Martino, a "made" member, or soldier, in the Gambino crime family of La Cosa Nostra (the "Gambino family"), and Norman Chanes and Daniel Martino, both of whom were associates in the Gambino family.

6. In order to conceal their ownership and control of USP&C, in or about 1996, Richard Martino, Norman Chanes and Daniel Martino caused the defendant KENNETH MATZDORFF to assume nominal ownership of USP&C and to falsely represent himself to third parties as the owner of that company.

## III. The Telephone Cramming Fraud Scheme

7. In or about and between approximately 1996 and 2002, the defendant KENNETH MATZDORFF, together with Richard Martino, Norman Chanes, Daniel Martino and others, knowingly and intentionally devised and executed a telephone cramming scheme, which involved defrauding consumers by causing USP&C to place unauthorized charges on local telephone bills of victims within the Eastern District of New York and elsewhere, and collecting payment on those unauthorized charges (the "Cramming Scheme").

8. To execute the Cramming Scheme, Richard Martino, Norman Chanes and others acting at their direction produced and

disseminated advertisements offering free samples of adult entertainment services, such as psychic hotlines, dating services, and sexually oriented talk-lines, over various "1-800" telephone numbers. These advertisements induced victims within the Eastern District of New York and elsewhere to call the various "1-800" telephone numbers by promising free samples of the entertainment services described.

9. Victims who called the "1-800" telephone numbers advertised in this manner heard pre-recorded "front-end programs," which varied over time and across the various "1-800" telephone numbers. Each was designed so that when a victim called the "1-800" telephone number and expressed a desire to obtain the free sample of the entertainment service advertised, the front-end program triggered a recurring monthly charge on the victim's local telephone bill for voice-mail service, without the knowledge, consent or authorization of the victim. The Bill Phrases for the monthly charges that later appeared on the victims' local telephone bills were designed to appear to be standard telephone-related charges or fees, and to conceal the fact that the charges were triggered by the calls to the "1-800" adult entertainment telephone lines.

10. In order to conceal the fraudulent nature of the "1-800" telephone numbers and related front-end programs used in the Cramming Scheme, Richard Martino, Norman Chanes, the

defendant KENNETH MATZDORFF and others acting at their direction caused to be prepared and knowingly facilitated the preparation of two sets of advertisements, front-end programs and related materials. One set was referred to as the "marketing" materials, and consisted of the fraudulent advertisements, front-end programs and related materials offering the free samples of entertainment services that were used to defraud the victims in the manner described above. The second set was referred to as the "approval" materials, and consisted of advertisements, front-end programs and related materials offering various voice-mail services. Unlike the "marketing" versions, the "approval" versions of the front-end programs appeared properly to seek the consumer's authorization to charge a recurring monthly fee for a voice-mail service, whose features were fully described.

11. The "approval" materials were not actively marketed to the public, but rather were presented to LECs, regulatory and law enforcement agencies and complaining customers in order to conceal the existence and fraudulent nature of the "marketing" materials actually used to generate the unauthorized charges. The Bill Phrases for the unauthorized charges corresponded to the names of the voice-mail services contained in the "approval" materials. In this manner, when USP&C faced inquiries concerning the business practices of its clients or the nature of the monthly recurring charges from LECs, regulatory or



law enforcement agencies or complaining customers, USP&C presented the "approval" materials rather than the "marketing" materials that actually triggered the charge.

12. The service providers that were USP&C's clients were front companies, devoid of employees and physical office space, that were set up to conceal the fact that the fraudulent front-end programs were owned and controlled by Richard Martino, Norman Chanes and Daniel Martino. All of USP&C's dealings with these purported clients were conducted through Richard Martino, Norman Chanes and employees acting at their direction.

13. The Cramming Scheme caused unauthorized recurring monthly charges to be included on millions of victims' local telephone bills throughout the Eastern District of New York and elsewhere in the United States, and generated between approximately \$50,000 and \$600,000 in gross revenue per day between 1997 and 2001. In total, the Cramming Scheme generated substantially in excess of \$500 million in gross revenues.

14. Many of the Cramming Scheme's victims complained to LECs and to USP&C about the unauthorized charges appearing on their local telephone bills. The defendant KENNETH MATZDORFF, at the direction of Richard Martino, Norman Chanes, Daniel Martino and others, caused a "call center" affiliated with USP&C to be established to handle the large volume of victim complaints internally, to prevent LECs from learning the extent of customers

complaining that the charges were unauthorized.

15. Telephone operators at the call center were directed initially to attempt to persuade victims that the charges were in fact authorized and to induce customers to agree to pay the charges. If a victim was adamant that the charges had not been authorized and refused to pay, the operators were next directed to offer a partial refund, but to offer a full refund only if the victim would not accept a partial refund.

16. The purpose of offering refunds to customers who demanded them was to reduce the likelihood that victims would complain directly to LECs or to regulatory agencies. The call center operators were further instructed that if victims asked them to provide the telephone number that triggered the charge on the USP&C page of their local telephone bill, the operators were to provide a "1-800" number that connected to the "approval" version of the front-end program, instead of the "1-800" telephone number that was connected to the "marketing" front-end program that the customer had actually called.

17. During the course of the Cramming Scheme, USP&C on average refunded approximately 50 percent of the unauthorized charges to complaining customers. From time to time, various LECs canceled the billing privileges of certain "1-800" number programs that generated these high refund levels. On such occasions, the defendant KENNETH MATZDORFF, Richard Martino and

Norman Chanes, together with others, caused USP&C to transfer billing for the purported customers of these canceled programs to new "1-800" number programs for the purpose of continuing and perpetuating the Cramming Scheme.

18. On several occasions during the course of the Cramming Scheme, representatives of various LECs and government agencies demanded to meet with USP&C's president to address the large volume of cramming complaints being made against USP&C and the service providers that were its clients. On several such occasions, the defendant KENNETH MATZDORFF attended meetings at the direction of Richard Martino or his employees. MATZDORFF represented himself at these meetings to be the owner and president of USP&C, despite the fact that, as he well knew and believed, he did not own or control USP&C.

19. The defendant KENNETH MATZDORFF further represented to LEC employees and government officials that USP&C was taking steps to police cramming activity by its service-provider clients, including by shutting down the "1-800" number programs that had particularly high rates of complaints and refunds. At the time he made such representations, MATZDORFF well knew and believed that the shell companies that were USP&C's clients were not, in fact, ceasing to bill the purported customers of those programs, but were instead simply transferring the billing of those individuals to new shell companies at the

direction of Richard Martino, Norman Chanes, Daniel Martino and others.

#### IV. The Internet "Free-Tour" Fraud Scheme

20. Richard Martino, Norman Chanes and Daniel Martino also designed and executed a scheme to defraud internet users who visited pornographic websites that they designed and operated together with others. Through these websites, the Martinos and Chanes fraudulently obtained visitors' credit and debit card information, ostensibly for age-verification purposes, and then billed the victims' cards without the victims' knowledge or consent (the "Internet Free-Tour Scheme").

21. The Internet Free-Tour Scheme was centered around purportedly "free tours" of the websites created by the Martinos and Chanes. Although the websites represented that visitors to the websites could take a "free tour" of each website without being billed, in actuality the websites were designed and operated so that victims would be billed without their knowledge or consent. Through the websites, the Martinos, Chanes and others billed and caused to be billed the credit and debit cards of thousands of victims in the United States, including in the Eastern District of New York, Europe and Asia, without their authorization. The bills were charged at a recurring monthly rate of up to \$90 each, for an approximate total amount of more than \$230 million.

V. Laundrying of the Proceeds of the Telephone Cramming Scheme and Internet Free-Tour Scheme

22. During the course of the Cramming Scheme described above, USP&C collected the payments for the unauthorized charges from LECs, and in turn, at the direction of the defendant KENNETH MATZDORFF and others, paid the bulk of the proceeds to its purported service-provider clients, net of expenses and refunds to complaining victims. These companies in turn transferred the proceeds to Overland Data Center ("Overland"), another company secretly controlled by Richard Martino, and Fairfax Telecommunications, Inc., a shell company secretly controlled by Richard Martino. Overland in turn transferred the vast bulk of the proceeds to two other companies owned and controlled by Richard Martino's companies, Mical Properties and Telcom On-Line, Inc.

23. The proceeds of the Internet Free-Tour Scheme described above were initially received at the bank account of Multimedia Forum, Inc. ("Multimedia"), at North Fork Bank on Long Island, New York. At the direction of Richard Martino and Daniel Martino, these funds were transferred to another company, Westford, which was secretly controlled by Richard Martino through one of his business associates. Among other things, in 1999 five transfers were made from Multimedia's account at North Fork Bank on Long Island to Westford's account in New Jersey. The proceeds of the Internet Free-Tour Scheme were commingled

with the proceeds of the Cramming Scheme and other monies in various accounts controlled by Richard Martino, Norman Chanes and Daniel Martino. The transfers and commingling of funds described above were executed for the purpose of concealing the criminal nature of the funds and of promoting the continued fraudulent activity.

COUNT ONE  
(Conspiracy to Commit Wire Fraud)

24. The allegations contained in paragraphs 1 through 23 are realleged and incorporated as if fully set forth in this paragraph.

25. In or about and between 1996 and 2002, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant KENNETH MATZDORFF, together with Richard Martino, Norman Chanes, Daniel Martino and others, did knowingly and intentionally conspire to devise and execute a scheme and artifice to defraud users of the "1-800" adult entertainment telephone numbers involved in the Cramming Scheme and others, and to obtain money and property from them by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, to transmit and cause to be transmitted, by means of wire communication in interstate and foreign commerce, writings, signs, signals and sounds, in violation of Title 18, United States Code, Section 1343.

26. In furtherance of the conspiracy and to effect its objectives, within the Eastern District of New York and elsewhere, the defendant KENNETH MATZDORFF, together with others, committed and caused to be committed, among others, the following:

OVERT ACTS

a. On or about March 15, 1997, MATZDORFF executed a resolution purporting to elect himself the President and Secretary/Treasurer of USP&C.

b. On or about December 17, 1999, MATZDORFF and others executed an agreement for the Sale and Purchase of Common Stock of USP&C, Inc.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNT TWO

(Money Laundering Conspiracy)

27. The allegations contained in paragraphs 1 through 23, 25 and 26 are realleged and incorporated as if fully set forth in this paragraph.

28. In or about and between 1996 and 2002, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant KENNETH MATZDORFF, together with Richard Martino, Norman Chanes, Daniel Martino and others, did knowingly and intentionally conspire to conduct financial transactions affecting interstate and foreign commerce, which in

fact involved the proceeds of specified unlawful activity, to wit: mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud, in violation of Title 18, United States Code, Section 1343; and credit card fraud, in violation of Title 18, United States Code, Section 1029(a)(5), knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity (a) with the intent to promote the carrying on of the specified unlawful activity, and (b) knowing that the transactions were designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of the specified unlawful activity, in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 1956(a)(1)(B)(i).

(Title 18, United States Code, Sections 1956(h) and 3551 et seq.)

ADDITIONAL ALLEGATIONS AS TO COUNT ONE

29. The allegations contained in Count One are hereby realleged and incorporated as if fully set forth in this paragraph, and the additional allegations below are incorporated by reference into Count One.

30. Based on (a) acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, and willfully caused by the defendant, and (b) all reasonably foreseeable acts and omissions of others in furtherance of a criminal plan,



scheme, endeavor, and enterprise undertaken by the defendant in concert with others; all of which occurred during the commission of the offense of conviction, in preparation for that offense, and in the course of attempting to avoid detection and responsibility for that offense, the following conduct occurred (U.S.S.G. § 1B1.3(a)(1)):

a. The greater of the actual loss and the intended loss was more than \$100,000,000 (U.S.S.G. § 2B1.1(b)(1)(N)(2002)).

b. The offense involved a scheme to defraud 50 or more victims (U.S.S.G. § 2B1.1(b)(2)(B)(2002)).

c. The offense involved sophisticated means (U.S.S.G. § 2B1.1(b)(8)(C)(2002)).

CRIMINAL FORFEITURE ALLEGATION ONE  
(Conspiracy to Commit Wire Fraud)

31. The United States hereby gives notice to the defendant charged in Count One that, upon his conviction of such offense, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which require any person convicted of such offense to forfeit any property constituting or derived from proceeds obtained directly or indirectly as a result of such offense, or traceable thereto. The value of the forfeitable property is a sum of money equal to \$500 million in United States currency.

32. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982, to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation, including but not limited to the following:

1. all right, title and interest in the premises and real property located at 17074 S. Demi Drive, Belton, Missouri 64012;
2. all right, title and interest in the premises and real property located at Lot 107 Cedar Crest, Lake Ozark, Missouri 65049;
3. all right, title and interest in the premises and real property located at Lot 23, Kays Point #1, Lake Ozark, Missouri 65049; and
4. all right, title and interest in the premises and real property located at 979 Heritage Isle, Sunrise Beach, Missouri 65079.

(Title 28, United States Code, Section 2461(c), Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p))

CRIMINAL FORFEITURE ALLEGATION TWO  
(Money Laundering Conspiracy)

33. The United States hereby gives notice to the defendant charged in Count Two that, upon his conviction of such offense, the government will seek forfeiture in accordance with Title 18, United States Code, Section 982, of all property involved in each offense of conviction in violation of Title 18, United States Code, Section 1956, or conspiracy to commit such offense, and all property traceable to such property as a result of the defendant's conviction of Count Two of this information. The value of the forfeitable property is a sum of money equal to \$730 million in United States currency.

34. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;  
it is the intent of the United States, pursuant to Title 18, United States Code, Section 982, to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation, including but not limited to the following:

1. all right, title and interest in the premises and real property located at 17074 S. Demi Drive, Belton, Missouri 64012;
2. all right, title and interest in the premises and real property located at Lot 107 Cedar Crest, Lake Ozark, Missouri 65049;
3. all right, title and interest in the premises and real property located at Lot 23, Kays Point #1, Lake Ozark, Missouri 65049; and
4. all right, title and interest in the premises and real property located at 979 Heritage Isle, Sunrise Beach, Missouri 65079.

(Title 18, United States Code, Section 982)

---

ROSLYNN R. MAUSKOPF  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

## Attachment 1a

Mr. Matzdorff Guilty Plea in US

Western District Court for the District of

Missouri Western Division

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. <u>05-00020-01-CR-W-SOW</u>
	)	Count One
KENNETH M. MATZDORFF,	)	18 U.S.C. § 371
[DOB: XX/XX/XX],	)	[NMT: Five Years Imprisonment,
	)	\$250,000 Fine, Three Years
<u>Defendant.</u>	)	Supervised Release, Plus \$100
	)	Special Assessment]
		Count Two
		(Criminal Forfeiture)
		18 U.S.C. § 981(a)(1)(C)
		28 U.S.C. § 2461(c)

I N F O R M A T I O N

THE UNITED STATES ATTORNEY CHARGES THAT:

COUNT ONE

1. At all times relevant to this Information:

(a) Cass County Telephone Company, LP (hereinafter CassTel) is a limited partnership located in Peculiar, Missouri. CassTel's principal business is providing telecommunications services to approximately 8,000 customers in Cass County, Missouri, as well as a small number of customers in the State of Kansas. CassTel is primarily (99%) owned by Local Exchange Company, LLC (hereinafter LEC).

(b) Local Exchange Company, LLC (LEC) is a limited liability company registered in Maryland. The corporation consists of approximately 43 persons and trusts which own "units" of the company.

(c) The National Exchange Carriers Association (hereinafter NECA) is a not-for-profit organization created by the Federal Communications Commission (FCC) pursuant to 47 C.F.R. § 69.601. NECA's purpose is to prepare and file access charge tariffs on behalf of all telephone companies that do not file separate tariffs. A tariff is the rate charged by one telephone company to another telephone company for access and use of that company's telephone system in the course of interstate telecommunications. 47 C.F.R. § 69.601(c) requires that all data submissions made to NECA be accompanied by a certification statement from an officer or employee responsible for the overall preparation of the data submission that "the data have been examined and reviewed and are complete, accurate, and consistent with the rules of the Federal Communications Commission." 47 C.F.R. § 69.601(c) further provides that "Persons making willful false statements in this data submission can be punished by fine or imprisonment under the provisions of the United States Code, Title 18, Section 1001."

NECA collects money from individual telephone companies, known as "local exchange carriers" under 47 C.F.R., Part 69. NECA distributes the funds back to local exchange carriers based upon whether the individual exchange carrier has costs above the national average cost as determined by NECA.

(d) The Universal Service Administrative Company (hereinafter USAC) is a not-for-profit corporation established to administer the Universal Service Fund (hereinafter USF). The USF was established by the FCC to subsidize high cost rural telephone systems. Pursuant to C.F.R § 36.611, each local exchange carrier must submit information to NECA by July 31st of each year which sets forth the allowable expenses of the carrier in the previous calendar year. Based upon this submission of expenses, the USAC makes a determination whether rural telephone companies are eligible for cost subsidies from the USF. The subsidies are disbursed by USAC to NECA to be paid out to the rural telephone companies the following calendar year.

(e) The Overland Data Center (ODC) was a company located in Overland Park, Kansas, that provided software support and information technology support to CassTel.

(f) F.S.E. Consulting Corp. (FSE) was a corporation located in New York, New York, which provided financial and accounting services to ODC.

(g) Defendant KENNETH M. MATZDORFF was at all times relevant to this information an employee of LEC. At various times throughout the conspiracy, defendant KENNETH M. MATZDORFF was the President of CassTel and LEC.



2. From on or about January 1998, to on or about July 2004, in the Western District of Missouri and elsewhere, defendant KENNETH M. MATZDORFF, and others known and unknown to the United States Attorney, did knowingly conspire, combine, confederate and agree together and with each other to violate the laws of the United States of America, specifically, mail and wire fraud in violation of Title 18, United States Code, Sections 1341 and 1343.

**MANNER AND MEANS**

The manner and means by which the conspiracy operated included the following:

3. From on or about January 1998, and continuing to on or about July 2004, in the Western District of Missouri and elsewhere, the defendant KENNETH M. MATZDORFF, and other persons known to the United States Attorney, devised and intended to devise a scheme and artifice to defraud the USF and NECA.

4. Defendant KENNETH M. MATZDORFF and others agreed to create false and fictitious ODC invoices to CassTel. The payments by CassTel to ODC based upon the fictitious invoices totaled approximately \$11 million between 1998 and 2003. The total value of the actual services performed during 1997 to 2002 by ODC for CassTel is estimated at \$240,000.

5. Defendant M. KENNETH MATZDORFF and others agreed to have CassTel, and later LEC, charge ODC for "consulting" and "management" fees. The payments from ODC to CassTel and LEC totaled approximately \$11 million from 1998 to 2003.

6. The payments from CassTel to ODC and from ODC to LEC were coordinated by persons known to the United States Attorney that were employed by FSE in New York, New York.

7. The fictitious ODC expenses were included by CassTel as allowable expenses in the submissions to NECA for the calculation by USAC of the Universal Service Fund payments to CassTel. The false and fictitious expenses resulted in an overpayment by USAC to CassTel of approximately \$3.5 million from 1999 to 2004.

8. The fictitious ODC expenses were included as allowable expenses in the cost studies filed by CassTel with NECA for determination of the payments to CassTel from the "cost pools" administered by NECA. The false and fictitious expenses resulted in an overpayment by NECA to CassTel of approximately \$5.4 million from 1998 to 2003.

#### **OVERT ACTS**

In furtherance of the conspiracy, the following Overt Acts, among others, were committed in the Western District of Missouri and elsewhere.

1. On or about January 1998, defendant KENNETH M. MATZDORFF and other LEC shareholders met to review the 1998 budget for

CassTel. At that meeting, defendant KENNETH M. MATZDORFF and other persons known to the United States Attorney agreed to inflate the expenses of CassTel in order to generate additional capital to expand the assets and services of CassTel. The additional capital would be received from the increased payments from the USF and NECA based upon the fictitious ODC expenses reported by CassTel.

2. On or about July 30, 1999, CassTel sent the 1998 USF submission to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

3. On or about July 31, 2001, CassTel sent the 2000 USF submission to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

4. On or about September 5, 2001, CassTel sent the 2000 cost study to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

5. On or about October 22, 2002, CassTel sent the 2001 cost study to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

6. On or about October 28, 2003, CassTel sent the 2002 cost study to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

7. On, about and between January 1998, and September 2004, NECA sent to CassTel, via wire transfers, approximately \$36,906,078.29.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

The allegations contained in Count One of this Information are realleged and incorporated by reference for the purpose of alleging a forfeiture pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c). Defendant KENNETH M. MATZDORFF shall forfeit to the United States \$2,500,000 in U.S. currency which constitutes or is derived from the proceeds traceable to the violation incorporated by reference in this Count.

All in violation of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

If any of these assets, as a result of any act or omission of the defendant KENNETH M. MATZDORFF:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to or deposited with a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficulty;  
it is the intention of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any property of said defendant KENNETH M. MATZDORFF up to the value of the assets set-out above.

Todd P. Graves  
United States Attorney

January 18, 2005  
DATE

By: /s/  
Paul S. Becker  
Assistant United States Attorney  
Western District of Missouri  
Chief, Organized Crime Strike Force Unit

/s/ /s/  
Bruce E. Clark, #31443  
Assistant United States Attorney  
Western District of Missouri  
Organized Crime Strike Force Unit

/s/  
Jess E. Michaelson, #52253  
Assistant United States Attorney  
Western District of Missouri  
Organized Crime Strike Force Unit

psb:sgs

ATTACHMENT 2  
HAS BEEN DEEMED  
HIGHLY CONFIDENTIAL  
IN ITS  
ENTIRETY.

ATTACHMENT 3  
HAS BEEN DEEMED  
HIGHLY CONFIDENTIAL  
IN ITS  
ENTIRETY.

## Attachment 4

### Missouri Utilities Noted in Staff's Investigation



## Missouri Local Exchange Companies of Interest

<b>Company</b>	<b>Connection</b>
Cass County Telephone	Ken Matzdorff was the President and Chief Executive Officer for this firm per his testimony in Case Number TM-2000-0182
Century Telephone	Firm is an owner of Spectra based in Monroe, Louisiana per Matzdorff Direct testimony in Case Number TM-2000-0182.
Spectra Communications Group LLC (Spectra)	Ken Matzdorff was the Chief Operating Officer for this firm per his testimony in Case Number TM-2000-0182
New Florence Telephone	Ken Matzdorff purchased this firm per his testimony in Case Number TM-2000-0182. Staff's data request responses in Case No. TM-98-222 - the case in which New Florence was sold to Tiger Telephone. Tiger Telephone is ownership is as follows: 1/3 Ken Matzdorff, 1/3 Bob Williams (Oregon Farmers Telephone) and 1/3 LEC, LLC. Per Dave Winter 8/11/04 e-mail
Oregon Farmers	-Robert D. Williams owns 94.12% of common stock. Loans with CoBank <i>per 2003 Annual report filed with MPSC</i> -Company uses <b>LEC LLC</b> as a billing vendor <i>per September 17, 2004 Oregon Farmers response to Staff Data Request # 4,</i>

## Attachment 5

### States Noted in Staff's Investigation

State	Connection
Delaware	<p><b>Spectra</b> is a Delaware Limited Liability Company <i>per Matzdorff Direct testimony in Case Number TM-2000-0182.</i> -</p> <p><b>-LEC, Inc.</b> is a Delaware corporation. <i>Per 3/1/96 Limited Liability Company Operating Agreement of Local Exchange Company LLC per DR # 2, March 3, 2004 responses pg. 4. CONFIDENTIAL</i></p> <p><b>-Lexitrans, Inc.</b> is a Delaware corporation <i>per DR # 14, March 3, 2004 responses pg. 2</i></p> <p><b>- Dynamic Telecommunications, Inc., and Westford Telecommunications, Inc.</b> are Delaware corporations. <i>per DR # 14, March 3, 2004 responses pg. 3</i></p>
Kansas	Location of <b>USP&amp;C</b> and <b>Overland Data</b>
Georgia	Home for <b>Spectronics</b> Corporation <i>per Matzdorff Direct testimony in Case Number TM-2000-0182</i>
Illinois	State of incorporation for <b>Lexicom. Inc.</b> , a minority owner of <b>LEC LLC</b> . <i>per DR # 13, March 3, 2004 answers, Cass County Telephone Company Limited Partnership Agreement of Limited Partnership, pg. 14. CONFIDENTIAL.</i>
Louisiana	Home of <b>Century Telephone</b> , Dr. Minor, and Dr. Cunningham <i>per Matzdorff Direct testimony in Case Number TM-2000-0182</i>
Maryland	State in which <b>Local Exchange Company LLC</b> is a limited liability company. <b>Crawford Telephone Company Limited Partnership</b> is a Maryland limited partnership. <i>Per 3/1/96 Limited Liability Company Operating Agreement of Local Exchange Company LLC per DR # 13, March 3, 2004 responses pg. 2. CONFIDENTIAL</i>
Missouri	Primary focus of investigation to determine what is any impact the Matzdorff Arrest has on utility or operations in Missouri.
New York	State where Arrest Warrant was filed. Most indicted individuals reside in this state. <b>Mical Properties, Inc.</b> and <b>Harvest Advertising, Inc.</b> were New York corporation. <i>per DR # 14, March 3, 2004 responses pg. 2-3</i>

## Attachment 6

### Addresses Noted in Staff's Investigation

Address	Significance
4550 W 109 <sup>th</sup> Street STE 150 Overland Park, Ks.	-Address of <b>USP&amp;C, TELDATA Consultants, Inc. &amp; LEXITRANS</b> (See Firms of Interest) <i>per Kansas &amp; Mo. Secretary of State search</i> -Address for <b>Telecom Operator Services, Inc.</b> <i>per o. 2001&amp;2002 Annual Registration Report.</i> -Address for <b>Billing Management Services, Inc.</b> <i>per Kansas secretary of State search.</i>
4550 W 109 <sup>th</sup> Street STE 218 Overland Park, Ks.	-Address of <b>USP&amp;C</b> (see firms of interest) <i>per Mo. Secretary of State 2003 Annual Registration Report</i> -Address for <b>Telecom Operator Services, Inc.</b> <i>per o. 2003 Annual Registration Report</i> -Address for <b>Cyber Data Processing, Inc.</b> <i>per Kansas Secretary of State search</i> -Address for <b>Lexitrans, Inc.</b> <i>per Kansas Secretary of State search</i>
4550 W 109 <sup>th</sup> Street STE 220 Overland Park, Kansas	Address of <b>Cyberdata Processing, Inc. f.k.a. Lexitrans</b> <i>per 8/20/2004 Featherstone e-mail to Schallenberg &amp; per Cass County Telephone 8/20/0 attachment to response to Data Request No.4, Schedule A</i>
4550 W 109 <sup>th</sup> Street STE 222 Overland Park, Kansas 66211	Address for <b>Info Access, Inc.</b> on August 4, 1997 <i>per Kansas secretary of state search.</i> Address for <b>Overland Data Center</b> on May 2, 2004 <i>per Kansas secretary of state search</i>
4550 W 109 <sup>th</sup> Street STE 300 Overland Park, Kansas 66211	Address of <b>TELDATA Consultants, Inc. (See Firms of Interest)</b> <i>per Kansas Secretary of State search</i>
4550 W 109 <sup>th</sup> Street Overland Park, Ks.	Address of <b>Overland Data Center Inc. and Lexitrans, Inc.</b> (see firms of interest) <i>per Kansas Secretary of State search</i>
3200 Lake Desiard Monroe, La. 71201	Address for Dr. Claude B. Minor Jr.
511 S Dresden CT Shreveport, La 71115	Address for Dr. Bobby R. Cunningham
36 South Charles St Baltimore, Md. 21202	Address of Local exchange Company LLC (see firms of interest) <i>per Mo. Secretary of State search</i>
36 South Charles St 1100 South Charles Center Baltimore, Md. 21202	Maryland address for Piper & Marbury and Lawrence M. Katz to handle Cass County Telephone Company LLP & LEC, LLC matters. <i>per Mo. Secretary of State search</i>
818 Guenevere Ballwin, Missouri 63011	Address for LEC Long Distance Inc. <i>per Mo. Secretary of State search</i>

17074 Demi Drive Belton, Mo. 64012	Address for Ken Matzdorff, secretary of Haug Construction Inc. <i>per Mo. 1999 Annual Registration Report.</i> Address for Ken Matzdorff, president & secretary of LEC Long Distance, Inc. <i>per Mo. 2003 Secretary of State Annual Registration Report</i> Address for Ken Matzdorff, organizer and initial manager for VIDEONET LLC <i>per Mo. Secretary of state search</i>
312 E. Capital PO Box 456 Jefferson City, Mo. 65102	Address for William R. England III and Sondra Morgan <i>per Mo. 2003 Secretary of State Annual Registration Report</i>
5963 North Cosby Avenue Kansas City, Missouri 64151	Address for Williams Holdings, L.L.C.
8800 Blue Ridge Blvd Suite 300 Kansas City, Mo. 64138	-Address of <b>USP&amp;C and Telecom Operator Services, Inc.</b> (see firms of interest) <i>per Mo. Secretary of State 1999 &amp; 2000 Annual Registration Report</i> -Address for <b>Billing Management Services, Inc</b> <i>per Terry Stock deposition in California, pg. 4 l. 114</i> - Address of <b>Investco Telecommunications, Inc.</b> <i>per 2000 Mo. Annual Report</i> -Address <b>Telecom Operator Services, Inc.</b> - Address for Telecom Operator Services, Inc. <i>per Mo. Secretary of State 1997&amp; 1998 Annual report</i> or
8800 Blue Ridge Blvd Suite 206 Kansas City, Mo. 64138	Address for <b>Haug Construction, Inc.</b> (see firms of interest) <i>per La. Secretary of State data</i>
8800 Blue Ridge Blvd Suite 100 Kansas City, Mo. 64138	Address for <b>MATZO L.L.C. &amp; Kansas City Consultants, L.L.C</b> <i>per Mo. Secretary of State search</i>
3145 Broadway Street Kansas City, Missouri 64111	Address for <b>D &amp; A Agency Services Inc.</b> and <b>Rodger H. Templin</b> organizer & registered agent for <b>WILMAT, L.L.C.</b> <i>per Mo. Secretary of State search</i>
8 Victory Lane Ste, 120 Liberty, Missouri 64068	Current address for <b>Haug Construction</b> <i>per Mo. Secretary of State search</i>
118 East Nodaway, Oregon, Mo. 64473	Address for 1) <b>Oregon Farmers Mutual Telephone</b> <i>per 2003 Annual report filed with MPSC</i> and 2) <b>Haug Construction Inc.</b> <i>per Mo. 1999 Annual Registration Report</i>
610 S Washington	Address for Robert D. Williams, president of Haug

Oregon, Mo. 64473	Construction Inc. per Mo. 1999 Annual Registration Report
260 W 1 <sup>st</sup> St. PO Box 398 Peculiar, Mo. 64078	Address for Cass County Telephone Company Limited Partnership per Kansas Secretary of State search
192 West Broadway P.O. Box 526 Peculiar, Mo. 64078	-Address for Tiger Telephone, Inc. (see Firms of Interests) <i>per Mo. 2004 Secretary of State Annual Registration Report</i>
192 West Broadway P.O. Box 562 Peculiar, Mo. 64078	Address for LEC Long Distance, Inc. (see Firms of Interests) per Mo. 2003 Secretary of State Annual Registration Report
192 West Broadway P.O. Box 647 Peculiar, Mo. 64078	Address for Local Exchange Company L.L.C. and InfoAccess, Inc. per DR # 13, March 3, 2004 answers, Cass County Telephone Company Limited Partnership Agreement of Limited Partnership, pg. 4. CONFIDENTIAL
192 West Broadway Peculiar, Mo. 64078	-Address for Telecom Operator Services, Inc. <i>per Mo. Secretary of State 1996 Annual report</i>
818 Guenevere Ballwin, Missouri 63011	Address for <b>LEC Long Distance Inc.</b> <i>per Mo. Secretary of State search</i>
301 Brookline Street Hawthorne, New York 10532	Address for <b>Daniel Martino</b> as CEO and principle executive office for <b>QUALITEL, Inc.</b> <i>per NY Department of State search</i>
160-40 25 Drive Flushing, New York 11358	Address for <b>Cohen Partnership, LP.</b> and its registered agent, <b>Benjamin Cohen</b> . <i>per NY Department of State search</i>
59 E. Broadway New York, New York 10002	Address for <b>Lexicom, Inc.</b> . <i>per DR # 13, March 3, 2004 answers, Cass County Telephone Company Limited Partnership Agreement of Limited Partnership, pg. 4. CONFIDENTIAL</i>
1501 Broadway New York, New York	Address for <b>Harvest Advertising, Inc.</b> <i>per DR # 14, March 3, 2004 responses pg. 3 and per US Eastern NY District Court Superceding Indictment 03-304 (S-3) (CBA) DR # 14, March 3, 2004 responses pg. 6</i>
144 East 39 <sup>th</sup> Street New York, New York	Early address for <b>Mical Properties, Inc. and LEXITRANS</b> <i>per DR # 14, March 3, 2004 responses pg. 2-3</i>
144 East 39 <sup>th</sup> Street FL 2 New York, New York 100160914	Address for <b>Info Access, Inc. and FSE</b> <i>per Kansas Secretary of State search</i>
444 Madison Avenue, Suite 212	Address for Lexicom Inc. <i>per Application for</i>

New York, New York 10022	<i>authority to engage in Business in the state of Kansas as a Foreign Limited Partnership per KCC Application filing to sell GTE properties to Cass County Telephone Company LLP</i>
485 Madison Avenue 15 <sup>th</sup> Floor New York, New York 10022	Address for <b>Klein, Zelman, Rothermel &amp; Dichter, LLP</b> to receive mail process for <b>QUALITEL, Inc.</b> per NY Department of State search
666 Third Avenue New York, New York	Later address for <b>Mical Properties, Inc.</b> per DR # 14, March 3, 2004 responses pg. 2
645 Bronx River Road Yonkers, NY 10704	Address for Elia Fiata per DR # 13, March 3, 2004 answers, Cass County Telephone Company Limited Partnership Agreement of Limited Partnership, pg. 4. <b>CONFIDENTIAL</b>



ATTACHMENT 7  
HAS BEEN DEEMED  
HIGHLY CONFIDENTIAL  
IN ITS  
ENTIRETY.

## Attachment 8

Federal Indictment in United States  
Eastern District Court of New York

EOC:AMG:EK  
F#2003R00446

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
SEP 21 2004 (M)  
★ BROOKLYN OFFICE ★

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

- against -

S U P E R S E D I N G  
I N D I C T M E N T

SALVATORE LOCASCIO,  
also known as "Tore,"  
RICHARD MARTINO,  
ZEF MUSTAFA,  
NORMAN CHANES,  
DANIEL MARTINO,  
ANDREW CAMPOS,  
also known as  
"Andrew Campo,"  
THOMAS PUGLIESE,  
LAWRENCE NADELL,  
YITZHAK LEVY,  
also known as  
"Isaac Levy,"  
KENNETH SCHAEFFER and  
USP&C, INC.,

Cr. No. 03-304(S-4)(CBA)  
(T. 18, U.S.C., §§ 371,  
981(a)(1)(c),  
982, 1343,  
1956(a)(1)(A)(i),  
1956(a)(1)(B)(i),  
1956(h), 1962(c),  
1962(d), 1963, 2 and  
3551 et seq.; T. 21,  
U.S.C., § 853; T. 28,  
U.S.C. § 2461)

Defendants.

- - - - - X

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Superseding Indictment,  
unless otherwise indicated:

I. The Enterprise

A. The Gambino Family

1. The members and associates of the Gambino  
Organized Crime Family of La Cosa Nostra (the "Gambino family")

constituted an "enterprise," as that term is defined by Title 18, United States Code, Section 1961(4), that is, a group of individuals associated in fact, which engaged in, and the activities of which affected, interstate commerce. The Gambino family was an organized criminal group that operated in the Eastern District of New York and elsewhere, and which constituted a continuing unit for the common purpose of achieving its objectives.

2. The Gambino family operated through groups of individuals headed by "captains," who were also referred to as "skippers," "capos," "caporegimes" and "capodecinas." These groups, which were referred to as "crews," "regimes" and "decinas," consisted of "made" members of the Gambino family, who were also referred to as "soldiers," "friends of ours," and "wise-guys," and associates of the Gambino family.

3. Each captain was responsible for supervising the criminal activities of his crew and providing crew members and associates with support and protection. In return, the captain received a share of the criminal proceeds obtained by the crew's members and associates.

4. Above the captains were the three highest ranking members of the Gambino family. The head of the Gambino family was known as the "boss." He was assisted by an "underboss" and a counselor who was known as the "consigliere."

With the assistance of the underboss and the consigliere, the boss was responsible for setting policy and resolving disputes between members of the Gambino family and members of other criminal organizations, among other things. In return for its protection and support, and for the purpose of promoting the ongoing criminal activities of the crews, the administration received a portion of the criminal proceeds from the crews.

B. The Purposes, Methods and Means of the Enterprise

5. The principal purpose of the enterprise was to generate money for its members and associates through crime, including mail fraud, wire fraud, credit card fraud, money laundering and other crimes.

II. The Defendants

6. The defendant SALVATORE LOCASCIO, also known as "Tore," was a captain in the Gambino family. He was the son of Frank LoCascio, a former underboss and consigliere of the Gambino family. After Frank LoCascio's conviction on racketeering charges in approximately April 1992, LOCASCIO took over the management of Frank LoCascio's criminal interests on behalf of the Gambino family.

7. The defendant RICHARD MARTINO was a soldier in the Gambino family. RICHARD MARTINO was a member of defendant SALVATORE LOCASCIO's crew, and shared the proceeds of his illegal activities with LOCASCIO.

8. The defendant ZEF MUSTAFA was an associate of the Gambino family. In the late 1980s and early 1990s, MUSTAFA was in the crew of Frank LoCascio and served, among other things, as his driver. After Frank LoCascio was convicted and incarcerated in approximately April 1992, MUSTAFA was assigned to the crew of defendant LOCASCIO.

9. The defendant NORMAN CHANES was an associate of the Gambino family. In the early 1990s, the defendant RICHARD MARTINO and CHANES formed a partnership through which they separately and together controlled corporations engaged in the adult entertainment industry, including the audiotext businesses, more commonly known as "900 number" businesses. These companies billed consumers for telephone services including "phone sex" lines and psychic readings, among others. Beginning in approximately 1996, RICHARD MARTINO and CHANES expanded their activities to include the provision of adult entertainment over the internet. At all times relevant to this Superseding Indictment, CHANES and RICHARD MARTINO used RICHARD MARTINO's position in the Gambino family to resolve disputes and further the interests of their joint businesses.

10. The defendant DANIEL MARTINO was the older brother of the defendant RICHARD MARTINO and an associate of the Gambino family.

11. The defendants ANDREW CAMPOS and THOMAS PUGLIESE were associates of the Gambino family.

12. The defendants LAWRENCE NADELL, YITZHAK LEVY and KENNETH SCHAEFFER worked for defendant RICHARD MARTINO at Mical Properties, Inc., described below.

13. The defendant USP&C, INC. ("USP&C") was a telephone billing aggregator, that is, as described in greater detail below, a company that aggregated charges on behalf of various clients and placed them on the telephone bills of consumers pursuant to contracts with local telephone companies. USP&C was secretly controlled by defendants RICHARD MARTINO, CHANES and DANIEL MARTINO.

### III. Certain Companies

14. Defendant RICHARD MARTINO was the president and owner of Mical Properties, Inc. ("Mical"), a New York corporation which maintained an office at 144 East 39<sup>th</sup> Street, and later at 666 Third Avenue, New York, New York. In or about 1999, Mical began to operate under the names "Telcom Online, Inc.," and "Telecom Online, Inc." ("Telcom"). Mical was principally engaged in operating various "1-900" and "1-800" adult entertainment telephone services. MARTINO also secretly controlled other companies, including Lexitrans, Inc., ("Lexitrans"), which provided web hosting services on the internet; and Dynamic Telecommunications, Inc. ("Dynamic"), and Westford

Telecommunications, Inc. ("Westford"), both of which used the same mail drop address in Westwood, New Jersey.

15. Defendant THOMAS PUGLIESE was the nominal president and owner of Fairfax Telecommunications Inc. ("Fairfax"), which received proceeds from USP&C as set forth below; and Invesco Telecommunications Inc. ("Invesco"), which did business under the name "Southwest Region Bill," as set forth below. Fairfax and Invesco were secretly controlled by defendants RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO.

16. Defendant NORMAN CHANES was the president and owner of Harvest Advertising, Inc. ("Harvest"), a New York corporation, which maintained an office at 1501 Broadway, New York, New York. Harvest was engaged in the business of placing advertising on television, in magazines and on the internet, among other things.

17. Defendants SALVATORE LOCASCIO and ZEF MUSTAFA were 50% and 25% owners, respectively, of Creative Program Communications, Inc. ("Creative"). Creative was a shell company whose principal purpose was to serve as a vehicle for defendants LOCASCIO and MUSTAFA to receive proceeds from defendant RICHARD MARTINO's criminal activities and to disguise the criminal source and nature of those proceeds.



#### IV. The USP&C Telephone Cramming Fraud Scheme

##### A. The Telephone Billing and Collection Industry

18. Local telephone companies, also called Local Exchange Carriers ("LECs"), permitted third parties to include charges for telecommunications services ordered by consumers on the consumers' local telephone bills. To facilitate the inclusion of their charges on consumers' local telephone bills, such third-party service providers contracted with telephone billing aggregators. Telephone billing aggregators acted as intermediaries between the third-party service providers and the LECs. These aggregators received the billing information from the service providers, which were the aggregators' clients, and submitted the billing information to the appropriate LEC for inclusion on the consumer's monthly local telephone bill. The telephone billing aggregators did this pursuant to "Billing and Collection Agreements" with the LECs.

19. Once the consumers paid their telephone bills, the billing aggregators collected the payments for their clients' services from the LECs. The billing aggregators then passed those payments back to their service-provider clients, and charged a fee for their billing and collection services.

20. Before the LECs would accept charges for inclusion on their phone bills, they typically required the billing aggregators to provide them with copies of the

advertising material and descriptions of the services and programs offered by the clients whose charges were to be included on consumers' telephone bills. In addition, the entries on telephone bills that described the services for which the consumer was being charged ("Bill Phrases") were subject to approval by the LEC and were generally required to be clear and concise descriptions of the service actually offered by the client and purchased by the consumer. The LECs imposed these requirements on the billing aggregators, among other reasons, in an effort to combat the placement of unauthorized charges on their customers' local telephone bills - a fraudulent practice commonly known in the telecommunications industry as "cramming."

B. The Scheme to Defraud

21. In or about and between approximately 1996 and 2002, the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, ANDREW CAMPOS, THOMAS PUGLIESE, LAWRENCE NADELL, YITZHAK LEVY, KENNETH SCHAEFFER and USP&C (the "Cramming Scheme Defendants"), together with others, knowingly and intentionally devised and executed a scheme to defraud consumers by causing USP&C to place unauthorized charges on local telephone bills of victims within the Eastern District of New York and elsewhere, and collecting payment on those unauthorized charges (the "Cramming Scheme").

22. To execute the Cramming Scheme, defendants RICHARD MARTINO and NORMAN CHANES, together with employees of Harvest and others acting at their direction, produced advertisements offering free samples of adult entertainment services, such as psychic hotlines, dating services, and sexually oriented talk-lines, over various "1-800" telephone numbers. Harvest placed these advertisements in various media, including adult magazines. These advertisements induced victims within the Eastern District of New York and elsewhere in the United States to call the various "1-800" telephone numbers by promising free samples of the entertainment services described.

23. Victims who called the "1-800" telephone numbers advertised in this manner by Harvest heard pre-recorded "front-end programs," which varied over time and across the various "1-800" telephone numbers. Each was designed so that when a victim called the "1-800" telephone number and expressed a desire to obtain the free sample of the entertainment service advertised, the front-end program triggered a recurring monthly charge on the victim's local telephone bill for a voice-mail service without the knowledge, consent or authorization of the victim. The Bill Phrases for the monthly charges that appeared on the victim's local telephone bills were designed to appear to be innocuous standard telephone charges and to conceal the fact that the charges were triggered by the calls to the "1-800" adult

entertainment telephone lines.

24. In order to conceal the fraudulent nature of the "1-800" telephone numbers and related front-end programs used in the Cramming Scheme, the defendants RICHARD MARTINO and NORMAN CHANES and others acting at their direction prepared and caused to be prepared two sets of advertisements, front-end programs and related materials. One set was referred to as the "marketing" materials, and consisted of the actual advertisements, front-end programs and related materials offering the free samples of entertainment services that were used to defraud the victims in the manner described above.

25. The second set was referred to as the "approval" materials, and consisted of advertisements, front-end programs and related materials offering various voice-mail services. Unlike the "marketing" version, the "approval" versions of the front-end programs appeared properly to seek the consumer's authorization to charge a recurring monthly fee for a voice-mail service, whose features were fully described.

26. The "approval" materials were not actively marketed to the public, but rather were presented to LECs, regulatory and law enforcement agencies and complaining customers in order to conceal the existence and fraudulent nature of the "marketing" materials actually used to generate the unauthorized charges. The Bill Phrases for the unauthorized charges

corresponded to the names of the voice-mail services contained in the "approval" materials. In this manner, when USP&C faced inquiries concerning the business practices of its clients or the nature of the monthly recurring charges from LECs, regulatory or law enforcement agencies or complaining customers, USP&C presented the "approval" materials rather than the "marketing" materials that actually triggered the charge.

27. Defendants RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO, together with others, caused the formation of Overland Data Center ("Overland"), located in Overland Park, Kansas, and secretly controlled it for the purpose of receiving and processing consumers' calls to the various "1-800" telephone numbers used in the Cramming Scheme. Overland operated telephone lines and voice response units ("VRUs"), which processed the consumers' calls and played the front-end programs. At the direction of RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL, YITZHAK LEVY and KENNETH SCHAEFFER, Overland employees programmed the VRUs to play the front-end programs and thereby trigger the unauthorized charges on the consumers' telephone bills. Overland's finances were managed by DANIEL MARTINO through FSE Consulting, of which DANIEL MARTINO was president. Through this position, DANIEL MARTINO assisted RICHARD MARTINO and CHANES in exercising secret control over Overland and other companies.

28. Defendants RICHARD MARTINO and NORMAN CHANES, together with employees of Harvest acting under their direction, created scripts for both the "approval" and "marketing" versions of the front-end programs, and retained voice-professionals to make recordings of the scripts. The recordings were then provided to employees of Mical, where, at the direction of defendants RICHARD MARTINO, LAWRENCE NADELL, YITZHAK LEVY, KENNETH SCHAEFFER and others, they were transmitted to Overland for use in the front-end programs.

29. Defendants RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO, together with others, caused the formation of USP&C and secretly controlled it for the purpose of placing the unauthorized charges generated by the fraudulent front-end programs onto the victims' local telephone bills.

30. Defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO and CAMPOS, together with others, caused the formation of various companies, including ASP Communications, Inc. ("ASP"), Benchmark Communications ("Benchmark"), Lunar Tel, Inc. ("Lunar"), Spring Telcom, Inc. ("Spring"), Special Comtel, Ltd. ("Special Comtel"), Enhanced Phone Services ("Enhanced Phone"), Messenger Com ("Messenger") and Voice Delivery Service Inc. ("Voice Delivery") (collectively, the "Campos Companies"). Each of the Campos Companies purported to be an independent company operated by ANDREW CAMPOS that was engaged in the

business of offering "1-800" telephone services. In fact, the Campos Companies were shell companies whose purpose was to disguise the fact that the "1-800" telephone services used in the Cramming Scheme were controlled by RICHARD MARTINO, CHANES and DANIEL MARTINO. The Campos Companies had no employees or physical office space other than rented mailboxes around the country.

31. Each of the Campos Companies registered multiple "1-800" telephone services under multiple fictitious business names with USP&C and various LECs. Each such business name was referred to as a "sub-CIC," which is an industry term that refers to an entity that is permitted to place charges on local telephone bills through a registered "CIC." USP&C was registered as a "CIC."

32. Defendants RICHARD MARTINO and NORMAN CHANES caused the Campos Companies to enter into contracts with USP&C to provide billing and collection services for the "1-800" telephone numbers used in the Cramming Scheme, and further caused the Campos Companies to submit the "approval" version of the materials to USP&C and the LECs, rather than the "marketing" versions that were used to defraud the Cramming Scheme's victims. Because the Campos Companies were shell companies devoid of employees or physical office space, all of USP&C's dealings with the Campos Companies were conducted through defendants RICHARD

MARTINO and CHANES, and, at their direction, through defendants LAWRENCE NADELL, YITZHAK LEVY, KENNETH SCHAEFFER and other employees of Mical.

33. The Cramming Scheme Defendants caused unauthorized recurring monthly charges to be included on millions of victims' local telephone bills throughout the Eastern District of New York and elsewhere in the United States, and generated between approximately \$50,000 and \$600,000 in gross revenue per day between 1997 and 2001. In total, the Cramming Scheme generated more than \$500 million in gross revenues.

C. Victim Complaints and Refunds

34. A large portion of the Cramming Scheme's victims complained to the LECs and to USP&C about the unauthorized charges appearing on their local telephone bills. Defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, together with others, caused a "call center" affiliated with USP&C to be established to handle the large volume of victim complaints internally, to prevent the LECs from learning the actual extent of customers complaining that the charges were unauthorized.

35. Telephone operators at the call center were directed initially to attempt to persuade victims that the charges were in fact authorized and to induce customers to agree to pay the charges. If a victim was adamant that the charges had



not been authorized and refused to pay, the operators were next directed to offer a partial refund, but to offer a full refund only if the victim would not accept a partial refund.

36. The purpose of offering full refunds to customers who demanded them was to reduce the likelihood that victims would complain directly to the LECs or to regulatory agencies. The call center operators were further instructed that if victims asked them to provide the telephone number that triggered the charge on the USP&C page of their local telephone bill, the operators were to provide a "1-800" number that connected to the "approval" version of the front-end program, instead of the "1-800" telephone number that was connected to the "marketing" front-end program that the customer had actually called.

37. During the course of the Cramming Scheme, USP&C on average refunded approximately 50% of the unauthorized charges to complaining customers. From time to time, various LECs canceled the billing privileges of the sub-CICs that generated these high refund levels. On such occasions, the defendants RICHARD MARTINO and NORMAN CHANES, together with others, would cause the Campos Companies and other similar shell companies under their control to begin soliciting victims and billing under new sub-CICs with new "1-800" telephone numbers for the purpose of continuing and perpetuating the Cramming Scheme. In

approximately 2001, because of complaints from various LECS and regulatory agencies about the Campos Companies, defendants RICHARD MARTINO, CHANES and PUGLIESE caused new shell companies to replace the Campos Companies as clients of USP&C. PUGLIESE was the nominal owner and president of several of these new shell companies. Like the Campos Companies, these new shell companies were secretly controlled by RICHARD MARTINO, CHANES and DANIEL MARTINO.

38. In one instance, Southwestern Bell - a LEC - cut off USP&C's rights to insert a USP&C bill page in Southwestern Bell's local telephone bills in response to high levels of customer complaints. In order to continue passing on fraudulent charges to Southwestern Bell's customers, USP&C switched to a "direct" billing format, in which they mailed bills directly to victims instead of inserting charges into a LEC's local telephone bill.

39. In order to deceive Southwestern Bell's customers into believing that the direct-billed charges were legitimate and were for costs arising from their local phone service, defendants RICHARD MARTINO, NORMAN-CHANES and DANIEL MARTINO caused the design of a bill page and mailing envelope that were intended to resemble Southwestern Bell's telephone bill. These bills were sent out on behalf of an entity called "Southwest Region Bill," which was a fictitious name for Invesco,

a company registered to defendant THOMAS PUGLIESE as president. The Southwest Region Bill telephone bills strongly resembled Southwestern Bell's bill formats, in that (a) the Southwest Region Bill invoice used a nearly identical typeface and font size to the Southwestern Bell invoice; (b) the placement of items on the Southwest Region Bill invoice such as account summaries, current charges, total amounts due and due dates were very similar to those used by Southwestern Bell; and (c) the Southwest Region Bill invoice also copied the light blue stripe down the left margin of the Southwestern Bell invoice in a nearly identical color and size. The Southwest Region Bill invoice also stated that if recipients did not pay the charges assessed on that bill, the company would "begin procedures to cancel all service to you," thereby suggesting that the recipient's telephone service would be shut off.

40. The "Southwest Region Bill" invoices were mailed out by USP&C at the direction of RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO, and various Mical employees under their control. Numerous victims were defrauded into paying the invoiced charges. Numerous other recipient of these bills, however, complained to regulators and to Southwestern Bell, and these entities rapidly took legal action to induce USP&C to stop mailing the fraudulent invoices.

V. The "Free Tour" Internet Fraud Scheme

A. The Internet Joint Venture

41. The Crescent Publishing Group, Inc. ("Crescent"), was a publisher of adult entertainment magazines, including *Playgirl*, *High Society*, *Climax* and *Live Young Girls*. Crescent maintained an office in midtown Manhattan.

42. In or about September 1996, the defendants RICHARD MARTINO and NORMAN CHANES, together with others, caused Lexitrans and Crescent to enter into an unwritten joint venture agreement (the "Joint Venture"). The purpose of the Joint Venture was to operate adult entertainment websites featuring content from magazines published by Crescent, including *Playgirl* (playgirl.com), *High Society* (highsociety.com), *Climax* (climaxmag.com) and *Live Young Girls* (ygal.com) (collectively, the "Websites"). The Joint Venture obtained money by charging the credit and debit cards of victims who had visited the Websites, including victims residing in Brooklyn, New York and in Nassau County, New York.

43. Using Lexitrans, Harvest, Mical, Dynamic, Westford and Crescent, the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL and YITZHAK LEVY, together with others, performed various functions for the Joint Venture, including the following tasks. RICHARD MARTINO and CHANES, through Mical and Harvest, designed the Websites.

Defendant YITZHAK LEVY assisted in overseeing the technical operations of the Websites from Mical. Crescent provided content for the Websites and implemented art and editorial changes provided by Harvest and Mical to Crescent. Lexitrans hosted the Websites on servers located in Kansas. Employees of Harvest, Dynamic and Westford provided marketing and advertising services for the purpose of directing internet traffic to the Websites. RICHARD MARTINO and CHANES, together with Bruce Chew, the President of Crescent, made all final decisions regarding the design and operation of the Websites.

B. Credit Card Processing

44. Visa U.S.A., Inc. ("Visa") was a membership corporation composed of more than 12,000 financial institutions. The members of Visa consisted of "issuing banks" and "merchant banks." "Issuing banks" were financial institutions that issued Visa credit and debit cards to consumers. "Merchant banks" were financial institutions that offered agreements permitting merchants to accept and process Visa cards for payment for goods and services. Within this system, Crescent and its affiliated corporations, at the direction of the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL and others, opened merchant accounts at merchant banks, including Humboldt Bank and First Financial Bank, for the purpose of processing Visa cards as payment for the cost of membership on the Websites. Crescent

pooled funds from these merchant bank accounts into the accounts of Multimedia Forum, Inc., ("Multimedia") a Crescent affiliate, at a branch of North Fork Bank located on Long Island, New York and within the Eastern District of New York, and from there sent the funds to other accounts controlled by Crescent, as well as accounts controlled by Lexitrans, Dynamic and Westford, and others.

C. The Scheme To Defraud

45. The defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL and YITZHAK LEVY, also known as "Isaac Levy" (collectively, the "Joint Venture Defendants") and others caused the Websites to present themselves as legitimate adult entertainment sites. In fact, however, the Joint Venture Defendants designed and operated the Websites to defraud the public by fraudulently obtaining visitors' credit and debit card information and then billing the victims' cards without the victims' knowledge or consent (the "Internet Scheme").

46. The Internet Scheme was centered around purportedly "free tours" of the Websites. While the Joint Venture Defendants and others, through the Websites, represented that visitors to the Websites could take a "free tour" of each Website without being billed, in actuality the Joint Venture Defendants, together with others, designed and operated the Websites so that victims would be billed without their knowledge

or consent.

47. On the first screen of the "free tour," the Joint Venture Defendants and others caused the Websites to obtain credit or debit card information by representing that this information would be used as proof of the visitors' age and that visitors' cards would "NOT BE BILLED". In fact, the Joint Venture Defendants intentionally caused the Websites to bill visitors' cards without the visitors' knowledge, consent or authorization, as a result of visiting the purportedly "free tour."

48. The Joint Venture Defendants and others also used various means to prevent visitors from leaving the Websites. These means included automatically sending visitors who attempted to leave the "free tours" directly to another free tour controlled by the defendants, multiple times consecutively; disabling the "go back" button on visitors' browsers and failing to include an "exit" or "home" button within the "free tour" itself. These technological mechanisms were intended to increase the likelihood that visitors would inadvertently trigger charges to their credit cards by proceeding through the "free tour."

49. Through the Websites, the Joint Venture Defendants, together with others, billed and caused to be billed the credit and debit cards of thousands of victims in the United States, Europe and Asia, without their authorization, at a

recurring monthly rate of up to \$90 each, for an approximate total amount of more than \$230 million.

D. Victim Complaints and Refunds

50. The Joint Venture Defendants, together with others, caused the Websites to defraud visitors through the "free tour" even though, as the Joint Venture Defendants knew, Crescent and its affiliated companies received numerous complaints from victims stating that they did not intend to join the Websites and had been billed without prior notice or consent. Despite the large number of such complaints, the Joint Venture Defendants, together with others, refused to alter the design of the Websites because they knew that this would reduce the number of visitors who became enrolled as members of the Websites, and would therefore reduce the defendants' profits.

51. The Joint Venture Defendants, together with others, knew that Crescent and its affiliated companies incurred extremely high "chargeback" rates virtually from the inception of the Joint Venture. A "chargeback" generally occurs when a consumer disputes a charge and the issuing bank credits the consumer's account and debits the merchant account in the corresponding amount. During 1999, as the Joint Venture Defendants knew, Crescent's chargeback rate was more than 10%, the third highest rate among the millions of merchants participating in the Visa program within the United States.



52. The Joint Venture Defendants, together with others, systematically abandoned their "merchant accounts" and opened new ones on a continuous, rolling basis, in order to conceal from Visa that the high level of chargebacks was continuing. The Joint Venture Defendants concealed from Visa and consumers the fact that these corporations and merchant accounts were all controlled by Crescent. This enabled the Joint Venture Defendants to avoid the imposition of fines and penalties and temporarily avoid being excluded from the Visa program.

53. In an effort to reduce the number of chargebacks and thereby avoid Visa's fees and maintain credit card processing privileges, the Joint Venture Defendants attempted to handle more victim complaints internally at Crescent and its affiliates rather than leaving victims to resolve the dispute with their issuing bank. In addition, the Joint Venture Defendants caused Crescent and its affiliates to provide refunds only when expressly requested by the consumer and otherwise merely canceled the consumer's membership account. In all, based on combined chargebacks and refunds, the Joint Venture Defendants caused Crescent to return an average of one out of every three dollars in revenue during 1999, which permitted the scheme to continue.

54. In or about July 1999, for the purpose of continuing the Internet Scheme as chargeback problems mounted,

Crescent created Luna, S.A., a new corporation with merchant accounts at South Bank & Trust Co., Ltd., a Montserrat bank doing business in Guatemala. At this offshore bank, the Joint Venture Defendants, together with others, continued their practice of rolling merchant accounts.

55. Due to the high level of chargebacks, in or about April 2000, Visa terminated the rights of Crescent, Crescent's President and Crescent's Chief Financial Officer to participate in the Visa program in the United States. Subsequently, the Joint Venture Defendants continued their credit card processing operations offshore. When the excessive chargeback rates continued and Visa discovered the defendants' maneuver, in September 2000, Visa barred Crescent, Crescent's President and Crescent's Chief Financial Officer from participating in the global Visa program. Notwithstanding this ban, Crescent took steps to continue operating the Websites through nominees.

#### VI. Disposition of the Schemes' Proceeds

##### A. Disposition Of The Cramming Scheme's Proceeds

56. During the course of its operation, the Cramming Scheme induced millions of victims throughout the United States to place telephone calls to the "1-800" telephone numbers operated by Overland. Overland transmitted the billing information for the unauthorized charges to USP&C for submission

to the LECs for inclusion on the victims' local telephone bills. USP&C collected the payments for the unauthorized charges from the LECs, and in turn paid the bulk of the proceeds to the Campos Companies and, after approximately January 2001, to the shell companies that replaced the Campos Companies, net of expenses and refunds to complaining victims. These companies in turn paid the proceeds to Overland and to Fairfax. Overland in turn paid the vast bulk of the proceeds to Mical, and, after approximately mid-2000, to Telcom. Overland also paid some of the proceeds to a company called Local Exchange Company L.L.C., also known as "LEC L.L.C." LEC L.L.C. was owned in part, both directly and indirectly through trusts, by defendants SALVATORE LOCASCIO, RICHARD MARTINO, ZEF MUSTAFA, NORMAN CHANES and DANIEL MARTINO. Fairfax paid the proceeds to Baseline Telecommunications, Inc. ("Baseline"), Dynamic, Mical and Harvest. Dynamic, in turn, paid a portion of its proceeds to Mical and Harvest.

B. Disposition of the Internet Scheme's Proceeds

57. Pursuant to the Joint Venture, Crescent deducted certain costs from the Websites' total revenue, including millions of dollars paid to Harvest and other companies, and then provided 50% of the remaining net profits to Lexitrans, Dynamic and Westford through Multimedia's bank account at North Fork Bank, within the Eastern District of New York, as directed by the defendants RICHARD MARTINO, NORMAN CHANES and

DANIEL MARTINO. Lexitrans, Dynamic and Westford in turn sent millions of dollars of these illegal proceeds to Mical, both directly and through various companies controlled by RICHARD MARTINO, CHANES and DANIEL MARTINO, including Dynamic and Overland. Multimedia also paid some of the proceeds to a company called Local Exchange Carriers LLC, through a series of intermediate companies controlled by RICHARD MARTINO and CHANES. Local Exchange Carriers, LLC was owned in part, both directly and indirectly through trusts, by defendants LOCASCIO, RICHARD MARTINO, MUSTAFA, CHANES, DANIEL MARTINO and CAMPOS.

C. Payments to Creative

58. From approximately 1996 through 2002, inclusive, defendants RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO funneled more than \$40 million in proceeds of the Cramming Scheme and the Internet Scheme from Mical, and later Telcom, to Creative. The proceeds funneled to Creative were transferred in fulfillment of RICHARD MARTINO's obligation as a member of organized crime to share illicit proceeds with persons above him in the Gambino family.

COUNT ONE  
(Racketeering)

59. The allegations contained in paragraphs 1 through 58 are realleged and incorporated as if fully set forth in this paragraph.

60. In or about and between 1996 and 2002, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants SALVATORE LOCASCIO, also known as "Tore," RICHARD MARTINO, NORMAN CHANES, ZEF MUSTAFA, DANIEL MARTINO, ANDREW CAMPOS, also known as "Andrew Campo," and THOMAS PUGLIESE, together with others, being persons employed by and associated with the Gambino family, an enterprise which engaged in, and the activities of which affected, interstate commerce, knowingly and intentionally conducted and participated, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity, as defined in Title 18, United States Code, Sections 1961(1) and 1961(5), consisting of the racketeering acts set forth below.

Racketeering Acts One Through Twenty-Five  
(Wire Fraud - Cramming Scheme)

61. The allegations contained in paragraphs 1 through 58 are realleged and incorporated as if fully set forth in this paragraph.

62. In or about and between 1996 and 2002, both dates being approximate and inclusive, the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, ANDREW CAMPOS, also known as "Andrew Campo," and THOMAS PUGLIESE, together with others, knowingly and intentionally devised a scheme and artifice to defraud users of the "1-800" adult entertainment telephone services involved in the Cramming Scheme and others, and to obtain money and property from them by means of materially false and fraudulent pretenses, representations and promises.

63. For the purpose of executing the scheme and artifice, the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, ANDREW CAMPOS and THOMAS PUGLIESE, together with others, transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce, signs, signals and sounds, to wit: the telephone calls set forth below, in violation of Title 18, United States Code, Sections 1343 and 2:

RA	Approximate Date of Call	Description of Call
1	January 29, 1997	Call from 516-277-2524 to an 800 number terminating in Overland Park, Kansas
2	February 12, 1997	Call from 864-306-9894 to an 800 number terminating in Overland Park, Kansas
3	April 14, 1997	Call from 417-887-3354 to an 800 number terminating in Overland Park, Kansas

RA	Approximate Date of Call	Description of Call
4	June 19, 1997	Call from 815-741-0005 to an 800 number terminating in Overland Park, Kansas
5	July 21, 1997	Call from 914-632-7363 to an 800 number terminating in Overland Park, Kansas
6	September 6, 1997	Call from 209-867-4347 to an 800 number terminating in Overland Park, Kansas
7	September 10, 1997	Call from 208-939-4121 to an 800 number terminating in Overland Park, Kansas
8	October 2, 1997	Call from 512-499-8081 to an 800 number terminating in Overland Park, Kansas
9	December 28, 1997	Call from 515-792-7709 to an 800 number terminating in Overland Park, Kansas
10	January 27, 1998	Call from 802-442-2650 to an 800 number terminating in Overland Park, Kansas
11	February 11, 1998	Call from 972-758-7872 to an 800 number terminating in Overland Park, Kansas
12	February 16, 1998	Call from 303-841-2381 to an 800 number terminating in Overland Park, Kansas
13	March 2, 1998	Call from 208-398-7445 to an 800 number terminating in Overland Park, Kansas
14	March 3, 1998	Call from 516-325-0185 to an 800 number terminating in Overland Park, Kansas
15	March 6, 1998	Call from 808-974-6230 to an 800 number terminating in Overland Park, Kansas

RA	Approximate Date of Call	Description of Call
16	April 15, 1998	Call from 660-665-7624 to an 800 number terminating in Overland Park, Kansas
17	June 6, 1998	Call from 213-380-9123 to an 800 number terminating in Overland Park, Kansas
18	August 17, 1998	Call from 516-922-1229 to an 800 number terminating in Overland Park, Kansas
19	March 31, 1999	Call from 508-853-3071 to an 800 number terminating in Overland Park, Kansas
20	May 1, 1999	Call from 570-489-7231 to an 800 number terminating in Overland Park, Kansas
21	September 16, 1999	Call from 713-473-4296 to an 800 number terminating in Overland Park, Kansas
22	October 11, 1999	Call from 409-265-3755 to an 800 number terminating in Overland Park, Kansas
23	January 9, 2000	Call from 405-691-8071 to an 800 number terminating in Overland Park, Kansas
24	January 10, 2000	Call from 817-926-7207 to an 800 number terminating in Overland Park, Kansas
25	December 20, 2000	Call from 281-312-4238 to an 800 number terminating in Overland Park, Kansas



## **Attachment 8**

**Original document did not include a Page 31.**

**RA numbers are sequentially listed within  
this document.**

**D. Suzie Mankin  
Administrative Office Support Assistant  
Utility Services Division  
MO Public Service Commission  
200 Madison Street, Room 220  
Jefferson City, MO 65101  
526-4153 facsimile  
Phone: 573-751-7346  
[suzie.mankin@psc.mo.gov](mailto:suzie.mankin@psc.mo.gov)**

RA	Approximate Date of Internet Connection	Visitor	Visitor's Location
26	February 28, 1999	Visitor #1	Florida
27	March 3, 1999	Visitor #2	Alabama
28	March 16, 1999	Visitor #3	New York
29	March 20, 1999	Visitor #4	Pennsylvania
30	March 26, 1999	Visitor #5	Mississippi
31	April 27, 1999	Visitor #6	New York
32	May 2, 1999	Visitor #7	Vermont
33	June 16, 1999	Visitor #8	New York
34	July 1, 1999	Visitor #9	Idaho
35	July 1, 1999	Visitor #10	Minnesota
36	July 1, 1999	Visitor #11	New York
37	July 16, 1999	Visitor #12	Maryland
38	August 6, 1999	Visitor #13	Pennsylvania
39	September 1, 1999	Visitor #14	Washington
40	November 29, 1999	Visitor #15	Oregon

Racketeering Act Forty-One  
(Money Laundering Conspiracy)

67. The allegations contained in paragraphs 1 through 58 are realleged and incorporated as if fully set forth in this paragraph.

68. In or about and between 1996 and 2002, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants SALVATORE LOCASCIO, also known as "Tore," RICHARD MARTINO, ZEF MUSTAFA,

NORMAN CHANES, DANIEL MARTINO, ANDREW CAMPOS, also known as "Andrew Campo," and THOMAS PUGLIESE, together with others, did knowingly and intentionally conspire to conduct financial transactions affecting interstate and foreign commerce, which in fact involved the proceeds of specified unlawful activity, to wit: mail fraud, in violation of Title 18, United States Code, Section 1341, wire fraud, in violation of Title 18, United States Code, Section 1343, and credit card fraud, in violation of Title 18, United States Code, Section 1029(a)(5), knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity (a) with the intent to promote the carrying on of the specified unlawful activity, and (b) knowing that the transactions were designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of the specified unlawful activity, in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 1956(a)(1)(B)(i), all in violation of Title 18, United States Code, Section 1956(h).

Racketeering Acts Forty-Two through Eighty  
(Money Laundering)

69. The allegations contained in paragraphs 1 through 58 are realleged and incorporated as if fully set forth in this paragraph.

70. On or about the dates specified below, within the Eastern District of New York and elsewhere, the defendants

listed below, together with others, did knowingly and intentionally conduct financial transactions, to wit: the transfers of funds caused by the deposit of the checks and wire-transfers set forth below, which in fact involved the proceeds of specified unlawful activity, to wit: mail fraud, in violation of Title 18, United States Code, Section 1341, wire fraud, in violation of Title 18, United States Code, Section 1343, and credit card fraud, in violation of Title 18, United States Code, Section 1029(a)(5), knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity (a) with the intent to promote the carrying on of the specified unlawful activity, and (b) knowing that the transactions were designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of the specified unlawful activity, in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i), 1956(a)(1)(B)(i) and 2.

RA	Approximate Date	Financial Transaction	Approximate Amount	Defendants
42	January 30, 1998	Wire Transfer from USP&C to ASP	\$888,406.20	RICHARD MARTINO, CHANES and CAMPOS
43	February 3, 1998	Check from ASP to Fairfax	\$1,094,033.36	RICHARD MARTINO, CHANES, CAMPOS and PUGLIESE
44	June 22, 1998	Wire transfer from USP&C to Special Comtel	\$1,087,419.61	RICHARD MARTINO, CHANES and CAMPOS
45	August 25, 1998	Wire Transfer from USP&C to Special Comtel	\$1,094,652.88	RICHARD MARTINO, CHANES and CAMPOS

RA	Approximate Date	Financial Transaction	Approximate Amount	Defendants
46	August 25, 1998	Wire Transfer from USP&C to Voice Delivery	\$2,013,724.20	RICHARD MARTINO, CHANES and CAMPOS
47	August 28, 1998	Check from Lunar to Fairfax	\$1,007,188.00	RICHARD MARTINO, CHANES, DANIEL MARTINO and CAMPOS
48	October 14, 1998	Check from Voice Delivery to Fairfax	\$1,248,168.00	RICHARD MARTINO, CHANES, CAMPOS and PUGLIESE
49	October 20, 1998	Check from Voice Delivery to Overland	\$853,371.64	RICHARD MARTINO, CHANES, DANIEL MARTINO and CAMPOS
50	December 22, 1998	Check from Mical to Creative	\$2,000,000.00	LOCASCIO, RICHARD MARTINO, MUSTAFA and CHANES
51	December 22, 1998	Check from Mical to Creative	\$3,000,000.00	LOCASCIO, RICHARD MARTINO, MUSTAFA and CHANES
52	March 17, 1999	Check from Overland to Mical	\$1,000,000.00	RICHARD MARTINO, CHANES and DANIEL MARTINO
53	March 17, 1999	Check from Overland to Mical	\$1,000,000.00	RICHARD MARTINO, CHANES and DANIEL MARTINO
54	March 17, 1999	Check from Overland to Mical	\$1,000,000.00	RICHARD MARTINO, CHANES and DANIEL MARTINO
55	March 17, 1999	Check from Overland to Mical	\$682,956.45	RICHARD MARTINO, CHANES and DANIEL MARTINO
56	April 1, 1999	Check from Multimedia to Lexitrans	\$930,323.10	RICHARD MARTINO, CHANES and DANIEL MARTINO
57	April 7, 1999	Check from Overland to Mical	\$270,935.80	RICHARD MARTINO, CHANES and DANIEL MARTINO
58	April 7, 1999	Check from Overland to Mical	\$1,000,000.00	RICHARD MARTINO, CHANES and DANIEL MARTINO
59	April 7, 1999	Check from Overland to Mical	\$1,000,000.00	RICHARD MARTINO, CHANES and DANIEL MARTINO

RA	Approximate Date	Financial Transaction	Approximate Amount	Defendants
60	April 12, 1999	Check from Fairfax to Harvest	\$327,322.67	RICHARD MARTINO, CHANES and PUGLIESE
61	April 15, 1999	Check from Dynamic to Mical	\$482,173.00	RICHARD MARTINO, CHANES and DANIEL MARTINO
62	April 15, 1999	Check from Dynamic to Mical	\$1,060,000.00	RICHARD MARTINO, CHANES and DANIEL MARTINO
63	April 15, 1999	Check from Dynamic to Mical	\$378,287.00	RICHARD MARTINO, CHANES and DANIEL MARTINO
64	April 22, 1999	Check from Mical to Creative	\$4,100,000.00	LOCASCIO, RICHARD MARTINO, MUSTAFA and CHANES
65	April 22, 1999	Check from Mical to Creative	\$3,886,090.35	LOCASCIO, RICHARD MARTINO, MUSTAFA and CHANES
66	April 23, 1999	Check from Spring to Overland	\$350,000.00	RICHARD MARTINO, CHANES, DANIEL MARTINO and CAMPOS
67	April 30, 1999	Check from Overland to Mical	\$1,000,000.00	RICHARD MARTINO, CHANES and DANIEL MARTINO
68	April 30, 1999	Check from Overland to Mical	\$550,000.00	RICHARD MARTINO, CHANES and DANIEL MARTINO
69	June 2, 1999	Check From Multimedia to Westford	\$2,190,441.20	RICHARD MARTINO, CHANES and DANIEL MARTINO
70	July 7, 1999	Check From Multimedia to Westford	\$2,291,863.46	RICHARD MARTINO, CHANES and DANIEL MARTINO
71	October 4, 1999	Check From Multimedia to Westford	\$1,506,217.97	RICHARD MARTINO, CHANES and DANIEL MARTINO
72	November 3, 1999	Check From Multimedia to Westford	\$1,703,363.27	RICHARD MARTINO, CHANES and DANIEL MARTINO
73	December 23, 1999	Check from Mical to Creative	\$1,757,454.37	LOCASCIO, RICHARD MARTINO, MUSTAFA and CHANES

RA	Approximate Date	Financial Transaction	Approximate Amount	Defendants
74	December 23, 1999	Check from Mical to Creative	\$3,000,000.00	LOCASCIO, RICHARD MARTINO, MUSTAFA and CHANES
75	December 23, 1999	Check from Mical to Creative	\$3,000,000.00	LOCASCIO, RICHARD MARTINO, MUSTAFA and CHANES
76	February 4, 2000	Check From Multimedia to Westford	\$1,211,241.86	RICHARD MARTINO, CHANES and DANIEL MARTINO
77	July 13, 2000	Check from Telcom to Creative	\$2,156,336.69	LOCASCIO, RICHARD MARTINO, MUSTAFA and CHANES
78	July 14, 2000	Check from Telcom to Creative	\$2,000,000.00	LOCASCIO, RICHARD MARTINO, MUSTAFA and CHANES
79	December 15, 2000	Check from Overland to LEC L.L.C.	\$970,000.00	LOCASCIO, RICHARD MARTINO, MUSTAFA, CHANES and DANIEL MARTINO
80	December 18, 2000	Check from Lunar to Fairfax	\$1,119,349.00	RICHARD MARTINO, CHANES, CAMPOS and PUGLIESE

(Title 18, United States Code, Sections 1962(c), 1963 and 3551 et seq.)

COUNT TWO  
(Racketeering Conspiracy)

71. The allegations contained in paragraphs 1 through 58 are realleged and incorporated as if fully set forth in this paragraph:

72. In or about and between 1996 and 2002, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants SALVATORE

LOCASCIO, also known as "Tore," RICHARD MARTINO, NORMAN CHANES, ZEF MUSTAFA, DANIEL MARTINO, ANDREW CAMPOS, also known as "Andrew Campo," and THOMAS PUGLIESE, together with others, being persons employed by and associated with the Gambino family, an enterprise which engaged in, and the activities of which affected, interstate commerce, knowingly and intentionally conspired to violate Title 18, United States Code, Section 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity, as defined in Title 18, United States Code, Sections 1961(1) and 1961(5).

73. The pattern of racketeering activity through which the above-named defendants, together with others, agreed to conduct the affairs of the Gambino family consists of the acts set forth in paragraphs 61 through 70 of Count One, as Racketeering Acts 1 through 80, which are realleged and incorporated as if fully set forth in this paragraph. Each defendant agreed that a conspirator would commit at least two of these acts of racketeering in the conduct of the affairs of the enterprise.

(Title 18, United States Code, Sections 1962(d), 1963 and 3551 et seq.)



COUNT THREE

(Mail and Wire Fraud Conspiracy - Cramming Scheme)

74. The allegations contained in paragraphs 1 through 58 are realleged and incorporated as if fully set forth in this paragraph.

75. In or about and between 1996 and 2002, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, ANDREW CAMPOS, also known as "Andrew Campo," THOMAS PUGLIESE, LAWRENCE NADELL, YITZHAK LEVY, also known as "Isaac Levy," KENNETH SCHAEFFER and USP&C, together with others, did knowingly and intentionally conspire to devise a scheme and artifice to defraud users of the "1-800" adult entertainment telephone numbers involved in the Cramming Scheme and others, and to obtain money and property from them by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, (a) to cause mail matter to be delivered by the United States Postal Service, in violation of Title 18, United States Code, Section 1341, and (b) to transmit and cause to be transmitted, by means of wire communication in interstate and foreign commerce, writings, signs, signals and sounds, in violation of Title 18, United States Code, Section 1343.

76. In furtherance of the conspiracy and to effect its objectives, the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, ANDREW CAMPOS, THOMAS FUGLIESE, LAWRENCE NADELL, YITZHAK LEVY, and USP&C, together with others, committed and caused to be committed, among others, the following:

OVERT ACTS

- a. On or about June 9, 1997, LEVY wrote a memorandum concerning "sub-cic and programs information."
- b. On or about October 23, 1997, NADELL and others attended a meeting concerning voice mail subscriptions.
- c. In or about late 1997 or early 1998, RICHARD MARTINO instructed an employee of USP&C not to disclose to some of USP&C's attorneys that the Campos Companies were using "entertainment" scripts to market the "1-800" numbers to consumers.
- d. On or about February 5, 1998, RICHARD MARTINO, CHANES, NADELL and LEVY, together with others, attended a meeting concerning LEC approvals.
- e. On or about March 30, 1998, SCHAEFFER sent an e-mail concerning bank accounts of various companies.
- f. On or about January 28, 1999, RICHARD MARTINO and NADELL, together with others, attended a meeting concerning USP&C's operations.

g. On or about May 12, 1999, CAMPOS opened a rented mailbox facility in Kentwood, Michigan.

h. In or about June 1999, RICHARD MARTINO, CHANES and DANIEL MARTINO caused the telephone bill of a consumer in Brooklyn, New York to be charged a monthly fee.

i. In or about August 1999, RICHARD MARTINO, CHANES and DANIEL MARTINO caused the telephone bill of a consumer in Brooklyn, New York to be charged a monthly fee.

j. On or about January 13, 2000, DANIEL MARTINO participated in a conference telephone call concerning USP&C's finances.

k. On or about January 14, 2000, DANIEL MARTINO sent an e-mail concerning Southwest Region Bill.

l. On or about February 1, 2000, PUGLIESE signed a "Master Services Agreement" on behalf of "Invesco Telecommunications, Inc. d/b/a Southwest."

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNTS FOUR THROUGH SIX  
(Wire Fraud - Cramming Scheme)

77. The allegations contained in paragraphs 1 through 58 are realleged and incorporated as if fully set forth in this paragraph.

78. On or about the dates set forth below, the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, ANDREW

CAMPOS, also known as "Andrew Campo," THOMAS PUGLIESE, LAWRENCE NADELL, YITZHAK LEVY, also known as "Isaac Levy," KENNETH SCHAEFFER and USP&C, together with others, knowingly and intentionally devised a scheme and artifice to defraud users of the "1-800" adult entertainment telephone services involved in the Cramming Scheme and others, and to obtain money and property from said victims by means of materially false and fraudulent pretenses, representations, and promises.

79. For the purpose of executing the scheme and artifice, the defendants RICHARD MARTINO, NORMAN CHANES, ANDREW CAMPOS, THOMAS PUGLIESE, LAWRENCE NADELL, YITZHAK LEVY, KENNETH SCHAEFFER and USP&C, together with others, transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce, signs, signals and sounds, to wit: the telephone calls set forth below.

Count	Approximate Date of Call	Description of Call
FOUR	January 29, 1997	Call from 516-277-2524 to an 800 number terminating in Overland Park, Kansas
FIVE	March 3, 1998	Call from 516-325-0185 to an 800 number terminating in Overland Park, Kansas
SIX	August 17, 1998	Call from 516-922-1229 to an 800 number terminating in Overland Park, Kansas

(Title 18, United States Code, Sections 1343, 2 and 3551 et seq.)

COUNT SEVEN

(Mail and Wire Fraud Conspiracy - Internet Scheme)

80. The allegations contained in paragraphs 1 through 58 are realleged and incorporated as if fully set forth in this paragraph.

81. In or about and between August 1996 and December 2000, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL and YITZHAK LEVY, also known as "Isaac Levy," together with others, did knowingly and intentionally conspire to devise a scheme and artifice to defraud visitors to the Websites, and to obtain money and property from those visitors by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, (a) to cause mail matter to be delivered by the United States Postal Service, in violation of Title 18, United States Code, Section 1341, and (b) to transmit and cause to be transmitted, by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, in violation of Title 18, United States Code, Section 1343.

82. In furtherance of the conspiracy and to effect its objectives, the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL and YITZHAK LEVY, together with others, committed and caused to be committed, among others, the

following:

OVERT ACTS

a. On or about March 10, 1999, RICHARD MARTINO, CHANES, DANIEL MARTINO, NADELL and LEVY transmitted and caused to be transmitted the Joint Venture Website ygal.com by means of wire communication from Lexitrans's servers in Kansas to a computer located in Freeport, New York.

b. On or about March 10, 1999, RICHARD MARTINO, CHANES, DANIEL MARTINO, NADELL and LEVY caused the credit card of a victim in Freeport, New York to be billed \$49.99 for the Joint Venture Website ygal.com.

c. On or about March 16, 1999, RICHARD MARTINO, CHANES, DANIEL MARTINO, NADELL and LEVY caused the credit card of a victim in Merrick, New York to be billed \$49.99 for the Joint Venture Website highsociety.com.

d. On or about April 27, 1999, RICHARD MARTINO, CHANES, DANIEL MARTINO, NADELL and LEVY caused the credit card of a victim in Brooklyn, New York to be billed \$49.99 for the Joint Venture Website highsociety.com.

e. On or about August 19, 1999, RICHARD MARTINO, CHANES, DANIEL MARTINO, NADELL and LEVY, together with others, attended a meeting at the offices of Mical concerning the Joint Venture.

f. On or about January 19, 2000, RICHARD MARTINO and others attended a meeting concerning the Joint Venture.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNTS EIGHT THROUGH ELEVEN  
(Wire Fraud - Internet Scheme)

83. The allegations contained in paragraphs 1 through 58 are realleged and incorporated as if fully set forth in this paragraph.

84. In or about and between August 1996 and December 2000, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL and YITZHAK LEVY, also known as "Isaac Levy," together with others, did knowingly and intentionally devise a scheme and artifice to defraud visitors to the Websites, and to obtain money and property from those visitors by means of materially false and fraudulent pretenses, representations and promises.

85. For the purpose of executing the scheme and artifice, the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL and YITZHAK LEVY, also known as "Isaac Levy," together with others, transmitted and caused to be transmitted, by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, to wit: internet connections established between servers owned

and operated by Lexitrans in the state of Kansas and the following individuals, whose identities are known to the grand jury, on or about the dates specified below:

Count	Approximate Date of Internet Connection	Visitor	Visitor's Location
EIGHT	March 16, 1999	Visitor #3	Eastern District of New York
NINE	April 27, 1999	Visitor #6	Eastern District of New York
TEN	June 16, 1999	Visitor #8	Eastern District of New York
ELEVEN	July 1, 1999	Visitor #11	Eastern District of New York

(Title 18, United States Code, Sections 1343, 2 and 3551 et seq.)

COUNT TWELVE  
(Money Laundering Conspiracy)

86. The allegations contained in paragraphs 1 through 58 are realleged and incorporated as if fully set forth in this paragraph.

87. In or about and between 1996 and 2002, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants SALVATORE LOCASCIO, also known as "Tore," RICHARD MARTINO, ZEF MUSTAFA, NORMAN CHANES, DANIEL MARTINO, ANDREW CAMPOS, also known as "Andrew Campo," and THOMAS PUGLIESE, together with others, did knowingly and intentionally conspire to conduct financial



transactions affecting interstate and foreign commerce, which in fact involved the proceeds of specified unlawful activity, to wit: mail fraud, in violation of Title 18, United States Code, Section 1341, wire fraud, in violation of Title 18, United States Code, Section 1343, and credit card fraud, in violation of Title 18, United States Code, Section 1029(a)(5), knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity (a) with the intent to promote the carrying on of the specified unlawful activity, and (b) knowing that the transactions were designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of the specified unlawful activity, in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 1956(a)(1)(B)(i).

88. In furtherance of the conspiracy and to effect its objectives, the defendants SALVATORE LOCASCIO, also known as "Tore," RICHARD MARTINO, ZEF MUSTAFA, NORMAN CHANES, DANIEL MARTINO, ANDREW CAMPOS, also known as "Andrew Campo," and THOMAS PUGLIESE, together with others, committed and caused to be committed, among others, the following:

OVERT ACT

a. On or about January 8, 1999, DANIEL MARTINO caused the Joint Venture to write a check in the amount of \$905,070.85 to Dynamic.

(Title 18, United States Code, Sections 1956(h) and 3551 et seq.)

COUNTS THIRTEEN THROUGH SEVENTEEN  
(Money Laundering)

89. The allegations contained in paragraphs 1 through 58 are realleged and incorporated as if fully set forth in this paragraph.

90. On or about the dates specified below, within the Eastern District of New York and elsewhere, the defendants RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO, together with others, did knowingly and intentionally conduct financial transactions, to wit: the transfers of funds caused by the deposit of the checks set forth below, which in fact involved the proceeds of specified unlawful activity, to wit: mail fraud, in violation of Title 18, United States Code, Section 1341, wire fraud, in violation of Title 18, United States Code, Section 1343, and credit card fraud, in violation of Title 18, United States Code, Section 1029(a)(5), knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity (a) with the intent to promote the carrying on of the specified unlawful activity, and

(b) knowing that the transactions were designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of the specified unlawful activity, in violation of Title 18, United States Code, Sections 1956 (a)(1)(A)(i) and (a)(1)(B)(i) and 2.

Count	Approximate Date	Financial Transaction	Approximate Amount
THIRTEEN	June 2, 1999	Check From Multimedia to Westford	\$2,190,441.20
FOURTEEN	July 7, 1999	Check From Multimedia to Westford	\$2,291,863.48
FIFTEEN	October 4, 1999	Check From Multimedia to Westford	\$1,606,217.97
SIXTEEN	November 3, 1999	Check From Multimedia to Westford	\$1,703,363.27
SEVENTEEN	February 4, 2000	Check From Multimedia to Westford	\$1,211,241.86

(Title 18, United States Code, Sections 1956(a)(1)(A)(i), 1956 (a)(1)(B)(i), 2 and 3551 et seq.)

ADDITIONAL ALLEGATIONS AS TO COUNTS ONE THROUGH ELEVEN

91. The allegations contained in Counts One through Eleven are hereby realleged and incorporated as if fully set forth in this paragraph, and the additional allegations below are incorporated by reference into Counts One through Eleven.

92. Based on (a) acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, and willfully caused by the defendant, and (b) all reasonably foreseeable acts and omissions of others in furtherance of a criminal plan, scheme, endeavor, and enterprise undertaken by the

defendant in concert with others; all of which occurred during the commission of the offenses of conviction, in preparation for those offenses, and in the course of attempting to avoid detection or responsibility for those offenses, the following conduct occurred (U.S.S.G. § 1B1.3(a)(1)):

a. The greater of the actual loss and the intended loss was more than \$400,000,000 (U.S.S.G. § 2B1.1(b)(1)(N) (Nov. 1, 2002)).

b. The offenses involved schemes to defraud 50 or more victims (U.S.S.G. § 2B1.1(b)(2)(B)).

c. The offenses involved a violation of a prior, specific judicial or administrative order, injunction, decree or process (U.S.S.G. § 2B1.1(b)(7)(C)).

d. The offenses involved sophisticated means (U.S.S.G. § 2B1.1(b)(8)(C)).

e. The defendants SALVATORE LOCASCIO, ZEF MUSTAFA, RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO each derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offenses (U.S.S.G. § 2B1.1(b)(12)(A)).

93. The defendants SALVATORE LOCASCIO, RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO were organizers and leaders of criminal activity that involved five or more participants and was otherwise extensive (U.S.S.G. § 3B1.1(a)).

94. The defendant LAWRENCE NADELL was a manager and supervisor of criminal activity that involved five or more participants and was otherwise extensive (U.S.S.G. § 3B1.1(b)).

95. The defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL and KENNETH SCHAEFFER willfully obstructed and impeded, and attempted to obstruct and impede, the administration of justice during the course of the investigation and prosecution of the instant offense of conviction, which obstructive conduct related to any offense of conviction, any conduct referred to in paragraphs 1 through 58 above, or a closely related offense (U.S.S.G. § 3C1.1).

ADDITIONAL ALLEGATION AS TO COUNTS  
ONE, TWO, AND TWELVE THROUGH SEVENTEEN

96. The allegations contained in Counts One, Two, and Twelve through Seventeen are hereby realleged and incorporated as if fully set forth in this paragraph, and the additional allegations below are incorporated by reference into Counts One, Two, and Twelve through Seventeen.

97. The offenses involved sophisticated laundering (U.S.S.G. § 2S1.1(b)(3)).

CRIMINAL FORFEITURE ALLEGATION ONE  
(Counts One and Two)  
(Racketeering and Racketeering Conspiracy)

98. The United States hereby gives notice to the defendants charged in Counts One and Two that, upon their conviction of such offenses the government will seek forfeiture

in accordance with Title 18, United States Code, Section 1963, which requires any person convicted of such offenses to forfeit any property:

a. such defendants have acquired an interest in and maintained in violation of Title 18, United States Code, Section 1962, which interests are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1);

b. such defendants have an interest in, security of, claims against, and property and contractual rights which afford a source of influence over, the enterprise named and described herein which the defendants established, operated, controlled, conducted, and participated in the conduct of, in violation of Title 18, United States Code, Section 1962, which interests, securities, claims, and rights are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(2). The interests subject to forfeiture under Section 1963(a)(2) include, but are not limited to, the defendants' interest in Local Exchange Company, L.L.C., also known as "LEC L.L.C.";

c. constituting and derived from proceeds obtained, directly and indirectly, from racketeering activity, in violation of Title 18, United States Code, Section 1962, which property is subject to forfeiture to the United States pursuant to Title 18,

United States Code, Section § 1963(a)(3).

99. The value of the forfeitable property is a sum of money equal to \$730 million in United States currency, for which the defendants are jointly and severally liable, including but not limited to, all funds on deposit in a certificate of deposit at Chase Manhattan Bank, now known as JP Morgan Chase, number 937-6083578-19, which matured on or about June 3, 2003, and which as of March 7, 2003, had an approximate value of \$679,719.70.

100. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 1963(m), to seek forfeiture of any other property of such defendants up to the value of the forfeitable property described in subparagraphs 94(a) through (e)

above, including but not limited to the following:

- a. all right, title and interest in the premises and real property located at One Tara Way, Tuckahoe, New York 10707;
- b. all right, title and interest in the premises and real property located at 495 Ox Pasture Road, Southampton, New York 11968;
- c. all right, title and interest in the premises and real property located at 299 Dune Road, Southampton, New York 11932;
- d. all right, title and interest in the premises and real property located at 320 Central Park West, Apt. 11F, New York, New York 10025;
- e. all right, title and interest in the premises and real property located at 279 Central Park West, Apt. 18B, New York, New York 10024;
- f. all right, title and interest in the premises and real property located at Lot 27, City: Harrison; Subdivision: Purchase Estates Inc., Country Club at Purchase; Recorder's Map Reference: Map 26094;
- g. all right, title and interest in the premises and real property located at 9778 Bent Grass Bend, Naples, Florida 34108;
- h. all right, title and interest in the premises and real property located at 2 Timmons Road, Scarsdale, New York 10583;
- i. all right, title and interest in the premises and real property located at 608 East 187<sup>th</sup> Street, Bronx, New York 10458;
- j. all right, title and interest in the premises and real property located at 2361 Hoffman Street, Bronx, New York 10458;
- k. funds representing the net proceeds of the sale of Riviera Colony Shopping Plaza, also known as Am South Plaza, located at Section 18, Township 50 South, Range 26 East, Collier County Florida, Lot 1, Block 1, Rivera Colony, Plat Book 8, Pages 17



and 18, on deposit in the interest bearing equity account maintained by the Clerk of the United States District Court for the Eastern District of New York pursuant to a Stipulation and Order, dated January 9, 2004, and which as January 9, 2004, had an approximate value of \$1,096.904.68;

- l. all right, title and interest in the premises and real property located at 2928 Indigobush Way, Naples, Florida 34105;
- m. all right, title and interest in the premises and real property located at 16 Bonmar Road, Pelham Manor, New York 10803;
- n. all right, title and interest in the premises and real property located at 1520 Gulf Boulevard, Belleair Shores, Florida 34634;
- o. all right, title and interest in the premises and real property located at 9 Apple Court, Eastchester, New York 10709;
- p. all right, title and interest in the premises and real property located at 2384 Hoffman Street, Bronx, New York 10458;
- q. all right, title and interest in the premises and real property located at 2376 Hoffman Street, Bronx, New York 10458; and
- r. all right, title and interest in the premises and real property located at 301 Brookline Street Hawthorne, New York 10532.

(Title 18, United States Code, Section 1963)

CRIMINAL FORFEITURE ALLEGATION TWO

(Count Three - Cramming Scheme)

(Conspiracy to Commit Mail and Wire Fraud)

101. The United States hereby gives notice to the defendants charged in Count Three that, upon their conviction of such offense the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title

28, United States Code, Section 2461(c), which require any person convicted of such offense to forfeit any property constituting or derived from proceeds obtained directly or indirectly as a result of such offense, or traceable thereto.

102. The value of the forfeitable property is a sum of money equal to \$500 million in United States currency, for which the defendants are jointly and severally liable, including but not limited to all funds on deposit in a certificate of deposit at Chase Manhattan Bank, now known as JP Morgan Chase, number 937-6083578-19, which matured on or about June 3, 2003, and which as of March 7, 2003 had an approximate value of \$679,719.70.

103. If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21,

United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c) to seek forfeiture of any other property of such defendant(s) up to the value of the forfeitable property described in subparagraphs 97(a) through (e) above, including but not limited to the following:

- a. all right, title and interest in the premises and real property located at One Tara Way, Tuckahoe, New York 10707;
- b. all right, title and interest in the premises and real property located at 495 Ox Pasture Road, Southhampton, New York 11968;
- c. all right, title and interest in the premises and real property located at 299 Dune Road, Southhampton, New York 11932;
- d. all right, title and interest in the premises and real property located at 320 Central Park West, Apt. 11F, New York, New York 10025;
- e. all right, title and interest in the premises and real property located at 279 Central Park West, Apt. 18B, New York, New York 10024;
- f. all right, title and interest in the premises and real property located at Lot 27, City: Harrison; Subdivision: Purchase Estates Inc., Country Club at Purchase; Recorder's Map Reference: Map 26094;
- g. all right, title and interest in the premises and real property located at 6 Raintree Court, Holmdel, New Jersey 07733;
- h. all right, title and interest in the premises and real property located at 5160 Bridleway Circle Boca Raton, Florida 33496;
- i. all right, title and interest in the premises and real property located at 9 Apple Court, Eastchester, New York 10709;

- j. all right, title and interest in the premises and real property located at 2384 Hoffman Street, Bronx, New York 10458;
- k. all right, title and interest in the premises and real property located at 2376 Hoffman Street, Bronx, New York 10458; and
- l. all right, title and interest in the premises and real property located at 301 Brookline Street Hawthorne, New York 10532.

(Title 28, United States Code, Section 2461(c), Title 18, United States Code, Section 981(a)(1)(C), and Title 21, United States Code, Section 853(p))

CRIMINAL FORFEITURE ALLEGATION THREE

(Count Seven - Internet Scheme)  
(Conspiracy to Commit Mail and Wire Fraud)

104. The United States hereby gives notice to the defendants charged in Count Seven that, upon their conviction of such offense the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which require any person convicted of such offense to forfeit any property constituting or derived from proceeds obtained directly or indirectly as a result of such offense, or traceable thereto.

105. The value of the forfeitable property is a sum of money equal to \$230 million in United States currency, for which the defendants are jointly and severally liable, including but not limited to all funds on deposit in a certificate of deposit at Chase Manhattan Bank, now known as JP Morgan Chase,

number 937-6083578-19, which matured on or about June 3, 2003, and which as of March 7, 2003, had an approximate value of \$679,719.70.

106. If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c) to seek forfeiture of any other property of such defendants up to the value of the forfeitable property described in subparagraphs 100(a) through (e), including but not limited to the following:

- a. all right, title and interest in the premises and real property located at One Tara Way, Tuckahoe, New York 10707;
- b. all right, title and interest in the premises and real property located at 495 Ox Pasture Road, Southampton, New York 11968;

- c. all right, title and interest in the premises and real property located at 299 Dune Road, Southampton, New York 11932;
- d. all right, title and interest in the premises and real property located at 320 Central Park West, Apt. 11F, New York, New York 10025;
- e. all right, title and interest in the premises and real property located at 279 Central Park West, Apt. 18B, New York, New York 10024;
- f. all right, title and interest in the premises and real property located at Lot 27, City: Harrison; Subdivision: Purchase Estates Inc., Country Club at Purchase; Recorder's Map Reference: Map 26094;
- g. all right, title and interest in the premises and real property located at 6 Raintree Court, Holmdel, New Jersey 07733;
- h. all right, title and interest in the premises and real property located at 5160 Bridleway Circle Boca Raton, Florida 33496; and
- i. all right, title and interest in the premises and real property located at 301 Brookline Street Hawthorne, New York 10532.

(Title 28, United States Code, Section 2461(c), Title 18, United States Code, Section 981(a)(1)(C), and Title 21, United States Code, Section 853(p))

CRIMINAL FORFEITURE ALLEGATION FOUR  
(Counts Twelve through Seventeen)  
(Money Laundering Conspiracy and Money Laundering)

107. The United States hereby gives notice to the defendants charged in Counts Twelve through Seventeen that, upon their conviction of such offenses the government will seek forfeiture in accordance with Title 18, United States Code, Section 982, of all property involved in each offense in

violation of Title 18, United States Code, Section 1956, or conspiracy to commit such offense, and all property traceable to such property.

108. The value of the forfeitable property is a sum of money equal to \$730 million in United States currency, for which the defendants are jointly and severally liable, including but not limited to all funds on deposit in a certificate of deposit at Chase Manhattan Bank, now known as JP Morgan Chase, number 937-6083578-19, which matured on or about June 3, 2003, and which as of March 7, 2003 had an approximate value of \$679,719.70.

109. If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any

---

other property of such defendants up to the value of the forfeitable property described in subparagraphs 103(a) through (e), including but not limited to the following:

- a. all right, title and interest in the premises and real property located at One Tara Way, Tuckahoe, New York 10707;
- b. all right, title and interest in the premises and real property located at 495 Ox Pasture Road, Southampton, New York 11968;
- c. all right, title and interest in the premises and real property located at 299 Dune Road, Southampton, New York 11932;
- d. all right, title and interest in the premises and real property located at 320 Central Park West, Apt. 11F, New York, New York 10025;
- e. all right, title and interest in the premises and real property located at 279 Central Park West, Apt. 18B, New York, New York 10024;
- f. all right, title and interest in the premises and real property located at Lot 27, City: Harrison; Subdivision: Purchase Estates Inc., Country Club at Purchase; Recorder's Map Reference: Map 26094;
- g. all right, title and interest in the premises and real property located at 9778 Bent Grass Bend, Naples, Florida 34108;
- h. all right, title and interest in the premises and real property located at 2 Timmons Road, Scarsdale, New York 10583;
- i. all right, title and interest in the premises and real property located at 608 East 187<sup>th</sup> Street, Bronx, New York 10458;
- j. all right, title and interest in the premises and real property located at 2361 Hoffman Street, Bronx, New York 10458;
- k. funds representing the net proceeds of the sale of



Riviera Colony Shopping Plaza, also known as Am South Plaza, located at Section 18, Township 50 South, Range 26 East, Collier County Florida, Lot 1, Block 1, Rivera Colony, Plat Book 8, Pages 17 and 18, on deposit in the interest bearing equity account maintained by the Clerk of the United States District Court for the Eastern District of New York pursuant to a Stipulation and Order, dated January 9, 2004, and which as January 9, 2004, had an approximate value of \$1,096.904.68;

- l. all right, title and interest in the premises and real property located at 2928 Indigobush Way, Naples, Florida 34105;
- m. all right, title and interest in the premises and real property located at 16 Bonmar Road, Pelham Manor, New York 10803;
- n. all right, title and interest in the premises and real property located at 1520 Gulf Boulevard, Belleair Shores, Florida 34634;
- o. all right, title and interest in the premises and real property located at 9 Apple Court, Eastchester, New York 10709;
- p. all right, title and interest in the premises and real property located at 2384 Hoffman Street, Bronx, New York 10458;
- q. all right, title and interest in the premises and real property located at 2376 Hoffman Street, Bronx, New York 10458; and

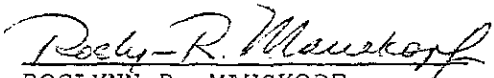
- r. all right, title and interest in the premises and real property located at 301 Brookline Street Hawthorne, New York 10532.

(Title 18, United States Code, Section 982, Title 21,  
United States Code, Section 853(p))

A TRUE BILL



FOREPERSON



ROSLYNN R. MAUSKOPF  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

No. CR

---

---

**UNITED STATES DISTRICT COURT**

EASTERN *District of* NEW YORK

CRIMINAL *Division*

---

---

**THE UNITED STATES OF AMERICA**

vs.

SALVATORE LOCASCIO,  
also known as "Tore," et al.

Defendants.

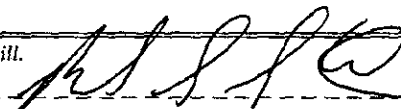
---

---

**INDICTMENT**

(T. 18 U.S.C., §§ 371, 981(a)(1)(c), 982, 1343,  
1956(a)(1)(A)(i), 1956(a)(1)(B)(i), 1956(h), 1962(c),  
1962(d) 1963, 2 and 3551 et seq.; T. 21,  
U.S.C., § 853; T.28, U.S.C § 2461

A true bill.



Foreman

Filed in open court this \_\_\_\_\_ day,

of Sept 21 A.D. 19 04

Clerk

Bail, \$ \_\_\_\_\_

---

---

AUSA Eric Komitee (718) 254-6240

## Attachment 9

# Telephone Cramming Scheme Description

## Telephone Cramming Scheme

### 1. The Telephone Billing and Collection Industry

Local telephone companies, also called Local Exchange Carriers ("LECs"), permitted third parties to include charges for telecommunications services ordered by consumers on the consumers' local telephone bills. To facilitate the inclusion of their charges on consumers' local telephone bills, such third-party service providers contracted with telephone billing aggregators. Telephone billing aggregators acted as intermediaries between the third-party service providers and the LECs. These aggregators received the billing information from the service providers, which were the aggregators' clients, and submitted the billing information to the appropriate LEC for inclusion on the consumer's monthly local telephone bill. The telephone billing aggregators did this pursuant to "Billing and Collection Agreements" with the LECs.

Once the consumers paid their telephone bills, the billing aggregators collected the payments for their clients' services from the LECs. The billing aggregators then passed those payments back to their service-provider clients, and charged a fee for their billing and collection services.

Before the LECs would accept charges for inclusion on their phone bills, they typically required the billing aggregators to provide them with copies of the advertising material and descriptions of the services and programs offered by the clients whose charges were to be included on consumers' telephone bills. In addition, the entries on telephone bills that described the services for which the consumer was being charged ("Bill Phrases") were subject to approval by the LEC and were generally required to be clear and concise descriptions of the service actually offered by the client and purchased

by the consumer. The LECs imposed these requirements on the billing aggregators, among other reasons, in an effort to combat the placement of unauthorized charges on their customers' local telephone bills – a fraudulent practice commonly known in the telecommunications industry as “cramming.”

## 2. The Scheme to Defraud

In or about and between approximately 1996 and 2002, the federal defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, ANDREW CAMPOS, THOMAS PUGLIESE, LAWRENCE NADELL, YITZXHAK LEVY, KENNETH SCHAEFFER AND USP&C together with others, knowingly and intentionally devised and executed a scheme to defraud consumers by causing USP&C to place unauthorized charges on local telephone bills of victims within the Eastern District of New York and elsewhere, and collecting payment on those unauthorized charges

To execute this Cramming Scheme, defendants RICHARD MARTINO and NORMAN CHANES, together with employees of Harvest and others acting at their direction, produced advertisements offering free samples of adult entertainment services, such as psychic hotlines, dating services, and sexually oriented talk-lines, over various "1-800" telephone numbers. Harvest placed these advertisements in various media, including adult magazines. These advertisements induced victims within the Eastern District of New York and elsewhere in the United States to call the various "1-800" telephone numbers by promising free samples of the entertainment services described.

Victims who called the "1-800" telephone numbers advertised in this manner by Harvest heard pre-recorded "front-end programs," which varied over time and across the various "1-800" telephone numbers. Each was designed so that when a victim

called the "1-800" telephone number and expressed a desire to obtain the free sample of the entertainment service advertised, the front-end program triggered a recurring monthly charge on the victim's local telephone bill for a voice-mail service without the knowledge, consent or authorization of the victim. The Bill Phrases for the monthly charges that appeared on the victim's local telephone bills' were designed to appear to be innocuous standard telephone charges and to conceal the fact that the charges were triggered by the calls to the "1-800" adult entertainment telephone lines.

In order to conceal the fraudulent nature of the "1-800" telephone numbers and related front-end programs used in the Cramming Scheme, the defendants RICHARD MARTINO and NORMAN CHANES and others acting at their direction prepared and caused to be prepared two sets of advertisements, front-end programs and related materials. One set was referred to as the "marketing" materials, and consisted of the actual advertisements, front-end programs and related materials offering the free samples of entertainment services that were used to defraud the victims in the manner described above.

The second set was referred to as the "approval" materials, and consisted of advertisements, front-end programs and related materials offering various voice-mail services. Unlike the "marketing" version, the "approval" versions of the front-end programs appeared properly to seek the consumer's authorization to charge a recurring monthly fee for a voice-mail service, whose features were fully described.

The "approval" materials were not actively marketed to the public, but rather were presented to LECs, regulatory and law enforcement agencies and complaining customers in order to conceal the existence and fraudulent nature of the

"marketing" materials actually used to generate the unauthorized charges. The Bill Phrases for the unauthorized charges corresponded to the names of the voice-mail services contained in the "approval" materials. In this manner, when USP&C faced inquiries concerning the business practices of its clients or the nature of the monthly recurring charges from LECs, regulatory or law enforcement agencies or complaining customers, USP&C presented the "approval" materials rather than the "marketing" materials that actually triggered the charge.

Defendants RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO, together with others, caused the formation of Overland Data Center ("Overland"), located in Overland Park, Kansas, and secretly controlled it for the purpose of receiving and processing consumers' calls to the various "1-800" telephone numbers used in the Cramming Scheme. Overland operated telephone lines and voice response units ("VRUs"), which processed the consumers' calls and played the front-end programs. At the direction of RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL, YITZHAK LEVY and KENNETH SCHAEFFER, Overland employees programmed the VRUs to play the front-end programs and thereby trigger the unauthorized charges on the consumers' telephone bills. Overland's finances were managed by DANIEL MARTINO through FSE Consulting, of which DANIEL MARTINO was president. Through this position, DANIEL MARTINO assisted RICHARD MARTINO and CHANES in exercising secret control over Overland and other companies.

Defendants RICHARD MARTINO and NORMAN CHANES, together with employees of Harvest acting under their direction, created scripts for both the



"approval" and "marketing" versions of the front-end programs, and retained voice-professionals to make recordings of the scripts. The recordings were then provided to employees of Mical, where, at the direction of defendants RICHARD MARTINO, LAWRENCE NADELL, YITZHAK LEVY, KENNETH SCHAEFFER and others, they were transmitted to Overland for use in the front-end programs.

Defendants RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO, together with others, caused the formation of USP&C and secretly controlled it for the purpose of placing the unauthorized charges generated by the fraudulent front-end programs onto the victims' local telephone bills.

Defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO and CAMPOS, together with others, caused the formation of various companies, including ASP Communications, Inc. ("ASP"), Benchmark Communications ("Benchmark"), Lunar Tel, Inc. ("Lunar"), Spring Telcom, Inc. ("Spring"), Special Comtel, Ltd. ("Special Comtel"), Enhanced Phone Services ("Enhanced Phone"), Messenger Com ("Messenger") and Voice Delivery Service Inc. ("Voice Delivery") (collectively, the "Campos Companies"). Each of the Campos Companies purported to be an independent company operated by ANDREW CAMPOS that was engaged in the business of offering "1-800" telephone services. In fact, the Campos Companies were shell companies whose purpose was to disguise the fact that the "1-800" telephone services used in the Cramming Scheme were controlled by RICHARD MARTINO, CHANES and DANIEL MARTINO. The Campos Companies had no employees or physical office space other than. rented mailboxes around the country.

Each of the Campos Companies registered multiple "1-800" telephone services under multiple fictitious business names with USP&C and various LECs. Each such business name was referred to as a "sub-CIC," which is an industry term that refers to an entity that is permitted to place charges on local telephone bills through a registered "CIC." USP&C was registered as a "CIC."

Defendants RICHARD MARTINO and NORMAN CHANES caused the Campos Companies to enter into contracts with USP&C to provide billing and collection services for the "1-800" telephone numbers used in the Cramming Scheme, and further caused the Campos Companies to submit the "approval" version of the materials to USP&C and the LECs, rather than the "marketing" versions that were used to defraud the Cramming Scheme's victims. Because the Campos Companies were shell companies devoid of employees or physical office space, all of USP&C's dealings with the Campos Companies were conducted through defendants RICHARD MARTINO and CRANES, and, at their direction, through defendants LAWRENCE NADELL, YITZHAK LEVY, KENNETH SCHAEFFER and other employees of Mical.

The Cramming Scheme Defendants caused unauthorized recurring monthly charges to be included on millions of victims' local telephone bills throughout the Eastern District of New York and elsewhere in the United States, and generated between approximately \$50,000 and \$600,000 in gross revenue per day between 1997 and 2001. In total, the Cramming Scheme generated more than \$500 million in gross revenues.

### 3. Victim Complaints and Refunds

A large portion of the Cramming Scheme's victims complained to the

LECs and to USP&C about the unauthorized charges appearing on their local telephone bills. Defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, together with others, caused a "call center" affiliated with USP&C to be established to handle the large volume of victim complaints internally, to prevent the LECs from learning the actual extent of customers complaining that the charges were unauthorized.

Telephone operators at the call center were directed initially to attempt to persuade victims that the charges were in fact authorized and to induce customers to agree to pay the charges. If a victim was adamant that the charges had not been authorized and refused to pay, the operators were next directed to offer a partial refund, but to offer a full refund only if the victim would not accept a partial refund.

The purpose of offering full refunds to customers who demanded them was to reduce the likelihood that victims would complain directly to the LECs or to regulatory agencies. The call center operators were further instructed that if victims asked them to provide the telephone number that triggered the charge on the USP&C page of their local telephone bill, the operators were to provide a "1-800" number that connected to the "approval" version of the front-end program, instead of the "1-800" telephone number that was connected to the "marketing" front-end program that the customer had actually called.

During the course of the Cramming Scheme, USP&C on average refunded approximately 50% of the unauthorized charges to complaining customers. From time to time, various LECs canceled the billing privileges of the sub-CICs that generated these high refund levels on such occasions, the defendants RICHARD MARTINO and NORMAN CRANES, together-with others, would cause the Campos Companies and

other similar shell companies under their control to begin soliciting victims and billing under new sub-CICs with new "1-800" telephone numbers for the purpose of continuing and perpetuating the Cramming Scheme. In approximately 2001, because of complaints from various LECS and regulatory agencies about the Campos Companies, defendants RICHARD MARTINO, CHANES and PUGLIESE caused new shell companies to replace the Campos Companies as clients of USP&C. PUGLIESE was the nominal owner and president of several of these new shell companies. Like the Campos Companies, these new shell companies were secretly controlled by RICHARD MARTINO, CHANES and DANIEL MARTINO.

In one instance, Southwestern Bell - a LEC - cut off USP&C's rights to insert a USP&C bill page in Southwestern Bell's local telephone bills in response to high levels of customer complaints. In order to continue passing on fraudulent charges to Southwestern Bell's customers, USP&C switched to a "direct" billing format, in which they mailed bills directly to victims instead of inserting charges into a LEC's local telephone bill.

In order to deceive Southwestern Bell's customers into believing that the direct-billed charges were legitimate and were for costs arising from their local phone service, defendants RICHARD MARTINO, NORMAN-CHANES and DANIEL MARTINO caused the design of a bill page and mailing envelope that were intended to resemble Southwestern Bell's telephone bill. These bills were sent out on behalf of an entity called "Southwest Region Bill," which was a fictitious name for Invesco, a company registered to defendant THOMAS PUGLIESE as president. The Southwest Region Bill telephone bills strongly resembled Southwestern Bell's bill formats, in that

(a) the Southwest Region Bill invoice used a nearly identical typeface and font size to the Southwestern Bell invoice; (b) the placement of items on the Southwest Region Bill invoice such as account summaries, current charges, total amounts due and due dates were very similar to those used by Southwestern Bell; and (c) the Southwest Region Bill invoice also copied the light blue stripe down the left margin of the Southwestern Bell invoice in a nearly identical color and size. The Southwest Region Bill invoice also stated that if recipients did not pay the charges assessed on that bill, the company would "begin procedures to cancel all service to you," thereby suggesting that the recipient's telephone service would be shut off.

The "Southwest Region Bill" invoices were mailed out by USP&C at the direction of RICHARD MARTINO, NORMAN CRANES and DANIEL MARTINO, and various Mical employees under their control. Numerous victims were defrauded into paying the invoiced charges. Numerous other recipient of these bills, however, complained to regulators and to Southwestern Bell, these entities rapidly took legal action to induce USP&C to stop mailing the fraudulent invoices.

4. Disposition Of The Cramming Scheme's Proceeds

During the course of its operation, the Cramming Scheme induced millions of victims throughout the United States to place telephone calls to the "1-800" telephone numbers operated by Overland. Overland transmitted the billing information for the unauthorized charges to USP&C for submission to the LECs for inclusion on the victims' local telephone bills. USP&C collected the payments for the unauthorized charges from the LECs, and in turn paid the bulk of the proceeds to the Campos Companies and, after approximately January 2001, to the shell companies that replaced

the Campos Companies, net of expenses and refunds to complaining victims. These companies in turn paid the proceeds to Overland and to Fairfax. Overland in turn paid the vast bulk of the proceeds to Mical, and, after approximately mid-2000, to Telcom.

Overland also paid some of the proceeds to a company called Local Exchange Company L.L.C., also known as "LEC L.L.C." LEC L.L.C. was owned in part, both directly and indirectly through trusts, by defendants SALVATORE LOCASCIO, RICHARD MARTINO, ZEF MUSTAFA, NORMAN CHANES AND DANIEL MARTINO.

Fairfax paid the proceeds to Baseline Telecommunications, Inc. ("Baseline"), Dynamic, Mical and Harvest. Dynamic, in turn, paid a portion of its proceeds to Mical and Harvest.

From approximately 1996 through 2002, inclusive, defendants RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO funneled more than \$40 million in proceeds of the Cramming Scheme and the Internet Scheme from Mical, and later Telcom, to Creative. The proceeds funneled to Creative were transferred in fulfillment of RICHARD MARTINO's obligation as a member of organized crime to share illicit proceeds with persons above him in the Gambino family.

## Attachment 10

### Internet Fraud Scheme Description

# 1. The "Free Tour" Internet Fraud Scheme- The Internet Joint Venture

The Crescent Publishing Group, Inc. ("Crescent"), was a publisher of adult entertainment magazines, including *Playgirl*, *High Society*, *Climax* and *Live Young Girls*. Crescent maintained an office in midtown Manhattan, New York.

In or about September 1996, the defendants RICHARD MARTINO and NORMAN CHANES, together with others, caused Lexitrans and Crescent to enter into an unwritten joint venture agreement (the "Joint Venture"). The purpose of the Joint Venture was to operate adult entertainment websites featuring content from magazines published by Crescent, including *Playgirl* ([playgirl.com](http://playgirl.com)), *High Society* ([highsociety.com](http://highsociety.com)), *Climax* ([climaxmag.com](http://climaxmag.com)) and *Live Young Girls* ([ygal.com](http://ygal.com)) (collectively, the "Websites"). The Joint Venture obtained money by charging the credit and debit cards of victims who had visited the Websites, including victims residing in Brooklyn, New York and in Nassau County, New York.

Using Lexitrans, Harvest, Mical, Dynamic, Westford and Crescent, the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL and YITZHAK LEVY, together with others, performed various functions for the Joint Venture, including the following tasks. RICHARD MARTINO and CHANES, through Mical and Harvest, designed the Websites.



Defendant YITZHAK LEVY assisted in overseeing the technical operations of the Websites from Mical. Crescent provided content for the Websites and implemented art and editorial changes provided by Harvest and Mical to Crescent. Lexitrans hosted the Websites on servers located in Kansas. Employees of Harvest, Dynamic and Westford provided marketing and advertising services for the purpose of directing internet traffic to the Websites. RICHARD MARTINO and CHANES, together with Bruce Chew, the President of Crescent, made all final decisions regarding the design and operation of the Websites.

2. Credit Card Processing

Visa U.S.A., Inc. ("Visa") was a membership corporation composed of more than 12,000 financial institutions. The members of Visa consisted of "issuing banks" and "merchant banks." "Issuing banks" were financial institutions that issued Visa credit and debit cards to consumers. "Merchant banks" were financial institutions that offered agreements permitting merchants to accept and process Visa cards for payment for goods and services. Within this system, Crescent and its affiliated corporations, at the direction of the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL and others, opened merchant accounts at merchant banks, including Humboldt Bank and First Financial Bank, for the purpose of processing Visa cards as payment for the cost of membership on the Websites. Crescent pooled funds from these merchant bank accounts into the accounts of Multimedia Forum, Inc., ("Multimedia") a Crescent affiliate, at a branch of North Fork Bank located on Long Island, New York and within the Eastern District of New York, and from there sent the funds to other accounts controlled by Crescent, as well as

accounts controlled by Lexitrans, Dynamic and Westford, and others.

3. The Scheme To Defraud

The defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL and YITZHAK LEVY, also known as "Isaac Levy" (collectively, the "Joint Venture Defendants") and others caused the Websites to present themselves as legitimate adult entertainment sites. In fact, however, the Joint Venture Defendants designed and operated the Websites to defraud the public by fraudulently obtaining visitors' credit and debit card information and then billing the victims' cards without the victims' knowledge or consent (the "Internet Scheme").

The Internet Scheme was centered around purportedly "free tours" of the Websites. While the Joint Venture Defendants and others, through the Websites, represented that visitors to the Websites could take a "free tour" of each Website without being billed, in actuality the Joint Venture Defendants, together with others, designed and operated the Websites so that victims would be billed without their knowledge or consent.

On the first screen of the "free tour," the Joint Venture Defendants and others caused the Websites to obtain credit or debit card information by representing that this information would be used as proof of the visitors' age and that visitors' cards would "NOT BE BILLED". In fact, the Joint Venture Defendants intentionally caused the Websites to bill visitors' cards without the visitors' knowledge, consent or authorization, as a result of visiting the purportedly "free tour."

The Joint Venture Defendants and others also used various means to prevent visitors from leaving the Websites. These means included automatically sending

visitors who attempted to leave the "free tours" directly to another free tour controlled by the defendants, multiple times consecutively; disabling the "go back" button on visitors' browsers and failing to include an "exit" or "home" button within the "free tour" itself. These technological mechanisms were intended to increase the likelihood that visitors would inadvertently trigger charges to their credit cards by proceeding through the "free tour."

Through the Websites, the Joint Venture Defendants, together with others, billed and caused to be billed the credit and debit cards of thousands of victims in the United States, Europe and Asia, without their authorization, at a recurring monthly rate of up to \$90 each, for an approximate total amount of more than \$230 million.

#### 4. Victim Complaints and Refunds

The Joint Venture Defendants, together with tour" even though, as the Joint Venture Defendants knew, Crescent and its affiliated companies received numerous complaints from victims stating that they did not intend to join the Websites and had been billed without prior notice or consent. Despite the large number of such complaints, the Joint Venture Defendants, together with others, refused to alter the design of the Websites because they knew that this would reduce the number of visitors who became enrolled as members of the Websites, and would therefore reduce the defendants' profits.

The Joint Venture Defendants, together with others, knew that Crescent and its affiliated companies incurred extremely high "chargeback" rates virtually from the inception of the Joint Venture. A "chargeback" generally occurs when a consumer disputes a charge and the issuing bank credits the consumer's account and debits the

merchant account in the corresponding amount. During 1999, as the Joint Venture Defendants knew, Crescent's chargeback rate was more than 10%, the third highest rate among the millions of merchants participating in the Visa program within the United States.

The Joint Venture Defendants, together with others, systematically abandoned their "merchant accounts" and opened new ones on a continuous, rolling basis, in order to conceal from Visa that the high level of chargebacks was continuing. The Joint Venture Defendants concealed from Visa and consumers the fact that these corporations and merchant accounts were all controlled by Crescent. This enabled the Joint Venture Defendants to avoid the imposition of fines and penalties and temporarily avoid being excluded from the Visa program.

In an effort to reduce the number of chargebacks and thereby avoid Visa's fees and maintain credit card processing privileges, the Joint Venture Defendants attempted to handle more victim complaints internally at Crescent and its affiliates rather than leaving victims to resolve the dispute with their issuing bank. In addition, the Joint Venture Defendants caused Crescent and its affiliates to provide refunds only when expressly requested by the consumer and otherwise merely canceled the consumer's membership account. In all, based on combined chargebacks and refunds, the Joint Venture Defendants caused Crescent to return an average of one-out of every three dollars in revenue during 1999, which permitted the scheme to continue.

In or about July 1999, for the purpose of continuing the Internet Scheme as chargeback problems mounted, Crescent created Luna, S.A., a new corporation with merchant accounts at South Bank & Trust Co., Ltd., a Montserrat bank doing business in

Guatemala. At this offshore bank, the Joint Venture Defendants, together with others, continued their practice of rolling merchant accounts.

Due to the high level of chargebacks, in or about April 2000, Visa terminated the rights of Crescent, Crescent's President and Crescent's Chief Financial Officer to participate in the Visa program in the United States. Subsequently, the Joint Venture Defendants continued their credit card processing operations offshore. When the excessive chargeback rates continued and Visa discovered the defendants' maneuver, in September 2000, Visa barred Crescent, Crescent's President and Crescent's Chief Financial Officer from participating in the global Visa program. Notwithstanding this ban, Crescent took steps to continue operating the Websites through substitutes.

5. Disposition of the Internet Scheme's Proceeds

Pursuant to the Joint Venture, Crescent deducted certain costs from the Websites' total revenue, including millions of dollars paid to Harvest and other companies, and then provided 50% of the remaining net profits to Lexitrans, Dynamic and Westford through Multimedia's bank account at North Fork Bank, within the Eastern District of New York, as directed by the defendants RICHARD MARTINO, NORMAN CRANES and DANIEL MARTINO. Lexitrans, Dynamic and Westford in turn sent millions of dollars of these illegal proceeds to Mical, both directly and through various companies controlled by RICHARD MARTINO, CRANES and DANIEL MARTINO, including Dynamic and Overland. Multimedia also paid some of the proceeds to a company called Local Exchange Carriers LLC, through a series of intermediate companies controlled by RICHARD MARTINO and CHANES. Local Exchange Carriers, LLC was owned in part, both directly and indirectly through trusts, by

defendants LOCASCIO, RICHARD MARTINO, MUSTAFA, CHANES, DANIEL MARTINO and CAMPOS.

From approximately 1996 through 2002, inclusive, defendants RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO funneled more than \$40 million in proceeds of the Cramming Scheme and the Internet Scheme from Mical, and later Telcom, to Creative. The proceeds funneled to Creative were transferred in fulfillment of RICHARD MARTINO's obligation as a member of organized crime to share illicit proceeds with persons above him in the Gambino family.

## Attachment 11

Mr. Lovern's March 29, 2004  
Memorandum

# **TRIAL MANAGEMENT ASSOCIATES**

A PRIVATE COMPANY THAT LITIGATES INTERNATIONAL PUBLIC INTEREST CASES

A Division of TMA International Trusts

www.tmaittma.com Phone: (206)-350-1862 Fax: (775)-871-8373 E-mail: tma@tmaittma.com

*SEATTLE, WA - CARSON CITY, NV - FT. WORTH, TX - CHICAGO, ILL - ANNAPOLIS, MD*

William Lovem, Sr.  
President  
Seattle, WA 98007  
TMA International Trusts  
William Lovem, Sr., Vice Chairman  
TMA Consulting - tmaconsulting@tmaittma.com  
R & L Associates, PLLC - rlassociates@tmaittma.com

Direct Dial: 410-798-6698  
Private Fax: 775-860-4724  
Private E-mail: wlovern@tmaittma.com  
Phone: 206-350-1143 / Fax: 775-871-8428  
Phone: 206-333-0098 / Fax: 775-878-0852  
Phone: 206-339-2604 / Fax: 775-871-8373  
Phone & Fax: 206-339-3549

March 29, 2004

**All Parties notified by fax March 29, 2004  
& certified mail**

**SBC COMMUNICATIONS INC. (NYSE: SBC)**

**Edward Whitacre**  
175 E. Houston, San Antonio, Texas 78205-2233  
**Pacific Telesis Group**  
**Ameritech**  
**SNET**

**Verizon Communications Inc. (NYSE: VZ)**

**Ivan Seidenberg**  
1095 Avenue of the Americas  
New York, NY 10036  
**NYNEX**

**BellSouth Corporation (NYSE: BLS)**

**F. Duane Ackerman**  
1155 Peachtree St. NE  
Atlanta, Ga. 30309

**Qwest Communications International Inc. (NYSE: Q)**

**Richard C. Notebaert**  
1801 California St.  
Denver, CO 80202

**Cincinnati Bell Inc. (NYSE: CBB)**

**John F. Cassidy**  
201 E. 4th St.  
Cincinnati, OH 45202



Page 2 (SBC Class actions)

**AT&T Corp. (NYSE: T)**

**David Dorman**

One AT&T Way

Bedminster, NJ 07921

**NECA**

**William Hegmann**

Richard A. Askoff

80 South Jefferson Road

Whippany, NJ 07981-1009

**INDEPENDENT NECA SERVICES / NECA SERVICES**

**FCC - Michael Powell, Commissioners' Martin, Abernathy, Copps, & Adelstein**

C/O Ms. Marlene H. Dortch, Office of the Secretary

Federal Communications Commission

445 12th St. S.W., TW A-325

Washington, DC 20554

Cc: Christopher Libertelli, Senior Legal Advisor to Chairman Powell

Daniel Gonzalez, Senior Legal Advisor to Commissioner Martin

Matthew Brill, Senior Legal Advisor to Commissioner Abernathy

Jessica Rosenworcel, Legal Advisor to Commissioner Copps

Lisa Zaina, Senior Legal Advisor to Commissioner Adelstein

**Frost Brown Todd LLC**

David Olson

2200 PNC Center, 201 East Fifth Street

Cincinnati, Ohio 45202

**AT&T Wireless Services, Inc. (NYSE: AWE)**

John D. Zeglis

7277 164th Ave. NE, Bldg. 1

Redmond, WA 98052

**Cingular Wireless LLC**

Randall L. Stephenson

Glenridge Highlands Two, 5565 Glenridge Connector

Atlanta, GA 30342

**Science Applications International Corporation**

**Telcordia Technologies, Inc.**

J. Robert Beyster

10260 Campus Point Dr.

San Diego, CA 92121

RE: American TeleDial Corp (ATC) et al v. SBC Communications et al  
William Lovern, Sr. et al v. SBC Communications et al

Dear Defendants & Ms. Dortch:

It has been 12 years to the day since I legally penetrated the Intercompany Settlement System (ICS). At the CompTel Convention in Las Vegas in February 1992, all the Bell Companies sat in my Hotel Suite with their lawyers and denied that the ICS even existed. On March 29, 1992, through Fidelity Telephone, I began legally downloading messages into the ICS for LEC Billing. The messages were formatted in EMR instead of the more expensive EMI format, and they flew through the system as expected, ending up at LECS throughout the country just like AT&T messages did daily, except for one thing, when the LECs began calling Southwestern Bell (SWBT) asking what was going on, SWBT panicked. They knew I had figured out the codes and was in the "Country Club's" secret billing system. It was the beginning of the end of the telecommunication industry...POST DIVESTITURE. It was the beginning of the end of your legacies and discriminatory practices.

On February 28, 1983 Judge Greene's Modification of Final Judgment was affirmed [103 S.Ct. 1240] in the now famous case, U.S. v. American Tel. and Tel. Co., 552 F. Supp. 131 (1982). In his decision the court said;

**"Antitrust consent decree must leave defendant without ability to resume actions which constituted antitrust violation in first place; the decree should not be limited to past violations, but it must also effectively foreclose possibility that antitrust violations will occur or recur."**

Judge Greene went on to say that the way AT&T had maintained monopoly power in telecommunications was through the control of the BOCs and their strategic bottleneck position. Divestiture was intended to require the removal of the two main barriers that previously deterred firms from entering or competing effectively in the interexchange market. Regarding exchange access services, which included B&C services, [bottleneck service] the court said;

Judge Greene 552 F. Supp. at pg. 171

**"AT&T will no longer have the opportunity to provide discriminatory interconnection to competitors. The Operating Companies [BOCs] will own the local exchange facilities. Since these companies will not be providing interexchange services [S-1822], they will lack AT&T's incentive to discriminate.**

**Moreover, they will be required to provide all interexchange carriers with exchange access that is equal in type, quality, and price to that provided to AT&T and its affiliates."**

How badly did the BOCs violate Judge Greene's Order? Below is the speech I gave at the 1994 NARUC Convention in Reno. It's worthy of another read today to bring things into perspective.

**"Speech" – BY: WILLIAM LOVERN, SR.  
given at "National Association of Regulatory Utility Commissioners"  
(NARUC) - National Convention, November 1994, Reno, Nevada**

**"NOTE: 2004"...is information added in 2004, not part of the speech.**

**Today marks the 10th year, 11th month, and 12th day since Divestiture.**

What has changed in the telecommunications industry, as far as reshuffling the wealth since the first day of January, 1984 has been remarkable; however, what has not changed in the telecommunication industry since the first day in January, 1984, is the continuing AT&T dominance through its ability to exclusively offer RAO based *"Special Number Calling Cards"* and to receive preferential premium billing services from all US telephone companies.

The importance of these two issues is this:

AT&T has dominated the calling card market, making billions of dollars over the years, through a special calling card arrangement with Cincinnati Bell and Bell South. This special arrangement has allowed AT&T to receive,

**\* preferential treatment and premium billing services, as if the card had been issued by a Bell Operating Company ("BOC") or Independent Telephone Company ("ITC") and,**

**\* no other competitive interexchange carrier has received such preferential treatment and today 10 years, 11 months and 12 days after Divestiture, no competitive interexchange carrier has been able to market an intraLATA and interLATA calling card that is accepted by virtually the entire telephone industry in the United States.**

What is this arrangement I am referring to?

***SPECIAL BILLING NUMBER (RAO) CALLING CARDS***

Here's what that includes;

1. Exclusive use of Cincinnati Bell's RAOs. AT&T has been able to issue Special Calling Cards (approximately 4 million) using 308 and 077 (077 appears as 677 on the actual calling card - per Bellcore specifications).

2. Exclusive use of Caribbean RAOs. AT&T has been able to issue Special Calling Cards (approximately 8 million) using RAO codes 503, 506, 507, 508. Each of these RAO codes - having been assigned by Bellcore to specific Caribbean countries - were never intended to be used for the issuance of calling cards, let alone calling cards for AT&T.

The use of these RAOs enables AT&T to issue 12 million, fully honored and completely billable calling cards that have generated billions of dollars over the course of the past few years, inclusive of an enormous amount of money for calls transported over other IC networks, charged to one of these cards, yet AT&T was paid for the call instead of the IC who actually transported the call.

Let's examine the preferential treatment that goes along with this arrangement.

### **BILLING & COLLECTION**

AT&T has received premium billing services since day one of Divestiture. AT&T believes they paid too much money for the service, but the rewards have been enormous.

#### **EXAMPLES;**

- \* What competitive interexchange carrier can say that they have 100% market presence in non-equal access as well as equal access telephone companies?
- \* What competitive interexchange carrier can market a calling card that is universally accepted by virtually every US Telephone Company - for intraLATA, interLATA, and international calling?
- \* What competitive interexchange carrier receives the comprehensive detail level Billing & Collection ("B&C") reports TODAY that AT&T has been receiving before, during and after Divestiture?
- \* What competitive interexchange carrier can boast that Bellcore actually changed the Bellcore CIID assignments document, for the entire Bellcore Client Companies [BOCs as you know them] to legitimize AT&T's blatant misuse of Cincinnati Bell and the Caribbean RAOs that have resulted in the issuance of up to 12 million AT&T exclusive calling cards?
- \* And what competitive interexchange carrier has their own unique version of the Exchange Message Interface ("EMI") that is used by the telephone industry to maintain premium billing services for AT&T?

I am referring to the AT&T - EMI or Exchange Standards Reference Document, or AT&T ESRD. [published and put out by AT&T, not Bellcore]

To summarize there are two systems for billing and collection services. A premium system, or Rolls Royce for AT&T and the BOCs, [BCCs, which includes SNET & CBT] then there is the Chevrolet for everyone else. Oddly the Chevrolet costs as much as a 1200% more to use than the Rolls Royce system and guess who pays for it all, the American Consumer, via the rates associated with LEC Billing.

Most people think AT&T divested themselves of their original billing system (System). Not true, they transferred ownership of replicated versions of their billing systems and kept the original for themselves. **Alex Abjornson** [the man who designed, implemented, and wrote the Bellcore Manuals for the System], installed the replicated version at Southwestern Bell in Kansas City. The original CMDS and CATS systems have been alive and well for the last 10 years, 11 months, and 12 days, still controlled by AT&T.

## **HISTORY ON THE BELL COMPANIES AND DIVESTITURE**

It is important to understand the history of billing services, as offered by the Regional Bell Operating Companies or ("RBOCs").

As a result of Divestiture the Access Service Tariff came into existence.

The initial intent of the Tariff was to structure how the RBOCs would be compensated for carrier use of BOC facilities.

Billing and Collection services were not directly a part of local access considerations and were defined as "Ancillary Services."

RBOC analysis determined that under Divested conditions, End User Billing [B&C] could be more than an ancillary requirement of Divestiture.

RBOC awareness as to the revenue potential of Billing & Collection grew, and as a result the RBOCs directed the CSO [later became Bellcore] in September, 1982, to form a Task Force to evaluate billing as a line of business or "LOB."

It should be noted that the development of Billing as a LOB was constrained by the historical regulated rate of return philosophy until April 1983.

In April, 1983, because of the FCC Third Report and Order, Docket 78-72, it became evident that even the short run potentials for Billing as a LOB were theoretically expanded considerably. [HUGE PROFITS]

This resulted in the creation of a new CSO (Bellcore) Task Force to evaluate the potential.

At this time in history, spring of 1983, B&C was no longer subject to regulation.

This meant that if B&C revenues were above or below the FCC allowed rate of return for the other Access Services, whatever B&C earned [more than or less than the normal FCC allowed rate of return] would not impact other Access Service revenues.

In essence, as of April 1983, B&C was allowed to make as much money as it could - **AN IMPORTANT POINT TO REMEMBER.**

[THIS RESULTED IN THE CREATION OF A NEW TASK FORCE TO EVALUATE THE REVENUE POTENTIAL FOR THE BOCS.]

The Task Force met between April 28th through May 29th, 1983. The product of this Task Force was the compilation of over 300 pages of significant data that provided National Parameters from which the RBOCs could utilize for their regional "price driving".. B&C models.

### **TASK FORCE RESULTS & CONCLUSIONS**

A couple of the key recommendations from this Task Force are as follows:

1. Billing & Collection should be considered a LOB by the RBOCs.
2. The mechanism to be used by the RBOCs for determining prices should be based upon the J. Goldberg cost model, generally referred to as the "Top Down Methodology." This process would allow each RBOC to quickly ...calculate revenue maximizing prices. [they artificially inflated costs associated with B&C]

Through the allocation of costs to the various billing elements, each RBOC could assign various costs. What this means is;

1. Billing & Collection rates were manipulated to fully recover the money that RBOCs were receiving from AT&T before Divestiture.
2. There was no consideration by the RBOCs of pricing B&C services competitively - because there were no other competitors.

### **INTERCOMPANY SETTLEMENTS AND THE CMDS I SYSTEM**

At the same time the Task Force was developing AT&T and B&C rates, the RBOCs and CSO [Bellcore] were creating what I refer to as the *Country Club* billing system, the Rolls Royce, the second system, the "circle within the circle."

This secret billing system for the telephone industry was fully functional in every way to the Tariffed billing system being presented to the FCC, except for the COSTS. THE RATES WERE SIGNIFICANTLY LOWER. HOW LOW? Originally the rate per message for billing was set at \$.10 per message.

This rate was immediately lowered by 50% to \$.05 per message including inquiry inclusive of Rolls Royce reporting system. This still exists today as we speak. This is the Intercompany Settlements System ("ICS") which is facilitated through the Centralized Message Distribution System ("CMDS I") and BOC (BCC) CATS, controlled by Bellcore and the BOCs, operated by Southwestern Bell and it has been operating in full swing since Divestiture.

Imagine \$.05 per message [a nickel], inclusive of all services including inquiry and full premium reporting [Rolls Royce] versus \$.20, \$.30, \$.40 per message, even higher, from the Chevrolet which provides inadequate reporting.

#### **QUESTION NO. 1 FOR THE COMMITTEE**

Why, when the RBOCs and Bellcore have a fully functional means of providing B&C services through ICS at \$.05 per message did the FCC approve B&C Tariffs that reflected rates to the interexchange carrier [IXC] market that were as much as 1200% greater than the rates the RBOCs charged themselves?

#### **WHAT WAS SOME OF THE IMPACT OF TWO B&C SYSTEMS**

As a result of AT&T having to pay the Tariffed B&C rates, the RBOCs were able to fully recover pre-Divestiture revenues, in essence - WINDFALL PROFITS.

At the same time the RBOCs have maintained a monopolistic [oligopoly] intercompany settlement billing system for their own use, at a fraction of the cost being charged to the IXC industry. How many of the IXCs in the industry today have B&C rates of \$.05 per message, with inquiry, detail reporting and, **100% ON NET CAPABILITY?**

The artificially inflated costs associated with B&C, which were part of the 1983 tariffs filed at the FCC, pursuant to Divestiture, were essentially the same tariff structures and rates that the BOCs filed in each of your states during this time frame. The ITCs also used the same poison data as the CSO filed the tariffs for the ECA ["NECA" as you know it today], based on the cost information compiled by the infamous Task Force. This affected every consumer in the country as these artificially inflated B&C costs resulted in higher rates.

**[Note: 2004 - As of 2004, estimated overcharges to consumers {wireline only}, inclusive of 6% compound interest, exceeds \$650,000,000,000.00]**

## POST DIVESTITURE RESULTS

The Task Force, via the J. Goldberg costing methodology, had already shifted ALL B&C service costs down into the basic rate elements of the service, so regardless of the rate of return, windfall profits would exist, corrupting the FCC's decision to place a 12.75 maximum rate of return on billing services.

On February 17, 1984, the FCC released Memorandum Opinion and Order, CC Docket No. 83-1145, [FCC 84-51, 34298], Investigation of Access and Divestiture Related Tariffs.

In this document the FCC states that the common line rate elements represent a \$10.8 Billion revenue requirement, of which the BOCs claim \$8.53 Billion or 79%. This is the ... "best estimate of future costs"... represented in the BOCs tariffs, however the FCC stated and I quote,

"The budget view is a list of 59 items relating to unseparated investment, expenses, taxes, and reserves listed in work papers. However, no documentation is presented to explain the source for all the figures which are used to derive interstate amounts, and thus the basis for all the access costs and rates, the discussion of the budget view occupies less than two and a half pages in each BOC filing."

They went on to say;

"...it is not possible from these filings to evaluate or verify the figures in the budget view. First, the sources of the budget view figures are not clearly specified and cannot be checked."

The FCC then predicted the future by stating that if the figures are wrong the whole industry would be affected. [Fruit from the poison tree], I quote again;

"As we pointed out, the budget view is of crucial importance in these filings as the direct basis for the BOC's claimed revenue requirements, is the root for every individual rate. It is additionally important because of the BOC and ECA top - down methodology. Any errors in the budget view would affect essentially every rate under this approach."

To my knowledge, at no time has the FCC or any other Federal agency ever fully investigated or audited the component costs of the RBOC billing services to determine if the costs applied to the billing elements were true, reasonable, and not overstated. The FCC went on to say;

"...that given their inability to understand and evaluate these rates, they were going to determine whether billing and collection should be detariffed."



Billing & Collection Services were subsequently detariffed under CC Docket No. 85-88, effective January 1, 1987. **[NOTE: 2004 - The Bert Halprin Doctrine, which made him a rich man in post FCC service, representing the BOCs].**

**[NOTE: 2004 - Keep in mind that the MFJ required the Bell operating Companies to provide AT&T's competitors the same services as AT&T were receiving in "...like, quality, and price."**

## **QUESTION NO. 2 FOR THE COMMITTEE**

Considering the overwhelming evidence that indicates the costs associated with Billing & Collection were intentionally artificially inflated, costing consumers hundreds of billions of dollars in higher rates, why hasn't anyone audited the BOCs component costs associated with billing services? I hope this committee will also ask why the FCC just walked away, or turned their heads from what they new to be an obvious problem and will you [NARUC] investigate?

AT&T new it was a problem, that's why they were filing emergency petitions in late 1983 and early 1984. AT&T said they would loose roughly 60% of there interstate revenue based on the costs and tariffs filed by the BOCs and ECA.

To calm AT&T the BOCs settled with AT&T outside the FCC and the BOCs gave AT&T a present to sooth the wound. That present was called **"Stargate"**. Cincinnati Bell was AT&T's sponsoring LEC into the CMDS I / BOC CATS billing system. This included access to the ICS system and the \$.05 price.

In 1987, the Department of Justice investigated SNAFA ("Shared Network Access Facilities Agreement"). For some reason DOJ [Philip Sauntry] completely missed ???? the entire calling card scheme. They missed the fact that AT&T still maintained their original billing system CMDS & CATS. Someone was asleep at the wheel, or ????

By 1988, AT&T was now issuing calling cards based on Cincinnati Bell's ("CBT") RAOs and Caribbean LECs RAO numbers. Mass marketing began on these new AT&T joint use calling cards. AT&T's use of the RAOs assigned to CBT and the Caribbean LECs went unchallenged by Bellcore or the BOCs.

In 1989, Card Issuer Identifier ("CIID" Numbers) were being talked about by Bellcore as a solution for universal calling cards.

In 1990, CIID Numbers are assigned to requesting carriers.

In 1991, the FCC finds CBT guilty of discrimination for violating Title Two of the Communications Act, in connection with their refusal to supply validation information about the AT&T Special Number calling cards to other IXCs. CBT's response is they will get out of the Calling card business, yet Bellcore reassigns CIID numbers to AT&T that just happen to match AT&T's RAO based Special Number joint use calling cards, issued in connection with CBT and the Caribbean LECs. This brings us to;

### **QUESTION NO. 3 FOR THE COMMITTEE**

Why is it that no other IXC, other than AT&T and now UNITEL a Canadian Long distance carrier, have a universally accepted calling card based on any Bellcore assigned CIID numbers almost 11 years after Divestiture. This is an important question as I know it's not because no other IXC wants to go to market with one.

In closing, I urge the committee and NARUC to launch an investigation into the anti-competitive barriers put up by the BOCs which have prevented any other IXC from being able to compete head to head with AT&T, the LECs, and now UNITEL in the lucrative calling card business. The monopoly by which the BOCs control Billing & Collection has got to be disassembled. The bottleneck on billing services is worse today than in 1984.

The MFJ not only required divestiture of the Bell System local exchange operations, but also required the dissolution of the partnership arrangements among the Bell System Companies. Preferential partnership arrangements between AT&T and the BOCs have cost consumers Hundreds of billions of dollars in overcharges.

The industry has lost hundreds of billions of dollars because of anti-competitive barriers controlled by the BOCs and something you probably don't know, most states and the federal government, have lost an incredible amount of tax dollars due to the inflated costs associated with billing services which have been used to wrongfully deduct expenses from tax returns. This has happened at every telephone company in America.

I urge this committee and NARUC to begin a thorough investigation into the BOCs and AT&T regarding their preferential partnership agreements that violate the MFJ and prevent the rest of the industry from enjoying the right to compete in a free market, void of antitrust and anti-competitive behavior.

It is important that you look at Billing & Collection as it is the most misunderstood, yet probably the most important aspect of the entire telecommunication industry. B&C services are not even close to being competitive. The BOCs bottleneck controls everyone except AT&T as no one is allowed to use the system as the court originally intended, except the BOCs. Everyone else, except AT&T, is being held hostage, some have been put out of business for challenging the BOCs control, while attempting to compete.

**[Note: 2004 – It was American TeleDial Corp (ATC) & National TeleProcessing, Inc. (NTI) that were illegally put out of business for legally accessing the ICS (InterCompany Settlement System), via Fidelity Telephone, beginning in March 1992. It is the Fidelity court settlement {lawsuit filed by ATC as litigation manager on behalf of Fidelity that has been voided by TMA International Trusts who owned ATC & NTI}. Fidelity assigned, via contract in 1992, all of their legal claims over to ATC].**

If the BOCs had been given approval to go into the interstate long distance business, no one, and I emphasize NO ONE would be able to compete head to head with them except AT&T because each BOC has installed their own version of the billing system locally for their own control region by region. This is why all new deals between AT&T and the BOCs are now locally negotiated whereas before AT&T worked primarily through CBT and Bell South.

**[NOTE: 2004 – VoIP is going to eliminate the cash cow known as ICS, however the SINS for 20 years of abuse are enormous. With the voiding of the Fidelity settlement, and by combining wireline overcharging associated with the ICS with wireless overcharging associated with the ICS, the defendants in the upcoming class actions are looking at over ONE TRILLION DOLLARS in "Joint & Several" liability. Unless a resolution is obtained by Wednesday, March 31, 2004, the industry will be financially destroyed, along with a lot of lawyers, executives, and federal employees.**

When you sell a service to the general public it's important to be able to collect your money in an efficient manner. Billing services are not competitive today, they never have been competitive, and we are 10 years, 11 months, and 12 days after Divestiture and the "Country Clubs" strangle hold on the industry is tighter than ever. The evidence of foul play warrants your attention and the attention of Washington, inclusive of Congress.

I hope you take appropriate steps to protect the consumers and the industry from further erosion. The Supreme Court said it best in the case *International Salt Co. V. United States*;

" it is not necessary that all of the untraveled roads to [anticompetitive conduct] be left open and that only the worn one be closed. The usual ways to the prohibited goals may be blocked against the proven transgressor."

To put it all in perspective, had MCI been given the same billing services and opportunities as AT&T, their roadside billboards claiming how much money they have saved consumers would have to be twice as wide to accommodate the extra zeros.

Ladies and Gentlemen you know who the proven transgressors are, you also know about anti-competitive conduct. I hope you will do something about it.

Now your memories should be refreshed and up to speed as to why it is my intention to legally destroy the telecom industry if that's what it takes to recover my money, stolen by the BOCs, with all the Defendants acting as an accessory in some capacity, either during or after the fact.

**American TeleDial Corp (ATC) et al v. SBC Communications et al**

This is the lawsuit to collect the approximate \$1,700,000,000.00, my partners and I lost as a result of being illegally blocked from using the ICS. As you all know, in 1992, SWBT (SBC) in their capacity as "Contract Administrator for the ICS, along with the other Bellcore Client Companies (BCCs) who acted as "Hosts" to the ICS, intentionally blocked Fidelity's [contractual partner of ATC] access to the system. Fidelity signed over all their legal claims to myself and ATC. As Vice-Chairman of ATC, I filed suit in state court in Missouri and forced SBC to open access to the ICS, via a TRO.

The case was bumped to federal court in Kansas, City MO, where eventually Fidelity [after being threatened by SBC who told Fidelity the BOCs would put Fidelity out of business], through their St. Louis Law Firm, conspired with the BOCs, Bellcore et al, to illegally settle the case without my approval. The settlement was accepted by the court and sealed. Myself, my partners, nor ATC received one penny of compensation for our losses.

We just proved this month that the federal courthouse in Kansas City where the settlement took place, had no legal jurisdiction. The state of Missouri never transferred legal jurisdiction [Missouri Code 12.030 & 12.040 in conjunction with Title 40 U.S.C., Sec. 255, in conjunction with Art. I, Sec. 8, cl. 17 U.S. Constitution - {Also, see Criminal Resource Manual (DOJ Title 9) Sec.'s 664, 665, 668, and, see **Jurisdiction Over Federal Areas Within the States, Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, ordered by President Eisenhower 1958**]. The state has confirmed the lack of jurisdiction; hence, the Judge had no jurisdiction, therefore the settlement is null and void.

This creates an enormous problem for you as the entire industry has been hiding behind this settlement for 11 years. The BCCs and AT&T made Billions of dollars off this illegal scam. Collectively they made **Hundreds of Billions of Dollars**, all in violation of the MFJ. My use of the ICS was completely legal and in accordance with the MFJ. Judge Green gave all LECs the legal right to use the system, he just didn't order the BOCs to educate anyone how to use it.

During the preliminary hearing in federal court BOC / Bellcore experts and lawyers perjured themselves. SBC's lawyers subordinated perjury. The Bellcore BOC lawyers intentionally withheld discovery that was later obtained in 1994, right before my speech to NARUC. Today those lawyers claim discovery had not completed back 1992, therefore they technically did not withhold. The documents obtained in 1994 include confidential instructional bulletins [signed by Bill Micou who testified under oath at the preliminary hearing that no AT&T interstate messages were being billed through ICS by the BCCs] from Bellcore to the BCCs explaining to them how to covertly bill AT&T messages so as to not expose the secret billing system, inclusive of flow charts showing how the money was going to flow to Cincinnati Bell (CBT).

The messages were all collected by the BCCs in their capacity as "Hosts", then sent to CBT who sold the receivables to AT&T on paper, who then in turn sold them back to CBT [decoding CIID messages when applicable], which said messages were then submitted by CBT into the secret billing system [ICS] coded 000 [CBT] in the carrier identification code in the EMR format instead of 288 [AT&T]. By being coded 000 it appeared that the messages had been transported by CBT, therefore the revenue belonged to CBT. The big problem was CBT did not transport interstate messages outside OHIO.

CBT was being credited Millions of Dollars by Bellcore for interstate messages, via their CATS reports, which I have in my possession. I obtained these documents through a subpoena. CBT to this day denies ever billing AT&T interstate messages, even though the physical evidence is undeniable.

ATC and its sister company National Teleprocessing, Inc. (NTI) had signed billing & collection contracts in 1992 with AT&T competitors that would have generated over \$300 Million in profits in just the first year, and this was after cutting the BOCs billing prices by as much as 50%. The industry was flocking to us for B&C services because we could provide a better product [Rolls Royce - ICS] than they were getting from the BOCs/BCCs [Chevrolet, or outer circle as described in my speech]. The Sacred Cash Cow was in jeopardy as ATC / NTI had forced the "Country Club" to open its membership. The way they reacted one would have thought I was an African American trying to join Augusta National in 1960. Their panic was almost humorous it was so animated, however it was outrageous, and incredibly arrogant. When they called meetings with us it was always in a secret location where no one would see us meeting. It was like they were the CIA.

The bottom line, with 6% compound interest on the money that would have been generated by our signed contracts, ATC / NTI lost approximately **\$1.7 Billion**. The BOCs made Hundreds of Billions. I want my money, and I intend to get it, even if I have to take down all the remaining Bell Operating Companies in the process, via multiple lawsuits, inclusive of shareholder litigation for securities fraud already committed. They made their money illegally. They took away my legal opportunity to succeed in the billing industry and now you're going to have to pay back my money, or suffer the legal consequences. I intentionally have not filed any lawsuits prior to now. This was part of our strategy as you all believe I won't file. Everything in life is timing. The BOCs are hurting, fighting off litigation, losing local access lines. Keep thinking I won't file and it'll be like the movie "Trading Places" with Eddie Murphy. My partners and I will be the ones' on the beach at the end of the movie. You'll be Ralph Bellamy and Dom Ameche.

As for the regulators, you are accessories after-the-fact. The FCC and state regulators have been covering-up this fraudulent scam since 1992. The statute of limitations on conspiracy does not begin to run until the last overt act has been committed. Overt acts are committed every day, and have been since March 29, 1992. With the participation of the FCC, and with NECA being a federal corporation having received "fruit from the poison tree" through Independent NECA Services, the Federal Government can be held liable under "joint and several liability" for all damages not only to us, but to all consumers who have been overcharged, with interest, in excess of **ONE TRILLION DOLLARS (\$1,000,000,000,000.00)**.

**I wonder if Congress has that kind of money, the BCCs don't. [This liability is associated with Case Number 2 - William Lovern, Sr. et al v. SBC Communications et al].**

The AT&T monopoly was not finally broken up by Judge Greene's Order until 1994, after AT&T got caught and the BOCs finally kicked them out of the "Country Club." Look at AT&T today, a mere shell of a company they use to be. The BOCs had to sell Bellcore to try and hide their tracks. SAIC intentionally covered up Bellcore's racketeering enterprise, all in the name of GREED. I personally sent all the necessary physical evidence to SAIC shortly after they obtained Bellcore. They simply swept it under the carpet. As recent as two weeks ago SBC lawyers told SAIC lawyers "to sit tight, Don't do anything with Lovern." In other words, don't try and settle. Hold the party line. We'll handle it.

Gentlemen, you can hold the party line, but I'll use RICO to bankrupt individuals, federal employees included. You can sit there and think I won't file suit. The BOCs thought this in 1992. They were wrong! They also thought their illegal settlement would protect them forever. They were wrong! You can trust your entire financial position in life with them, but you will be wrong! "What goes around, comes around."

***"Opportunity exists when reality is different from perception."*** Thinking you're financially safe is a terrible mistake. I will get my money...that you can count on. No one steals from me and gets away with it...NO ONE! The time to make a decision is NOW. Eleven years is long enough. You know the facts, chose your poison. Resolution deadline is 12 Noon, March 31, 2004. Feel free to call me with any questions.

Keep in mind the ICS is the focal point in the ongoing Gambino Crime Family criminal indictment, whereby they used the ICS, via USP&C, to overcharge consumers up to \$800,000 per day.

Yours truly,

William Lovern, Sr.  
President

Cc: Senate Committee on Commerce, Science & Transportation  
Sub-Committee on Communications

House Committee on Energy & Commerce  
Sub-Committee on Telecommunications & Internet

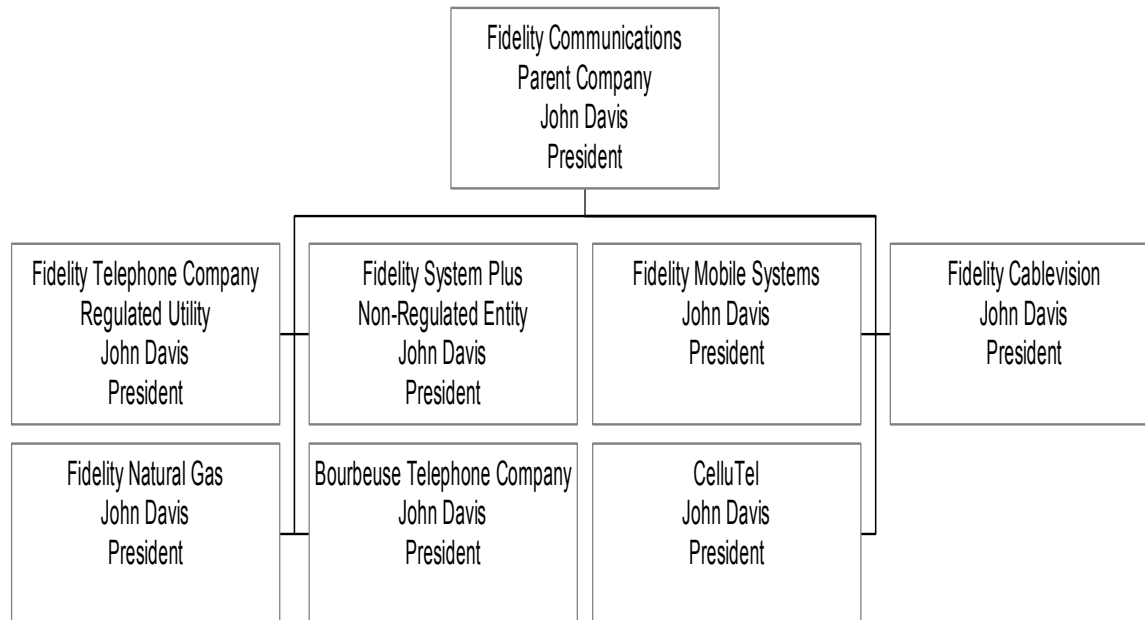
WLS/ss

# Attachment 12

## Fidelity Communications, Inc. Organizational Structure @ July 1992

# Fidelity Corporate Structure

Fidelity Corporate Organization Structure  
@ July 31, 1992





## Attachment 13

Mr. Matzdorff MPSC Testimony on  
April 19, 2004

00001

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS  
HEARING  
April 19, 2004  
Jefferson City, Missouri  
Volume 1

In the Matter of the Investigation ) Case No. IR-2004-0354  
into the Earnings of Cass County )  
Telephone Company )

MORRIS L. WOODRUFF, Presiding  
SENIOR REGULATORY LAW JUDGE.

STEVE GAW, Chair  
ROBERT CLAYTON, III  
COMMISSIONERS.

REPORTED BY:  
TRACY L. THORPE, CSR, CCR  
MIDWEST LITIGATION SERVICES

00002

A P P E A R A N C E S

W.R. ENGLAND, III, Attorney at Law  
SONDRA B. MORGAN, Attorney at Law  
Brydon, Swearingen & England  
312 East Capitol Avenue  
Jefferson City, Missouri 65102  
573-635-7166  
FOR: Cass County Telephone Company  
MICHAEL F. DANDINO, Senior Public Counsel  
P.O. Box 2230  
Jefferson City, Missouri 65102  
573-751-5559  
FOR: Office of Public Counsel and the Public  
MARC D. POSTON, Senior Counsel  
P.O. Box 360  
Jefferson City, Missouri 65102  
573-751-8701  
FOR: Staff of the Missouri Public Service Commission

24  
25  
00003

## P R O C E E D I N G S

JUDGE WOODRUFF: Okay. Let's go on the record. We're here in Case No. IR-2004-0354, which is in the matter of the investigation into the earnings of Cass County Telephone Company.

And we're here today for an on-the-record presentation concerning a Stipulation and Agreement that was presented by the parties to resolve Staff's complaint about the earnings of the company.

We'll begin by taking entries of appearance beginning with Cass County Telephone.

MR. ENGLAND: Thank you, your Honor. Let the record reflect the appearance of WR England and Sondra B. Morgan on behalf of the Cass County Telephone Company.

JUDGE WOODRUFF: Thank you.

And for Staff?

MR. POSTON: Marc Poston appearing for the Staff of the Missouri Public Service Commission.

JUDGE WOODRUFF: And for Public Counsel?

MR. DANDINO: Michael Dandino, Office of the Public Counsel representing the Office of Public Counsel and the public.

JUDGE WOODRUFF: Thank you.

As I indicated, we're here today for an on-the-record presentation. And primarily the purpose is

00004

for the parties to answer questions from the Commissioners, but I'm going to start out by asking you to give a brief statement explaining the status of this case, what the Commission has ask-- has been asked to decide. And I'll begin with Staff.

MR. POSTON: Would you like me to stand --

JUDGE WOODRUFF: If you would, come on up to the podium.

MR. POSTON: Would you like me to go into a little background into this case at all?

JUDGE WOODRUFF: If you would, please.

MR. POSTON: Last year the Staff conducted a thorough audit of Cass County Telephone Company and concluded that Cass was over-earning by roughly \$320,000. Cass, OPC and Staff agreed upon specific rate reductions and entered into a Stipulation and Agreement which the parties filed on February 5th.

It was after this agreement when the Staff first learned that Cass had ties to several individuals in the company named as defendants in a federal indictment. The Staff and OPC then met with Mr. Matzdorff with Cass County and with Mr. England representing Cass County to discuss this indictment.

And through this meeting and follow-up data requests that the Staff sent to Cass County, the Staff

00005

concluded that the federal indictment has no impact on the Staff's audit or upon the terms of the Stipulation and Agreement. And the Staff continues to believe that the rate reductions agreed to in the stipulation are in the public interest and since the Staff -- excuse me.

They are in the public interest since the Staff uncovered nothing to suggest that the Staff's audit results were tainted in any way. And for this reason, the

9 Staff recommends that the Commission approve the  
10 Stipulation.  
11 JUDGE WOODRUFF: Public Counsel wish to make a  
12 statement?  
13 MR. DANDINO: Yes, your Honor.  
14 JUDGE WOODRUFF: All right. May it please the  
15 Commission. The Office of Public Counsel represents the  
16 Stipulation and Agreement in this case. As Mr. Poston  
17 said -- described the situation of the negotiations, our  
18 office got involved with it at that early stage at the  
19 invitation of the company and the Staff.  
20 At that time I believe that there was a --  
21 most of the reduction was going to be given to one tier of  
22 the MCA and then the access reduction. And Public Counsel  
23 thought it would be more in line to divide the reduction  
24 between the M-- the two tiers of the MCA in order to bring  
25 them a little bit closer together and achieve a greater  
00006  
1 reduction for more customers.  
2 At that point, we've entered into the  
3 Stipulation and Agreement. Office of Public Counsel, we do  
4 not have any problem with the responses and the information  
5 that we've received from the Staff. We've reviewed it and  
6 it appears that the funds have been used for the benefit of  
7 the ratepayers in Cass County. And with this reduction of  
8 rates, we support it, we would ask the Commission to approve  
9 it.  
10 JUDGE WOODRUFF: Thank you. For Cass County  
11 Telephone then?  
12 MR. ENGLAND: Thank you, your Honor. I have  
13 nothing to add to the presentations of Staff and Public  
14 Counsel. Would urge the Commission to approve the  
15 Stipulation and Agreement.  
16 JUDGE WOODRUFF: Very good. Then we'll go to  
17 questions from Chairman Gaw.  
18 CHAIR GAW: Thank you, Judge.  
19 Ask Staff when you determined the  
20 over-earnings in this case, what test year was used?  
21 MR. POSTON: 2002.  
22 CHAIR GAW: 2002. Was that the only year  
23 examined?  
24 MR. POSTON: I believe so.  
25 CHAIR GAW: Has Staff seen the books and  
00007  
1 records of the company for any other year besides that year?  
2 MR. POSTON: If I may -- am I on?  
3 JUDGE WOODRUFF: I think you are.  
4 MR. POSTON: Mr. Winter is here and he  
5 actually performed the audit and would better be able to  
6 answer your questions, if he may.  
7 JUDGE WOODRUFF: Mr. Winter, why don't you  
8 come forward and we'll swear you in.  
9 (Witness sworn.)  
10 JUDGE WOODRUFF: You may be seated. Tell us  
11 your name.  
12 THE WITNESS: My name is David Winter.  
13 JUDGE WOODRUFF: I assume you're employed with  
14 the Commission?  
15 THE WITNESS: Yes. I'm an accountant with the  
16 auditing staff of the Commission, PO Box 360, Jefferson  
17 City, Missouri.  
18 JUDGE WOODRUFF: Thank you.  
19 Ask your questions.

20 CHAIR GAW: Thank you, Judge.  
21 DAVID WINTER testified as follows:

22 QUESTIONS BY CHAIR GAW:

23 Q. Mr. Winter, I'll ask you the same question.  
24 First of all, the test year, as I understand it, was the  
25 year 2002. Is that calendar year?

00008

1 A. Yes. Our test year ran through 12/31/2002.  
2 We also looked -- on an analytical basis we looked at  
3 previous years to determine whether those years fluctuated,  
4 high, low, in between. We also looked at the other  
5 financial statements of Cass County from 1988 through 2002.

6 Q. All right. 1998 through 2002?

7 A. Yes, sir.

8 Q. What did you determine when you looked through  
9 those other years?

10 A. Everything was -- from our analytical review,  
11 everything was pretty much in line, what we would normally  
12 see.

13 Q. I guess what I'm asking is, when you used the  
14 test year 2002 and found -- I assume you found these  
15 over-earnings in that test year?

16 A. Yes, sir.

17 Q. Would that have been -- if you had used those  
18 other years from 1998 forward, do you think you would have  
19 varied very much in regard to what you would have found as  
20 to over-earnings?

21 A. We started noticing over-earnings when we did  
22 our analytical review. And 2002 was probably the largest we  
23 saw because it was pretty much zero or positive need a rate  
24 increase. Most of the increase that we're seeing came from  
25 probably Universal Service Fund dollars they were getting

00009

1 from NECA.

2 Q. Okay. When you say that's where the source of  
3 it was, does that mean anything in regard to whether or not  
4 they received more than what they were entitled to receive?

5 A. No.

6 Q. It just means that that amount coupled with  
7 their other revenues resulted in total revenues that you  
8 believe exceeded what should be the case going forward?

9 A. Yes.

10 Q. Have you looked at -- is this the first review  
11 that you personally have done of this company?

12 A. Yes, it is.

13 Q. All right. Do you know when the last review  
14 was done of the company previous to this one?

15 A. This company is rather new. It was really  
16 established I believe in 1995, 1996. When Cass County was  
17 formed they bought some exchanges from GTE. That was  
18 probably a series of exchanges that were purchased. There  
19 was another purchase in the southeast part of the state and  
20 another piece in the southwest part of the state. And this  
21 is the first time we've really looked at their rates since  
22 that period of time.

23 Q. Okay. So you would say since the company has  
24 come into existence, this is their first review?

25 A. Yes, sir.

00010

1 Q. And the purchase -- was the purchase that was  
2 done in 1995, was that an asset purchase or a corporate  
3 stock purchase?

4 A. It was an asset purchase. They sold the

5 exchanges. It was a standard contract for X dollars at that  
6 particular time.

7 Q. All right. The stipulation and the settlement  
8 in regard to the amount of over-earnings and -- I guess  
9 would be -- results in a revenue decrease --

10 A. Yes.

11 Q. -- correct?

12 And is there a rate of return authorized as a  
13 result of this stipulation?

14 A. No, there's not. It's a dollar settlement.

15 Q. Yes. Okay. Was there an authorized rate of  
16 return previous to this? How were rates determined prior to  
17 this stip since it was a new company?

18 A. As part of the agreement for this -- just not  
19 for Cass County, but for all the GTE exchanges that were  
20 bought in 1995, 1996, the agreement was that they would  
21 adopt GTE's rates. In other words, the rates that GTE had  
22 in that particular time would just flow straight over to  
23 Cass County or, as I said, to the other companies, BPS and  
24 Ozark and Modern Telephone which was bought by Northeast  
25 Missouri Rural. It was just a straight -- they just changed

00011

1 the tariffs, the same rates.

2 Q. Okay. The revenue stream then that came into  
3 the company, were those revenues -- I guess they would have  
4 been paid out in the form of expenses of the company and in  
5 shareholder profits. That would be the case, wouldn't it?  
6 Revenues of Cass County, Cass-- CassTel?

7 A. Revenues? The revenue streams coming into the  
8 company?

9 Q. That were going out. After the revenues come  
10 in, where do they go?

11 A. This particular company usually turned the  
12 revenues back -- they did two things. They primarily put  
13 the money back into the company, back into plant.

14 Q. Okay. What kinds of things did they do?

15 A. There in the process they upgrade their  
16 switch. Basically they built a new telephone company. They  
17 put a fiber ring in, they provide fiber, they provide DSL  
18 services to their customers. They've spent a great deal of  
19 money on plant and plant improvements since they bought the  
20 company.

21 Q. Okay. And the decisions that -- the decisions  
22 to do that would have been made by whom?

23 A. Mr. Matzdorff as president.

24 Q. Okay. Who are the corporate officers of this  
25 company?

00012

1 A. I can give you one name. I don't have the  
2 other two names in front of me. It's Mr. Ken Matzdorff is  
3 one. And I'll have to defer to -- I don't have those other  
4 two names in front of me right now.

5 Q. You have them somewhere though?

6 A. Yes, I do.

7 Q. Okay. So the investments that were made back  
8 in the company, did that take up all of the corporate  
9 profits then?

10 A. Most of the corporate profits. They did --  
11 the other piece of Cass County is that it's a sub-S  
12 Corporation.

13 Q. Yes.

14 A. So some of the profits were paid to the  
15 stockholders to pay their taxes.

16 Q. who are the stockholders or are those -- is  
17 this an open company or is it privately held?  
18 A. It's privately held. There's a number of  
19 different stockholders. I don't know if I can divulge the  
20 number of stockholders, but there's a number of stockholders  
21 right now.  
22 Q. I believe there was reference earlier to some  
23 information that came out after this initial settlement was  
24 reached regarding CassTel Company and perhaps some federal  
25 investigation; is that correct?

00013  
1 A. Yes.  
2 Q. Can you tell me what you know about that?  
3 A. There was a federal indictment that came down  
4 that we first became aware of in mid-February. It involved  
5 organized crime on the East Coast in relationship to a  
6 couple different schemes that they had developed.  
7 One scheme was to have these 1-800 numbers.  
8 People would call the 1-800 numbers and then their phone  
9 number would go to another company, in this case was  
10 Overland Data.  
11 Overland Data would use that information  
12 and -- through another company called USP&G, I believe,  
13 which was a third party aggregator, which you see in the  
14 industry. And then they would put those charges on a  
15 telephone -- on your bill, for instance, if you called that  
16 number. It would show up as a -- I believe it's a voice  
17 mail number.  
18 Q. Was that voice mail number -- was that a voice  
19 mail service that was continued thereafter on your phone  
20 bill?  
21 A. In most cases what I've seen through the  
22 indictment, that you would -- once you got that number on  
23 there, that voice extra service, it would stay on there.  
24 Q. All right. So there's some sort of an  
25 allegation about -- that that was a cramming --

00014  
1 A. That was --  
2 Q. -- mechanism?  
3 A. -- a cramming. In this particular case, what  
4 came out in the argument was Mr. Matzdorff's name was on as  
5 president in 19-- I believe 1998, 1999 of USP&G, which is  
6 the cramming company, which is the agg--  
7 Q. Was it USP&C or USP&G?  
8 A. Is it P&C? USP&C probably.  
9 Q. And how is that company, if at all, tied into  
10 the company that's in front of us?  
11 A. The only -- the only common denominator was  
12 Mr. Matzdorff.  
13 Q. You mentioned another company. Was it  
14 Overland --  
15 A. Overland.  
16 Q. -- Park?  
17 Overland Data Center?  
18 A. Overland Data has no relationship to this  
19 company or to LEC, LLC.  
20 Q. All right. They don't have any relationship  
21 at all?  
22 A. No. Not to Staff's knowledge.  
23 Q. Have you ever heard of an affidavit that may  
24 have been filed that said that something to the effect that  
25 LEC received -- do you know who LEC is? Let me strike that

00015

1 first question.

2 A. There's two LECs.

3 Q. All right. Tell me who they are.

4 A. There's Local Exchange Carriers, which was an  
5 investment vehicle to buy Spectra Communications. This is  
6 another case that was before the Commission. And there's  
7 Local Exchange Company, which is the holding company of Cass  
8 County Telephone.

9 Q. Are those two LECs related to one another?

10 A. There's -- there's probably some common  
11 stockholders at the time.

12 Q. Where are they based?

13 A. They're based in Kansas City.

14 Q. And where is Overland Data Center based?

15 A. I believe it's Overland Park, Kansas.

16 Q. Let me refer to -- let me ask you this. Have  
17 you heard about any allegation that Local Exchange Company  
18 received money and I'll say in the form of millions of  
19 dollars from Overland Data Center which, in turn, received  
20 millions of dollars from Local Exchange Company's  
21 subsidiary, CassTel? Have you heard anything about that?

22 A. I have not. The only thing I have seen is in  
23 the indictment which indicates there was \$940,000 that went  
24 from Overland Data to LEC, Local Exchange Company, LLC.

25 We inquired as to -- into where that money

00016

1 came from and why it was sent to Local Exchange Company.

2 And the answer was is they were in the process of buying  
3 Spectra Communications at the time.

4 Local Exchange Carriers had not been fully set  
5 up to include the bank accounts, so the down payment that  
6 was being paid for the GTE properties -- at the time Spectra  
7 properties -- was coming through the Local Exchange Company  
8 bank accounts and then they were transferred out to pay GTE  
9 for the properties. As to the hundreds of millions of  
10 dollars, I have no idea.

11 Q. I don't know about hundreds of millions.

12 A. Millions of dollars, I --

13 Q. Okay. Tell me how that money went again, the  
14 money transfers. Could you do that?

15 A. Do we have a -- can I use this a second?

16 Q. If somebody knows how to make it work.

17 A. Are these erasable?

18 Q. I think you go over here to this, don't you?

19 A. Is it dry eraser?

20 JUDGE WOODRUFF: I think so.

21 THE WITNESS: Now, I don't want to get in  
22 trouble if it doesn't erase.

23 JUDGE WOODRUFF: There are markers there,  
24 that's why I assume it's for use.

25 THE WITNESS: We're going to put this in the

00017

1 categories of company and carrier. Company -- let's see if  
2 we can do this.

3 BY CHAIR GAW:

4 Q. I think that's an electronic thing.

5 JUDGE WOODRUFF: We've got a paper board over  
6 there.

7 THE WITNESS: We've got a paper board. Okay.

8 JUDGE WOODRUFF: Since I don't know how to use  
9 the technology.

10 CHAIR GAW: I don't know how to use it either.

11 That's better. We'll just use that. Turn it just a little



12 bit more, Mr. Winter, so they can -- I don't know, Judge,  
 13 what --  
 14 MR. ENGLAND: I don't think he's going to find  
 15 a clean sheet.  
 16 BY CHAIR GAW:  
 17 Q. May have to turn it over and use the back side  
 18 of one of those pages. I mean like flip it -- whatever  
 19 works. Can you do that?  
 20 A. Yeah. We can do that. We're going to use the  
 21 cardboard, if that's okay.  
 22 Q. Whatever works.  
 23 A. Permanent record here.  
 24 what we've got -- we're going to talk about  
 25 carrier and company. Okay? Carrier equals -- and I'm going

00018

1 to use it as the investment vehicle for Spectra. It was an  
 2 investment company that was set up to invest in Spectra  
 3 Communications. So we'll do that -- and I take no  
 4 responsibility for my writing. The next one was company.  
 5 That is the company -- Local Exchange Company that owns  
 6 CasTel or Cass County Telephone.  
 7 Q. All right.  
 8 A. Per the indictment, what happened was there  
 9 was an Overland Data that transferred money, 900 and -- I  
 10 believe \$940,000 to the company, Local Exchange Company.  
 11 They transferred money to the company because, from my  
 12 understanding from our investigation, the carrier -- Local  
 13 Exchange Carrier, the investment vehicle to buy Spectra, had  
 14 not set up -- been fully set up to include their banking  
 15 arrangements.  
 16 The money went into Cass County Company and  
 17 then it came back out here to buy the GTE exchange. In  
 18 other words, it was just -- it came in and went out. It was  
 19 not -- it was more set up because they had not set up their  
 20 banking arrangements. It was said -- they need to money to  
 21 close with GTE to buy the GTE properties at that particular  
 22 time so they transferred the dollars into here.  
 23 Now, what the indictment says is that the  
 24 \$940,000 was ill-gotten gain and that's why it shows up  
 25 Local Exchange Company, those dollars, because it went to

00019

1 that company. Whether it went in and out, it still went  
 2 here and that's why it was mentioned in the indictment.  
 3 Q. What year did that occur?  
 4 A. 2000, I believe. That was -- that was a case  
 5 before the Commission and I believe it was TM-2000-262; is  
 6 that right? I have my notes. Excuse me, it's TM-2000-182,  
 7 the purchase of GTE properties by Century Telephone and  
 8 Spectra.  
 9 Q. Okay. Now, the purchase of the -- okay. Help  
 10 me out here. The money transfer went from Overland Data --  
 11 A. To CasTel.  
 12 Q. -- to CasTel?  
 13 A. Well, to the company, the holding company of  
 14 CasTel.  
 15 Q. The holding company, which is --  
 16 A. The company --  
 17 Q. -- LEC --  
 18 A. -- LEC.  
 19 Q. -- LLC?  
 20 A. Yes.  
 21 Q. And then it went from there to where?  
 22 A. GTE.

23 Q. Okay. And then what did they get for that?  
 24 A. They bought -- what they got for that was they  
 25 bought the GTE Midwest -- a portion of the GTE Midwest  
 00020  
 1 properties in the state of Missouri.  
 2 Q. All right.  
 3 A. There was three sales in the state of Missouri  
 4 of GTE properties. The first sale is what we previously  
 5 talked about, the Modern Telephone, which was exchanges up  
 6 in the northeast part of the state. The other piece was  
 7 Ozark Telephone, which is in the far southwest of the state.  
 8 BPS, which is on the other side, and then Cass County, which  
 9 is connected to Kansas City.  
 10 Q. Now, all of those carriers that you just  
 11 mentioned --  
 12 A. That was the first GTE sale.  
 13 Q. That was the first sale. Are those carriers  
 14 related to one another that you just mentioned?  
 15 A. No. No. They're all independent.  
 16 The second sale, GTE came out and said we're  
 17 selling properties. So the second sale involves this  
 18 \$940,000. That was the CenturyTel piece that bought the  
 19 second sale of GTE properties in the state of Missouri. And  
 20 that was in TM-2000-182.  
 21 Q. Okay. Now, where you have -- you have this  
 22 top line up here you have carrier equals -- you have  
 23 Spector?  
 24 A. Spectra. That was the investment vehicle that  
 25 was set up for investors to buy into -- to get some equity  
 00021  
 1 dollars to buy in-- to buy the GTE properties so they --  
 2 they set up another company called Spectra.  
 3 Q. Is it Spectra or Spector? That's what --  
 4 A. S-p-e-c-t-r-a.  
 5 Q. So what you have up there is actually --  
 6 should be t-r-a- instead of t-o-r. Correct?  
 7 A. All right.  
 8 Q. Just making sure there wasn't another  
 9 company --  
 10 A. Yeah.  
 11 Q. -- that had a similar name.  
 12 A. Yeah. It's called Spectra Communications.  
 13 Q. Okay.  
 14 A. And I -- yeah, I spelled it right there.  
 15 Q. Now, how is Overland Data related to Local  
 16 Exchange Company?  
 17 A. As far as I know, there is no connection  
 18 between the two companies whatsoever other than there is  
 19 off -- some people that were investors in Overland Data in  
 20 the indictment owned pieces of Overland Data.  
 21 Q. So why would they give money, \$940,000 from  
 22 Overland Data to --  
 23 A. I can't --  
 24 Q. -- Local Exchange Company?  
 25 A. That's -- my understanding, that's how they  
 00022  
 1 were taking care of their equity piece to buy --  
 2 Q. whose equity piece?  
 3 A. The other stockholders that were buying into  
 4 Spectra.  
 5 Q. who were they? You're saying the other  
 6 stockholders.  
 7 A. I do not have a list of those. There's

8 probably somebody from the company that could probably tell  
9 you that.

10 Q. Do those stockholders have interest in any of  
11 these other companies that you've got listed up there?

12 A. My understanding, they have an interest in  
13 Local Exchange Company. And I am not quite sure -- I have  
14 no idea who the stockholders are of Local Exchange Carrier,  
15 I have no idea.

16 Q. Is there any common -- any common connector in  
17 between -- that's obvious to you between CasSTel and Local  
18 Exchange Company other than the ownership?

19 A. Not to my knowledge.

20 Q. An employee, perhaps?

21 A. No.

22 Q. Let me ask you, how did you find out about  
23 this \$940,000 transfer?

24 A. It's stated in the -- first of all, it's one  
25 of the Staff questions that I had when I read the

00023

1 indictment. It was listed for the \$940,000 that went from  
2 the Overland Data to LEC, LLC. From there, we inquired to  
3 the company what happened here.

4 Q. All right. And the other thing that happened  
5 there was -- I assume is that assets were transferred from  
6 GTE to CasSTel?

7 A. No. CasSTel was not involved in that  
8 arrangement.

9 Q. Where did the assets go?

10 A. The assets went to Spectra.

11 Q. To Spectra.

12 A. Spectra and to CenturyTel.

13 Q. To CenturyTel?

14 A. There was -- remember we can go back out when  
15 the second series of sales was to Spectra CenturyTel. And  
16 that's who GTE sold the property to.

17 Q. How are Spectra and CenturyTel connected?

18 A. Spectra -- my understanding is CenturyTel was  
19 recruited to buy more equity to buy the GTE properties and  
20 connected as into a business relationship. I do not know  
21 if -- at that time what the business relationship was. I'm  
22 sure there's somebody here that could tell you -- give you  
23 more information.

24 Q. Who might that be, do you know?

25 A. I believe Mr. Matzdorff is here.

00024

1 Q. Okay. Go ahead.

2 A. Previously you had asked whether Cass County  
3 had -- the officers of Cass County. I believe there's  
4 three. We don't have the right information. I'll get that  
5 information to you.

6 Q. Now, who owns CasSTel?

7 A. CasSTel is owned by Local Exchange Company.

8 Q. 100 percent?

9 A. It's -- yes, 100 percent is owned by Local  
10 Exchange Company.

11 Q. And when --

12 JUDGE WOODRUFF: If I can interrupt,  
13 Mr. Winter, I've had a request that you speak into the  
14 microphone. If you'd come over to the podium.

15 THE WITNESS: Oh, okay.

16 Local Exchange Company owns CasSTel Telephone.  
17 within Local Exchange Company, they have a large number of  
18 equity investors.

BY CHAIR GAW:

Q. In Local Exchange Company?

A. Yes. Local Exchange Company, there's a large number of equity investors.

Q. And were you given any of those -- lists of any owners?

A. Yes. We have a complete list of all the

owners of Local Exchange Company, yes, we do.

Q. All right. In 1995, that would have been when CassTel was formed. How does that relate in time to the Spectra GTE transfer?

A. This is about five years afterwards.

Q. Which -- five years after what?

A. 1995. This was about 1999, 2000 time period.

Q. For purposes of the record --

A. Excuse me.

Q. -- when you're pointing, I'm just trying to get you to describe it.

A. Cass County was established in 1995, 1996. Spectra Communications was 1999, 2000 time period. GTE at the time nationwide was examining a number of their rural exchanges, a number of states of where to stay in business, where to leave.

For instance, they sold the state of Arkansas, they've sold the state of Alabama, Missouri -- they're no longer in the state of Missouri. There's other states also. They've sold some of the rural exchanges they've had. And this is -- the Spectra piece, the 2000 piece was the second phase of that divestiture of those exchanges.

Q. Okay. The purchase though of the -- and the formation of CassTel, how did that come about? How did the -- where did the money come from to purchase the assets?

A. The money at that particular time came from -- I believe it's a CoBank loan. And I do not have that amount in front of me. And then there was a series of investors that put equity money into -- for the difference from the CoBank piece to purchase the GTE exchanges.

Q. What do you mean by a CoBank loan?

A. CoBank is a -- it is a part of I believe agricultural -- they provide credit to telephone companies, rural telephone companies, water companies. And they're kind of a step before you go to RUS for money. And CoBank provided, I believe, the bulk of the dollars to purchase Cass County Telephone through a loan they gave.

JUDGE WOODRUFF: Mr. Winter, if you'd move the microphone in front of your mouth more, they're having a hard time hearing you over the Internet.

BY CHAIR GAW:

Q. Where did you say USP&C was based, if you did?

A. I did not say, but I do believe it's in Overland Park, Kansas also.

Q. And do you know who owns USP&C?

A. No, I do not. The indictment does provide some information as to that, but I do not have that information right now.

Q. Have you been in touch with anyone that's conducting the investigation on the indictments that you

mentioned?

A. No, I have not.

Q. Has anyone with Staff been in touch with

4 anyone to that -- conducting that investigation, to your  
5 knowledge?

6 A. Not to my knowledge.

7 JUDGE WOODRUFF: Commissioner Clayton?

8 CHAIR GAW: I'm going to temporarily halt

9 inquiry.

10 QUESTIONS BY COMMISSIONER CLAYTON:

11 Q. In my notes I'm a little confused, so I want  
12 to go back to your chart here. And I apologize to the  
13 people listening that we can't get that displayed.

14 You made reference to several stages of the  
15 sale of the GTE rural exchanges --

16 A. Yes.

17 Q. -- in the state of Missouri; is that correct?

18 A. Yes.

19 Q. How many total stages were there?

20 A. There were three stages.

21 Q. And the first stage occurred in approximately  
22 what year?

23 A. 1995, 1996. And that was the individual  
24 exchanges that were sold. And that came the genesis of Cass  
25 County Telephone.

00028

1 Q. Okay. So that first sale they became what  
2 CasTel is today?

3 A. Yes.

4 Q. Okay. The second stage -- and actually let me  
5 go back. Just briefly, you listed a number of properties  
6 that were included in that. You mentioned Ozark?

7 A. Ozark Telephone is in the southwest part of  
8 the state. It's in McDonald County.

9 Q. And you also mentioned Modern?

10 A. Modern is owned by Northeast Missouri Rural.  
11 It is -- I can't give you a physical description, but it's  
12 northeast of Kirksville.

13 Q. Northeast of Kirks-- can't get too much  
14 further northeast of Kirksville. Right?

15 A. No. Northeast -- northeast, east of  
16 Kirksville is where it is.

17 Q. And those properties are currently part of  
18 CasTel?

19 A. No. Those were part of the properties that  
20 were sold to different companies, but those were divested by  
21 GTE.

22 Q. Okay. I understand. Stage one involved a  
23 number of purchasers, not just CasTel?

24 A. Yes.

25 Q. Okay. I was confused. Thank you.

00029

1 Now, the second stage included some additional  
2 GTE properties --

3 A. Yes.

4 Q. -- correct?

5 A. It did.

6 Q. And generally what were those properties  
7 again?

8 A. Those properties were spread throughout the  
9 state of Missouri. It's very difficult to give you a  
10 description of exactly where they're at, but they were  
11 mostly -- again, in the rural areas of the state of  
12 Missouri.

13 Q. Okay. And were there multiple purchasers or  
14 was there one purchaser?

15 A. The way GTE did it, they only wanted to sell  
16 to one person those exchanges. They did not want to divide  
17 them up into three or four different sales. So when they  
18 put a state out to bid, it was one purchaser for their  
19 properties in the state.

20 Q. Okay. Now, that's different than what  
21 happened in stage one. Correct?

22 A. Yes.

23 Q. So stage two there was one purchaser for the  
24 whole lot?

25 A. Yes.

00030

1 Q. And that was Spectra?

2 A. That -- that was Spectra, yes, sir.

3 Q. Okay. And Spectra is owned entirely by Local  
4 Exchange Carrier?

5 A. That was -- Local Exchange Carrier was a  
6 investment vehicle. And I believe they owned the stock of  
7 Spectra, but I'm -- I'm fuzzy on that piece.

8 Q. Okay. Do you know the purchase price for the  
9 total package of second stage GTE properties?

10 A. I do not have that information with me.

11 Q. Was it --

12 A. It's public knowledge.

13 Q. Was it 940,000 or was it more than 940,000?

14 A. It was several million dollars. It was -- I  
15 don't have that information. I believe there are people  
16 here that could give you that information, but it was  
17 considerably more than \$940,000.

18 Q. Okay. Well, several million if we say  
19 \$3 million, then a third of the purchase price came from  
20 Overland Data?

21 A. Yes. I believe you're talking well over  
22 \$100 million.

23 Q. Oh, 100 million?

24 A. Yes.

25 Q. That's significantly different than several

00031

1 million.

2 A. I believe. If I -- I'm just going from my  
3 remembrances of the deal.

4 Q. Well, maybe we can find that out from  
5 somebody, just generally what that price is. We can narrow  
6 it down somewhere closer between several million and several  
7 hundred million. There's some zeroes that we're missing  
8 somewhere.

9 A. Yeah.

10 Q. Now, when Overland Data transferred in the 2--  
11 excuse me, the \$940,000 into Casstel, Casstel immediately or  
12 soon thereafter sent a check for the same amount to GTE to  
13 effectuate that purchase of the second stage properties?

14 A. The dollars were not transferred to Casstel.  
15 They were -- they were -- move this over here. They were  
16 transferred to Local Exchange Company.

17 Q. Okay. So they went to Local Exchange Company  
18 and then LE -- LE Company sent it to GTE?

19 A. Yes. Yes.

20 Q. Okay.

21 A. Again, Cass-- the company owns Casstel.

22 Q. I understand.

23 A. And the dollars went from Overland Data to  
24 Local Exchange Company and then from Local Exchange Company  
25 it bounced over here for the purchase of the second phase of

00032

1 the GTE exchanges.

2 Q. And when that money was transferred and GTE  
3 transferred title, at that point the properties were titled  
4 as Spectra?

5 A. I believe they were titled Spectra CenturyTel.  
6 Remember when we went back, there was two -- there was two  
7 equity investors in the second sale. There was -- and I  
8 mentioned that sales case. There was Spectra  
9 Communications, which was an investment vehicle of a number  
10 of different stockholders and there was also Century  
11 Telephone. So both of those two entities were the  
12 purchasers of the second phase of those GTE properties.

13 Q. Now, at any point did Local Exchange Company  
14 ever own an interest in Spectra?

15 A. Not to my knowledge.

16 Q. How soon after the creation of Spectra was  
17 Local Exchange Carrier created?

18 A. I can't answer that question.

19 Q. And we do not -- we're not aware of who the  
20 shareholders or directors of Overland Data Company are?

21 A. Not to my knowledge.

22 Q. Okay. And I think you've already answered  
23 this. Casstel is owned 100 percent by Local Exchange  
24 Company?

25 A. Yes.

00033

1 Q. And did you state how many owners, how many --  
2 and if you can't give me the exact number, that's fine --  
3 how many multiple of owners is -- are there of Local  
4 Exchange Company?

5 A. We have that information, by it's been  
6 classified as confidential. We can probably provide you  
7 that information.

8 Q. Okay. And then are we aware of who the  
9 shareholders are of Local Exchange Carrier?

10 A. No.

11 Q. We are not. Okay.

12 A. I was going to say, the reason why -- again,  
13 why we put that on there, because the indictment is  
14 rather -- it mentions LEC three times. One as a definition  
15 of a local operating company or Local Exchange Company and  
16 then it gets in -- as a telephone acronym name, and then it  
17 gets into Local Exchange Carrier and Local Exchange Company.

18 Q. Well, the indictment, when it references LEC,  
19 does it mean the carrier or the company?

20 A. They're both mentioned.

21 Q. Both of them are mentioned. Are either Local  
22 Exchange Carrier -- and I'm using proper names. Local  
23 Exchange Carrier or Local Exchange Company, are either of  
24 them indicted?

25 A. No.

00034

1 Q. Neither are subject defendants?

2 A. No.

3 Q. Is Overland Data a named Defendant?

4 A. I believe the shareholders of Overland Data  
5 are defendants in --

6 Q. In their entirety or just a few shareholders  
7 of Overland Data?

8 A. I do not know all the shareholders, but I  
9 believe some of the shareholders are indicted as part of the  
10 indictment. Just like Local Exchange Company, some of the

11 stockholders have been indicted.  
12 Q. Okay. Regarding USP&C -- excuse me.  
13 Before I go to that, Local Exchange Carrier,  
14 Local Exchange Company, are either of them utilities under  
15 Missouri law?  
16 A. No.  
17 Q. Okay. And Overland Data certainly would not  
18 be.  
19 A. No.  
20 Q. It's out of Kansas.  
21 USP&C, is it a utility under Missouri?  
22 A. No.  
23 Q. Are you aware of any relationship between  
24 USP&C and Local Exchange Company or Local Exchange Carrier?  
25 A. The only thing I'm aware of is that they might  
00035 have similar stockholders. And that's the only thing I'm  
1 aware of.  
2 Q. Okay. At any point in your investigation  
3 subsequent to learning about the indictment, has the subject  
4 company, Casstel or Local Exchange Company, provided all the  
5 information that you have requested?  
6 A. They've been very open with any information.  
7 Any request that we've -- we've asked for, they've given to  
8 us a very quickly.  
9 Q. Is there any other information that you  
10 believe would be helpful in determining whether or not a  
11 regulated utility has been involved in any alleged  
12 wrongdoing at all?  
13 A. Once we found out, we went through there and  
14 had a meeting with the company and followed up with data  
15 requests. And we believe we're satisfied that Local  
16 Exchange Company in our earnings investigation has not been  
17 tainted by this indictment.  
18 Q. In your assessment in the rate case, is it  
19 your opinion that the books, accounting records appear to be  
20 in order and that there is no overt appearance of  
21 impropriety?  
22 A. The books, as far as we can see from our audit  
23 tests and from the audit financial statements we have seen,  
24 are in order. We don't see anything out of line that we  
00036 would -- that would call into question the earnings of the  
1 company.  
2 JUDGE WOODRUFF: If I could interrupt again,  
3 apparently the podium mike is not functioning. Why don't  
4 you come back over to the witness seat. We have a lot of  
5 viewers out there and they keep us sending me e-mails. All  
6 right.  
7 COMMISSIONER CLAYTON: Do you want me to start  
8 over, Judge?  
9 JUDGE WOODRUFF: No. That's not necessary.  
10 BY COMMISSIONER CLAYTON:  
11 Q. Did Staff, when looking at Casstel, determine  
12 whether there were any types of inappropriate telephone or  
13 Internet billing charges that were not authorized by the  
14 customer?  
15 A. What we did, we did a two-prong attack on that  
16 particular area. First, we got our consumer area --  
17 consumer complaint area involved in that and they looked --  
18 went back and looked at the complaints by -- about Casstel.  
19 We found very, low non-existent complaints about Casstel and  
20 their charges on the bill.  
21



22 And the second piece, we went back and looked  
 23 if there was any contracts between any of the indicted  
 24 parties and CassTel in relationship of the cramming  
 25 allegations. There are no contracts at the present time

00037

1 that -- the information we provided that were a cramming --  
 2 cramming contracts or third-party contracts with CassTel.

3 Q. This type of activity is called cramming?

4 A. Yes.

5 Q. And exactly what is the definition of  
 6 cramming?

7 A. Cramming is putting unauthorized charges on a  
 8 legitimate telephone bill. In other words, we have this --  
 9 charges, for instance, from Overland Data. We'll take  
 10 Overland Data as an example.

11 They provided the telephone numbers that were  
 12 called into their 1-800 number. They gave those telephone  
 13 numbers to the third-party aggregators, which is US&C, I  
 14 believe. US&C has contracts probably with a number of  
 15 companies. In fact, one of the companies mentioned in the  
 16 indictment was Southwestern Bell. And what they would do,  
 17 they --

18 Q. How named Southwestern Bell?

19 A. It was just that they were doing the same  
 20 scheme through Southwestern Bell.

21 Q. Oh, doing it through, but they weren't doing  
 22 the scheme?

23 A. They weren't doing. They were just using -- a  
 24 legitimate third-party biller was putting these things on  
 25 the bill, they were being billed as voice mail charges. And

00038

1 that's what you're cramming, an unauthorized charge onto  
 2 your bill -- onto a customer's bill.

3 Q. And the customer services department was not  
 4 able to find any amount of cramming in this instance that  
 5 would be greater than I guess the averages --

6 A. No.

7 Q. -- with any other company?

8 A. No. They've had rather good quality of  
 9 service reports and customer service reports about CassTel.

10 Q. Okay. Does Staff believe there are any other  
 11 safeguards that the Commission should consider with regard  
 12 to the allegations surrounding the parties in this case?

13 A. I believe we've pretty well covered -- we're  
 14 continuing to monitor the situation. We're monitoring  
 15 the -- there's a sale process going on with some of the  
 16 shareholders. We're monitoring that to ensure that nothing  
 17 like this happens with one of our companies in the state of  
 18 Missouri.

19 Q. Is Local Exchange Company a Missouri  
 20 corporation or is it a Missouri LLC? I think you said it  
 21 was an LLC.

22 A. I believe it's either a Delaware or Maryland  
 23 company. I'm not quite sure.

24 Q. And it owns properties in multiple states --

25 A. I --

00039

1 Q. -- or are you aware?

2 A. I do not know.

3 Q. You're not aware of that.

4 Okay. Does Staff believe it has the tools  
 5 necessary to monitor the transfers that you referenced  
 6 before --

7 A. Yes.  
8 Q. -- and the ongoing activity of the company?  
9 A. The company has been very forthright with us  
10 and been very willing to work with the Staff regarding  
11 investigation and monitoring the current situation with the  
12 company. So I think we have enough tools right now to take  
13 care of it.  
14 COMMISSIONER CLAYTON: Okay. Thank you.  
15 JUDGE WOODRUFF: Chair Gaw?  
16 CHAIR GAW: Yeah. Thank you, Judge.  
17 FURTHER QUESTIONS BY CHAIR GAW:  
18 Q. You may have said this, I'm not sure. Did you  
19 say that Local Exchange Company is a certificated  
20 telecommunications company?  
21 A. They're not certificate, no. They're not  
22 certificate. They're a holding company. The certificate  
23 company is CassTel or Cass Telephone Company.  
24 Q. Do they own any other certificated companies?  
25 A. Not to my knowledge in the state of Missouri.  
00040  
1 Q. Do they own anything else other than CassTel?  
2 A. I believe they might, but I'm not sure at the  
3 present time what they own.  
4 Q. And the money for the purchase of the CassTel  
5 assets came from where?  
6 A. From stockholders and from CoBank.  
7 Q. Okay. And the stockholders, are they the same  
8 stockholders that own stock in Local Exchange Company today  
9 as owned them when the purchase was made?  
10 A. I can't give you a definitive answer on that.  
11 I believe -- I can't give you a definitive answer. I do not  
12 think there's been much movement in the stockholders of LEC,  
13 LLC since the purchase of Cass County Telephone.  
14 Q. Were the stockholders of Local Exchange  
15 Company, LLC individuals or corporations or other entities?  
16 A. You saw a combination of three things. It's  
17 one company, there's individuals and then there's trust  
18 funds.  
19 Q. Is it true that Mr. Matzdorff at one time was  
20 a high-ranking executive officer of USP&C?  
21 A. The only thing I know is what I read in the  
22 newspaper that he was president of USP&C.  
23 Q. Do you know when that was?  
24 A. I believe until when he sold his interest  
25 in -- it may be up to 19-- the late 90's. I can't give you  
00041  
1 a specific date.  
2 Q. At one time Mr. Matzdorff had an interest in  
3 USP&C. Is that what you're saying?  
4 A. It's my understanding, yes.  
5 Q. As the president?  
6 A. It's my understanding, yes.  
7 Q. And he sold his interest; is that correct?  
8 A. That's what was relayed to us, he had sold his  
9 interest in it.  
10 Q. Was he 100 percent owner at the time?  
11 A. It was relayed to the Staff that he was -- had  
12 a very, very small piece of the company.  
13 Q. And do you know who the purchasers of his  
14 interest were?  
15 A. No, I do not.  
16 Q. Did you have occasion to read an article in  
17 the village -- from The Village Voice that I think may be

18 written by a Tom Robbins dealing with Cass County?  
 19 A. No.  
 20 Q. So you haven't seen that article?  
 21 A. No, I have not.  
 22 Q. So you wouldn't have had an occasion to check  
 23 to see whether or not some of the statements made in that  
 24 article were accurate?  
 25 A. No. I've not seen the article.

00042

1 CHAIR GAW: That's all I have right now for  
 2 Mr. Winter.  
 3 JUDGE WOODRUFF: Mr. Winter, you can go ahead  
 4 and step down.  
 5 Do you have any other questions, Chair Gaw?  
 6 CHAIR GAW: I'll ask Staff, Staff's counsel,  
 7 if they have any more information about the questions that  
 8 were asked of the witness, Mr. Winter?  
 9 MR. POSTON: If I have any more responses to  
 10 his questions?  
 11 CHAIR GAW: Yes.  
 12 MR. POSTON: No, I don't. I believe the 940  
 13 was actually 970, but that's all.  
 14 CHAIR GAW: 970-- when you're saying the  
 15 940,000, it was actually 970,000?  
 16 MR. POSTON: Yeah. Other than that, I have  
 17 nothing else.  
 18 CHAIR GAW: Public Counsel, have you had any  
 19 occasion to look into any of these questions that we've been  
 20 asking?  
 21 MR. DANDINO: Basically, we rely upon the  
 22 Staff's audit. And when we reviewed it, we were satisfied  
 23 that it was -- with the results of it. Other than taking an  
 24 independent investigation, no, we did not.  
 25 CHAIR GAW: Would Public Counsel have any

00043

1 concern about some of these -- let me ask you this. Have  
 2 you seen any of these stories regarding this company that  
 3 have come out in the last few months in The Kansas City Star  
 4 or The Village Voice?  
 5 MR. DANDINO: I saw them in The Kansas City  
 6 Star. I didn't see them in The Village Voice.  
 7 CHAIR GAW: Did Public Counsel have any  
 8 concern about some of the statements that have been made in  
 9 those stories?  
 10 MR. DANDINO: Well, at first we did. Just  
 11 looking at it, we said, what's going on here? And I think  
 12 after looking at the -- after meeting with the company and  
 13 then looking at the data requests and discussing with the  
 14 Staff, you know, we were satisfied.  
 15 And also we were looking at what -- and the  
 16 two things that really -- that really made it I think for us  
 17 is that we were looking at if over-earning -- in an  
 18 over-earnings case and the history of the company has shown  
 19 that the revenues derived from it have gone into the  
 20 plant -- into the company to be used, you know, for the  
 21 benefit of the ratepayers improving the system and that when  
 22 this over-earnings occurred, that we were able to -- the  
 23 company was willing to agree to a reduction in the  
 24 earnings -- in the revenues in order to eliminate this  
 25 over-earnings in revenue. We saw it as benefiting the local

00044

1 ratepayers and also the access ratepayers, plus the 911 --  
 2 the contract for the 911.

3 And basically we were looking at it in terms  
4 of what does this mean for our -- you know, for our clients  
5 and we felt comfortable with that.

6 We would say if this was a question of  
7 under-earnings and it was -- there was a rate increase, we  
8 probably would have taken a much harder look at it. But I  
9 think, you know, looking back on it and the confidence we  
10 had in Mr. Winter and the Staff, the people that examined it  
11 and I think we were very -- we were comfortable with it.

12 CHAIR GAW: Mr. England, are you taking lead  
13 on this?

14 MR. ENGLAND: Yes, your Honor.

15 CHAIR GAW: There's been some suggestion by  
16 Staff that if the Commission desired to look any further  
17 into some of these statements and allegations that have been  
18 made in some of these news stories, that we could do that  
19 and close this case out and move forward if we wanted to do  
20 that.

21 I guess what I'm interested in knowing from  
22 you is whether or not you believe that there's -- that if  
23 you want to -- first of all, do you want to respond to any  
24 of those statements or does anyone from the company wish to  
25 respond to those -- some of those stories?

00045

1 And, second of all, do you have an argument  
2 about why the Commission shouldn't look further into some of  
3 those allegations?

4 MR. ENGLAND: Those are a lot of questions,  
5 your Honor.

6 CHAIR GAW: I know. And if it weren't you, I  
7 would have done them one at a time, but I know you can  
8 handle it, Mr. England.

9 MR. ENGLAND: I do have responses. I think  
10 Staff did a very good job of explaining the situation and  
11 responding to your questions. There would be a few nits and  
12 picks, but I think the large substance is correct.

13 The thing that I'd like for the Commission to  
14 recognize is the fact that Mr. Matzdorff has been involved  
15 in the telephone industry all his life. I believe he worked  
16 part-time in summers when he put himself through college at  
17 Iowa State, went to work immediately for Contel, at that  
18 time, Telephone Company.

19 I got to know him in the early 80's when he  
20 was working for Contel headquartered in Wentzville,  
21 Missouri. Then he went -- I mean, he progressed through the  
22 ranks there, had increasing areas of responsibility, was  
23 with Contel until they were acquired by GTE.

24 He came back to Missouri, he had been  
25 stationed in Dullus -- around Dullus Airport in the eastern

00046

1 region at that time. Came back to Missouri, went to work  
2 for Fidelity Telephone Company where he worked for several  
3 years, then had an opportunity to go out and acquire an  
4 ownership interest in his own telephone company, and that  
5 was the Cass County Telephone Company.

6 His whole life has been involved in the  
7 telephone business and nothing else. He look this  
8 company -- acquired it on April 1st, 1996. Our office was  
9 fortunate enough to be able to represent them there.

10 They had -- approximately 40 percent of their  
11 lines were multi-party service at that time. These folks in  
12 Peculiar, in Drexler, Garden City were being served by  
13 analog service that had been put in service in the 1960's.

14 Since 1996 they have eliminated all party line  
 15 service. They have implemented digital switches in all of  
 16 their exchanges. They have rolled out a DSL service to all  
 17 of their customers. They've increased the customer count  
 18 from approximately 5,700 access line count -- from about  
 19 5,700 to about 8,500 access lines today.

20 They have done that without a rate increase  
 21 from this Commission. They essentially inherited the rates  
 22 from GTE, agreed to provide or charge those, which they did  
 23 until this point in time when there's been a situation where  
 24 the earnings are finally sufficient that they're excessive,  
 25 if you will, and were able to return those to some of the

00047

1 local subscribers as well as to the access customer.

2 One other thing you may not know is that  
 3 during Mr. Matzdorff's tenure with the company, they took  
 4 the I believe Drexler exchange, which at that time was  
 5 outside the MCA, and collapsed it into the Garden City  
 6 exchange, thereby making it part of the MCA, so providing  
 7 MCA service to a group of customers that had previously not  
 8 had that.

9 I guess it's a long-winded way of saying that  
 10 Mr. Matzdorff and this company have been committed to  
 11 providing good quality telephone service and have, in fact,  
 12 done so.

13 As part of Staff's audit, they got the general  
 14 ledger, as they do of any company -- particularly every  
 15 small company and that shows every what I call put and take.  
 16 That has every receipt and disbursement for at least a  
 17 12-month period of time, if not longer. Staff traditionally  
 18 looks at that, looks hard at that as well as all the other  
 19 financial information.

20 I don't believe there's been any indication of  
 21 wrongdoing, any indication of misspent monies. And as  
 22 Mr. Dandino indicated, what monies they have made in large  
 23 measure have been returned to the company and the people  
 24 that they serve.

25 Now, having said all of that, if you feel like  
 00048

1 you need further assurances and further information, we're  
 2 more than willing to provide that. As Mr. Winter indicated,  
 3 we've done that with Staff and Public Counsel up to this  
 4 point in time.

5 Our only reservation would be some of that  
 6 information I anticipate may be confidential and we, of  
 7 course, would want to provide it under a protective order.

8 CHAIR GAW: Mr. England, I did give you at  
 9 least an opportunity, if you wish, to respond to any of  
 10 the -- to those articles that have been in the paper. And  
 11 particularly in regard to whether or not we would do  
 12 anything further with this case.

13 I recognize it as not necessarily being tied  
 14 to -- from what I've heard so far, to the issue of whether  
 15 or not this stipulation should be approved or not, whether  
 16 or not there should be further inquiry at least in regard to  
 17 some of the alleged connections here that seem to be woven  
 18 in some of these articles together. Now, I don't know  
 19 whether you want to do that or not, but --

20 MR. ENGLAND: I don't know that it's -- one, I  
 21 do not represent Mr. Matzdorff personally. I don't  
 22 represent LEC, LLC. I have not been involved at all in any  
 23 of the federal proceedings that have been going on, so I  
 24 don't think it would be my place to respond. And, frankly,

25 even if it were, probably under the circumstances it would  
00049 1 be best not to.

2 I think as far as the regulated activities of  
3 this company are concerned, they're pretty much an open  
4 book. And I think they've been examined and, as I said, I  
5 think everything is above board.

6 If there's something you feel -- extra that  
7 you feel you need in order to give you a comfort level to  
8 approve this Stipulation and Agreement, within reason, we're  
9 willing to provide it. I mean, that's all I can offer or  
10 say at this time.

11 CHAIR GAW: Would it be accurate to say  
12 that Mr. Matzdorff would rather not testify today?

13 MR. ENGLAND: Well, as with everything, it  
14 depends on what you'd ask. I think, frankly, he'd love to  
15 testify because he could say a lot better and with a heck of  
16 a lot more emotion what I said about how committed he is to  
17 providing telephone service to his customers.

18 CHAIR GAW: I understand.

19 MR. ENGLAND: So, I mean, I think again  
20 with -- if you're talking about the regulated telephone  
21 company, its operations, monies in and out, Mr. Matzdorff is  
22 perfectly capable of testifying and telling you about that.

23 CHAIR GAW: My real question is in regard to  
24 how that may impact the issue of whether or not we do  
25 anything further with inquiring about some of these alleged

00050 1 connections with some of these companies that appear to be  
2 in a number of transactions woven in together. And I'm just  
3 giving you the opportunity, if you want to -- since this is  
4 obviously a hearing on the Stipulation, that I don't think  
5 it's appropriate for us to require it today.

6 MR. ENGLAND: Well, and let me suggest that  
7 the Stipulation really only addresses the earnings of the  
8 company. It's going to continue to be subject to your  
9 jurisdiction and your regulation on an ongoing basis. So if  
10 there's anything that comes to light in the future that you  
11 all want to inquire about, I don't think by approving this  
12 Stipulation and Agreement that's going to preclude you from  
13 doing so.

14 CHAIR GAW: I agree with you. I'm just trying  
15 to determine whether or not Mr. Matzdorff wants to say  
16 anything to us today.

17 MR. ENGLAND: Well, I'll ask him and see if  
18 there's anything I haven't said that he'd like to address.

19 MR. DANDINO: Mr. Chairman?

20 JUDGE WOODRUFF: Yes, Mr. Dandino.

21 MR. DANDINO: If I can make just a brief  
22 comment. Talking about when you were discussing the  
23 interrelationship of the companies and the earnings  
24 investigation is that Public Counsel and I believe the Staff  
25 did too is that the -- it calls for a three-year rate

00051 1 moratorium on filing a complaint. Of course, a moratorium  
2 does not bind the Commission.

3 And as far as -- and Public Counsel and I  
4 believe the Staff also reserve the right to conduct the rate  
5 investigation, file a complaint, notwithstanding that, that  
6 should the US attorney file an indictment against Cass  
7 County or any officer employee of Cass County.

8 It was to that effect that even though we  
9 couldn't see anything here, if something would subsequently

10 come up, that we would -- it would still not bind our hands  
11 to get involved with this. Thank you.

12 MR. ENGLAND: I'm advised by Mr. Matzdorff,  
13 surprisingly enough, that he thinks I did an adequate job  
14 explaining everything so we'll leave it at that.

15 CHAIR GAW: I take it he doesn't want to add  
16 to that?

17 MR. ENGLAND: Not right now. As I said, if  
18 there are additional questions, inquiries about this that  
19 you all have, we're willing to respond to them and answer.

20 CHAIR GAW: Take just five minutes, Judge.

21 JUDGE WOODRUFF: Let's take about a 10-minute  
22 break. we'll come back at 3:30.

23 (A recess was taken.)

24 JUDGE WOODRUFF: We're back on the Internet

25 again.

00052

1 Chairman Gaw, did you have anything further?

2 CHAIR GAW: Mr. England, before we close this  
3 out, I have got -- I feel that we have a responsibility to  
4 get a response on a couple of paragraphs in The Kansas City  
5 Star article of February the 14th because it directly  
6 mentions CassTel in regard to what they refer to as  
7 something that probably was used to launder money from an  
8 individual. And I feel like we need a response --

9 MR. ENGLAND: Sure.

10 CHAIR GAW: -- on that and I'd like to ask

11 Mr. Matzdorff his response to it.

12 MR. ENGLAND: Okay. Do you want to have him  
13 take the stand?

14 JUDGE WOODRUFF: Good afternoon.

15 (Witness sworn.)

16 JUDGE WOODRUFF: Can you tell us your name,  
17 please?

18 THE WITNESS: My name is Kenneth Matzdorff.

19 JUDGE WOODRUFF: And what is your position?

20 THE WITNESS: I am president of Cass County

21 Telephone.

22 THE COURT REPORTER: Could you spell your last  
23 name?

24 THE WITNESS: It's spelled M-a-t-z-d-o-r-f-f.

25 KENNETH MATZDORFF testified as follows:

00053

1 QUESTIONS BY CHAIR GAW:

2 Q. Good afternoon, Mr. Matzdorff.

3 A. Good afternoon.

4 Q. I will ask you first, have you seen the  
5 article in The Kansas City Star that was dated 2/14 of '04  
6 that's entitled Belton Exec Linked to Phone Scam?

7 A. Yes, I have.

8 Q. All right. In that article there are three  
9 paragraphs. And if you wouldn't mind -- and bear with me,  
10 please. I will read them to you and then I'd like to get  
11 your response, in particular, to one of the allegations --  
12 or the suggestions may be a more fitting way of stating  
13 it -- that relates to CassTel.

14 It says, In September, authorities searched a  
15 company called Telecom Online, Inc. in New York which  
16 allegedly ran the deceptive websites. The affidavits  
17 supported the warrant charged -- supporting the warrant  
18 charged that alleged Gambino family members Richard Martino  
19 and Salvator LaCassio (ph.) -- do you know if I pronounced  
20 that correctly?

21 A. I don't know.  
 22 Q. -- infiltrated a series of related telephone  
 23 companies based in Missouri in furtherance of the schemes.  
 24 Next paragraph, The affidavit referred to  
 25 Local Exchange Company, LLC, or LEC, which was created in  
 00054 1 1996 to purchase Casstel, and Local Exchange Carriers which  
 2 was set up in 2000 to buy interest in Spectra Communications  
 3 Group.  
 4 Matzdorff is the president of LEC and chief  
 5 executive of Casstel. According to bank records, in 2002  
 6 Matzdorff owned 7.4 percent of LEC and 5.6 percent of  
 7 Spectra.  
 8 And then the third paragraph, The affidavit  
 9 said that LEC received millions of dollars from an Overland  
 10 Park business called Overland Data Center, which in turn,  
 11 received millions of dollars from LEC's subsidiary Casstel.  
 12 The affidavit stated that Overland Data Center probably was  
 13 used to launder money for Martino.  
 14 First of all, can you tell me your response to  
 15 the allegation in regard to the millions of dollars from  
 16 LEC's subsidiary Casstel that was allegedly turned over I  
 17 guess to Overland Data Center?  
 18 A. Can you repeat -- I want to make sure I'm  
 19 clear on what you're saying.  
 20 Q. Well, and I guess if you could answer the  
 21 question, if you would, as to whether or not the statement  
 22 that LEC received millions of dollars from an Overland Park  
 23 business called Overland Data Center which, in turn,  
 24 received millions of dollars from LEC's subsidiary Casstel  
 25 is true?

00055 1 A. I can only assume that the dollars in question  
 2 relate to the \$970,000 that we received. If you look at the  
 3 indictment -- and I'm going pretty much from the same  
 4 documents you've seen, Commissioner Gaw -- is there's a  
 5 \$970,000 reference on December 15th of 2000. And the best I  
 6 can tell from the records, that's the reference that they're  
 7 making.

8 And I think that Mr. Winter indicated in his  
 9 data request to the company, trying to track that back, the  
 10 best we can tell, that matches up with payments -- I think I  
 11 can clarify a little bit Spectra Communications was formed  
 12 as a partnership between -- or an LLC, I should say to be  
 13 correct, between CenturyTel, a publicly traded company, and  
 14 a company that was formed, Local Exchange Carriers,  
 15 specifically to buy exchanges, it's 107 exchanges in the  
 16 state of Missouri representing approximately 130,000 access  
 17 lines.

18 I was heavily engaged in that and served as  
 19 the president of that company and was the one indeed that  
 20 brought CenturyTel in as a potential partner for many  
 21 reasons, one which was their capital power because the  
 22 acquisition was in -- it was close to \$300 million for the  
 23 acquisition, so that kind of puts it in perspective.

24 The partnership between those companies led to  
 25 the development of that company at which time later

00056 1 CenturyTel -- in a third time, as Mr. Winter indicated,  
 2 purchased CenturyTel Missouri which is another 350,000 lines  
 3 in which I became president of those operations and oversee  
 4 pretty much 60 percent of the land-line based operations for  
 5 the state of Missouri.



6 Q. And for which company is that again?  
 7 A. Not only for Spectra, which continues to  
 8 exist, but also CenturyTel Missouri. And those two  
 9 properties -- those two properties we run contiguously. And  
 10 this fall CenturyTel purchased the ownership interest from  
 11 Local Exchange Carrier, so Local Exchange Carrier no longer  
 12 has interest in that property but I continue on in my  
 13 capacity with CenturyTel.

14 Q. So you have a position with CenturyTel?

15 A. Yes, I do.

16 Q. Which is what again?

17 A. I am the executive vice president.

18 Q. All right. You also have a position with  
 19 CasTel?

20 A. That's correct. I serve as president.

21 Q. All right. And you have a position with Local  
 22 Exchange Company --

23 A. That's correct.

24 Q. -- LLC?

25 A. I'm the president of that company, which  
 00057

1 serves as the holding company for Cass County Telephone.

2 Q. Yes. And all of Cass County Telephone is  
 3 owned by LEC?

4 A. Actually, 99 percent. It's a limited  
 5 partnership -- a Maryland limited partnership. And there  
 6 are two small interests owned in order to create that  
 7 limited partnership.

8 Q. I don't know whether it would be appropriate  
 9 to disclose that in public session or not.

10 A. I think those are part of the annual reports  
 11 that we file each year with the company.

12 Q. Would you tell me who they are?

13 A. I believe one is -- one of the officers is a  
 14 gentleman by the name of Elia Fiata. And the other one is a  
 15 company and I --

16 MR. WINTER: Lexicom.

17 THE WITNESS: It's Lexicom is the name of the  
 18 company, it's an Illinois-based company.

19 BY CHAIR GAW:

20 Q. Is that a publicly held company?

21 A. No, it's not.

22 Q. So, to the best of your knowledge, the only  
 23 thing that you're aware of that could be referred to in the  
 24 article -- that could be referring to in the article in  
 25 regard to transfers of money from CasTel to Overland Data

00058  
 1 Center is this \$970,000?

2 A. I don't know how to answer that, Commissioner,  
 3 simply because my sources of information are much the same  
 4 as yourself. I've seen the newspaper article and I've seen  
 5 the indictment that referenced that. And I -- that's really  
 6 the only thing I know how to answer on that without, you  
 7 know, specifics and I don't know his sources beyond that.

8 Q. Well, would there be any other transfers of  
 9 money that you're aware of from CasTel to Overland Park --  
 10 Overland Data Center?

11 A. Overland Data Center provided services to Cass  
 12 County. They provided data functions for the company. And  
 13 that was listed --

14 Q. I see.

15 A. -- that was listed in our -- our responses.

16 Q. What kind of data functions were performed?

17 A. Oh, as an example, the Public Service  
18 Commission requires that we attempt to contact two  
19 customers -- or customers twice before we would ever attempt  
20 to disconnect them for non-payment.

21 we utilize voice recognition units that they  
22 have. Our underlying network support technical expertise as  
23 it relates -- we chose not to hire that personnel and felt  
24 we could do it more effectively. We live in a very rural  
25 area and don't have that expertise nor is it easy to attract

00059

1 it, so we contract those services out.

2 Q. So there would have been additional monies  
3 paid from CassTel to Overland Data Center in the last  
4 several years?

5 A. That's correct.

6 Q. And you're saying that except for the  
7 \$970,000, to your knowledge, the only monies that were  
8 transferred were for services?

9 A. Okay. To my knowledge, CassTel is only paid  
10 out for services rendered to the company.

11 Q. And what period of time were those services  
12 rendered, if you know?

13 A. They -- the company started on April 1st, 1996  
14 and they continued until June, at which time I became aware  
15 of alleged improprieties and I terminated the functions.

16 Q. In June of what year?

17 A. 2003.

18 Q. 2003. Do you know anything about the  
19 ownership of Overland Data Center?

20 A. No, I do not.

21 Q. Do you know if it's a corporation or something  
22 else?

23 A. I really don't.

24 Q. And you're not familiar with any -- you don't  
25 know any of the owners?

00060

1 A. I only -- I only know of the services and the  
2 personnel that's responsible for providing the services to  
3 me really. That's -- beyond the ownership, I really don't  
4 know.

5 Q. When did -- did you know -- were you familiar  
6 with that company prior to 1996?

7 A. I became aware of them when I initiated the  
8 formation of Cass County Telephone and started looking at  
9 vendors that would be required in order to provide the phone  
10 services. We essentially bought the assets and, as we  
11 described, needed to build the infrastructure in order to  
12 support those services. So I became aware of them in  
13 probably 1995.

14 Q. And do you know if they have any relation to  
15 USP&C?

16 A. To my knowledge, there's no relationship  
17 there.

18 Q. You used to have one, is that correct, with  
19 USP&C?

20 A. Used to have?

21 Q. A relationship with that company.

22 A. Yes, I did.

23 Q. What was that?

24 A. I -- I was a stockholder in the company and  
25 helped to form that company. And then in 1998, sold my

00061

1 interest.

2 Q. To whom did you sell your interest?  
3 A. I sold my interest to a Mr. Mike Laurel.  
4 Q. And I'm sorry. You probably said this. What  
5 was the period of time that you had that relationship with  
6 USP&C?  
7 A. USP&C was formed in late 1996. I believe it  
8 was 1998 I sold my interest.  
9 Q. Okay. And you're aware that -- are you aware  
10 whether or not the indictments draw any connection between  
11 Overland Data Center and USP&C?  
12 A. Only what I've read in the indictment itself,  
13 which -- which is not clear what the relationship is.  
14 Q. How much -- if you know, how much were the  
15 amounts that were being paid from CassTel to Overland Data  
16 Center on an annual basis for services?  
17 A. I really can't give you a correct indication.  
18 I know that the services varied by the functions. They were  
19 larger amounts until some of our systems were built, as an  
20 example, trouble reporting systems and interface systems for  
21 accounting functions like that. So it really varied by  
22 year, but I know the -- I know I responded to that in a  
23 highly confidential -- in the response to the Commission  
24 Staff.  
25 CHAIR GAW: Let me ask Staff very quickly, do  
00062 you have that information?  
2 MR. POSTON: Yeah. I can give you that data  
3 request, if you give me a minute.  
4 BY CHAIR GAW:  
5 Q. Mr. Matzdorff, did that amount very much from  
6 year to year?  
7 A. There was a peak period where we did a lot of  
8 systems work and there was a peak year. It was centered  
9 around when we initially were looking to buy local exchange  
10 carriers and from Spectra before we brought CenturyTel on.  
11 That was one of the key reasons bringing  
12 CenturyTel on was we were supporting a lot of systems and  
13 the concern I had was being able to handle an acquisition  
14 that large. We initially were putting a lot of dollars into  
15 supporting and beefing up the system. We were initially  
16 with a vendor that, in my opinion, couldn't -- couldn't  
17 provide the adequate service for the people in Missouri.  
18 Q. Now that you have made that statement, I'm not  
19 sure if I want to ask you who that was, but -- I'm not --  
20 A. well --  
21 Q. -- I'm not so -- if you feel like you can tell  
22 me, I'll be glad to hear it, but -- who did you work with  
23 before?  
24 A. MidAmerica Computer out of Blair, Nebraska.  
25 Q. All right. And when you changed to Overland  
00063 Data Center, why did you choose that company as opposed to  
2 some other company?  
3 A. well, let me clarify. We used both systems,  
4 but one system was really designed for companies of 1,000  
5 lines or less that support companies throughout the United  
6 States. I was looking for something that was more attuned  
7 to the needs of the state of Missouri and something that  
8 potentially would have 150,000 access lines.  
9 Q. And go ahead and finish your sentence. What  
10 does that lead you to what conclusion?  
11 A. I think I stated it.  
12 Q. I think you did too, but would you go ahead

13 and restate it for me? That caused you to choose Overland  
14 Data Center?

15 A. Yeah. They -- it was not a relational  
16 database, which means that you had several flat files --  
17 what are called flat files. And flat files, by such, if  
18 you're out of -- out of sync, then it affects all of your  
19 other systems, so they don't force reconciliation.

20 That's fine for a company that has a hand  
21 calculation with less than 1,000 lines, but you can imagine  
22 with hundreds of employees and trying to have relationships  
23 between databases for billing, customer service, service  
24 provisioning, those type of things, that's what leads, quite  
25 frankly, to the large companies having difficulties is when

00064

1 they don't have relationship files that stay in sync with  
2 each other. And I'm sure you've had that discussion with  
3 various billing entities as they have impacted your  
4 services.

5 Q. Okay. And you chose that company as opposed  
6 to some other company because?

7 A. I chose the company because their location.  
8 Many of the employees had experience in Sprint billing  
9 system, so I had a comfort level that they had worked in  
10 large database applications and they'd supported us prior to  
11 that and -- and were the most familiar with our databases  
12 and what they were going to convert.

13 Q. You were involved with Local Exchange Company,  
14 LLC at its beginning. Correct?

15 A. That's correct.

16 Q. And you were not the only one involved with  
17 it?

18 A. I was the founder and was the one responsible  
19 for putting together the partnership arrangement with  
20 CenturyTel.

21 Q. Okay. With Local Exchange Company; is that  
22 correct?

23 A. With Local Exchange Carriers, I believe you  
24 said, Commissioner.

25 Q. I'm --

00065

1 A. If you didn't, I apologize.

2 Q. That's okay. I'll ask you this question then.  
3 Were you involved with Local Exchange Company, LLC?

4 A. Yes, I was.

5 Q. Okay. And did it have any other purpose when  
6 it was formed other than to be the holding company for  
7 CasTel?

8 A. No. That was the purpose for which it was  
9 formed.

10 Q. And were you the only individual involved in  
11 its formation?

12 A. I was the -- I was the founder and the one  
13 responsible for putting together the transaction.  
14 Continental Illinois Bank had originally contacted me about  
15 possibility of some sales that were being announced by GTE.  
16 And I -- when they lost interest in the transaction, I asked  
17 that I take it on and -- and form Cass County Telephone from  
18 them.

19 Q. All right. And did anyone else go into that  
20 investment with you?

21 A. Yes. I had a list of investors that joined  
22 with me on that venture.

23 Q. All right. Was that a long list, short list?

24 A. It's a fairly substantive list. I'd say  
25 approximately 46 members.

00066

1 CHAIR GAW: Okay. And I'll ask Staff, is that  
2 information that we have?

3 MR. POSTON: I think so.

4 THE WITNESS: Yes, it is.

5 CHAIR GAW: It's been provided? Am I correct  
6 to say up to this point that's highly confidential?

7 MR. ENGLAND: If not, it's certainly  
8 proprietary. I think we marked it as highly confidential.

9 CHAIR GAW: All right. And is that a part --  
10 Staff has that in its possession, I take it; is that  
11 correct?

12 MR. POSTON: We're looking. I believe we do.

13 MR. ENGLAND: It's Data Request No. 13.

14 CHAIR GAW: Thank you, Mr. England.

15 For the record, Judge, so it's on the record,  
16 Staff has handed me that Data Request No. 13.

17 BY CHAIR GAW:

18 Q. Mr. Matzdorff, how were these investors found?

19 A. Some were acquaintances, others were referred  
20 to me by -- by individuals that I found to be very  
21 trustworthy and of high integrity and, quite frankly, very  
22 surprising relationship. I'm hesitant to name names, but  
23 people that I felt I knew and trusted.

24 Q. Yes, sir.

25 CHAIR GAW: I don't think I can go further

00067

1 with this question-- with this questioning where we are  
2 today, but I'm going to pass for the moment back to  
3 Commissioner Clayton and if he has any questions.

4 COMMISSIONER CLAYTON: I just have a few.

5 CHAIR GAW: Thank you, sir.

6 QUESTIONS BY COMMISSIONER GAW:

7 Q. Mr. Matzdorff, the questioning by Commissioner  
8 Gaw has answered a lot of my questions. Generally speaking,  
9 I was interested in the relationship among the various  
10 companies that have been discussed here today. Does the  
11 company Spectra still exist?

12 A. Yes, it does.

13 Q. Is it simply a fictional entity owned by  
14 CenturyTel or does it remain to be a partnership between  
15 various entities? What is Spectra right now?

16 A. Spectra Communications was a stand-alone  
17 company that the primary support services were performed by  
18 CenturyTel. And CenturyTel is the majority owner of that  
19 company. They purchased the interest of Local Exchange  
20 Carriers in November of 2003.

21 There are two -- two individuals from Monroe,  
22 Louisiana that have an affiliate relationship with  
23 CenturyTel that are also shareholders, but for all practical  
24 purposes, CenturyTel has 99.x percent of the ownership.

25 Q. So Spectra is now almost entirely owned by

00068

1 CenturyTel?

2 A. That's correct. And I believe that's the  
3 intent.

4 Q. You stated that you sold out your interest in  
5 USP&C in 1998; is that correct?

6 A. That's correct.

7 Q. What was the year of the activities listed in  
8 the indictment? Were you affiliated with the company during

9 that time?

10 A. The indictment, as I understand it, implies  
11 that the activity began from the time of its inception  
12 until -- until I assume the indictment was passed down,  
13 which included 1996, '97. The company had no functions  
14 during '96 and really didn't get started in its operations.

15 My role in getting involved and why my name, I  
16 believe, was in the paper was tied to the fact that when it  
17 was founded, I was the one that put together the paperwork.  
18 In order to get registered, you have to have an officer. We  
19 had no employees at the time so I placed myself as the  
20 president, but I've never held an active function with that  
21 company nor as an officer of that company.

22 Q. You were simply a stockholder, you were never  
23 an officer?

24 A. That's correct.

25 Q. Okay. And Overland Data Center, you have

00069

1 never in the past nor currently acted as either a  
2 shareholder or an officer --

3 A. No.

4 Q. -- or an employee of Overland Data Center?

5 A. No.

6 Q. It was your testimony earlier that you were a  
7 founder and organizer of both Local Exchange Company, LLC,  
8 which is the holding company of CassTel. Correct?

9 A. That's correct.

10 Q. And also a founder and organizer of Local  
11 Exchange Carrier?

12 A. That's correct.

13 Q. And Local Exchange Carrier does not exist  
14 anymore?

15 A. Local Exchange Carrier exists only until we  
16 get the tax returns so I can can it, close it down.

17 Q. Okay. Has CassTel or Local Exchange Company  
18 ever had any type of relationship with USP&C --

19 A. No.

20 Q. -- as a vendor or otherwise?

21 A. No.

22 Q. So no dollars have gone back and forth in  
23 either direction between those two entities?

24 A. No, there have not.

25 COMMISSIONER CLAYTON: I don't believe I have

00070

1 any further questions. Thank you.

2 THE WITNESS: Thank you, Commissioner.

3 JUDGE WOODRUFF: Chair Gaw, anything further?

4 CHAIR GAW: No, thank you.

5 JUDGE WOODRUFF: You can step down. Thank  
6 you.

7 THE WITNESS: Thank you.

8 JUDGE WOODRUFF: Any other questions for any  
9 other witnesses?

10 I'll give the parties an opportunity to make a  
11 closing statement if they wish. Staff?

12 MR. POSTON: I have nothing to close other  
13 than we continue to support the Stipulation and Agreement.

14 JUDGE WOODRUFF: Public Counsel?

15 MR. DANDINO: I have nothing further, your  
16 Honor.

17 JUDGE WOODRUFF: Cass County Telephone?

18 MR. ENGLAND: Nothing further, your Honor.

19 JUDGE WOODRUFF: With that, then we are

20 adjourned.  
 21 CHAIR GAW: One question. The data request is  
 22 not a part of the record unless you admit it, I assume?  
 23 JUDGE WOODRUFF: That would be correct.  
 24 CHAIR GAW: Would it be possible to have that  
 25 admitted as an HC document?

00071  
 1 JUDGE WOODRUFF: We can mark it as HC  
 2 exhibits.

3 CHAIR GAW: I think there were two of them.  
 4 And I don't know -- just because I asked for it doesn't mean  
 5 it has to be -- I would like for it to be if it's -- if we  
 6 could have it in the record, Judge. Thank you.

7 MR. ENGLAND: I have no objection, your Honor.  
 8 I'd point out that it's my understanding that  
 9 no protective order has actually been issued in this case.  
 10 It's fairly young, if you will. So I would request that a  
 11 protective order be issued and then if you want to make that  
 12 part of the record as a highly confidential exhibit, that's  
 13 fine.

14 JUDGE WOODRUFF: All right. A protective  
 15 order will be issued. I'll go ahead and issue one -- well,  
 16 I can do it from the Bench at this point and the formal  
 17 protective order will also be issued through EFIS tomorrow.

18 MR. ENGLAND: That would be fine.  
 19 JUDGE WOODRUFF: We've got the two data  
 20 requests, Data Request No. 9, which concerns the amount of  
 21 fees that were paid by Cass County Telephone to Overland  
 22 Data Center. We'll mark that as Exhibit 1-HC. And the  
 23 other is the list of investors in LEC, LLC and we'll mark  
 24 that as Exhibit No. 2-HC.

25 All right. Anything else while we're on the  
 00072 record? With that then, we are adjourned.

1 (Exhibit Nos. 1 and 2 were marked for  
 2 identification.)  
 3  
 4  
 5  
 6  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

00073  
 1 I N D E X  
 2 DAVID WINTER  
 3 Questions by Chair Gaw  
 Questions by Commissioner Clayton

7  
 27

Further Questions by Chair Gaw

39

KENNETH MATZDORFF

Questions by Chair Gaw

53

Questions by Commissioner Clayton

67

00074

## EXHIBITS INDEX

Marked Rec'd

Exhibit No. 1-HC

Data Request No. 9, Highly Confidential

72

Exhibit No.2-HC

Data Request No. 13, Highly Confidential

72



ATTACHMENTS 14 THROUGH 16

HAVE BEEN DEEMED

HIGHLY CONFIDENTIAL

IN THERE

ENTIRETY

## Attachment 17

Southwestern Bell Telephone Company

Post-Hearing Brief in United States

Western District Court of Missouri;

Civil Action File Number:

92-4326-CV-W-8

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

FIDELITY TELEPHONE COMPANY, a  
Missouri Corporation,

Plaintiff,

vs.

SOUTHWESTERN BELL TELEPHONE  
COMPANY, a Missouri corporation,  
and BELL COMMUNICATIONS RESEARCH,  
INC. a New Jersey Corporation

Defendants.

CIVIL ACTION FILE  
NO. 92-4326-CV-W-8

POST-HEARING BRIEF OF DEFENDANT  
SOUTHWESTERN BELL TELEPHONE COMPANY

September 11, 1992

## INDEX

	<u>Page</u>
I. SUMMARY OF THE CASE . . . . .	1
II. STATEMENT OF FACTS . . . . .	3
A. PROCEDURAL HISTORY . . . . .	3
The Underlying Transaction . . . . .	4
B. BACKGROUND INFORMATION ON CMDS AND CATS . . . . .	6
The Parties And Non Parties . . . . .	6
The CMDS and CATS Systems . . . . .	7
Guidelines for The CMDS System . . . . .	9
The BOC CATS Practice . . . . .	10
Operation of CATS Under the Practice . . . . .	11
Participation in CMDS and CATS . . . . .	13
Formatting Messages For Inclusion in CATS . . . . .	14
C. BACKGROUND INFORMATION ON FIDELITY'S USE OF CATS FOR IXC MESSAGES . . . . .	15
Fidelity's "Creative Concept". . . . .	15
Fidelity's Coding of its IXC Messages . . . . .	18
Fidelity's Notice Concerning Use of CATS & Southwestern Bell's Reaction . . . . .	19
D. IMPACT ON OTHER LECS OF FIDELITY'S USE OF CATS FOR IXC MESSAGES. . . . .	21
Forcing Other LECS to Bill For Fidelity . . . . .	21
Bill Appearance Issues . . . . .	23
E. BILLING & COLLECTIONS SERVICES FOR IXCS . . . . .	24

LEC Billing & Collections Services . . . . .	24
IXC Billing & Collection Market . . . . .	26
Southwestern Bell & Fidelity as Competitors . . . . .	28
<b>III. ARGUMENT . . . . .</b>	<b>29</b>
A. PLAINTIFF MUST PREVAIL ON THE MERITS OF ITS SUIT IN ORDER TO QUALIFY FOR INJUNCTIVE RELIEF . . . . .	29
B. PLAINTIFF WILL NOT SUFFER IRREPARABLE HARM BY THE DENIAL OF INJUNCTIVE RELIEF . . . . .	30
C. FIDELITY HAS NOT PRESENTED PROOF SUFFICIENT TO PREVAIL ON THE MERITS OF THE CLAIMS IDENTIFIED IN ITS MOTION FOR INJUNCTIVE RELIEF . . . . .	34
1. Plaintiff has not established success on the merits on Counts I & III . . . . .	35
Res Judicata & Collateral Estoppel . . . . .	35
Merits of Fidelity's Contract Theories . . . . .	36
2. Plaintiff has not proved its claims under Counts VI, VII, or VIII . . . . .	38
Res Judicata . . . . .	39
Antitrust Analysis . . . . .	41
Essential Facilities . . . . .	42
Monopolization, Attempt to Monopolize, and Conspiracy to Monopolize . . . . .	50
Refusal to Deal . . . . .	52

3.	Fidelity has not proven its cause of action under Count VI, and there is no legal or regulatory obligation which would mandate that Southwestern Bell bill and collect for Fidelity's IXC messages in the manner demanded . . . . .	54
	Southwestern Bell's MFJ Obligations . . . . .	54
	FCC Billing and Collections Policy Does Not Require Injunctive Relief. . . . .	59
D.	THE HARM TO DEFENDANTS AND TO THIRD PARTIES OUTWEIGHS ANY HARM TO FIDELITY . . . . .	60
1.	Southwestern Bell's billing and collections product . . . . .	61
2.	Issuance of an injunction will cause Southwestern Bell and other RBOCs and LECs to violate state and federal regulations governing bill appearances . . . . .	63
	MFJ Implications . . . . .	63
	State Subentity Billing Issues . . . . .	66
E.	ISSUANCE OF AN INJUNCTION WOULD BE CONTRARY TO PUBLIC POLICY . . . . .	67
IV.	CONCLUSION . . . . .	69

**POST-HEARING BRIEF OF DEFENDANT  
SOUTHWESTERN BELL TELEPHONE COMPANY**

**I. SUMMARY OF THE CASE**

Plaintiff Fidelity Telephone Company (Fidelity) filed this case less than three weeks after having a state court deny the same relief requested here based on the same fact situation and many of the same arguments. The instant and earlier state action involved an effort to use the court system to impose upon Defendant Southwestern Bell Telephone Company (Southwestern Bell) an unjustified commercial arrangement -- a billing, collection and settlement contract for operator services and long distance telephone calls -- that is not founded upon any existing contractual obligation, past practice, nor justified on any legal theory. Throughout a series of continually changing arguments and theories, Plaintiff has failed to establish a single legal justification for the extraordinary relief it seeks from this Court.

Southwestern Bell and the other 1200 local exchange companies (LECs) throughout the nation have for many years performed billing, collection and settlements of one another's third number and credit card calls on a reciprocal basis. The system which facilitates this reciprocal arrangement is the Bellcore Client Company Calling Card and Third Number Settlement System (BOC CATS). The consideration for the billing and collection services on these LEC calls has been five cents per message and the performance of reciprocal services by all local exchange companies. Billing and collection services for other types of calls, including

interexchange carrier (IXC) messages, are available to the IXCs from local exchange companies and others on commercial terms mutually agreeable to the contracting parties. In addition, interexchange carriers also do some of their own billing.

In the spring of 1992, Plaintiff attempted to make a unilateral change in the BOC CATS system by using it for IXC messages that Fidelity had purchased from two interexchange carriers. This use of the BOC CATS system was unprecedented and directly contrary to written guidelines. Moreover, it was accomplished only after Plaintiff repeatedly and intentionally submitted falsified information to the Central Message Distribution System (CMDS) which routes message data to individual companies for billing.

Plaintiff's legal theories have ranged from allegations of a contractual right to use the system, to arguments based upon general antitrust concepts, the Communications Act and the Modification of Final Judgment. In the final analysis, despite many days of depositions, extensive discovery and lengthy hearings, Plaintiff has failed to establish facts to support any theory which would serve as a basis for the mandatory injunctive relief requested from this Court.

Even if Fidelity could be found to have stated a claim which is not barred by its failed attempt in the Franklin County proceeding, Fidelity still is not entitled to a permanent injunction because it has not satisfied the elements which are a prerequisite to such extraordinary relief. Dataphase Systems, Inc



v. C. L. Systems, Inc., 640 F.2d 109 (8th Cir. 1981); see also, Current-Jacks Fork Canoe Rental Assoc. v. Clark, 630 F. Supp. 421, 424-425 (E.D. Mo. 1985) (holding that actual success on the merits must be demonstrated to obtain a permanent injunction). For a permanent, as opposed to a preliminary injunction, the elements Fidelity is required to prove are actual success on the merits, irreparable harm, that its harm outweighs any harm to the defendants, and that issuance of an injunction will further the interest of the public. See Dataphase, supra at 114. As this brief will set forth in more detail, Fidelity has not proved actual success on the merits nor a harm that cannot be compensated with money damages in the same way that commercial litigants are normally compensated. Additionally, the harm to the Defendants in the transformation of CATS into an IXC billing system, the damage to Southwestern Bell's billing and collection product, and the serious risk of violations of law caused by Fidelity's misuse of CATS far outweigh any damage to Fidelity. Finally the interests of the public will not be furthered by forcing all 1200 LECs to provide services to Fidelity against their own wishes and in their absence and such action would undermine the policies of the FCC and state regulators.

## II. STATEMENT OF FACTS

### A. PROCEDURAL HISTORY

This case comes before the Court on Plaintiff, Fidelity Telephone Company's Motion for Issuance of Temporary Restraining

Order, Preliminary Injunction and Permanent Injunction filed on July 16, 1992. At a nonevidentiary hearing held on July 17, 1992 Plaintiff's request for a TRO was denied and an evidentiary hearing was scheduled. That hearing began on August 10; it was completed on August 14, 1992. With the consent of all of the parties the scope and impact of the hearing was enlarged by the Court to encompass not only Plaintiff's request for a preliminary injunction, but also its request for permanent injunctive relief.

Plaintiff's initial six count Complaint filed on July 16, 1992 pleaded contractual and discrimination theories.<sup>1</sup> A First Amended Complaint was filed later that same day restating the original six counts and adding antitrust theories. A Second Amended Complaint was filed two weeks later which removed the allegations contained in the First Amended Complaint concerning the involvement of the other Regional Bell Operating Companies (RBOCs)<sup>2</sup> in the alleged antitrust conspiracy.

#### **The Underlying Transaction**

The "transaction" which forms the basis of Plaintiff's suit is the screening by Southwestern Bell of messages transported by interexchange carriers (IXCs) submitted by Fidelity to the local

---

<sup>1</sup> Plaintiff's attorney James Shields signed the Complaint on behalf of "Plaintiffs American Teledial Corporation and Fidelity Telephone Company" even though Fidelity was the only named Plaintiff.

<sup>2</sup> For the convenience of the Court, a list of acronyms used in this brief and at the hearing is attached hereto as Appendix A. Additionally, all cases not readily accessible to the Court, such as FCC opinions, not previously provided to the Court or opposing counsel have been collected into Appendix C.

exchange telephone company (LEC) to local exchange telephone companies' settlement system called the Bellcore Client Company Calling Card and Third Number Settlement System (BCC CATS, BOC CATS or CATS).

The same transaction formed the basis of the Plaintiff's prior state court action alleging contractual theories, and seeking the same injunctive relief Plaintiff has sought in this Court. That suit was filed by Fidelity against Southwestern Bell and Bell Communication Research Inc. (Bellcore), the other defendant herein, in a Missouri state court in Franklin County on June 15, 1992. See Franklin County Circuit Court Legal File. Without an evidentiary hearing, the Franklin County action resulted in the issuance of a TRO which was subsequently dissolved after the evidentiary hearing held on June 25, 1992 before Circuit Court Judge John Brackman. Id. At the close of Plaintiff's case, Judge Brackman also dismissed Plaintiff's cause of action against Southwestern Bell. Id. Plaintiff's Motion to Set Aside the Dismissal which was argued on July 1, 1992 was denied and the dismissal was certified for appeal. Id. Subsequently on July 29, 1992, after voluntarily dismissing out Defendant Bellcore, who had not yet been properly served by the time of the hearing, Fidelity filed a notice of appeal in the Court of Appeals for the Eastern District of Missouri. Id. Plaintiff is actively pursuing its appeal now, having recently filed a Statement of Issues with the Court.. Defendant Southwestern Bell filed a Rule 12 Motion in this Court on August 9, 1992 seeking the dismissal of Plaintiff's Complaint on the grounds its suit is barred by the

doctrine of res judicata. The Court deferred a ruling in the Motion until submission of the case.

B. BACKGROUND INFORMATION ON CMDS AND CATS

**The Parties And Non Parties**

Fidelity and Southwestern Bell are but two of approximately 1200 local exchange telephone companies throughout the nation which have their own designated service territory within which each is obligated to provide basic local telephone service pursuant to state franchises. Testimony of R. Taylor; see also, Fidelity Second Amended Complaint. The rates and earnings of local exchange companies, like Southwestern Bell, Fidelity and the 1200 other LECs are closely regulated by the state public utility commissions in the states in which those utilities operate.<sup>3</sup> Testimony of R. Taylor.

Southwestern Bell is one of seven Regional Bell Operating Companies (RBOCs) created by the divestiture of AT&T from its local exchange operating companies.<sup>4</sup> See Plaintiff's Second Amended Complaint; Testimony of W. Micou. The Consent Decree<sup>5</sup> also established certain restrictions on the activities of the RBOCs to

---

<sup>3</sup> Southwestern Bell is rate and earnings regulated in the five states in which it operates: Missouri, Arkansas, Kansas, Oklahoma and Texas. Its interstate services are regulated by the Federal Communications Commission.

<sup>4</sup> The other six RBOCs are Bell Atlantic, BellSouth, NYNEX, US WEST, Ameritech and Pacific Telesis.

<sup>5</sup> United States v. American Telephone and Telegraph, 552 F. Supp. 131 (1982), Plaintiff's Exh. 33.

prevent those companies from entering into the long distance business reserved for AT&T and its IXC competitors. See Plaintiff's Exh. 33 (the MFJ). The primary method of insuring compliance with that objective was the creation of Local Access And Transport Areas (LATAs) within which an RBOC is permitted to transport telephone calls (intraLATA), but between which it may not (InterLATA).<sup>6</sup> Testimony of R. Taylor; W. Micou. Although there are numerous exceptions, LATAs in many cases roughly correspond to area codes.

#### **The CMDS and CATS Systems**

At the time of divestiture, certain centralized functions which had previously been performed by Bell Labs were transferred by the Court to a newly created service company called Bellcore. Testimony of W. Micou. Two such systems, the Central Message Distribution System, or CMDS and BOC CATS are at the heart of the dispute between Plaintiff and Defendants in this case, as in the Franklin County case.

CMDS is a computer run, message data routing system operated by Southwestern Bell under contract to the system owner, Bellcore. Testimony of W. Micou; R. Taylor. The CMDS system routes the message detail required to bill individual customers for any telephone call which has touched the network of a LEC and that of at least one other telephone company, LEC or IXC. Testimony of W.

---

<sup>6</sup> Independent Telephone Companies (all LECs which are not RBOCs) may also provide long distance services, but most do not have the facilities. Many of those that do provide such services do so through separate subsidiaries.

Micou. The routing system exists to facilitate the exchange of billing data by telecommunications companies. Testimony of W. Micou. CMDS is not a telephone call transmission system, nor is it a billing system. Id. Messages which go through the CMDS system do not get billed by LECs who receive the messages unless a billing and collections agreement is in place. Testimony of W. Micou; J. Yancey.

BOC CATS, as with CMDS, is also owned by Bellcore and operated by Southwestern Bell pursuant to contract. Testimony of W. Micou. It is not involved in the transmission of telephone calls, nor is it a billing system. Id. Instead, BOC-CATS is an adjunct to CMDS which was designed and is used exclusively for the accumulation of message data on calls transported by local exchange telephone companies.<sup>7</sup> Id. CMDS copies the message data on all qualifying LEC transported calls and sends that information into the CATS system for inclusion on monthly reports which are utilized by all 1200 LECs for settlement purposes amongst themselves. Id. The actual telephone calls are billed by the 1200 LECs using their own individual billing systems. See Testimony of J. Yancey. Because of past practice and the implicit agreement of all of the involved local exchange companies, calls which have been submitted to CATS are placed by the LECs on their own bill pages. Testimony of W. Micou.

---

<sup>7</sup> All services provided by a LEC on behalf of a customer of another LEC do not get settled through CATS. The system is instead used only for certain types of LEC transported calls, primarily intraLATA credit card and third number calls.

The LEC which completes telephone calls for the customers of another LEC incurs expenses associated with the transmission of the calls over its network, while the customers' home companies have the pertinent information (name, address etc.) required to bill and collect for the telephone calls. Id. Without the CATS settlement system in place to exchange such services, each LEC would be required to establish a method of billing every person who uses their facilities, or prevent the use of its facilities by persons with whom the LEC does not have a billing relationship in order to avoid incurring unrecoverable expenses. Testimony of R. Taylor; W. Micou. The charge the 1200 LECs assess for billing and collecting each other's messages processed through CATS is a nickel per message plus the promise to provide reciprocal services.

#### **Guidelines For The CMDS System**

Use of both the CMDS and CATS systems are governed by certain procedures and guidelines issued by Bellcore which insure the uniform and proper operations of these systems which handle millions of messages daily. Testimony of W. Micou. In the case of CMDS, the Exchange Message Record (EMR) instructs participants about how to format message detail such that the computer can properly read and route it.<sup>8</sup> Testimony of A. Abjornson; W. Micou. The CMDS Users Guide advises participants concerning which messages are proper for CMDS routing. Testimony of R. Taylor. The CMDS Users Guide which Southwestern Bell provided to Fidelity on three

---

<sup>8</sup> The Exchange Message Record is used by LECs for formatting while a separate (but similar) manual, the Exchange Message Interface (EMI) is used by IXCs.

separate occasions in 1991, well before Fidelity made its decision to enter into its IXC billing venture, provides in relevant part:

Currently, for Interexchange Carrier related messages, the billing BCC receives message and billing details via CMDS I. It then bills and collects the associated revenues, dealing directly with the appropriate IC [IXC] under the billing and collection contracts and tariffs for billing and collection services rendered. There is no exchange of revenues for these calls via CATS.

See Defendant's Exhs. 21, 22 & 23, Document at 1-1 (emphasis added). Because all message data submitted to CATS originates in CMDS, the formatting of messages for inclusion in CATS is also determined by reference to the EMR. Testimony of W. Micou. However, it is the BOC CATS Practice which governs the type of messages which are appropriate for inclusion in the CATS settlement system. Id. See Plaintiff's Exh. 39.

#### **The BOC CATS Practice**

The BOC CATS Practice, or Bellcore Practice BR 981-200-110, (Plaintiff's Exh. 39) specifies at ¶2.01 that:

The only messages accepted by BCC CATS, therefore, are for services provided by Local Exchange Companies.... A further qualifier is that a messages must originate in one company (BCC and all Local Exchange Companies within the billing BCC's territory) and bill to a customer in another company.... (emphasis added).

Plaintiff's Exh. 39 ¶2.01. At ¶2.02 the Practice further explains that:

The following types of messages do NOT qualify for inclusion in the monthly CATS reports: ... (d) All interexchange carrier (IC) calling card and third number messages.



See Plaintiff's Exh. 39. Although the term "service" is not defined in the CATS Practice, in the context of ¶2.01 it is modifying the term "messages," which is the data created by the actual delivery of telephone service to the customer, and not the ancillary services which are provided by telephone companies to each other.' Id.; Testimony of W. Micou; G. Scheffel.

#### Operation of CATS Under the Practice

Until this dispute with Fidelity arose, no LEC in the eight years since divestiture, and even before, ever claimed a right or attempted to use CATS for messages generated by services provided by IXCs. Testimony of W. Micou. The only time the issue of whether IXC messages could be settled through CATS came up during the tenure of Fidelity's expert, Mr. Abjornson, at Bellcore was with South Central Bell. On that occasion it was determined that

<sup>9</sup> Fidelity's position at the hearing was that the only criteria relevant to determining eligibility for CATS settlements is ownership of the message. This is not the case as is clear from the language of the BOC CATS Practice. In any event, Plaintiff's strained argument does not hold together because it does not appear that Fidelity in fact "owns" the messages in question. Fidelity retained the absolute right to recourse uncollectible and unbillable messages back to CNSI and ATC (apparently Fidelity is only purchasing the good ones). See Defendant's Exhs. 9 at pp. 6 and 10. Additionally, the responsibility to pay taxes on the IXC messages, a common indicia of ownership with the IRS at least, is retained by CNSI in its contract. Id. at p. 11. Finally, perhaps the most important indicia of ownership to customers is whose rates apply to the call and therefore who a customer should call if he has a complaint. Without exception the rates on the IXC calls Fidelity sent through the CATS system were the rates of the underlying IXCs who transported the calls, and not Fidelity's. Testimony of J. Davis. In any event, the term ownership does not appear in the CATS practice and, such a concept is not consistent with the "services provided by" language at ¶2.01 of the CATS practice which clearly looks to the company carrying and rating the call. Testimony of W. Micou.

such messages did not qualify for CATS settlements.<sup>10</sup> See Defendant's Exh. 49.

Although Fidelity continues to suggest in its Brief that AT&T settles its messages through CATS,<sup>11</sup> there was no evidence presented at the hearing to substantiate this claim. Mr. Matzdorff acknowledged that he had no personal knowledge that Cincinnati Bell might be submitting IXC messages to CATS. Cincinnati Bell witness Gary Scheffel specifically denied that his company has ever submitted IXC messages to CATS, and Fidelity did not pursue it on cross examination.<sup>12</sup> Further, contrary to Fidelity's suggestion, the mere fact that Indicator 19 Value 8 is utilized by AT&T in CMDS

---

<sup>10</sup> Notwithstanding Mr. Abjornson's testimony to the contrary the trip ticket evidenced a meeting with South Central Bell personnel to specifically discuss whether South Central could host the messages of small IXCs to CATS. Per Defendant's Exh. 49, Mr. Abjornson told them that was not possible because IXC messages could not be settled through CATS, but instead required individual contracts for billing and collection. If the entire problem could have been resolved by a simple purchase of accounts receivables arrangement why would Mr. Abjornson have not explained that to the meeting participants or reported that back to Bellcore in his summary of the meeting?

<sup>11</sup> Mr. Rowland and Mr. McClellan both testified that AT&T has contracts with all LECs. Such contracts would be unnecessary if AT&T had access to CATS..

<sup>12</sup> Mr. Scheffel testified further that submission of AT&T messages to CATS would violate Cincinnati's contract with AT&T and its contract with Bellcore for participation in CATS with the RBOCs.

does not indicate that AT&T messages are settled through CATS.<sup>13</sup> Alex Abjornson testified that Indicator 19 Value 8 has nothing to do with CATS and relates instead to CMDS.

#### Participation in CMDS and CATS

The users of the CMDS and CATS systems are divided into direct and indirect participants. The owners of the systems, the seven RBOCs, Cincinnati Bell and Southern New England Telephone Co.<sup>14</sup> are the direct participants. All remaining LECs are indirect participants. Testimony of A. Abjornson; W. Micou. The direct participants are the ones who incurred the expense to create the systems and who are responsible for all expenses necessary to maintain them, including a pro rata responsibility for the expense associated with all messages submitted by companies' in their respective regions. Id. Mr. Micou testified that Southwestern Bell's pro rata expenses have increased as a result of Fidelity's use of CATS for IXC messages because the message volume for which

---

<sup>13</sup> Donald Little explained that Indicator 19 Value 8 is not reserved for AT&T. AT&T is merely the only IXC which currently has a contract with Southwestern Bell under which Southwestern Bell purchases AT&T accounts receivable. Mr. Little testified Southwestern Bell has offered the same terms to other IXCs but none have as yet entered into such an agreement. More importantly, messages with a value of 8 in indicator 19 do not go into BOC CATS. Testimony of Donald Little, Bill Micou and Gary Scheffell. Mr. Scheffell also explained that when he wrote the definition of Indicator 19 Value 8 contained in the EMR, in his role as a member of the Message Technical Review Board, he intentionally made the definition generic so that other IXCs could use that value in the future.

<sup>14</sup> At the time of divestiture, AT&T had less than a 5% ownership interest in Cincinnati Bell and SNET which accounts for their unique status as Bellcore Client Companies which are not also RBOCs subject to the Modification of Final Judgment.

Southwestern Bell is responsible has significantly increased. Id. The indirect participants have equal ability to the use of the systems, but must be hosted by a direct participant who has the responsibility for insuring the proper use of the system by the companies it hosts.<sup>15</sup> Id.; see also, Defendants Exhs. 21, 22 & 23 (CMDS Users Guide) at p. 2-2. Southwestern Bell is Fidelity's host to both CMDS and CATS. See Plaintiff's Second Amended Complaint.

#### **Formatting Messages For Inclusion in CATS**

The status of a company as a direct or indirect participant in CMDS and CATS impacts the manner of submission of its message data to those systems. A direct participant sends its data directly into the CMDS system. An indirect participant will send its data to its host for submission to CMDS. Testimony of W. Micou. The host's responsibilities with regard to submission of data for its subtending LECs differs depending upon the RAO status of the independent company. Id. An independent LEC which has applied to Bellcore and received full Revenue Accounting Office (RAO) status has responsibility for the formatting and packing of its own messages which the host then forwards to CMDS. Id. The host of a non-full RAO status company performs the formatting and packing function for the independent company and then submits the packs to CMDS. Id. Up until January of 1992 Fidelity was a non-full RAO status company and Southwestern Bell formatted, packed and

---

<sup>15</sup> IXC's are also permitted to participate in CMDS and they can be directly hosted by a direct participant or indirectly hosted by an indirect participant which is itself hosted by a direct participant.

submitted its messages to CMDS at no charge. Testimony of J. Davis; R. Taylor. During that time period, Fidelity never submitted non-LEC messages. Id. In August 1991 Fidelity applied for full RAO status. See Defendant's Exh. 11. The letter application informed Southwestern Bell that Fidelity wished to become a full status RAO for the nine exchanges Fidelity serves, all within the state of Missouri, but did not reference Fidelity's intent to submit messages which originated in exchanges outside of Fidelity's territory. Id. Bellcore granted Fidelity its RAO in January 1992. In the next full CATS cycle Fidelity began to submit messages which originated well beyond its nine exchanges and well beyond the state of Missouri. Testimony of R. Taylor, J. Davis.

C. BACKGROUND INFORMATION ON FIDELITY'S USE OF CATS  
FOR IXC MESSAGES

Fidelity's "Creative Concept"

Beginning in February 1992, Fidelity began to submit IXC transported messages for settlement through CATS. Testimony of R. Taylor. Fidelity's preparation for its business venture in IXC billing and collections began much earlier in mid-1991. Kenneth Matzdorff, a Vice-President at Fidelity first conceived of the idea to use the LEC-to-LEC settlement system for IXC messages in 1990 when he was still employed at Contel, another independent LEC.<sup>16</sup> Testimony of K. Matzdorff. Mr. Matzdorff developed a familiarity with the CATS system in his work at Contel in the area of LEC

---

<sup>16</sup> Mr. Matzdorff testified that Contel has never, to his knowledge, submitted IXC messages to CATS.

billing and collections. Id. During that period of time, he also had occasion to work with Alex Abjornson, Fidelity's contingency fee-consultant in this case, while Mr. Abjornson was still employed at Bellcore in charge of the CATS system. Id. (Just three months after Mr. Matzdorff began his employment at Fidelity he first mentioned his idea about using the CATS system for IXC messages to Fidelity President, John Davis during a staff meeting while they were discussing the feasibility of Fidelity becoming a full status RAO company. Id.

Fidelity consulted with Mr. Abjornson concerning the parameters of CATS and what Fidelity's responsibilities would be as a full status RAO. Testimony of J. Davis. Later, in the fall of 1991, Fidelity began contract negotiations with Capitol Network Systems, Inc. (CNSI), a Texas-based operator services provider which eventually agreed to sell messages to Fidelity in exchange for Fidelity's promise to obtain billing and collections for its messages through CATS. Testimony of R. Rowland; K. Matzdorff; see also, Defendant's Exh. 9. During this preparation stage Mr. Abjornson also brought Fidelity together with Michael Lovern, the President of National Teleprocessing, Inc. (NTI) and its subsidiary, American Teledial Corporation, Inc. (ATC), which later signed a Purchase of Accounts Receivables contract with Fidelity in March 1992 on similar terms and conditions as the CNSI contract. See Defendant's Exh. 10. Fidelity's preparations also included discussions with lending institutions to obtain funds to finance the new business venture. Testimony of J. Davis.

One of Mr. Abjornson's primary roles as consultant to Fidelity<sup>17</sup> was to assist Fidelity in formatting its messages for inclusion in CMDS and CATS because as a full status RAO Fidelity had to assume that responsibility in January 1992. Testimony of J. Davis; A. Abjornson. Mr. Abjornson was seemingly well-equipped for this task as he was a co-author of the EMR while employed at Bellcore. Testimony of A. Abjornson. He testified that he relied solely upon the EMR in assisting Fidelity both in determining the proper use of CATS and in formatting Fidelity's messages, rather than on any discussions with Southwestern Bell, or even reference to the CATS practice which Abjornson admitted governed the parameters of CATS.<sup>18</sup> Id. Fidelity in turn relied upon the advice

---

<sup>17</sup> Mr. Abjornson also has separate consulting arrangements with both CNSI and ATC.

<sup>18</sup> Fidelity takes the position that its preparation efforts included meeting with Southwestern Bell personnel to advise them of Fidelity's plans. Testimony of J. Davis; K. Matzdorff. Mr. Matzdorff testified about a January 15, 1992 meeting with Joyce Roberts and Larry Rucker. However, Mr. Matzdorff conceded that he did not specifically mention IXC messages at that meeting, even though the decision to enter into that venture had been made approximately one month earlier. Instead, the discussion centered around Fidelity's plans to purchase messages "from other carriers," a practice which is a common and permissible in the context of the Missouri local exchange company intercompany compensation plan: the Primary Toll Carrier Plan, but which would only involve messages of other LECs using Fidelity as their Primary Toll Carrier. Id. Finally, the January 15, 1992 meeting occurred after Fidelity had already signed a contract with Alex Abjornson wherein Fidelity agreed to compensate Mr. Abjornson for his services based entirely upon the profits, if any, to be earned by Fidelity's unique use of the CATS system to bill, collect and settle for IXC messages. See, Defendant's Exh. 13.

of Mr. Abjornson in coding its IXC messages in such a way as to be accepted by CATS.<sup>19</sup> Id.

#### Fidelity's Coding of its IXC Messages

The record is clear that Fidelity submitted false information regarding its purchased IXC messages before CMDS would recognize and copy the messages for inclusion in CATS. Testimony of W. Micou. Those changes were made by Fidelity personnel without Southwestern Bell's knowledge or assistance. Testimony of R. Taylor. Absent the deliberate falsification of information, the messages would have been automatically rejected by the BOC CATS system.

Fidelity's chief computer operations manager, Dan Kerr testified in deposition testimony, which was made a part of the record at the hearing, that he wrote a program sometime in January 1992 which caused certain key aspects of the purchased messages to be recoded such that the messages appeared as if Fidelity had transported the underlying calls. See Deposition of Dan Kerr at pp. 14, 18-20. The changes made to each message by Mr. Kerr's

---

<sup>19</sup> Nevertheless, Fidelity takes the position that Joan Machinsky assisted them in late February to successfully code the first batch of IXC messages submitted that month. Testimony of J. Davis; K. Matzdorff. To put Fidelity's "reliance" claim in proper perspective, Mr. Matzdorff also testified that Fidelity, which had already signed contracts with Mr. Abjornson and CNSI, was certainly not seeking Ms. Machinsky's permission to use the CATS system for its IXC messages and that it had no intention of backing away from its plan had she told Fidelity that use of the CATS system for IXC messages was improper. Testimony of K. Matzdorff. In any event, as Mr. Matzdorff further testified, Ms. Machinsky told him just that in March 1992, when the first CATS report came out reflecting the IXC messages, and Fidelity did not back down at that time. Id.



program were in the "from RAO" field. Instead of accurately reflecting the actual RAO, Fidelity falsified the information to identify the originating exchange as a Fidelity exchange on each call. In addition, Fidelity falsified the LATA indicator so that the calls which were interLATA in nature (IXC transported) would appear as intraLATA calls. Fidelity also set the Intercompany Settlements Indicator (ICS) to incorrectly signify that the purchased messages qualified for CATS settlements. Finally, Fidelity replaced the transporting IXC's Carrier Identification Code (CIC) with the 000 code reserved in CMDS for LEC transported traffic. Id. Without each of these falsifications the messages would automatically have been edited out by the system. Testimony of W. Micou. The record is clear that Fidelity consciously and knowingly developed a scheme that is based on the submission of false information to obtain access to a system that it had no right to access for its purpose.

**Fidelity's Notice Concerning Use of CATS  
Southwestern's Reaction**

In its Brief Fidelity continues to claim that "at no time prior to February 21, 1992, did Southwestern Bell or Bellcore inform Fidelity that the submission of its messages directly into CMDS and CATS was prohibited." Brief at p. 10. This claim is particularly surprising because the IXC messages were processed only because Fidelity falsified the message characteristics to gain entrance to a system which would have otherwise rejected the messages. Further, the CMDS Users Guide which Southwestern Bell sent to Fidelity on three separate occasions in early to mid-1991

specifically states that IXC messages do not get settled through CATS. See p. 10, supra; Defendant's Exhs. 21, 22 & 23, at p. 1-1.

The evidence shows that Southwestern Bell first discovered that Fidelity was submitting recoded IXC messages to CATS in mid-March 1992 when the February BOC CATS report was issued. Testimony of R. Taylor. Although Southwestern Bell believed that Fidelity's use of CATS was improper, it did not want to hold money which did not belong to it, and so reserving all rights, it agreed to remit 90% to Fidelity. Id. That agreement was in place through July 1992 at which time Southwestern Bell began to remit the 10% which had been retained in an attempt to avoid additional litigation. Id. Even while agreeing to remit moneys to Fidelity in April 1992, Southwestern Bell asked Fidelity to voluntarily stop misusing the CATS system. Id. When discussions and correspondence did not resolve the dispute, Southwestern Bell developed a screen which would reject any non-LEC messages submitted by Fidelity, but which would still allow for the proper submission and settlement of Fidelity LEC messages. Id. The screen was implemented after due notice to Fidelity. Although Fidelity's brief claims that the "screening process was jointly developed," with the other RBOCs and Bellcore, the testimony of Mr. Taylor was clear that although Southwestern Bell sought Bellcore's concurrence, the decision to screen was his alone. See Fidelity Brief at p. 21; Testimony of R. Taylor.

D. IMPACT ON OTHER LECs OF FIDELITY'S USE OF CATS FOR  
IXC MESSAGES

Forcing Other LECs to Bill For Fidelity

Prior to when Southwestern Bell implemented the screen, Fidelity submitted 300,000 messages worth approximately \$6.00 to \$10.00 per message, or over 3 million dollars in total. Testimony of K. Matzdorff; R. Rowland. LEC messages normally settled through CATS generally average around \$1.00 per message. Testimony of W. Micou; J. Yancey. (During the Franklin county TRO alone, Fidelity submitted over \$500,000 worth of IXC messages. Testimony of R. Taylor.

The 300,000 plus IXC messages Fidelity submitted to the CATS system during the spring of 1992 were billed and collected by potentially all of the 1200 local exchange companies throughout the nation. Notwithstanding that fact, Fidelity did not at any time, either prior to the initiation of its plan, nor after, contact any of the 1200 LECs, orally or in writing, to advise these "billing entities"<sup>20</sup> of its plan, nor to instruct these companies on how to handle the inevitable customer inquiries. Testimony of K. Matzdorff.

Witnesses from Southwestern Bell, Cincinnati Bell and Pacific Bell established that numerous inquiries have been made by confused and angry customers who are not accustomed to the appearance of high priced and in many cases old IXC messages (see D. Kerr

---

<sup>20</sup> The contracts with both CNSI and ATC expressly reference the 1200 LECs as the "billing entities" who will perform primary inquiry on Fidelity's purchased messages.

Deposition at p. 25) on their LEC bill pages, and who were unable to identify the carriers responsible for providing the service and rating the messages.<sup>21</sup> As explained by Southwestern Bell Area Manager-Contract Development, James Yancey, Southwestern Bell's business offices are not currently equipped to handle inquiries on Fidelity's IXC calls and could not be equipped to do so without considerable expense and the identification by Fidelity of the underlying carrier on each call. Sandy Salas a billing specialist at Pacific Bell testified that ninety percent of the Fidelity IXC calls which were submitted to her Company for billing were unbillable and had to be returned. To compound the problem, in order to answer customers' questions on these calls, Ms. Salas had to manually retrace the calls to Fidelity because Pacific Bell's business office is not equipped to handle inquiries on IXC traffic submitted to CATS. Testimony of S. Salas. Mr. Yancey, who wrote the computer program required at Divestiture to track IXC messages being billed by Southwestern Bell, explained that the modification required for Fidelity's IXC messages to be properly handled at Southwestern Bell would not be easy to create. Testimony of J. Yancey. It took 300 man years to create the existing program and to revise or duplicate it for use with CATS would be a time consuming and expensive undertaking. Id.

---

<sup>21</sup> The Court also has received the positions of the United States Telephone Association and The Telephone Cooperative Association expressing their opposition to Fidelity's use of CATS for IXC messages.

### Bill Appearance Issues

The appearance of IXC messages on the bill pages of Southwestern Bell and other LECs is not just a customer confusion concern for these companies. Exhibits marked and received into evidence at the hearing demonstrate the degree of state regulation over the billing of IXC calls by LECs. See pp. 65-67, *infra*; Appendix B. These regulations require the identification on customer bills of the IXC who transported and rated a call in order to facilitate the ability of customers to make inquiries and to require the operator services industry to take responsibility for their own services and charges.<sup>22</sup> See Appendix B; Testimony of J. Yancey. Although Fidelity was, at the time of its submission of IXC messages to CATS, aware of at least four states which prohibited LECs from placing such messages on their bill pages without identification of the actual service provider, it did nothing to advise the affected LECs that the messages would be submitted to CATS so that these companies could take whatever action each might find necessary or appropriate to avoid violations of state law. Testimony of K. Matzdorff. In any event, it is doubtful that Fidelity could have then, or even now, provided these LECs with the information necessary to comply with their individual state subentity billing requirements, because as Mr. Matzdorff and Mr. Davis both testified Fidelity does not know the quantity, nor

---

<sup>22</sup> Unlike local exchange companies which are extensively regulated by both state and federal agencies, IXCs and operator services providers are subject to little regulatory oversight. Mr. Rowland testified that CNSI's rates are not regulated.

the identity of the IXCs whose calls Fidelity has caused to be billed by the LECs as a result of submission of its IXC messages to CATS.<sup>23</sup>

In addition to state subentity billing requirements, the RBOCs have unique MFJ restrictions on the billing of IXC messages. No RBOC may transport a call across LATA boundaries, nor may an RBOC do anything to give the appearance that it provides such a service. See Plaintiff's Exh. 33 (the MFJ). Fidelity's use of CATS for IXC messages which appeared on RBOC bill pages without any IXC identifier gives the appearance that an RBOC was transporting interLATA calls. Testimony of J. Yancey. Additionally, because the RBOCs, who together with Cincinnati Bell and SNET own the vehicle through which Fidelity has received IXC billing and collection services under substantially different terms and conditions than they are willing to provide to other IXCs, the RBOCs have been accused of having discriminated in favor of Fidelity's IXC customers. Id; see also, Defendant's Exhs. 31 & 32.

#### E. BILLING & COLLECTIONS SERVICES FOR IXCS

##### LEC Billing & Collections Services

Southwestern Bell, the other RBOCs, and many of the 1200 independent LECs throughout the nation offer billing and collection services for interexchange carrier transported calls. Testimony of

---

<sup>23</sup> ATC is a bill aggregator which purchases the messages of other IXCs and operator services providers and submits those messages to Fidelity pursuant to their contract. No one at Fidelity knows the identity of the companies for whom ATC aggregates.

J. Yancey. (The services which include Billing Name and Address (BNA) agreements and traditional billing and collection agreements) are offered pursuant to contracts or tariffs<sup>24</sup> at rates which are generally different and higher than the nickel rate reflected in the reciprocal CATS system. Testimony of J. Yancey; see also, testimony of Ron McClenan, Vice President of ATC. Contrary to Fidelity's claims that Southwestern Bell has engaged in a concerted refusal to deal, the testimony of four witnesses at the hearing demonstrated that Southwestern Bell has a BNA with both CNSI and ATC and a billing and collections contract with CNSI. Additionally, Southwestern Bell offered a billing and collections agreement to Fidelity in May 1992, which Fidelity declined. Testimony of J. Yancey; R. McClenan; R. Rowland, and K. Matzdorff. There was no evidence at the hearing that any RBOC has refused to provide billing and collections services to Fidelity or any of its partners, in fact Mr. Rowland and Mr. McClenan testified that their companies have agreements with all of the RBOCs.

The rates for the various billing and collections services are set by each individual company to cover that company's costs.<sup>25</sup>

---

<sup>24</sup> Billing and collection rates which are set by tariffs cannot be implemented without the approval of the state regulatory authorities.

<sup>25</sup> Fidelity's brief alleges that all of the RBOCs "fear the loss of the lucrative income stream," Brief at p.3, and that \$700,000,000 per year in revenues to the RBOCs" is at stake. Brief at p. 15. The other RBOCs are not parties to this case because of Fidelity's preference in that regard, and there was no testimony at the hearing concerning the revenues or motivations of non-parties, particularly not a \$700 million dollar figure; nevertheless SWB would agree that the other RBOCs will be substantially harmed by the issuance of an injunction.

Testimony of J. Yancey. Mr. McClenan agreed that LECs should be able to recover their individual costs when they do IXC billing. In most cases, billing & collections providers, like Southwestern Bell, strictly control the age and the type of messages for which they will bill. Notwithstanding the 350 day edit contained in CMDS, Southwestern Bell will not bill messages which are over 90 days old because collectibility diminishes significantly with age. Id. Other LECs have similar age restrictions. Id. Southwestern Bell also has special provisions in its billing and collections contracts to protect it against the liability associated with IXC uncollectibles which tend to be significantly higher than LEC uncollectibles. Id.; see also, Defendant's Exh. 29, Southwestern Bell Billing Policy Guidelines.

#### **IXC Billing & Collection Market**

In addition to the services provided by LECs, IXCs can do their own billing, obtain billing through billing aggregators or use the services of independent company organizations like USINTELCO, NECA and USTA who act as aggregators on behalf of many of the smaller local exchange telephone companies. Testimony of R. Rowland; R. McClenan. Not every LEC in the nation desires to be in the business of billing and collecting for IXC traffic and, therefore some decline to enter into billing and collection arrangements with IXCs. The number of access lines (customers phones) which cannot be reached by IXCs through billing and collection contracts is only 2-5% because the LECs who do not wish



to engage in that business are the very small.<sup>26</sup> See Testimony of D. Little; R. Rowland. The issue of whether or not these companies should be required to provide billing and collections services to IXCs has been addressed by the FCC in recent dockets. Testimony of R. Rowland; Infra at pp. 58-59. Although that regulatory agency has expressed some concern that local exchange companies should, perhaps in the future if a need can be demonstrated, be required to provide the billing name and address information to IXCs (so that the IXCs can do their own billing, the FCC has expressly declined to require LECs to themselves provide billing and collections services to IXCs. Testimony of R. Rowland.

In its Brief Fidelity takes the position that access to CATS for IXC billing will result in costs savings to customers. Brief at p. 16. Such a claim is purely speculative because the rates of IXCs and operator services providers like CNSI, ATC and the others that Fidelity could not identify, are not regulated by the state and federal regulatory agencies and thus these companies could not be forced to pass those savings on to their customers. In any event given the tremendous expense associated with transforming LECs billing systems, like Southwestern Bell's, to accommodate Fidelity's messages through CATS in a manner which would permit compliance with subentity billing requirements, it is unlikely that

---

<sup>26</sup> Mr. Rowland testified that the number of companies that do not provide billing and collection services may be as high as 400, but he did not know the number of access lines served by these companies.

the nickel rate and cost savings would continue.<sup>27</sup> Testimony of J. Yancey.

#### **Southwestern Bell & Fidelity as Competitors**

Fidelity witnesses John Davis and Ken Matzdorff testified that their company considers Southwestern Bell to be its competitor in the billing and collections market. Nevertheless, Mr. Matzdorff admitted that Southwestern Bell does not bill nationwide, as Fidelity hopes to do. Most importantly, Fidelity is seeking access to a system to facilitate the billing of IXC calls when it is undisputed that Southwestern Bell does not use BOC CATS to provide the billing and collections services to its 82 billing and collections customers.<sup>28</sup> Testimony of K. Matzdorff. The traditional billing and collections services which Fidelity provides to its customers, AT&T and MCI, do not use CATS either and the charge is more than the nickel rate charged in CATS settlements.<sup>29</sup> Finally, the markets of Southwestern Bell and

---

<sup>27</sup> The nickel rate after all is based on a variety of factors which would be destroyed if CATS were expanded as Fidelity proposes. The kinds of calls, volumes of calls, average dollar amounts per call and uncollectibles would change. Regulated and unregulated charges would be processed without distinction. The IXCs receiving billing and collection services from the LECs are in no position to provide billing and collections services to the LECs. In short, there would be no reciprocity and balance left in a settlement system which requires reciprocity and balance.

<sup>28</sup> Some of Southwestern Bell's contracts are with bill aggregators. The number of IXCs and operator services providers who obtain billing and collections services through Southwestern Bell directly and indirectly is 1045.

<sup>29</sup> Mr. Matzdorff testified that Fidelity sought to purchase messages from MCI for inclusion in CATS. Given the significant difference in price between the reciprocal CATS system and the nonreciprocal tradition billing and collection services, MCI's

Fidelity are not the same: Fidelity is acting as an aggregator by seeking the billing of services that it does not provide. Southwestern Bell rather than being a bill aggregator, is a bill renderer on behalf of IXCs and others.

### III. ARGUMENT

#### A. PLAINTIFF MUST PREVAIL ON THE MERITS OF ITS SUIT IN ORDER TO QUALIFY FOR INJUNCTIVE RELIEF

Although Plaintiff's Brief does not acknowledge it, pursuant to the consent of the parties, the hearing on Plaintiff's request for preliminary injunctive relief was consolidated with the hearing on a permanent injunction per the provisions of Rule 65(a)(2). Therefore, in order to prevail on its request for a permanent injunction, Plaintiff is required to prove the four elements established by the Eighth Circuit in Dataphase Systems, Inc. v. C. L. Systems, Inc., 640 F.2d 109 (8th Cir. 1981), with one very important modification: the probability of success on the merits prong is replaced by the more stringent requirement that Plaintiff prove actual success on the merits of its cause of action. Current-Jacks Fork Canoe Rental Assoc. v. Clark, 630 F. Supp. 421, 424-425 (E.D. Mo. 1985).

The relaxed standard argued by Plaintiff in its brief may be proper in the context of some preliminary injunction proceedings, under much different claims of irreparable harm, but would clearly

---

disinterest in the cost savings suggests that traditional billing and collections alternative is quite viable for at least one large IXC.

not be apply in this case where the request is for a permanent injunction and the harm to the Defendants and third parties outweighs Plaintiff's damages. In this case Plaintiff must demonstrate that it has prevailed on at least one of its theories in order to be entitled to a permanent injunction. Fidelity has not demonstrated the elements of even one of the five counts under which injunctive relief has been sought, and thus its request must be denied. Additionally as set forth below, Fidelity has failed to sustain its burden of proof on the other three required Dataphase steps: irreparable harm to Plaintiff, that such harm outweighs any harm to the defendants, and that the interests of public policy will be furthered by issuance of an injunction. See Dataphase, supra at 114.

B. PLAINTIFF WILL NOT SUFFER IRREPARABLE HARM BY THE DENIAL OF INJUNCTIVE RELIEF

The overwhelming majority of Fidelity's evidence on the issue of harm focused on the business needs and aspirations of its IXC partners, ATC and CNSI. The testimony of two of Fidelity's five witnesses, Mr. Rowland with CNSI and Mr. McClenan with ATC, stressed the arrangements which IXCs must make when they seek to obtain nationwide billing and collection arrangements. Both witnesses were very aware of how IXC billing can be done, and in fact how it is currently being done by hundreds of IXCs, but complained of the expense and difficulties inherent in dealing with a multiplicity of billing entities who, like Fidelity, wish to negotiate their own billing services arrangements with operator

service providers<sup>30</sup> and how easy and inexpensive billing and collections would be if all 1200 LECs had no choice, but to bill their non-rate regulated, higher priced<sup>31</sup> services on local exchange companies' bills. See Testimony of R. Rowland; R McClenan.

Mr. Rowland and Mr. McClenan expressed their hope that this Court would do what the FCC has refused to do by requiring all 1200 LECs to do billing for these IXCs.<sup>32</sup> While Fidelity has worked to create the illusion that this has been brought solely on its own behalf, rather than on behalf of its IXC partners, Fidelity would now have the Court look to the business discomfort of its partners to bootstrap irreparable harm.

The simple reality is that CATS is and has always been a LEC-to-LEC settlement system which Fidelity has the right to use for

---

<sup>30</sup> John Davis testified that Fidelity did not allow USINTELCO to negotiate billing and collections arrangements for operator services providers on Fidelity's behalf, as USINTELCO does for hundreds of small LECs, because Fidelity likes to negotiate directly with such companies.

<sup>31</sup> Despite Mr. Rowland's refusal to admit that his company, CNSI, was cited by the FCC as one of the 12 worst offenders in the operator services industry in terms of high prices and insufficient customer information, FCC Docket No. CC 91-226 (copy attached), evidences that fact and indicates the type of company that Fidelity is seeking to force all LECs to deal with in a blind business arrangement.

<sup>32</sup> The number 400 was used by attorneys for Plaintiffs, but as Southwestern Bell currently serves 1045 indirect billing and collections customers, the real number is much higher. These IXCs and others throughout the nation are currently accomplishing their own billing without resort to an end run around the FCC's refusal to force LECs to provide billing and collections services in a very competitive market where other alternatives exist.

its LEC messages just like all other LECs. It borders on the frivolous for Fidelity to argue that it will now be irreparably harmed if this Court does not order Southwestern Bell to permit use of BOC CATS in a way that it has never been used (for IXC messages) in a market in which hundreds of interexchange carriers have been using many alternative billing options for many years to bill countless billions of IXC messages. The evidence at the hearing clearly established that notwithstanding Mr. Matzdorff's unsubstantiated suspicions, which were refuted by Cincinnati Bell witness, Gary Scheffel, and William Micou of Bellcore, every LEC is being treated exactly the same, as is every IXC.

The evidence of Fidelity's irreparable harm was limited to the conclusory testimony of Fidelity President, John Davis stating that he had no way of estimating Fidelity's damages due to his inability to project the volume of messages Fidelity would be purchasing from its IXC partners in the future. Testimony of J. Davis. Nevertheless, Fidelity obtained a twelve month projection from CNSI of the number and dollar value of messages CNSI would be submitting to CATS in October of 1991 well before the project got off the ground. Testimony of K. Matzdorff; see also, Defendant's Exh. 3. That information was used to establish the purchase price under their contract. Testimony of K. Matzdorff. Additionally Fidelity's testimony referenced bank loans and the financing of the purchase of CNSI messages which could not have been accomplished without some projections regarding the anticipated volume of business and profits. See generally Testimony of J. Davis; K.

Matzdorff. The estimation of future growth in business is a common commercial undertaking and such lost future profits are the precise type of damage for which litigants are routinely compensated with monetary awards in commercial disputes. Fidelity's position is that it will not estimate its damages, when it is clearly able to do so, and is in the sole position to do so. That is not the same as where damages cannot be quantified and is thus not the type of damage for which injunctive relief is a necessary alternative.

John Davis also testified about his fear that his company's business opportunities would be lost by its inability to use the CATS system to process IXC messages. The IXC venture is a new line of business for Fidelity and one which they recognized all along was at risk as can be seen from the way in which they negotiated their contracts. See Defendant's Exhs. 9 & 10. Mr. Davis testified that Fidelity exercised an option in its contracts with CNSI and ATC to cease performance due to an inability to use CATS to obtain billing and collection on the IXC messages.

In any event, Fidelity's IXC partners testified that notwithstanding the existence of other billing alternatives which they must currently use during Southwestern Bell's screen, that their companies would be back at Fidelity's doorstep in a minute if the CATS system were opened to their IXC traffic. Testimony of R. Rowland; R. McClenan. The long term viability of Fidelity's plan will not be harmed by the denial of an injunction because there will always be IXCs and operator service providers ready to do business with the least cost billing alternative, even if it means

forcing companies which have heretofore refused to do business with such companies to do business with them on terms which are not negotiable.

C. FIDELITY HAS NOT PRESENTED PROOF SUFFICIENT TO  
PREVAIL ON THE MERITS OF THE CLAIMS IDENTIFIED  
IN ITS MOTION FOR INJUNCTIVE RELIEF

Fidelity's Motion For Issuance of Temporary Restraining Order, Preliminary Injunction and Permanent Injunction relies upon Counts I (Breach of Contract, Third Party Beneficiary), III (Specific Performance), VI (Attempt to Monopolize, Conspiracy), VII (Essential Facilities), and VIII (Concerted Refusal to Deal) as grounds for the requested relief. Accordingly, Plaintiff is required to prevail on the merits of at least one of those counts to be entitled to a permanent injunction. Because each of the counts upon which Fidelity seeks injunctive relief before this Court arise, if at all, from the screening of Fidelity's IXC messages, Fidelity's entire case is barred by the doctrine of res judicata, which under Missouri law requires a Plaintiff to bring all causes of actions arising from a single transaction in one suit, the judgment from which suit will bar any additional suits on the same transaction. The doctrine is applicable here, notwithstanding the fact that Fidelity is actively pursuing its state court case on appeal, because an appeal does not prevent the application of the preclusive affect of a prior judgment. Consumers Oil Company v. Spiking, 171 S.W.2d 245, 251 (Mo. App. 1986). Beyond the doctrine of res judicata, Plaintiff is still not



entitled to injunctive relief from this Court, because a careful examination of the evidence demonstrates that Plaintiff has been unable to sustain its burden of proof on any one Count.

1. Plaintiff has not established success on the merits on Counts I & III.

Count I of Plaintiff's Second Amended Complaint alleges that Fidelity has a third party beneficiary right under the Administrator Agreement between Southwestern Bell and Bellcore for the maintenance of the CMDS and CATS systems. See Plaintiff's Exh.

5. Count III seeks specific performance based upon the Administrator Agreement and the EMR. Both of these claims are barred by the doctrines of res judicata and collateral estoppel as a result of Fidelity's failure to prevail under these same theories in the state court proceedings.

#### **Res Judicata & Collateral Estoppel**

Federal Courts are required to give state court judgments the same preclusive effect as the judgment would receive in the courts of the rendering state. Gahr v. Trammel, 796 F.2d 1063, 1066 (8th Cir. 1986). Accordingly, Missouri principals of claim preclusion govern. See Medina v. Wood River Pipe Line Co., 809 F.2d 531, 533 (8th Cir. 1987). Under Missouri law any claim that arises from the same act, contract or transaction must be brought at the same time or be precluded in future litigation. Grue v. Hensley, 210 S.W.2d 7, 10 (1948); see also, Barkley v. Carter County State Bank, 791 S.W.2d 906, 910-911 (Mo. App. 1990).

Plaintiff's suit in Franklin County focused upon the perceived

obligation of Southwestern Bell to provide Fidelity with access to the CATS system for IXC messages. However, the evidence at both injunction hearings revealed that no written contract exists.<sup>33</sup> Based upon that evidence Judge Brackman found that no contractual obligation existed. Accordingly, he granted Southwestern Bell's Motion to Dismiss at the close of Plaintiff's case at the June 25, 1992 preliminary injunction hearing.<sup>34</sup>

#### **Merits of Fidelity's Contract Theories**

Even without the doctrine of res judicata, Fidelity could not prevail on Counts I & III because the evidence at the permanent injunction hearing does not support the existence of a contractual right which allows Fidelity to use the CATS system for messages transported by unidentified IXCs to be billed by all 1200 local exchange companies throughout the nation.

Under Missouri law a contract without a termination date is terminable at will, and Southwestern Bell terminated any "contract" allowing the use of CATS for IXC messages when it began to screen the IXC messages more than three months ago. See Paisley

---

<sup>33</sup> Mr. Abjornson testified in both that court and in this, the EMR is not a static document, it has no parties, nor signatures, nor even a termination date.

<sup>34</sup> Subsequently at a hearing held on July 1, 1992, again before Judge John Brackman, Fidelity's Motion to Set Aside the Dismissal was overruled. The grounds Fidelity urged included the same third party beneficiary right under the Administrator Agreement set forth in Counts I & III of its Second Amended Complaint before this Court, and the obligation of Southwestern Bell pursuant to the Modification of Final Judgment to provide access to CATS for Fidelity's IXC messages. Fidelity apparently repudiated its MFJ theory in argument at the hearings before this Court.

v. Lucas, 143 S.W.2d 262, 271 (Mo. 1940) (holding that a written agreement without a specific duration is terminable at will by either party). In Knox County Court v. Benson, 706 S.W.2d 215 (Mo. App. 1985) the court reversed an order for specific performance of a contract to maintain bridges because the written contract did not contain a termination date and the defendant had terminated the agreement. In this case specific performance would be equally inappropriate because the "contract," if any, was clearly terminated. See Plaintiff's Exh. 13, May 7, 1992 letter from R. Taylor to K. Matzdorff.

Similarly, the law with regard to third party beneficiary rights under contract does not support Fidelity's claim. One who is not a party or in privity with a party to a contract may maintain an action for breach of contract only if it can be established that the contracting parties intended to make the contract for his benefit. Volume Services, Inc. v. C. F. Murphy & Associates, Inc., 656 S.W.2d 785 at 794-795 (Mo. App. 1983). In this case where all of the evidence established that CATS was designed for services provided by local exchange companies exclusively and that no company, other than Fidelity, has ever believed otherwise, and where the plain language of the Administrator Agreement does not provide otherwise, Plaintiff cannot create a third party beneficiary interest in that contract which is contrary to the intent and performance of the parties to that contract: Southwestern Bell and Bellcore.

In Volume Services, Inc., supra, the court held that the question of intent to benefit a third part is a question of fact:

Such an allegation can only be proven either through express provisions in each contract, or through ambiguous contractual language coupled with surrounding circumstances demonstrating that the defendants would assume a direct obligation to plaintiff sufficient to overcome the presumption that absent express declaration, parties do not contract for the benefit of others.

- 656 S.W.2d at 795. In this case where the plain language of the contract does not demonstrate an intent to benefit Plaintiff by allowing it the right to use CATS in a unique way, and where the evidence demonstrates that the purpose of the CATS system is and has always been for the benefit of LECs settling with each other for like messages, Fidelity cannot sustain its burden to transform the Administrator Agreement into a vehicle through which Fidelity can force 1200 LECs to provide billing and collections services to Fidelity's partners on terms and conditions that these LECs would not otherwise agree upon.

The utter absurdity of Fidelity's contract claims is Fidelity's own admission that it could not submit IXC messages into the BOC CATS system without miscoding them so as to falsify the identity of the company that carried the calls and other information. See discussion of Fidelity's miscoding of messages supra at p. 18. Fidelity's need to miscode these messages proves the lack of a contract between Southwestern Bell and Fidelity for the processing of IXC messages through CATS.

2. Plaintiff has not proved its claims under Counts VI, VII, or VIII.

In state court, Fidelity did not seek relief under the Missouri antitrust statutes (§§ 416.031, 416.121 RSMo 1986) prohibiting unlawful restraints of trade, monopolization, attempts to monopolize, and conspiracy to monopolize. In this suit, Fidelity's antitrust counts were not even included in Fidelity's original complaint. Fidelity now states: "This is principally an antitrust case." See Brief at 2. If so, it is only because Fidelity has no other pretext for seeking injunctive relief and not because there is any basis for Fidelity's antitrust claims.

Although it has now cloaked its claims in the language of federal antitrust law, Fidelity has made no attempt to support its antitrust claims with anything remotely resembling conventional antitrust analysis. For that reason, Fidelity's antitrust claims are virtually unintelligible and it is difficult to respond to them. Nevertheless, Southwestern Bell would respectfully show that there is no merit to any of Fidelity's antitrust claims.

#### **Res Judicata**

Before addressing Fidelity's antitrust claims on the merits, Southwestern Bell reasserts its position that all such claims are barred by the doctrine of claim preclusion. If Fidelity had filed suit in this Court originally, Fidelity could have litigated all of its state and federal claims against Southwestern Bell -- including its so-called "antitrust" claims -- in a single suit. Instead, Fidelity deliberately filed suit in the Franklin County Circuit Court -- a court with no jurisdiction over federal antitrust claims. In that suit, Fidelity chose not to assert state law antitrust claims -- claims which would have been identical to the

federal antitrust claims now before this Court. See §§416.031 and 416.121, RSMo (1986).

Southwestern Bell submits that the Missouri Supreme Court, if given a chance to decide the issue, would hold that res judicata bars Fidelity's federal as well as its state antitrust claims. That result would be consistent with Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 380, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985), in which the Court stated: "Our decisions indicate that a state court judgment may in some circumstances have preclusive effect in a subsequent action within the exclusive jurisdiction of the federal courts."

The Eighth Circuit has not yet decided whether federal antitrust claims are barred by prior state court adjudications under the circumstances presented by this case. In Brannan v. Eisenstein, 804 F.2d 1041 (8th Cir. 1986), the Court held that a federal securities act claim would not be barred as a compulsory counterclaim which should have been filed in state court. The state court defendants in Brannan had not selected the original forum and were not guilty of claim splitting. In holding that their federal securities claims were not barred, the Court concluded that the Missouri Supreme Court would not interpret Missouri's compulsory counterclaim rules as requiring defendants to file counterclaims over which the Missouri courts could not possibly exercise jurisdiction. Id. at 1044-45. Nothing in Brannan suggests that the Eighth Circuit would hold that forum-shopping plaintiffs may split federal and state claims to circumvent Missouri's anti-claim-splitting policies.

### Antitrust Analysis

Fidelity has wholly failed to prove that competition has been injured by the defendants' conduct. To begin with, Fidelity has not adequately defined relevant product and geographic markets. Fidelity's antitrust claims must therefore fail. See Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp., 382 U.S. 172, 177, 86 S.Ct. 347, 15 L.Ed.2d 247 (1965) (without an adequate market definition, there is no way to measure the defendant's ability to lessen or destroy competition); United States v. E.I. du Pont de Nemours & Co., 351 U.S. 377, 76 S.Ct. 994, 100 L.Ed. 994 (1956) (illegal power must be appraised in terms of the competitive market for the product); Consul, Ltd. v. Transco Energy Co., 805 F.2d 490-492 (4th Cir. 1986) (in antitrust litigation, the plaintiff bears the burden of defining and proving the existence of product and geographic markets subject to monopolization).

To be sure, Fidelity has invoked some of the terminology of antitrust law. In its Second Amended Complaint, Fidelity alleged that the defendants were attempting to monopolize and conspiring to monopolize what it called "the market in the United States for the collection, distribution and billing of collect, credit-card and third-number calls on behalf of LECs." Fidelity now states:

Fidelity is seeking to enter a relative [sic] market defined as "the settlement of charges for '0+' dialed telephone calls originating in one of the 50 states."

Brief at 15. These attempts at market definition, however, are wholly unsupported by evidence and provide no assistance in

explaining the economic realities of competition in any relevant market.

Fidelity states that "The record is clear that Fidelity and Southwestern Bell are competitors in the relevant market as are Fidelity and the other RBOCs and AT&T." Brief at 24. Having proclaimed that the record is "clear," Fidelity makes no attempt to explain how Fidelity competes in any relevant market with Southwestern Bell, the other RBOCs, or AT&T. Instead the evidence demonstrated that Fidelity seeks to compete as a billing aggregator, whereas Southwestern Bell is a bill renderer. Further, Fidelity testified that it seeks to obtain billing and collection services nationwide, but Southwestern Bell only provides bill rendering services in five of the fifty states. Testimony of J. Yancey.

Aside from these and similar generalizations -- which are contrary to the evidence at the hearing -- Fidelity has made no attempt to identify relevant markets or to demonstrate how the defendants have monopolized, attempted to monopolize, conspired to monopolize, or conspired to restrain trade in any such markets.

#### **Essential Facilities**

Fidelity states that "for Fidelity to be able to enter the relevant market, it must have access to CATS." Brief at 24. The record reflects, however, that it has not been essential for Fidelity's competitors to have access to CATS. In seeking a temporary restraining order, Fidelity assured the Court that it could and would prove that CATS was being used to settle messages attributable to calls transported to AT&T and that Fidelity was at



a competitive disadvantage because CATS was not being made available to settle messages attributable to calls transported by IXCs other than AT&T. Fidelity claimed that this discrimination in providing access to an essential facility violated the Sherman Act. The evidence shows that CATS has not been used by Southwestern Bell, the other RBOCs, or by any other firm in the settlement of messages attributable to AT&T-transported calls or other IXC-transported calls. For that reason, Fidelity has shifted the focus of its essential facilities claim and now asserts that access to CATS is essential in order for Fidelity to bill a variety of 0+ messages even though Fidelity's competitors do not have access to CATS for that purpose.

At the heart of Fidelity's essential facility claim is the assertion that Fidelity has "created a concept" and that without access to CATS "Fidelity cannot bring its new concept to the relevant market." Brief at 14-15. Fidelity virtually concedes that access to CATS is not essential for the collection, distribution and billing of collect, credit-card and third-number calls and is not essential to "the settlement of charges for '0+' dialed telephone calls originating in one of the 50 states." Access to CATS is only essential to Fidelity's novel scheme to force other LECs to provide Fidelity with billing and collection services at rates lower than those the LECs would offer under separately negotiated billing and collection contracts. Nor would any authority support Fidelity's claim (based on an "essential facilities" argument) for access to a facility (BOC CATS) for IXC messages that even this Defendant does not use for such messages.

No authority would support such an unprecedented application of the essential facilities doctrine.

Courts applying the essential facilities doctrine generally state that four requirements must be proved in order to establish liability under that doctrine. Fidelity has failed to prove any of them. The four requirements are:

- (1) the existence of an essential facility and control of that facility by a monopolist;
- (2) a competitor's inability practically or reasonably to duplicate the essential facility;
- (3) the monopolist's denial of the use of the facility to a competitor; and
- (4) the feasibility of providing the facility.

See MCI Communications Corp. v. American Telephone & Telegraph Co., 708 F.2d 1081, 1132-33 (7th Cir.), cert. denied, 464 U.S. 891, 104 S.Ct. 234, 78 L.Ed.2d 226 (1983).

The first fallacy of Fidelity's argument is that the facility claimed to be essential is not "essential" and has never been used for the purposes which Fidelity proposes. Large and small interexchange carriers, 0+ providers, and the many firms which provide billing and collection services to them have operated successfully without CATS for years. Southwestern Bell alone has 1045 customers which are provided billing and collections services without resort to BOC CATS. Testimony of J. Yancey.

The second fallacy of Fidelity's argument is that the facility claimed to be essential is claimed to be essential only because it achieves results which could not be achieved if the system were opened up as Fidelity proposes. Fidelity argues that

it must have access to CATS in order to obtain the benefit of the 5¢/message intercompany settlement rate -- a rate based on mutual undertakings among the nation's 1200 LECs to provide reciprocal services to each other's customers and to charge each other reciprocal rates for the billing and collection services they provide each other. The 5¢/message rate does not exist in a vacuum and applies only as part of a larger package in which each participating LEC agrees to charge its co-participants low rates in consideration for the co-participants' agreement to charge it the same low rates.

In this regard, it does not logically follow that arrangements which make sense in reciprocal billing situations will also make sense in non-reciprocal billing situations or that the LECs would agree to maintain a 5¢/message billing rate if the intercompany settlement procedures were opened up to new categories of services. To illustrate, it may make sense for physicians to offer low courtesy rates to each other on a reciprocal basis, but that does not mean that it makes sense for physicians to offer those same low rates to patients who will not reciprocate by offering medical services of their own at low courtesy rates. Although it may be efficient for LECs to provide low reciprocal billing and collection rates to each other for limited categories of LEC-transported toll calls, it does not logically follow that it would make economic sense for the LECs to provide those same reciprocal rates to each other or to other firms with respect to

different categories of communications services<sup>35</sup> where there is no possibility of receiving reciprocal benefits from the arrangement.

The third fallacy of Fidelity's argument is that the present defendants "control" the so-called essential facility. The assertion that the defendants control an essential facility is based on a misunderstanding of what CATS is and how it fits into the intercompany settlements process as a whole. CATS is a reporting system which facilitates the intercompany settlement arrangements among more than 1200 LECs. In reality, the intercompany settlement process -- and not the computer systems through which that process is supported -- is the "facility" which Fidelity deems "essential." It makes no difference what computer equipment or systems are used to facilitate the settlement of accounts as long as the companies agree upon the terms of settlement.

Under the existing intercompany settlement arrangements, the participating LECs have agreed to provide certain services for each other's subscribers in return for an agreement that they will provide each other with reciprocal billing and collection services to collect charges owing with respect to such services. By these

---

<sup>35</sup> Such services could include all IXC-transported calls, "1+" services, "0+" services of all kinds (including those furnished by Operator Services Providers or "OSPs"), or toll information services such as "1-900-number" services. Many of the firms providing these services are unregulated and the rates they charge may be considerably higher than the regulated rates charged by the LECs. Fidelity has not only failed to show why LECs should charge reciprocal billing and collection rates to firms which do not provide reciprocal billing and collections services to the LECs but has also failed to show why the LECs should be compelled to bill for these unregulated categories of service at all.

arrangements, the participating LECs have agreed to settle accounts with respect to two primary categories of calls: LEC-transported credit card calls and LEC-transported third number calls. The present arrangements do not provide for the settlement among LECs of IXC-related or 0+ services in general. Fidelity has not proved that Bellcore or Southwestern Bell have the power to force the nation's 1200 LECs to enter into new intercompany settlement procedures or to force the LECs to collect IXC-related accounts or 0+ accounts for Fidelity through the CATS settlement procedures. In this regard, neither Bellcore (as owner of the CATS system) nor Southwestern Bell (as CATS administrator or as Fidelity's host) can unilaterally expand the permitted uses of LEC intercompany settlement procedures by altering CATS hardware or software without the consent of the LECs participating directly or indirectly in CATS. Therefore, it is inaccurate to describe the defendants as "controlling" the facility which Fidelity claims to be "essential" in this case.

The fourth fallacy of Fidelity's argument is that the defendants are acting as Fidelity's competitors in the context of this case. As stated above, Fidelity is not in the position of an essential facilities "competitor" seeking equal or reasonable access to facilities being used by its competitors. Fidelity has failed to prove that any firm -- whether labeled as a "competitor" or otherwise -- uses CATS for the purposes which Fidelity claims to be "essential." Moreover, Fidelity is not actually seeking to provide billing and collection services in competition with its fellow LECs. Fidelity does not plan to send its own bills to other

LECs' subscribers with respect to the IXC-related or 0+ messages which Fidelity has acquired. Instead, Fidelity wants the LECs which it calls "competitors" to bill their subscribers on Fidelity's behalf and charge Fidelity rates lower than the rates the LECs would charge other firms for the same or similar billing and collection services. In this context, Fidelity is not a "competitor" seeking to provide its own billing and collection services but is merely an arbitrageur seeking to exploit a differential between the reciprocal rates the LECs charge each other for limited categories of LEC-transported calls and the rates the LECs charge each other and other firms for non-reciprocal billing and collection services. If there is "competition" between Fidelity and other LECs in this context, it is not the kind of "competition" contemplated by the essential facilities doctrine.<sup>36</sup>

The fifth fallacy of Fidelity's argument is that Fidelity has demonstrated its inability to duplicate those facilities required for Fidelity to provide billing and collection services to IXCs and 0+ providers. Fidelity has access to CATS on the same terms and conditions offered to its fellow LECs. By its own admission,

---

<sup>36</sup> Southwestern Bell offers billing and collection services only within its franchised service area. To the extent that Fidelity seeks to collect accounts owed by Southwestern Bell's subscribers, Fidelity proposes that SWBT directly bill those subscribers on Fidelity's behalf at rates lower than those currently offered to Fidelity's IXC partners and other firms. In this context, Southwestern Bell is a supplier of billing and collection services to Fidelity, not a competitor. If Fidelity has "competitors" in the IXC and 0+ billing and collection arena, those competitors are firms competing with Fidelity's IXC partners. Two of those firms have complained to Southwestern Bell that Fidelity and its partners, through the use of CATS, have obtained unfair competitive advantages for themselves. See Defendant's Exhs. 31 and 32.

Fidelity also has equal access to CMDS to route billing information to other LECs. Fidelity claims, however, that there are other LECs which are unwilling to provide IXCs with billing and collection services. If so, those companies should pursue whatever legal claims they believe they may have against those LECs rather than Fidelity suing the present defendants. Neither Southwestern Bell nor Bellcore are responsible for the billing and collection policies of those LECs which will not deal with Fidelity's partners.

The sixth fallacy of Fidelity's argument is that Fidelity has demonstrated that it is feasible for the defendants to provide Fidelity with expanded access to CATS. In this regard, Fidelity's analysis of the "feasibility" requirement misses the point entirely. Based upon the testimony at the hearing it is clear that it would be technically complex and very expensive for the CATS to be reprogrammed in order to process falsely coded IXC-related or 0+ messages. However, the real feasibility questions in this case are not technical feasibility questions, but rather economic feasibility questions. In determining whether it would be economically feasible to maintain intercompany settlement procedures such as those proposed by Fidelity, one would have to determine:

- (1) whether it would be economically feasible for the nation's 1200 LECs to open the CATS settlement procedures to Fidelity and all other purchasers of IXC-related and 0+ messages;

- (2) if so, whether it would be economically feasible to treat non-reciprocal billing and collection services provided with respect to IXC-related and 0+ messages in the same manner as reciprocal billing and collection services provided with respect to LEC-transported calls; and
- (3) if so, whether it would be economically feasible to charge the same 5¢/message rate presently charged for reciprocal billing and collection services provided only with respect to LEC-transported calls or whether different (and higher) rates should be built into the system.

Fidelity has made no attempt to prove what arrangements with respect to IXC-related and 0+ calls would be economically reasonable or feasible under CATS. Fidelity's simplistic analysis addresses only what would happen in the short run if no firm other than Fidelity were permitted to use CATS for the purposes proposed. Fidelity has merely asserted that it is technically possible for the CATS system to process miscoded billing messages on a relatively small scale without disrupting the entire CATS system, and then incorrectly suggested that it is the defendants' burden of proof to disprove its assertions. See Brief at p. 29. Fidelity's analysis is totally divorced from the business and economic realities of the market place, and the defendants have conclusively shown that it would make no economic sense for the LECs to conduct business in the manner Fidelity proposes. Testimony of W. Micou. In short, Fidelity has failed to prove any of the required elements of an essential facility claim.

**Monopolization, Attempt to Monopolize,  
and Conspiracy to Monopolize**

Fidelity has not briefed its Sherman Act § 2 claims (other than its essential facilities claim) and has not demonstrated that any relevant market has been monopolized or is susceptible to



monopolization. Moreover, Fidelity has not demonstrated how any allegedly improper actions taken by the defendants have resulted or could possibly result in the monopolization of any relevant market.

In this regard, Fidelity is not claiming that it is improper for the LECs to bill their customers for services rendered by other LECs, IXC's, or 0+ providers. Fidelity's case is built on the proposition that it is not only efficient and desirable but legally mandatory for LECs to bill their customers for services provided by other telecommunications providers, a result rejected by the FCC the MFJ Court and various state regulatory authorities. In essence, Fidelity claims that other LECs should be forced to bill their customers to collect amounts owing to Fidelity with respect to any IXC-related and 0+ messages which Fidelity purchases and that such services must be provided without a contract requiring the delivery of such services. Testimony of K. Matzdorff.

Fidelity has stated no economic or legal reason why LECs should not, in the absence of regulatory compulsion, be free to determine for themselves the terms and conditions under which they will bill their own customers for services provided to those customers by other telephone companies. Nevertheless, at the heart of Fidelity's case is the unexplained proposition that the antitrust laws compel the nation's LECs to participate in intercompany settlement arrangements which establish uniform procedures and uniform prices for the provision of billing and collection services with respect to IXC-related and 0+ messages. Fidelity seems to be suggesting that the nation's LECs should have established a single, uniform rate for billing and collecting IXC

and 0+ receivables and agreed to settle accounts relating to such receivables through the CATS settlement procedures or through similar clearinghouse procedures. Fidelity claims that the LECs' failure to enter into such agreements either constitutes "monopolization" or evidences "attempted monopolization" or a "conspiracy to monopolize."

As stated above, Fidelity has made no attempt to prove these §2 claims through anything resembling traditional antitrust analysis. Fidelity's §2 claims fail for another, equally fundamental reason. The antitrust laws were enacted to protect competition, not to further the special and peculiar interests of individual firms. See Cargill, Inc. v. Monfort of Colorado, Inc., 479 U.S. 104, 110, 107 S.Ct. 484, 93 L.Ed.2d 427 (1986). In this case, Fidelity has wholly failed to show how the defendants have injured or threatened to injure competition, or that the defendants have intended to injure competition by their actions. At most, Fidelity has proven that the defendants have not permitted Fidelity to misuse the CATS intercompany settlement procedures to obtain services from other LECs under false pretenses or under terms and conditions which those LECs would not freely negotiate with Fidelity. In short, Fidelity has not established that the defendants have violated the "essential facilities" doctrine or otherwise monopolized, attempted to monopolize, or conspired to monopolize any relevant market in violation of §2.

#### **Refusal to Deal**

Fidelity's "refusal to deal" claim is nothing more than a restatement of its "essential facilities" claim as a claim under

Sherman Act §1 (15 U.S.C. §1). In this regard, the defendants have not refused to deal with Fidelity and have not denied Fidelity access to an essential facility. Fidelity has access to CATS and to CMDS under the same terms and conditions as other LECs. Fidelity has offered no evidence to show that the defendants have, in concert with each other or other firms, engaged in a "concerted refusal to deal" with Fidelity to prevent Fidelity from buying IXC-related or 0+ accounts receivable and collecting those receivables through the same channels through which other firms collect them. Fidelity remains free to negotiate billing and collection contracts with individual LECs, and there is no evidence that the conduct of either defendant has interfered with Fidelity's ability to collect the IXC-related or 0+ messages which Fidelity has already purchased or may purchase in the future.

Fidelity's complaint is not that the defendants are refusing to provide it with goods or services which are provided to other firms but that the defendants will not provide Fidelity with services under CATS which are not presently available to anyone under CATS. This is not a "concerted refusal to deal" on the part of the defendants but is simply a refusal to make unilateral changes in long-standing intercompany settlement procedures in response to demands from one out of the 1200 LECs participating in the LEC intercompany settlement procedures.

Basically, what Fidelity requests is that the Court play a regulatory role which the agencies vested with regulatory authority over the telecommunications industry have refused to play: the role of setting LEC billing and collection rates with respect to IXC-

related and 0+ messages. More specifically, Fidelity asks the Court, in the guise of enforcing the antitrust laws, to order the LECs to set a 5¢/message billing rate for billing and collection services provided by LECs with respect to IXC-related and 0+ messages. Fidelity has provided the Court with no rationale explaining why such a rate would be reasonable -- let alone necessary -- to protect competition.

3. Fidelity has not proven its cause of action under Count VI, and there is no legal or regulatory obligation which would mandate that Southwestern Bell bill and collect for Fidelity's IXC messages in the manner demanded.

#### **Southwestern Bell's MFJ Obligation**

Notwithstanding the fact that Southwestern Bell has offered to provide its traditional billing and collections services to Fidelity on the same terms and conditions that it provides such services to all others seeking to bill IXC messages; and that Southwestern Bell has a billing and collections contract with one Fidelity partner (CNSI); that it offered such a contract to Fidelity's other partner (ATC), but that ATC chose to enter into a Billing Name and Address (BNA) contract instead, Fidelity still represents to the Court that Southwestern Bell and the other the Regional Bell Operating Companies (RBOCs)<sup>37</sup> are required, to provide it with billing and collection services through CATS. Testimony of J. Yancey.

---

<sup>37</sup> Additionally, there was no evidence at the hearing that any RBOC has refused to provide traditional billing and collections services to Fidelity or any of its partners.

Fidelity is a local exchange company (LEC). There is no obligation of any kind imposed upon the RBOCs in favor of the LECs, by the Modification of Final Judgment (MFJ or the Decree) or any other concept of law. Moreover, while the RBOCs must make a good faith effort, consistent with the Decree, to provide interexchange carriers (IXCs) with equal access to their telecommunications networks, Fidelity is not an IXC and access to telecommunications facilities is not at issue in this case. More to the point, the MFJ specifically states the RBOCs are not required to provide billing and collection services to IXCs. In any event, Southwestern Bell does not discriminate between IXCs. Testimony of J. Yancey. What Fidelity is seeking is not equal treatment, but rather discriminatory treatment in its favor. It is the treatment Fidelity is seeking, rather than which Fidelity now has that poses the MFJ concern.

The MFJ, which divested AT&T from the former Bell System local exchange companies, was the culmination of a series of antitrust complaints against AT&T. See United States v. American Tel. & Tel. Co., 552 F.Supp. 131, 135-136 (1982). (Plaintiff's Exh. 33). There was no allegation or evidence of unfair dealings with independent telephone companies and, as a result, no Order entered establishing any AT&T or the Regional Bell Operating Company "obligation" with regard to independents. Moreover, no mention is made of BOC CATS, whatsoever, either in the Decree or any of Judge Greene's subsequent Orders, and the only official reference to CMDS is found in a footnote to the Plan of Reorganization (POR or Plan). The POR concerns the distribution of what had been AT&T assets to

be made at divestiture and was filed with the Court on December 16, 1982 by AT&T. Footnote 375 at page 367 of the Plan states the ownership of "the Centralized Message Data System [CMDS] which collects data on message telephone calls" would be transferred to the Central Staff Organization (Bellcore). No "rights" to CMDS, much less BOC CATS, were thereby created for independent telephone companies, such as Fidelity.

Plaintiff cannot direct this Court's attention to, nor is there any provision in the MFJ, which creates an obligation on the part of Southwestern Bell to Fidelity as a local exchange carrier with regard to billing and collection or otherwise. There are actually only four references in the Decree to the entire subject of billing and all relate to IXC's, not LEC's.

The most important reference is in Appendix B(C)(2), wherein it states:

Nothing in this Modification of Final Judgment shall either require a BOC to bill customers for the interexchange services of any interexchange carrier or preclude a BOC from billing its customers for the interexchange services of any interexchange carrier it designates, provided that when a BOC does provide billing services to an interexchange carrier, the BOC may not discontinue local exchange service to any customer because of nonpayment of interexchange charges unless it offers to provide billing services to all interexchange carriers, and provided further that the BOC's cost of any such billing shall be included in its tariffed access charges to that interexchange carrier.

See United States v. American Tel. & Tel., 552 F.Supp. 131, 228-29, 232 and 234 (D.C.C. 1982) (Emphasis added). (Plaintiff's Exh. 33).

Billing is an activity performed in a competitive arena. It is for this very reason that the FCC does not regulate the

provision of billing services by telephone companies. See e.g., the Tariffing of Billing and Collection Services, 102 F.C.C. 2d 1150 (1986). Likewise, the federal courts have consistently held that billing is not an "essential facility" and that, therefore, telephone companies have no obligation under the antitrust laws to bill for unaffiliated entities. See e.g., Directory Sales Management Corp. v. Ohio Bell, 833 F.2d 606, 612-13 (6th Cir. 1987), aff'g 1986-2 Trade Cases p. 67, 250 (E.D. Ohio 1986); [Billing by Ohio Bell for yellow page advertising held not to be an "essential facility."] Illinois Bell v. Haines Co., No. 85-C-7644, slip. op. (N.D. Ill. May 15, 1989).

In keeping with the FCC's finding that billing and collection is a competitive service, Judge Greene concluded, by Order dated December 23, 1986, that the Regional Bell Operating Companies are permitted to provide billing and collection services to interexchange carriers on an untariffed basis. United States v. Western Electric, No. 82-0192, slip op. (D.D.C. December 23, 1986).

More recently, a question was raised as to whether Bell Atlantic could limit its IXC billing and collection efforts for "adult" entertainment messages to those subscribers who had affirmatively agreed to pay for the charges associated with such calls. Finding in favor of Bell Atlantic, Judge Greene held:

[T]o be sure, Regional Company billing services may be cheaper than some other alternatives; [footnote] but that, in and of itself, does not suggest, much less demonstrate that the elimination of Regional Company billing services (for all providers of this type of service) with respect to those who do not affirmatively agree to pay for the particular charges at issue here constitutes a violation of the non-discrimination provisions of the Decree.

United States v. Western Electric, No. 82-0192, slip op. at page 6 [Memorandum and Order], (D.D.C. June 26, 1989).

The Department of Justice has also repeatedly confirmed its position that billing is a competitive service. The Department's opinion in this area is to be afforded great weight, as it instituted the antitrust case against AT&T which resulted in the MFJ and it is the "primary enforcement agency" for the Decree.<sup>38</sup>

On November 4, 1986, the Department filed a Motion and Proposed Order for Waiver to permit the Bell Operating Companies to provide billing and collection services to IXCs on an untariffed basis. In that Motion, the Department noted that billing is a competitive service, with "no barriers" of entry.<sup>39</sup>

<sup>38</sup> In the words of Judge Greene, "The Department has substantial enforcement powers under the Decree, and it was always intended to be the primary enforcement agency. Thus, for purposes of determining and securing compliance, the Department is authorized under Section VI to compel the production of information and documents from AT&T and the Operating Companies, and under Section VII to apply to this Court for orders to enforce compliance with the Decree." United States v. Western Electric, 578 F. Supp. 677, 679 at footnote 7 (D.D.C. 1983).

<sup>39</sup> By opinion letter dated January 7, 1992 (a copy of which was provided to the Court and of which judicial notice was taken at the hearing), the Department found "nothing in the Decree creates a general obligation for a Regional Company to provide billing and collection services." The opinion letter specifically noted:

The mere fact that an Operating Company may be able to provide billing and collection services more cheaply than some alternatives does not create an obligation for it to provide billing services for its information services competitors. United States v. Western Electric Co., Civil No. 82-0192, slip op. at 6 (D.D.C. June 26, 1989). ...billing and collection is generally a competitive service that normally can be obtained from other sources without competitive disadvantage.... We conclude that U S WEST is not obligated to provide billing and collection services to TeleConnect and that



In conclusion, there is nothing in the MFJ which requires Southwestern Bell to provide any services, particularly not billing and collections services for IXC messages, to local exchange companies, such as Fidelity.

**FCC Billing and Collections Policy Does  
Not Require Injunctive Relief**

The FCC has reviewed the issue of requiring all LECs to provide billing and collections services to IXCs on a number of occasions and has declined to require the offering of such services, but instead has found the market for IXC billing and collections is sufficiently competitive and that reasonable alternatives exist to billing services provided by LECs. In In the Matter of Detariffing of Billing and Collection Services, CC Docket No. 85-88 (released January 29, 1986) the FCC concluded:

Because there is sufficient competition to allow market forces to respond to excessive rates or unreasonable billing and collection practices on the part of [local] exchange carriers, no statutory purpose would be served by continuing to regulate billing and collection services for an indefinite period. Although we cannot quantify the market shares of the various billing and collection vendors, the record clearly indicates that sufficient competition exists and will continue to develop. It is important to recognize that competition is defined not only by credit card companies, collection agencies, service bureaus and the LECs, by the customers (ICs) [IXCs] themselves. To the extent the ICs [IXCs] are able to meet their own billing and collection needs, the market acts on the LEC in much the same way as competition from other third party billing vendors does. In either case, the effect is to put downward pressure on LEC rates.

---

its refusal to do so does not violate the Decree.

Opinion letter, at p. 2.

Order at pp 23-24.<sup>40</sup>

Additionally in a separate docket, Docket No. 91-115, the FCC entertained the Comments of CNSI and CompTel, an IXC industry coalition, urging the FCC to find that billing and collections services are monopoly services and require all LECs to provide such services all IXCs. In the Matter of Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115 (released May 24, 1991) at p. 6. The Commission concluded however:

To grant this aspect of the CompTel CNSI Petition would be tantamount to a reconsideration of the Detariffing of Billing and Collection order [CC-85-88] and we decline to do that.

Order at p. 9. From the language of the FCC's opinions addressing the same relief sought by Fidelity in this case, an order requiring all LECs to provide billing and collections services for IXC messages on Fidelity's terms and conditions, would be contrary to the policy of the FCC to allow market forces to regulate LEC billing for IXCs. This Court should not allow Fidelity to undermine that important FCC policy.

D. THE HARM TO DEFENDANTS AND TO THIRD PARTIES  
OUTWEIGHS ANY HARM TO FIDELITY

In order to qualify for injunctive relief a party must prove that the harm it will suffer without such relief outweighs harm to

---

<sup>40</sup> The Commission notes later in the opinion that the only "potential bottleneck" was an IXCs inability to get name and address information. Southwestern Bell has consistently provided BNA to any company seeking such service.

the defendants. Further, a party must show that public policy favors the issuance of injunctive relief, which at least in part, requires an examination of the impact issuance of an injunction will have on persons who are not parties to the case. See Dataphase Systems, Inc., supra at p.114. The evidence demonstrated that Southwestern Bell will be severely and irreparably harmed by the issuance of the injunction sought by Fidelity in this case.

That harm will include: possible destruction of Southwestern Bell's traditional billing and collections product, harm to its revenue streams associated with billing and collections; harm to the Company's image and loss of customer good will caused by a loss of control over the types of messages it is required to bill and the manner of billing; and the serious risk that Southwestern Bell will be violating state and federal regulatory objectives having to do with the appearance of Fidelity's IXC messages on its bill page without identification of the actual service provider.

Southwestern Bell's billing and collections product

Southwestern Bell currently has 82 direct and 1045 indirect billing and collections customers. Testimony of J. Yancey. The services to these customers are provided through a combination of contracts and tariffs.<sup>41</sup> Id. The product accounts for a \$10,000,000 annual revenue stream which is utilized not only to recover costs associated with the product itself, but also to provide profits which are use by the various state regulatory

---

<sup>41</sup> In some states rates are tarified, but the terms and conditions are set forth in a contract. In other states rates and terms and conditions are all governed by contract.

agencies to support the provision of affordable basic local telephone service to Southwestern Bell's customers. See e.g., In the matter of the cost service study of Southwestern Bell Telephone Company, 21 Mo. P.S.C.(N.S.) 397, at p. 399 (1977). Fidelity seems to find it abhorrent that Southwestern Bell would be motivated by a desire to protect its revenues at stake in this case, but that is exactly what Southwestern Bell stockholders and regulators have a right to expect from the Company. In any event its hard to see a distinction between Southwestern Bell's motivation in that regard and that of Fidelity.

It is also important to consider Southwestern Bell's customers. Loss of the billing and collections revenue stream will not only injure Southwestern Bell, but also its customers who may be required to pay higher rates for other services to allow Southwestern Bell to obtain its revenue requirement as allowed by the regulatory agencies which establish Southwestern Bell's revenue requirement and rates.<sup>42</sup>

Two of Southwestern Bell's current customers, Zero Plus Dialing, Inc. (ZPDI) and OAN have already complained that Fidelity's use of CATS is an unfair advantage and have demanded that Southwestern Bell treat their companies the same as Fidelity by providing them with access to CATS if Fidelity is permitted to use it for IXC billing. See Defendant's Exhs. 31 & 32. Therefore

---

<sup>42</sup> In Southwestern Bell's most recent rate examinations in the five states in which it operates the billing and collection revenues were considered when the commissions set rates for all of the Company's services to allow recovery of the Company's intrastate revenue requirement.

Fidelity's use of CATS, if ordered, would impair Southwestern Bell's existing billing and collection arrangement with other IXCs.

Another aspect of Southwestern Bell's billing and collections product which will be harmed by the issuance of an injunction by this Court is the loss of control over the terms and conditions under which the Company is willing to do business. James Yancey testified that Southwestern Bell has provisions in its billing and collections contracts that protect the Company's image and the effectiveness of its service by controlling the types and age of messages for which the Company will bill. See Defendant's Exh. 29. Additionally, Southwestern Bell closely controls the way in which uncollectibles are handled so that each of its customers retain responsibility for theirs own uncollectibles instead of passing that risk on to Southwestern Bell to spread among all of its customers and ratepayers. Id. Mr. Yancey also testified that the revenues which Southwestern Bell would receive if all of its current IXC billing and collections were settled through BOC CATS would not cover the annual level of uncollectibles which it presently manages through its current billing and collections practices. Unless Southwestern Bell were to destroy the symmetry of CATS by substantially raising rates to cover its normal billing and collections cost, including uncollectibles, it would have to exit the billing and collections market altogether because its costs would far exceed its revenues.

#### **State and Federal Regulations Governing Bill Appearances**

##### **MFJ Bill Appearance Issues**

Fidelity's actions have potentially placed Southwestern Bell and the other Regional Bell Operating Companies in violation of their MFJ obligations in that Fidelity, by altering of the IXC transported messages which Fidelity has forced into BOC CATS has caused these messages to appear on Southwestern Bell's and the other RBOC's bill pages with no notation identifying the name or even the existence of the interexchange carrier who transported the call. Thus, an appearance has been given that Southwestern Bell and the other RBOCs are providing interLATA, interstate services in violation of the Decree. See MFJ, Section VIII(E), 552 F. Supp. 131 at 232 (D.D.C. 1982) (Plaintiff's Exh. 33) and United States v. Western Electric Co., 698 F. Supp. 348, 356-359 (D.D.C. 1988). An injunction will put Southwestern Bell and the other RBOCs in continuing risk of violating the Decree.

Plaintiff alleges that a telephone credit card call from St. Louis to Dallas placed by one of Plaintiff's attorneys, Eddie Pope, appeared on Mr. Pope's bill from Southwestern Bell Telephone Company, and is no different from the situation outlined above. However, the call in question is noted on the face of the bill, and the corresponding legend, which appears on the reverse side of the applicable bill page, indicates that the billing of the interLATA, interstate call in question was provided as a service to AT&T. See Plaintiff's Exh. 49. The language employed was specifically endorsed by the MFJ Court at divestiture. Section VIII(E) of the MFJ states:

If a separated BOC provides billing services to AT&T pursuant to Appendix B(C)(2), it shall include upon the portion of the bill devoted to interexchange services the following legend:

This portion of your bill is provided as a service to AT&T. There is no connection between this company and AT&T. You may choose another company for your long distance telephone calls while still receiving your local telephone service from this company.

See United States v. American Tel. & Tel., 552 F. Supp. 131, 232 (D.D.C. 1982), See also, Plaintiff's Exh. 33. Although the MFJ Court approved the language in question, Plaintiff has argued Southwestern Bell's notation is not as clear as it might be. There is, however, no comparison between the approved language and the lack of any information on customers bills as to the identity of the IXC service providers, which occurs as a result of Fidelity's obliteration of all references in the message to the involvement of an IXC in the transport of the calls when such messages are submitted to CATS.

Fidelity also made other references to the MJF on a number of occasions throughout the hearing. For example, Fidelity told the Court, that the MJF requires Southwestern Bell to provide billing and collection services to Fidelity's IXC messages through BOC CATS. Not only is this statement entirely without merit, but further, by Order dated December 21, 1983, Judge Greene acknowledged the need for continued enforcement of the Decree and noted that his Court had "retained jurisdiction to enforce the Decree and to take various other actions with respect thereto at the request of the Department of Justice, AT&T, or any of the

operating companies, as well as on the Court's own Motion." See United States v. Western Electric Co., 578 F. Supp. 677, 679 (D.D.C. 1983).<sup>43</sup>

While Southwestern Bell Telephone believes that it has no obligation under the MFJ to provide Fidelity with a conduit onto the BOC CATS system for the processing of IXC messages such a claim would be a matter solely within the jurisdiction of the Department of Justice, which the MFJ Court has decreed to be the "primary enforcement agency" for the Decree and with the Federal District Court for the District of Columbia.

#### **State Subentity Billing Issues**

In addition to concerns about potential violations of the MFJ caused by Fidelity's actions, Southwestern Bell is also concerned about potential violations of state subentity billing requirements. According to Mr. Matzdorff, Fidelity's legal research revealed only four states which had regulations precluding Fidelity's scheme. Fidelity's legal research overlook at least 22 other states with similar prohibitions. Fidelity also failed to examine state tariffs, which Mr. Matzdorff acknowledged have the force and effect of law. Worse still, Fidelity disregarded its own legal research and consciously sent altered IXC messages to local exchange companies in all of the four states it had identified as having regulations which would be violated by Fidelity's actions.

---

<sup>43</sup> Federal courts have consistently recognized and deferred to MFJ Court's jurisdiction. See SafeCard Services, Inc. v. Ohio Bell Telephone Co., No. C2-85-903 (S.D. Ohio November 10, 1986) and Indiana Bell Telephone Co. v. The New American Phone Co., No. IP 84-1641-C (S.D. Ind. February 26, 1987).



At hearing, Southwestern Bell offered into evidence Defendants' Exhs. 40-45. These exhibits constitute exemplars of state tariffs, public utility commission orders, and rules and regulations which mandate that the interexchange carrier who transports a call be clearly identified on the customers' bills.<sup>44</sup> A detailed analysis of those exhibits which demonstrate that a significant number of state tariffs, rules and regulations will be violated as a result of Fidelity's submission of Fidelity's recoded IXC messages to CATS is attached hereto as Appendix B.

The considerable risk to Southwestern Bell and other local exchange companies associated with violations of state and federal laws could never be compensated by money damages. Given the fact that Fidelity has demonstrated a callous disregard for the ability of its 1200 "billing entities" to comply with such laws Southwestern Bell is uncomfortable with Fidelity controlling its own ability to so comply.

E. ISSUANCE OF AN INJUNCTION WOULD BE CONTRARY TO  
PUBLIC POLICY

Fidelity suggest at p. 38 of its Brief that "The public interest usually is implicated in situations where an injunction is sought to restrain enforcement of a statute of regulation designed to further the public interest." Even looking at that one

---

<sup>44</sup> Defendant's Exhs. 40-45 do not constitute an all inclusive list of all such requirements. Rather, those exhibits are simply a compilation of as many applicable state tariffs, orders, rules, and/or regulations as Southwestern Bell could gather within the short period of time available prior to the commencement of the hearing.

rationale alone, Fidelity should not be granted an injunction because the multitude of regulations and tariffs contained in Appendix B and discussed above were all enacted to protect the public interest by requiring that the bills of telephone customers clearly identify the company which provided the service and whose rates applied to provision of such service so that customers would have the ability to pursue concerns about such calls with the proper entity. Thus on Fidelity's own standard of what would serve the public interest injunctive relief should be denied.

There are other public policy considerations which must be examined in this case. Mr. Matzdorff testified that he does not believe that the 1200 LECs who participate in the CATS system have any choice but to bill Fidelity's IXC messages, even if the insertion of IXC messages into CATS has changed the way the system previously operated. These companies are, in Mr. Matzdorff's view of this case, required to do business with Fidelity on terms they were never willing to agree to before and with companies unknown to the LECs or even Fidelity. There is no concept in law or business which supports this blind man's bluff view of contractual obligations.

Another public policy consideration revolves around the need for consistent communications policy throughout the nation. The FCC was created and given primary jurisdiction over national telecommunications policy because Congress saw a need for uniformity. Although the federal courts throughout the nation must keep their doors open to litigants with claims that center upon

telecommunication issues, that need must be balanced with the public policy consideration weighing in favor of consistency and fairness to nonparties. When a case will have a nationwide impact upon parties not before the court (in this case all 1200 LECs, and many IXCs), and where the FCC has already issued opinions addressing the same relief sought before the federal court, and where to grant the relief sought by the litigant, would require overruling or modifying existing FCC policy, the doctrine of primary jurisdiction should apply. See Defendant's Rule 12 Motion. All of those factors are present in this case.

#### IV. CONCLUSION

Notwithstanding the fact that Fidelity was only able to effectuate its plan by:

- the intentional miscoding of IXC messages;
- by forcing the 1200 LECs throughout the nation to bill IXC messages without their knowledge and consent;
- by doing so without the benefit of contracts, written or otherwise which would require Southwestern Bell to provide Fidelity with unique access to CATS or require the 1200 LECs to provide the demanded billing services.


Further, notwithstanding the fact that no other company has ever used CATS in the way sought by Fidelity; and that to grant Fidelity's request would:

- undermine the countless contracts willingly entered into between IXCs and their billing entities throughout the nation,
- cause LECs nationwide to be in violation of state laws, regulations and tariffs;
- override national telecommunications policy established by

the FCC.

Fidelity still urges this Court to grant it extraordinary equity relief in the form of a mandatory injunction. For all the foregoing reason and those set forth in detail in this Brief, Southwestern Bell urges the Court to deny Fidelity's Motion.

Respectfully submitted,

  
\_\_\_\_\_  
Alfred G. Richter #27444  
Katherine C. Swaller # 34271  
Madeleine E. Dabney # 39708  
100 North Tucker, Suite 630  
St. Louis, Missouri 63101

and

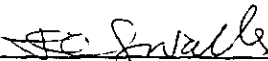
Deacy and Deacy

\_\_\_\_\_  
Spencer J. Brown #18616  
Patrick C. Cena #25018  
1000 Bryant Building  
1102 Grand Avenue  
Kansas City, Missouri 64106

Attorneys for Defendant Southwestern Bell  
Telephone Company

CERTIFICATE OF SERVICE

A copy of Post-Hearing Brief of Defendant Southwestern Bell Telephone Company was overnight delivered to the attorney(s) for Bellcore, Mr. Truman K. Eldridge, Jr., ARMSTRONG, TEASDALE, SCHLAFLY & DAVIS, 1700 City Center Square, 1100 Main Street, Kansas City, Missouri 64105 and Plaintiff, Mr. James D. Shields, SHIELDS, BRITTON & FRASER, 14643 Dallas Parkway, Suite 920, Dallas, Texas 75240 and Mr. Steven S. Brown, NIEWALD, WALDECK & BROWN, One Kansas City Place, 1200 Main, Suite 4100, Kansas City, Missouri 64105, this 10 day of September, 1992.

  
Katherine C. Swaller

## Attachment 18

Mr. Mazdorff Arrest Warrant

EOC:TAF/ERK

**M04-1008**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
-----X

**TO BE FILED UNDER SEAL**

UNITED STATES OF AMERICA

v.

AFFIDAVIT IN SUPPORT OF  
ARREST WARRANT

KENNETH M. MATZDORFF,

(18 U.S.C. § 1956(h))

Defendant.

-----X

EASTERN DISTRICT OF New York, SS.:

BETH AMBINDER, being duly sworn, deposes and says that she is a Special Agent of the Federal Bureau of Investigation, duly appointed according to law and acting as such.

Upon information and belief, there is probable cause to believe that in or about and between 1996 and 2002, within the Eastern District of New York and elsewhere, the defendant KENNETH M. MATZDORFF did commit an offense against the United States, to wit: conspiring to conduct or attempting to conduct financial transactions, affecting interstate and foreign commerce, which in fact involved the proceeds of specified unlawful activity, namely mail fraud, in violation of Title 18, United States Code, Section 1341, wire fraud, in violation of Title 18, United States Code, Section 1343, and credit card fraud, in violation of Title 18, United States Code, Section 1029(a)(5), knowing that the property involved in the financial transactions represented the proceeds

of some form of unlawful activity, with the intent to promote the carrying on of specified unlawful activity, and knowing that the transactions were designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity, in violation of Title 18, United States Code, Sections 1956(h), 1956(a)(1)(A)(i) and (a)(1)(B)(i). The bases for my belief are set forth below<sup>1</sup>.

(Title 18, United States Code, Section 1956(h)).

1. I have been a Special Agent with the Federal Bureau of Investigation ("FBI") for approximately 8 years. In this capacity, I have investigated traditional organized crime, also known as "La Cosa Nostra" in the New York metropolitan area as well as white-collar violations committed by members and associates of organized crime. As an FBI Special Agent, I have participated in numerous investigations and conducted and participated in physical and electronic surveillance, reviewed numerous electronically intercepted conversations and executed search warrants. I have also interviewed and debriefed numerous confidential sources and cooperating witnesses.

2. I am currently serving as case agent in the

---

<sup>1/</sup> Because the purpose of this affidavit is solely to establish probable cause in support of the requested arrest warrant, I have not set forth all of the information I have developed in the course of this investigation.



investigation and prosecution of United States v. Salvatore LoCascio et al., 03-CR-304 (S-3) (CBA). A copy of the indictment in this case (hereinafter "the Indictment") is attached hereto and incorporated herein by reference. As set forth in the Indictment, the LoCascio case involves two frauds committed by and on behalf of the Gambino organized crime family of La Cosa Nostra and the laundering of approximately \$400 million in illegal proceeds from those schemes. The fraud schemes alleged in the Indictment and the laundering of the proceeds are summarized below. In my capacity as case agent, I have debriefed dozens of witnesses, reviewed subpoenaed documents, and exchanged information with investigating agents from other law enforcement agencies participating in this investigation. The facts set forth below are drawn from all of these sources.

**The "Cramming Scheme"**

3. As alleged in the Indictment, between approximately 1996 and 2002, the defendants Richard Martino, Norman Chanes, Daniel Martino, Andrew Campos, Thomas Pugliese, Lawrence Nadell, Yitzhak Levy, Kenneth Schaeffer and a corporate entity named USP&C, which is located in Overland Park, Kansas, devised and executed a scheme to defraud consumers by placing unauthorized charges on local telephone bills and collecting payment on those unauthorized charges. (Indictment at ¶ 21). To execute this scheme, Richard Martino, a soldier in the Gambino

family, and Gambino family associate Norman Chanes, together with employees at Chanes' company, Harvest Advertising, Inc., produced advertisements offering free samples of adult entertainment services such as psychic hotlines, dating services, and sexually oriented talk-lines over various "1-800" telephone numbers.

(Indictment at ¶ 22). Victims who called the "1-800" telephone numbers heard pre-recorded "front-end" programs. (Indictment at ¶ 23). When a victim expressed a desire to obtain a sample of the advertised entertainment service, the front-end program triggered a recurring monthly charge on the victim's local telephone bill for a voice mail service without the knowledge, consent or authorization of the victim. (Indictment at ¶ 23). The "bill phrases" describing these charges on the victims' local telephone bills were designed to look like innocuous, standard telephone charges and to conceal the fact that the charges were actually triggered by the calls to the "1-800" adult entertainment telephone lines. (Indictment at ¶ 23).

4. In order to conceal this scheme, defendants Richard Martino and Chanes caused to be prepared dual sets of advertisements, front-end programs, and related materials. (Indictment at ¶ 24). One set, referred to as "marketing" materials, consisted of the actual materials that were used to solicit and defraud customers. (Indictment at ¶ 24). The second set, referred to as "approval" materials, appeared properly to

seek the customer's authorization for voice-mail services, and to disclose that the charges would be billed on a recurring monthly basis. (Indictment at ¶ 24). These approval materials were submitted to local telephone companies, also known as local exchange carriers ("LECs"), in order to conceal the existence and fraudulent nature of the "marketing" materials. (Indictment at ¶ 24).

5. The success of the scheme depended on the operation of several other companies specially created by the defendants for their criminal purposes. For example, Richard Martino, Daniel Martino and Chanes created Overland Data Center in Overland Park, Kansas (located in an office adjacent to USP&C), for the purpose of receiving and processing calls to the "1-800" numbers. (Indictment at ¶ 27). At the direction of Richard Martino, Daniel Martino, Chanes, Nadell, Levy and Schaeffer, Overland employees programmed voice-response units ("VRUs") located at Overland to play the front-end programs and thereby trigger the unauthorized charges on the consumers' telephone bills. (Indictment at ¶ 27). Richard Martino, Daniel Martino and Chanes, together with others, also formed USP&C and secretly controlled it for the purpose of placing the unauthorized charges generated by the fraudulent front-end programs onto the victims' local telephone bills. (Indictment at ¶ 29).

6. Campos, Richard Martino, Daniel Martino and Chanes also caused the creation of various companies (collectively, the "Campos Companies"). (Indictment at ¶ 30). The Campos Companies purported to be independent companies operated by Campos for the purpose of providing "1-800" telephone services, but were, in fact, shell companies whose real purpose was to conceal the participation of Richard Martino, Daniel Martino and Chanes in this part of the scheme. (Indictment at ¶ 30). Richard Martino and Chanes caused the Campos companies to enter into contracts with USP&C to provide billing and collection services for the "1-800" telephone numbers used in the scheme and then submitted, ostensibly on behalf of the Campos Companies, the "approval" version of the materials to USP&C and the LECs, rather than the "marketing" versions that were actually used to solicit customers. (Indictment at ¶ 32).

7. A large portion of the cramming scheme victims complained to the LECs and to USP&C about the unauthorized charges appearing on their local telephone bills. (Indictment at ¶ 35). Therefore, Richard Martino, Daniel Martino and Norman Chanes, together with others, caused a "call center" affiliated with USP&C to be established to handle the large volume of victim complaints internally, to prevent the LECs from learning the actual extent of customer complaints regarding the unauthorized charges. (Indictment at ¶ 35).

8. Telephone operators at the call center were directed first to attempt to persuade victims that the charges were in fact authorized and to induce customers to agree to pay the charges. (Indictment at ¶ 36). When victims persisted in their complaints, the call center operators offered refunds. At first, victims were offered partial refunds, but if they complained adamantly and persistently, full refunds were often provided. (Indictment at ¶ 36). The purpose of offering refunds was to reduce the likelihood that victims would complain directly to the LECs or to regulatory agencies and law enforcement agencies. (Indictment at ¶ 37). The call center operators were further instructed that if victims asked them to provide the telephone number that triggered the charge on the USP&C page of their local telephone bill, the operators were to provide a "1-800" number that then connected them to the "approval" version of the front-end program, (Indictment at ¶ 37), instead of connecting to the "marketing" front-end program that the customer had actually called. (Indictment at ¶ 37).

9. In approximately 2001, because of complaints received by various LECs and regulatory agencies about the Campos companies, defendants Richard Martino, Chanes and Pugliese formed new shell companies to replace the Campos companies as "clients" of USP&C. (Indictment at ¶ 38). Like the Campos companies, these new shell companies were secretly controlled by Richard

Martino, Chanes and Daniel Martino. (Indictment at ¶ 38). In addition, through Overland and USP&C, the defendants caused unauthorized charges for voice-mail services to appear on the phone bills of victims who never even called the "1-800" numbers. (Indictment at ¶ 33). In total, the cramming scheme generated at least approximately \$400 million in gross revenues and \$100 million in profits.

#### **The Internet Pornography Scheme**

10. As also alleged in the Indictment, the defendants also designed and executed a scheme to defraud internet users who visited pornographic websites designed and operated by the defendants and others. Through these websites, the defendants fraudulently obtained visitors' credit and debit card information, ostensibly for age-verification purposes, and then billed the victims' cards without the victims' knowledge or consent. (Indictment at ¶ 47).

11. The Internet pornography scheme was centered around purportedly "free tours" of the defendants' websites. Although the websites represented that visitors to the websites could take a "free tour" of each website without being billed, in actuality they designed and operated the websites so that victims would be billed without their knowledge or consent. (Indictment at ¶ 48). Through the websites, the defendants and others billed and caused to be billed the credit and debit cards of thousands

of victims in the United States, including victims in the Eastern District of New York, Europe and Asia, without their authorization. The bills were charged at a recurring monthly rate of up to \$90.00 each, for an approximate total amount of more than \$230 million. (Indictment at ¶¶ 43, 51).

**The Laundering of the Proceeds of the Cramming and Internet Pornography Schemes**

12. During the course of its operation, the cramming scheme induced millions of victims throughout the United States, including numerous victims in the Eastern District of New York, to place telephone calls to the "1-800" telephone numbers operated by Overland. (Indictment at ¶¶ 21, 58). Overland transmitted the billing information for the unauthorized charges to USP&C for submission to the LECs for inclusion on the victim's local telephone bills. USP&C collected the payments for the unauthorized charges from the LECs, and in turn paid the bulk of the proceeds to the Campos companies and, after approximately January 2001, to new shell companies that replaced the Campos companies, net of expenses and refunds to complaining victims. (Indictment at ¶ 58). These companies in turn paid the proceeds to Overland and Fairfax, another shell company nominally operated by defendant Thomas Pugliese, but in fact controlled by Richard Martino for the purposes of laundering money. (Indictment at ¶ 58). Overland in turn paid the vast bulk of the proceeds to Richard Martino's companies, Mical and Telcom. Id.

13. Overland also paid some of the proceeds (approximately \$6.8 million) to a company called Local Exchange Company L.L.C., also known as "LEC L.L.C.," which was owned, in part, both directly and indirectly through trusts, by Gambino family captain Salvatore LoCascio, Gambino family soldier Richard Martino, and Gambino family associates Zef Mustafa, Norman Chanes, and Daniel Martino. (Indictment at ¶ 58). LEC L.L.C. was also used as a receptacle for the receipt of illegal proceeds from the Internet pornography scheme. (Indictment at ¶ 58). Finally, between approximately 1996 and 2002, more than \$40 million in illegal proceeds from both schemes were funneled to Creative Programs Communications Inc. ("Creative"), an entity owned by Salvatore LoCascio, Salvatore LoCascio's uncle, Joseph LoCascio, and Zef Mustafa. (Indictment at ¶ 58). These payments were made by Chanes and Richard Martino in fulfillment of Richard Martino's obligations as a soldier in the Gambino family to "kick up" a portion of his illegal profits to his Gambino family captain, Salvatore LoCascio. (Indictment at ¶ 60).

14. As alleged in the Indictment, several of the money laundering transactions pursuant to which money was funneled to Creative were effected through transfers made at the direction of Richard Martino from the bank account of Multimedia Forum, Inc. ("Multimedia"), at North Fork Bank on Long Island. These transfers were made to another company, Westford, which was



secretly controlled by Richard Martino through one of his business associates. (Indictment at ¶¶ 45, 59). As alleged in the Indictment, in 1999 five transfers were made from Multimedia's account at North Fork Bank on Long Island to Westford's account in New Jersey pursuant to this money laundering scheme. (Indictment at ¶¶ 90-91).

**KENNETH M. MATZDORFF's Facilitation of the Criminal Activity of the Gambino Crime Family**

15. As set forth below, investigation has revealed that KENNETH M. MATZDORFF has played an integral role, as an associate of the Gambino crime family, in both (i) the cramming scheme and (ii) the laundering of proceeds from both schemes.

**USP&C**

16. Investigation has revealed that MATZDORFF was instrumental in establishing and operating USP&C, which, as set forth above, was the primary vehicle that the Gambino family used to submit false billing charges to the LECs. I have interviewed several confidential sources who previously worked at USP&C. The information provided by each of these sources has been corroborated by other confidential sources and by other documentary information and by information provided by cooperating witnesses and has proven to be reliable in all regards. In sum, five confidential sources (CS's 1-5), all of whom previously worked at USP&C, have informed me that at all times during their employment at USP&C, which spanned the period

from in or about and between 1996 and 1999, MATZDORFF held himself out as President of USP&C.

17. MATZDORFF also falsely represented himself to be the owner of USP&C. For example, in the course of my investigation, I have also reviewed documents executed in connection with the acquisition by MATZDORFF and others of Garden City Bank in 2000 (described in more detail infra). In these documents, MATZDORFF identified himself as the Chairman and Founder of USP&C. Similarly, when USP&C was sold in December 1999, MATZDORFF signed the stock purchase agreement effecting the sale of the company and identified himself as President and Owner. I have also reviewed a deposition given by MATZDORFF in civil litigation between Southwestern Bell and PAC Bell in 2000. In this deposition, MATZDORFF falsely identified himself as the sole owner of USP&C.

18. My investigation has revealed that, in fact, all important decisions concerning the business of USP&C were ultimately made not by MATZDORFF, but by Richard Martino, Norman Chanes and others. For example, CS's 1-5 have all stated that, during the course of their employment at USP&C, all important decisions regarding the operation of the business were made by Richard Martino, Daniel Martino, Norman Chanes and their associates in New York. In addition, when deposed in connection with the Southwestern Bell litigation against USP&C in 2000,

MATZDORFF acknowledged that he did not know the individual who purchased USP&C and said that he was informed simply that the buyer was a person with capital who came from the East Coast. MATZDORFF further acknowledged that, despite being the purported owner, he did not receive any money from the sale.

19. Investigation has also revealed that MATZDORFF knew that USP&C was being used by Richard Martino, Norman Chanes and others to place unauthorized charges on customers' telephone bills. For example, one of the confidential sources referred to supra ("CS-1") has informed me that during the course of CS-1's employment at USP&C, CS-1 repeatedly told MATZDORFF that USP&C was receiving numerous calls from customers complaining that unauthorized charges were being placed on their telephone bills by USP&C. CS-1 further stated that, on several occasions, CS-1 transferred calls from complaining victims to MATZDORFF when CS-1 believed that the callers were truthfully representing that they had not authorized any charge. According to CS-1, MATZDORFF took this information and never informed CS-1 of what he did in response to these complaints.

20. Investigation has also revealed that MATZDORFF knew that USP&C was being used to circumvent LEC regulations regarding billing for adult entertainment services. For example, CS-1 has stated that when CS-1 began working at USP&C, MATZDORFF told CS-1 that USP&C's customers were in the business of

providing psychic and phone sex services. In the Southwest Bell litigation, however, MATZDORFF acknowledged his familiarity with billing and collection agreements, a fact which indicates that he knew of standard LEC policy against billing for adult entertainment services. Accordingly, if MATZDORFF knew that USP&C's customers were providing adult entertainment services, he also knew that USP&C was deceiving the LECs as to the nature of services its customers provided.

21. Another one of the confidential sources referred to above ("CS-2") has also informed me that, in or about 1999, CS-2 explicitly told MATZDORFF that CS-2 believed that USP&C was being used to bill customers for unauthorized voice mail services triggered by calls to USP&C's psychic and sex lines. According to CS-2, MATZDORFF responded that that was because some of the programs in question were "more heavily marketed." A third confidential source ("CS-3") has informed me that CS-3 came to believe that MATZDORFF was selected to play the role of "front man" at USP&C because of his connections in the local telephone industry.

22. By holding himself out as the President and Owner of USP&C when he, in fact, knew that USP&C was being used by Richard Martino, Norman Chanes and others to defraud customers and deceive LECs, MATZDORFF facilitated the cramming scheme and allowed Richard Martino, Norman Chanes and others to conceal

their roles in this scheme.

**LEC L.L.C.**

23. Investigation has further revealed that MATZDORFF has also been instrumental in the operation of LEC L.L.C., which, as revealed by investigation, has been one of the main vehicles for laundering proceeds of both the cramming scheme and the internet pornography scheme to Richard Martino, Salvatore LoCascio, Norman Chanes and other participants in the schemes.

24. Examination of subpoenaed documents has revealed that LEC L.L.C. is a corporation located in Peculiar, Missouri that manages and owns, in whole or in part, three local telephone companies including Cass County Telephone.

25. Examination of subpoenaed documents has also revealed that, in or about and between 1998 and 2002, approximately \$ 6.6 million was transferred from bank accounts held by Overland Data Center to bank accounts held by LEC L.L.C. These funds were ostensibly paid by Overland to LEC L.L.C. as "management and consulting fees." In the course of my investigation, I have extensively interviewed and debriefed CS-6, who served in a high-level management capacity at Overland between 1996 and 2003. The information provided by CS-6 has been corroborated by other evidence and has always proven reliable. According to CS-6, LEC performed no management or consulting services for Overland during the period the period 1996 to 2003

that would justify the payment of anything more than nominal fees, and has performed no services at all for Overland since 1997.

26. Examination of subpoenaed documents has revealed that the majority of the shares of LEC L.L.C. are owned by Gambino family captain Salvatore LoCascio, Gambino family soldier Richard Martino, and Gambino family associates Daniel Martino, Norman Chanes, Zef Mustafa.

27. In sworn documents executed in connection with the acquisition by MATZDORFF and others of Garden City Bank in 2000, MATZDORFF stated that he has been the President of LEC L.L.C. since its founding in 1994. In these same documents, he further identified himself as Managing Partner and 7.4% owner of LEC L.L.C. In a hearing before the Public Service Commission of the State of Missouri in April 2004, MATZDORFF testified under oath that he is the President of LEC L.L.C.

28. In this same hearing, MATZDORFF denied knowing of any relationship between USP&C and Overland Data Center. In fact, as MATZDORFF well knew and believed, USP&C and Overland were both created out of an entity owned by Richard and Daniel Martino called Info Access for the purpose of concealing the Martinos' continued control over those assets. In addition, the companies' operations continued to be intertwined on a daily basis, even after the separation. For example, Overland

regularly submitted billing information for all of the victims of the cramming scheme to USP&C for inclusion in bills issued by the LECs. In addition, MATZDORFF, through LEC L.L.C. received substantial fees for "consulting and management services" from Overland.

29. By operating and managing LEC L.L.C. and providing false testimony about the operations of the companies involved in the cramming scheme, MATZDORFF facilitated the laundering of proceeds from the cramming scheme to Richard Martino, Norman Chanes, Salvatore LoCascio, Zef Mustafa and others and facilitated their concealment of their roles in these crimes.

**Cass County Telephone**

30. Examination of subpoenaed documents reveals that Cass County Telephone Company, a local exchange carrier in Missouri, is owned by LEC L.L.C. In a hearing before the Public Service Commission of the State of Missouri in April 2004, MATZDORFF testified under oath that he is the President of Cass County Telephone Company.

31. According to CS-6, in or about and between 1997 and 2003, Overland Data Center performed certain computer consulting work for Cass County. According to CS-6, however, the amount that Cass County paid Overland for this work was approximately five to ten times the true value of the invoiced services. According to CS-6, these funds were first transferred

from Cass County to FSE Consulting, a consulting company owned and operated by Richard Martino's brother, Daniel Martino, and then from FSE Consulting to Overland. Examination of subpoenaed documents reveals that these funds were then sent back to Cass County.

32. This arrangement had the effect of defrauding the Universal Service Fund ("USF"), a federal government program established to assist high-cost and/or rural telephone service providers: Under federal regulations, participants in the USF program are entitled to reimbursement on a "cost-plus" basis for expenditures incurred in order to improve services offered to their customers. Examination of subpoenaed documents has revealed that between 1996 and 2003, Cass County received millions of dollars from USF as a result of claims submitted for services received from Overland.

33. Because Cass County is owned by LEC L.L.C., these funds, in turn, were received by the owners of LEC L.L.C., including Gambino family captain Salvatore LoCascio, Gambino family soldier Richard Martino and Gambino family associates Norman Chanes, Zef Mustafa, Daniel Martino and KENNETH M. MATZDORFF.

**Garden City Bank**

34. In addition, KENNETH MATZDORFF also acted as a front man for Richard Martino in connection with the acquisition



of Garden City Bank, a federally insured bank located in Garden City, Missouri. Records indicate that on or about February 15, 2001, Garden City Bank was purchased by MATZDORFF, and MATZDORFF's wife, Rebecca Malcolm Matzdorff, through Garden City Bank Shares Acquisition Corp., for approximately \$3,000,000, consisting of approximately \$526,000 in cash and a loan in the amount of \$2,500,000. As a result of this purchase, approximately 83% of Garden City Bank is currently nominally owned by MATZDORFF and MATZDORFF's wife.

35. Investigation has revealed that the funds used to purchase Garden City Bank represent, at least in part, the proceeds of the cramming scheme.

36. On or about February 9, 2001, a deposit in the amount of \$500,000 was made into the joint account of Rebecca Matzdorff and KENNETH MATZDORFF at United Missouri Bank ("UMB") by means of wire transfer from an entity called Caller Requested Transfer, Inc. ("Caller Requested"). Examination of subpoenaed documents has revealed that the Executive Officer of Caller Requested is Anthony Marano. Investigation has revealed that Marano is an employee of Richard Martino's companies, Mical and Telcom Online. Examination of subpoenaed documents has also revealed that two months prior to the transfer from Caller Requested to the Matzdorff account at UMB, approximately \$500,000 was wire transferred from Overland to Caller Requested.

Investigation has further revealed that on or about November 17, 2000, LEC L.L.C. made a \$2,500,000 loan commitment for the purchase of Garden City Bank.

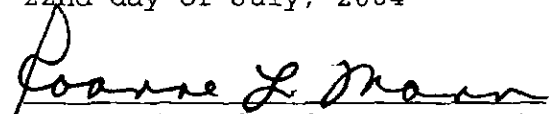
37. In October 2003, I participated in the execution of a search warrant at the offices of Richard Martino's company, Mical/Telcom Online, located at 666 Third Avenue, New York, New York. Among the documents recovered in the search were bank documents from Garden City Bank and correspondence discussing the possibility of using Garden City Bank as a merchant bank for purposes of credit card processing. As set forth in the Indictment, an integral part of the internet pornography scheme was the use of merchant banks to bill victims' credit cards.

Wherefore, I respectfully request that an arrest warrant be issued for KENNETH MATZDORFF so that he may be dealt with according to law. I further respectfully request that the arrest warrant and this affidavit be filed and maintained under seal until the defendant KENNETH MATZDORFF is arrested and that these documents be unsealed upon execution.



BETH AMBINDER  
SPECIAL AGENT  
FEDERAL BUREAU OF INVESTIGATION

Sworn to before me this  
22nd day of July, 2004



UNITED STATES MAGISTRATE JUDGE  
EASTERN DISTRICT OF NEW YORK

## Attachment 19

# Oregon Farmers' Comments to the Staff's Report

LAW OFFICES  
**BRYDON, SWEARENGEN & ENGLAND**  
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON  
JAMES C. SWEARENGEN  
WILLIAM R. ENGLAND, III  
JOHNNY K. RICHARDSON  
GARY W. DUFFY  
PAUL A. BOUDREAU  
SONDRA B. MORGAN  
CHARLES E. SMARR

312 EAST CAPITOL AVENUE  
P.O. BOX 456  
JEFFERSON CITY, MISSOURI 65102-0456  
TELEPHONE (573) 635-7166  
FACSIMILE (573) 635-0427

DEAN L. COOPER  
MARK G. ANDERSON  
GREGORY C. MITCHELL  
BRIAN T. MCCARTNEY  
DIANA C. CARTER  
JANET E. WHEELER

OF COUNSEL  
RICHARD T. CIOTTONE

January 20, 2005

Mr. Nathan Williams  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, Missouri 65102

**Re: Oregon Farmers Mutual Telephone Company**

Dear Nathan:

This correspondence is in response to your email dated December 30, 2004, seeking review and feedback by Oregon Farmers Mutual Telephone Company (Oregon Farmers) on the section of Staff's draft Investigative Report as it relates to Oregon Farmers. Accordingly, this response is limited to Oregon Farmers and does not purport to respond on behalf of any other entity.

In the third paragraph under Section A entitled "Company Operations," the Report notes that the owners of Oregon Farmers entered into a stock purchase agreement whereby all of the outstanding common stock of Oregon Farmers would be sold to another telecommunication company. This transaction was thoroughly reviewed and approved by the Commission in its Case No. IM-2004-0461. The sale closed on September 23, 2004. As a result, Mr. Robert Williams no longer holds an ownership interest in Oregon Farmers nor is he an elected officer of that Company. (Mr. Williams does retain the honorary title of President.)

The last paragraph in Section A notes that Oregon Farmers receives billing services from LEC, LLC, a firm with the majority of its owners involved in the Federal litigation in New York. Please be advised that as of January 1, 2005, LEC, LLC no longer performs billing functions for Oregon Farmers (nor does it perform any other services for Oregon Farmers).

In the first paragraph under the section entitled "Affiliate and Related Party Transactions," the Report notes that Oregon Farmers bills and collects payments from customers on behalf of South Holt Cablevision, Inc. and further notes that the principal owner of South Holt Cablevision, Inc. is Robert Williams. This is no longer true. Mr. Williams sold the Cable Television assets to Northwest Missouri Holdings Inc. at the same time he sold his stock in Oregon Farmers. Accordingly, Mr. Williams no longer has an ownership interest in the Cable Television operations for which Oregon Farmers performs billing and collection services. Similarly, the Report indicates that Oregon Farmers contracts with South Holt Communications, Inc. for the performance of plant maintenance, administrative and management services. Again, as a result of the sale of stock, Oregon Farmers no longer contracts with South Holt Communications for these services.

The draft Report goes on to speculate that former payments by Oregon Farmers to South Holt Communications Inc. may be in lieu of payment of dividends or other distribution of capital and that this may “circumvent” dividend restrictions contained in Oregon Farmers’ mortgage notes. This is simply not true. Oregon Farmers’ lender is well aware of these payments, and there has been no question raised by the lender in this regard. In fact, during Mr. Williams ownership, Oregon Farmers met all the covenants of its loan and was current on all principal and interest payments. Accordingly, for the Staff to speculate that these payments to South Holt Communications may be a way to circumvent dividend restrictions in the mortgage loan is not only unfounded, it is highly prejudicial and inflammatory.

Section B of the Report is entitled “Firm’s Involvement in Inappropriate Activities,” and by its terms suggests that Oregon Farmers was involved in “inappropriate activities.” The Report notes that Mr. Williams has joint business dealings with Mr. Matzdorff and if Mr. Matzdorff has engaged in inappropriate activities then concerns regarding Mr. Williams’ activities are likely to be increased. This is pure conjecture and speculation. It is simply not true and is highly prejudicial and inflammatory. Mr. Williams is a long time, highly respected owner/manager of an independent telephone company. Simply because he has joint business dealings with Mr. Kenneth Matzdorff is no basis on which to speculate that he is engaged in any improper activity. In fact, neither Mr. Williams nor Oregon Farmers has been involved with, let alone mentioned in, any of the activities described in the Federal indictments regarding Mr. Kenneth Matzdorff.

Finally, at Section C of the Report entitled “Impact on Missouri Consumers,” the Report concludes that “there is a risk to Missouri consumers is (sic) that certain cost of service rates may be too (sic) due to consideration of inappropriate costs.” While the sentence obviously has some typographical errors, the intent appears to be that there is a risk to Missouri consumers that certain cost of service rates charged by Oregon Farmers may include inappropriate costs. Again, this is rank speculation and conjecture. There is absolutely no evidence that any of the limited transactions Oregon Farmers engaged in with entities associated with Mr. Kenneth Matzdorff were inappropriate. In fact, the draft Report later states that Oregon Farmers’ independent external auditors have raised no questions regarding these transactions. Also, the Staff fails to note that it has engaged in at least two earnings investigations of Oregon Farmers in the last six (6) years, and at no time did Staff question the appropriateness of these affiliate transactions.

In conclusion, the Staff should revise its Report to reflect the misstatements noted above and further refrain from engaging in speculation and conjecture that appears to be designed to do nothing more than raise suspicion and prejudice the Company in the minds of the reader.

If you have any questions regarding these comments or would like to discuss them more thoroughly, please feel free to call me at your convenience.

Sincerely,

W.R. England, III

WRE/da

## Attachment 20

New Florence Telephone Company's

Comments to the Staff's Report

LAW OFFICES  
**BRYDON, SWEARENGEN & ENGLAND**  
PROFESSIONAL CORPORATION  
312 EAST CAPITOL AVENUE  
P.O. BOX 456  
JEFFERSON CITY, MISSOURI 65102-0456  
TELEPHONE (573) 635-7166  
FACSIMILE (573) 635-0427

**RECEIPT COPY**

DAVID V.G. BRYDON  
JAMES C. SWEARENGEN  
WILLIAM R. ENGLAND, III  
JOHNNY K. RICHARDSON  
GARY W. DUFFY  
PAUL A. BOUDREAU  
SONDRA B. MORGAN  
CHARLES E. SMARR

DEAN L. COOPER  
MARK G. ANDERSON  
GREGORY C. MITCHELL  
BRIAN T. MCCARTNEY  
DIANA C. CARTER  
JANET E. WHEELER

OF COUNSEL  
RICHARD T. CIOTTONE

January 18, 2005

Mr. David Winter  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

RE: **New Florence Telephone Company**

Dear Dave:

This correspondence is in response to your email dated December 27, 2004, seeking review and feedback by New Florence Telephone Company (New Florence) on the draft section of Staff's Investigative Report as it relates to New Florence. Accordingly, this response is limited to New Florence and does not purport to respond on behalf of any other entity.

We have identified several statements that are inaccurate or incomplete as follows (References will be to the Draft Report attached to your December 27, 2004 email.):

In the second paragraph of Section 11.A, the Report indicates that Mr. Kenneth Matzdorff was President and Director of New Florence Telephone Company until August 12, 2004. At that time, Mr. Matzdorff voluntarily resigned both his position as President and Director. Accordingly, on and after August 12, 2004, Mr. Robert Williams became the President of New Florence and its sole Director. Thus, Mr. Matzdorff is no longer an officer of the Company nor is he a director of the Company. In other words, he has completely removed himself from the management of New Florence.

In the second paragraph under the Section entitled "Affiliate/Related Party Transactions," the Report indicates that New Florence "has two officers that have authority to approve purchases or fund disbursements that also have a separate business relationship with third party vendors doing more than \$10,000 annually with New Florence Telephone Company. These individuals are Kenneth Matzdorff and Robert Williams." As noted above, while that may have been the case prior to August 12, 2004, that is no longer true. As of August 12, 2004, Mr. Williams is the only individual with authority to approve purchases or fund disbursements of any kind for New Florence.



The Report makes reference to the fact that "Overland Data Center did not provide any data functions to New Florence," and correctly notes that New Florence could not provide copies of agreements between Overland Data Center and LEC, LLC as that information is not in New Florence's possession or control. The Report, however, fails to mention the fact that there are no direct charges from Overland Data Center to New Florence. In fact, the Report leaves the opposite impression by saying "the possibility exists that New Florence does make Overland Data Center payments through its LEC, LLC payments." There is absolutely no evidence that LEC, LLC has charged any costs associated with Overland Data Center to New Florence. To speculate that that may be the case is highly prejudicial and inflammatory. Moreover, no allegation has been made in any of the Federal proceedings that would link New Florence to Overland Data Center (or USP&C). In fact, New Florence is never mentioned in the Federal proceedings.

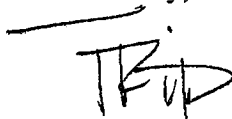
Also, under the section entitled, "Firm's Involvement in Inappropriate Activities," the Report states as follows: "There is no evidence that New Florence Telephone Company had any involvement in the activity cited in the Federal indictments in New York with the possible exception of money laundering." Not only is there no evidence that New Florence had any involvement in the activity cited in the Federal indictments in New York, there is not even any mention of New Florence in those indictments. For the Staff to imply that there is a possibility of money laundering involving New Florence Telephone Company is contrary to the facts and, again, prejudicial and inflammatory.

While the Report recognizes that New Florence paid LEC, LLC for various services, such as billing and collection, it fails to mention that all payments from New Florence to LEC, LLC ceased as of January 1, 2005 and that LEC, LLC no longer provides any services to New Florence.

Finally, the draft Report does not reflect the additional information which was recently provided to Staff by New Florence such as the audit and additional data request responses. The independent, third-party audit report only identified one area of concern with respect to New Florence's transactions with affiliates. More importantly, this area of concern had no impact upon New Florence's submissions to, and receipt of, Universal Service Fund monies.

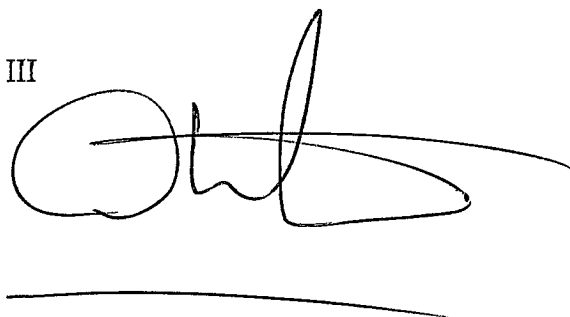
In conclusion, we hope that you will make the necessary corrections and add the additional information indicated above. If there are any questions regarding this correspondence, you may direct them to me at the above number.

Sincerely,



W.R. England, III

WRE/da



## Attachment 21

### Cass County Telephone's Comments to the Staff's Report

LAW OFFICES  
**BRYDON, SWEARENGEN & ENGLAND**  
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON  
JAMES C. SWEARENGEN  
WILLIAM R. ENGLAND, III  
JOHNNY K. RICHARDSON  
GARY W. DUFFY  
PAUL A. BOUDREAU  
SONDRA B. MORGAN  
CHARLES E. SMARR

312 EAST CAPITOL AVENUE  
P.O. BOX 456  
JEFFERSON CITY, MISSOURI 65102-0456  
TELEPHONE (573) 635-7166  
FACSIMILE (573) 635-0427

DEAN L. COOPER  
MARK G. ANDERSON  
GREGORY C. MITCHELL  
BRIAN T. MCCARTNEY  
DIANA C. CARTER  
JANET E. WHEELER

OF COUNSEL  
RICHARD T. CIOTTON

January 19, 2005

Mr. Nathan Williams  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, Missouri 65102

**Re: Cass County Telephone Company**

Dear Nathan:

This correspondence will respond to your email dated December 30, 2004 seeking review and feedback by Cass County Telephone Company on draft sections of Staff's Investigation Report. This response is limited to Cass County Telephone Company (CassTel) and does not purport to respond on behalf of any other entity, affiliated or non-affiliated with CassTel. As a general matter, we believe the Report is deficient and inaccurate. It is deficient in that it fails to give a complete and balanced view of CassTel. It is inaccurate in certain respects and we will attempt to identify those inaccuracies later. We would also note that the Report includes a great deal of conjecture and speculation and then appears to draw conclusions and inferences based upon that conjecture and speculation.

The Report is deficient in that it fails to give a complete and unbiased view of CassTel. For example, the Staff Report completely ignores the history and accomplishments of CassTel since its inception. As the Commission is well aware, Cass County started operations on April 1, 1996, by acquiring six exchanges from GTE Corporation. At the time of sale, the telephone properties were comprised of six exchanges, serving approximately 5,700 access lines covering approximately 500 square miles of serving territory.

Customers were served primarily through 1961-1963 vintage step-by-step (XY) switches. Further, over 2,600 of the access lines were 4-party lines. Maintenance and customer support were provided in remote locations with little to no local management available in the area.

In a span of four years, CassTel replaced the existing Central Office Equipment (COE) with digital switching equipment. CassTel installed Siemens switches and today these switches are equipped with the latest software release. At the time of acquisition, CassTel's customers could not order vertical services, class features or equal access services as they do today. All of the switches are Communications Assistance for Law Enforcement Act (CALEA) compliant and have Signaling System 7 (SS7) available. Further, CassTel at the time of acquisition assisted the counties in the financing of E-911 efforts. CassTel now serves approximately 8,100 access lines, all single-party service.

At the time of acquisition, the outside plant was at exhaust for much of the serving territory. As noted above, outside plant included 4-party service in four of the six exchanges. CassTel reinforced and

replaced much of the cable plant with jell-filled, buried cable and fiber optic cable. To date, CassTel has invested over \$22 million in new plant facilities to meet the needs of one of the states fastest growing counties.

CassTel provides some of the most advanced telecommunications service in the state. It has deployed DSL service capability to over 90% of its customer base. CassTel provides local customer service support and local community involvement.

To date, CassTel employs either directly or indirectly approximately 46 full-time employees and it has established a local business office in Peculiar, Missouri, where customers may come in and talk face-to-face with a Company representative.

All of these efforts and expenditures have been made without any increase in rates to customers. In fact, in August of 1999, the Company filed revised tariffs with the Commission that expanded MCA service to customers in the Creighton exchange which, prior to that time, did not have such service. This resulted in a substantial revenue loss to the Company. Up until May of 2004, the rates the Company charged its customers were the same as those charged by GTE in 1996 at the time of sale. Of particular significance is the fact that up until May 16, 2004, the rates which CassTel was authorized to charge its customers were not based upon any costs which CassTel actually incurred in providing service to its customers. In May, 2004, the Company reduced its rates as a result of a stipulation with Staff by approximately \$320,000 annually.

The inaccuracies in Staff's Report are as follows: (References will be to page numbers in the draft Report attached to your December 30, 2004 email. Some inaccuracies that occur more than once in the Report are noted only once.)

- At page 7 of the Report under "Initial Conclusions", the second paragraph begins with the following sentence,  
  
"This initial report will show that there has been negative impact on service provided to Missouri customers of Cass County Telephone . . ."

There is absolutely no evidence that service to CassTel subscribers has been negatively impacted. In fact, as indicated above, service has been significantly enhanced and expanded since CassTel took control of these properties in 1996. To the best of CassTel's recollection, it has met or exceeded every quality of service criteria contained in Commission rules and regulations. For example, at the time of acquisition, the number of trouble reports per 100 access lines was approximately 6 troubles per 100 per month. Today that service index is .5 troubles per 100 per month. The Company has not experienced a held order in over four and one-half years for a regulated service. CassTel is unaware of any formal complaints that have been brought regarding its service, and, to the extent it has received informal complaints, they have been resolved quickly and satisfactorily.

- At page 12 of the Report, Staff begins a lengthy discussion of "Telephone Cramming."

What it fails to mention is that there has been absolutely no allegation, let alone evidence, that Cass County has engaged in any telephone cramming. The Staff's discussion of telephone cramming in its Report is irrelevant to and has no bearing on the operations of CassTel.

- At page 23, under the heading "Missouri Exposure to Overpayment for Goods & Services," the Staff begins with the following sentence:

“There are significant transactions with affiliates and owners involving Cass County Telephone Company LLP . . . that influence . . . [the Company’s] cost structure.”

While as an abstract matter, the statement would appear to be correct, the fact of the matter is that until May of 2004, the intrastate rates which CassTel charged its customers were rates it inherited from GTE and which were not based on CassTel’s costs. Accordingly, to the extent CassTel engaged in transactions with affiliates during this period of time, the costs which CassTel incurred from such transactions had no bearing on, or relationship to, the intrastate rates it charged customers.

- At page 29, in the first paragraph at the top of the page, there is a sentence that reads as follows:

“It is known at this time Cass County Telephone Company, LLP, is (sic) transferred funds to; Haug Construction, Local Exchange Company, LLC, LEC Long Distance, Inc., New Florence Telephone Company, Pegasus Communications, Inc. and VideoNet, LLP, during the last three years.”

The use of the term “transferred funds” suggests that CassTel did not receive value for the payments it made to these entities. On the contrary, all of these entities provided goods and/or services to CassTel for which payments were made. And, in addition, in the case of LEC, LLC, payments were made in the form of distributions, which is a perfectly legitimate transaction.

- At page 40, under the section entitled “Overland and Cass Telephone,” there is the following statement:

“ . . . Cass County indicated that these expenditures [to Overland] were on-going and for IT and Cass County’s customer billing system.”

However, in the CassTel response to Data Request No. 9 also quoted on that same page, CassTel made it clear that it has not utilized Overland Data’s services since July of 2002. Thus, Cass Tel did not represent that payments to Overland Data were “on going,” since they ceased in 2002.

- At page 41, Staff states as follows:

“ . . . it appears that Cass County’s original representations to the Staff were misleading and rates are overstated by the amount paid to Overland (\$679,022). If combined with the original stipulated rate reduction of \$319,998, Cass County’s rates should have been reduced by a total of \$999,020.”

This is simply not correct. First of all as Staff is well aware, even if the entire amount paid to Overland is disallowed, a corresponding reduction in Universal Service Funds is also appropriate. Thus, in order to correctly reflect the intrastate revenue requirement effect of the disallowance of this payment, Staff has to “net” the corresponding reduction in Federal USF funds against the reduced or disallowed expense. In short, Staff has only looked at one side of the equation. Secondly, Staff conveniently ignores the fact that this was a stipulated rate reduction and as part of that stipulation, CassTel chose not to pursue certain issues which it would have pursued had the matter gone to hearing. For example, Staff disallowed all income tax expense in its revenue requirement calculation. If an income tax expense were properly allowed, it would have offset the amount paid to Overland (i.e., \$679,022). Similarly, CassTel did not dispute Staff’s proposed depreciation rates and rate of return which it would have done had the matter gone to hearing. Accordingly, it is neither fair nor accurate to state that had the Overland payment been disallowed, the rate reduction would have been increased by the disallowed amount.

- At page 48, the last sentence in the top paragraph, Staff states as follows:

“Attachment 15 to this report shows that there is no Cass County Telephone Company, L.P. employee position that can effectively negotiate fees with LEC, LLC. The LEC, LLC fees are basically established by LLC, LLC (sic) and imposed on Cass County Telephone Company, L.P.”

First of all, Attachment 15 is simply an organizational chart of CassTel and contains no substantive information regarding the duties, responsibilities, capabilities, etc. of the individual employee positions. It is unclear how Staff can draw this conclusion from an organizational chart. Second, and more importantly, this statement leaves the impression that the Company performs no review of charges it pays to affiliates for various goods and services. This is misleading and directly contrary to CassTel’s response to Staff Data Request No. 24 which is reproduced at the bottom of page 51 and top of page 52 of the Staff Report. It is clear from this response that CassTel uses various methods to review transactions with affiliated companies and ensure that the terms and conditions of those transactions are commercially reasonable. Third, the fairness of affiliate transactions under Part 32 of the CFR is a matter on which CassTel’s annual audits focus, which provides independent verification of the appropriateness of payments made to LEC, LLC. Finally, it is worth noting that Staff’s statement about effective negotiating leverage is true in all parent-subsidiary situations, from SBC and its subsidiaries down to the smallest local phone company and its subsidiaries. The question in those circumstances is never whether the negotiations were conducted at arm’s length; the question is whether the results of the negotiations were fair.

- Similarly, at page 50 under the section entitled “Impact on Missouri Consumers,” the last sentence of the first paragraph reads as follows:

“The important item to note in this section is the fact that LEC, LLC can engage in a transaction with any firm or individual and cover the transaction through a billing to Cass County Telephone Company L.P. . . . as LEC, LLC charge.”

Again, this leaves the impression that CassTel does nothing to review the charges it receives from LEC, LLC for goods and services LEC, LLC provides to it. That is simply not true in light of the Company’s response to Staff Data Request No. 24. More importantly, the Staff has presented an incomplete picture to the Commission regarding Cass County’s transactions with affiliates. Nowhere does Staff look at the total cost of service incurred by CassTel by functional account and make a comparison with other similarly situated telecommunications companies. The Staff Report leaves the impression that the Company’s costs are excessively or unreasonably high when, in fact, there is no evidence of such. In fact, CassTel believes that if the Commission Staff were to perform a comparative analysis, it would find that CassTel’s costs, relative to other telecommunications companies either on a per access line or per customer basis, are relatively low.

- At page 53 of the Report, under “Scope of Operations,” second sentence, first paragraph, the Report states:

“LEC, LLC is currently charging Cass County Telephone Company Limited Partnership over \$4 million annually based on an unexecuted service agreement that exceeds LEC, LLC’s costs to provide those services.”

First of all, LEC is not currently charging CassTel over \$4 million annually. In calendar year 2004, LEC, LLC billed \$2,300,540 to CassTel for goods and services. Second, these charges are not based on an unexecuted service agreement. Rather, they are based upon an executed service agreement, a copy of

which the Company has lost and cannot find. Third, and most importantly, the charges from LEC, LLC do not exceed its costs to provide those services and there is no evidence of that fact in the draft Report.


- At page 57, under the heading "Firm's Involvement in Inappropriate Activities," the first sentence of the first paragraph states as follows:

"There is no evidence that Cass County Telephone L.P. had an involvement in the activities cited in the Federal indictments in New York with the possible exception of money laundering."

This statement is incomplete. It should also acknowledge that the Federal indictments in New York do not make any mention of CassTel and, more importantly, there is absolutely no allegation in the indictment that CassTel engaged in money laundering or cramming.

CassTel is a viable, effective provider of telephone services in rural Missouri. It has unfortunately become entangled in a difficult and complicated situation. For the Commission to reach appropriate conclusions, Staff's Report (and any subsequent statements it makes to the Commission) must deal very carefully with the factual matters it raises. It is equally important for the Report to avoid speculation. CassTel is making no effort in this letter to comment on factual statements relating to persons other than itself, and this letter does not comment directly on statements in the Report that appear to be speculative; nevertheless, CassTel hopes that the corrections it is offering will improve the Commission's understanding of the situation.

Sincerely,



W.R. England, III

WRE/da