

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

Staff of the Public Service Commission)	
Of the State of Missouri,)	
)	
Complainant,)	
)	
v.)	Case No. TC-2005-0357
)	
Cass County Telephone Company)	
Limited Partnership,)	
)	
Respondent.)	

**STAFF’S SUGGESTIONS IN SUPPORT OF THE STIPULATION AND
AGREEMENT**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and respectfully submits the following Suggestions in Support of the Stipulation and Agreement:

I. BACKGROUND

Cass County Telephone Company (CassTel) is a “telecommunications company” and “public utility” as those terms are defined in §386.020 RSMo.¹ As such, CassTel is subject to the supervision and control of the Commission as provided by law in Chapters 386 and 392 RSMo.

On August 11, 2004, the Staff began an informal investigation of CassTel as a result of the arrest of CassTel’s then President, Kenneth M. Matzdorff. Thereafter, on January 14, 2005, the Commission established a case (MoPSC Case No. TO-2005-0237) and directed its Staff to investigate all matters pertaining to the operations of CassTel as a

¹ RSMo. 2000 or RSMo. Supp. 2004, unless otherwise noted.

result of Mr. Matzdorff's guilty plea to certain felony charges.² In addition, the Commission authorized its Staff to file a complaint(s) on any matters contained within the scope of the investigation case.

On April 8, 2005, Staff filed a Complaint against CassTel. The Commission docketed the Complaint as captioned above. By virtue of its Complaint, Staff has sought to obtain authority from the Commission for the Commission's General Counsel to seek penalties against CassTel allowed by law for the violations alleged in the Complaint. Thereafter, on May 13, 2005, CassTel filed its Answer and affirmative defenses.

On July 22, 2005, Staff filed a proposed procedural schedule. CassTel filed its response to Staff's proposal on July 28, 2005. On August 4, 2005, the Commission issued its Order adopting a procedural schedule. Among other things, the Order included events culminating in an evidentiary hearing of five days to commence on October 31, 2005.

On August 30, 2005, Staff filed its Motion for Summary Disposition and a legal memorandum in support of said motion. On September 23, 2005, Staff and CassTel filed a Joint Motion for Suspension of Procedural Schedule and Motion for Expedited Treatment (Joint Motion) to allow them to explore the terms of a settlement without the distraction and burden of simultaneously committing substantial effort and expense to preparing for an evidentiary hearing.

On September 26, 2005, the Commission issued an order granting the Joint Motion.

² On July 15, 2005, the Commission issued its Order Dismissing Case, acknowledging that the Staff has the necessary authority to continue to investigate the operations of CassTel without the necessity of a formal docket. Thereafter, Staff has continued its investigation of CassTel.

On December 29, 2005, Staff and CassTel filed a Stipulation in this case. On December 29, 2005, the Office of the Public Counsel filed its Statement of No Opposition to Stipulation pursuant to 4 CSR 240-2.115(E). Pursuant to 4 CSR 240-2.115(C), the Commission may treat this Stipulation as a Unanimous Stipulation.

II. THE COMPLAINT

Staff's Complaint against CassTel consisted of four Counts (Complaint at pp. 1-24). A brief summary of each Count follows.

Count I alleged a violation of Section 386.570 RSMo (Complaint at pp. 1-12). Kenneth M. Matzdorff pled guilty to the federal crimes of conspiracy to commit mail fraud and wire fraud (Complaint at pp. 6-10). Mr. Matzdorff's crimes were based on a conspiracy to defraud the Universal Service Administrative Company (USAC) and the National Exchange Carriers Association (NECA) by including as expenses of Cass County Telephone Company Limited Partnership payments made to Overland Data Center on false or fictitious invoices (Complaint at pp. 6-12).

These expenses based on such falsified or fictitious invoices were then used to qualify for unwarranted disbursements of subsidies from USAC and revenue distributions of NECA (Complaint at pp. 6-10). Mr. Matzdorff served as President and/or ran the daily operations of CassTel when the false or fictitious invoices were created and used as expenses by CassTel to qualify for unwarranted disbursements of subsidies and revenue distributions from 1998 through about July, 2004 (Complaint at pp. 6-10).

Count II alleged that by relying on the false or fictitious invoices of Overland Data Center in making entries in the accounts, books of account, records or memoranda of Cass County Telephone Company Limited Partnership, Kenneth Matzdorff willfully

made false, or willfully falsified entries in the accounts, books of account, records or memoranda of Cass County Telephone Company Limited partnership in violation of Section 386.560 (Complaint at pp. 13). Count II relied on the same factual background as Count I (Complaint at pp. 12).

Count III alleged that by relying on false invoices of Overland Data Center in making entries in the accounts and books of account, records or memoranda of CassTel that Kenneth Matzdorff willfully made false entries in the accounts, books of account, records or memoranda of CassTel in violation of 4 CSR 240-30.040 (Complaint at pp. 14-16).

Count IV alleged that Mr. Matzdorff made statements to the Commission on April 19, 2005, that were directly contradicted by his guilty pleas in Federal Court on January 18, 2005 (Complaint at pp. 14-22). The primary difference is that Mr. Matzdorff admitted in Federal Court that he knowingly caused falsified or fictitious invoices to be paid by CassTel to Overland Data Center and then CassTel utilized these added false expenses to make false submissions to NECA and USAC and received subsidies (Complaint at pp. 17-21).

III. THE STIPULATION

In making its decision to enter into this Stipulation, Staff considered a wide array of factors. One crucial factor was the willingness of CassTel to work with Staff on Staff's audit and take corrective action.

One important factor was CassTel's willingness to go beyond a statement of no wrongdoing, which is quite common in Settlement Agreements. Staff took CassTel's willingness to publicly admit certain things about the case as a positive indication of a

desire to resolve all matters regarding the complaint. CassTel conceded that sufficient evidence existed to permit a finder of fact to reasonably conclude that Mr. Kenneth M. Matzdorff caused false entries to be made in the books of account of CassTel when he was an officer of CassTel and to further admit sufficient evidence existed to permit a finder of fact to reasonably conclude that on April 19, 2004, Mr. Kenneth M. Matzdorff gave false or misleading testimony to the Commission under oath in Case No. IR-2004-0534 (Stipulation at pp. 3).

This is akin to an Alford Plea in a criminal case. In that context, it is an admission that the State has sufficient evidence to show a crime was committed and that the defendant did it. Likewise, Staff interprets the fact that there was an admission of sufficiency of the evidence to mean that CassTel acknowledged the seriousness of the wrongs committed. Staff did not deem it appropriate to settle a case of this magnitude with a mere statement of no wrongdoing.

Another important factor was the payment of One Million Dollars (\$1,000,000) to the Public School Fund in settlement of this Complaint. This payment is to settle the matters in the pending Complaint (Stipulation at pp. 3-4). This settlement includes all other matters arising out of the pending Complaint (Stipulation at pp. 3-4). This settlement excludes any matters associated with the Staff's ongoing investigation of and any current or future complaint against New Florence Telephone Company including Case No. TC-2006-0184.

Staff believes that the magnitude of the payment in this case is unprecedented. Staff also submits that it is appropriate in light of the scope of wrongdoing done by Mr. Matzdorff and others utilizing CassTel as the instrument of their criminal activity. The

size of the payment needed to be large to address the egregiousness of the wrong but still be palatable to all concerned. The payment is to be made at the earlier of ninety days of a Commission Order approving the Agreement in this case or upon the close of the sale of CassTel. This arrangement ensures that the payment will be made.

Furthermore, the Stipulation does not settle the issue of whether CassTel is currently overearning. That is a matter of ongoing discussions between CassTel and Staff.

1. Certification of CassTel for Receipt of USF Funds.

The Parties agreed that CassTel has implemented sufficient financial and managerial controls to justify its certification for receipt of federal Universal Service Fund (USF) disbursements. Staff agrees to recommend that the Commission certify prospectively to the Federal Communications Commission (FCC) that funds received by CassTel from the federal high cost support funding mechanisms will be used in accordance with Section 254(e) of the federal Telecommunications Act of 1996 (47 USC §254(e) 1999).

Staff is not obligated to and would not make such a recommendation if, during the time that LEC, LLC continues to have majority ownership of the Company, the day-to-day management of CassTel no longer is being performed by a third party acceptable to Staff (Stipulation at pp. 5-6). In fact, as noted in the Stipulation, the Stipulation is predicated upon an understanding that the present CassTel owners will promptly a sale of CassTel to the Commission for approval (Stipulation at p. 7).

2. Certification for Prior Periods.

Under the Stipulation Staff can make a recommendation of certification for prior periods to the Commission for certification. There are specific provisions that allow for such certification for High Cost Support. There is nothing in this Agreement that constitutes a waiver of any future Commission rule or regulation regarding High Cost Support.

3. Adjustments to Books of Account.

The Parties agree that CassTel shall adjust its 2005 books and records by making the correcting entries to its accounts as set forth in Attachment 1 attached to the Stipulation. The Parties further agreed that the adjustment of CassTel's 2005 books and records represents an accurate valuation of CassTel's telephone plant in service and depreciation reserve accounts for that period. The Parties also agreed that no restatement of CassTel's annual reports to the Commission for years prior to 2005 will be made, except for a notice attached to each of the prior years' annual reports directing users to refer to the 2005 CassTel Annual Report for a description of inaccuracies within the 1996-2004 reports. Prior Annual Reports will be corrected and submitted by CassTel if prior period USF certification is sought.

4. The Agreement is in the Public Interest.

Staff believes that the Stipulation is in public interest and should be approved by the Commission. Staff further submits that the pending Complaint together with any Potential Enforcement Complaints are likely to lead to protracted litigation both before the Commission and in Circuit Court on a number of issues. Such matters are better addressed in the manner set forth in the Stipulation.

Furthermore, approval of the Stipulation will permit CassTel to concentrate its energies on providing safe, reliable and affordable telecommunications service. The Stipulation will facilitate sale of CassTel's assets and the Stipulation is predicated on an understanding that the present CassTel owners will promptly present such a sale to the Commission for its approval. Staff believes that a change of ownership is crucial for CassTel and that this Stipulation is an important element of that sale occurring.

WHEREFORE, for the following reasons, Staff respectfully requests that the Commission issue an order in this case approving the Stipulation subject to the specific terms and conditions contained therein.

Respectfully Submitted,

/s/ Robert V. Franson

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Service Commission

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 6th day of January, 2006.

/s/ Robert V. Franson