

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

In the Matter of the Investigation Into the )  
Earnings of Cass County Telephone Company. )

Case No. IR-2006-0374

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

**COMES NOW** the Staff of the Public Service Commission of Missouri and submits the following suggestions in support of the Stipulation and Agreement filed with the Commission on March 30, 2006, as revised by the amendatory terms filed with the Commission on May 22, 2006:

***Related Pending Cases***

1. This Stipulation and Agreement as amended (First Amended Stipulation) addresses issues raised due to the Staff’s earnings investigation of CassTel. It also contemplates the related case of the pending sale of CassTel’s assets to FairPoint Missouri which the Commission has docketed as Case No. TM-2006-0306. The third leg of the “three-legged stool” (a description made by CassTel’s attorney Trip England during the January 11, 2006 on-the-record presentation to the Commission of the stipulation and agreement filed in Case No. TC-2005-0357) is the Staff’s complaint against CassTel docketed by the Commission as Case No. TC-2005-0357. If these three cases, Case Nos. TC-2005-0357, TM-2006-0306 and Case No. IR-2006-0374 are resolved, all matters regarding CassTel now pending before this Commission will be resolved.

### ***Signatories and Conduct of Settlement Negotiations***

2. After extensive negotiations between the parties who signed the Stipulation and Agreement before it was amended, the Staff filed the Stipulation with the Commission on March 30, 2006.

3. In response, the Commission issued on April 3, 2006 its “Order Directing Notice and Setting Dates for Submission of Intervention Requests” with which it established April 24, 2006 as the deadline for those wishing to intervene in this case to file their requests to do so.

4. On April 24, 2006 Southwestern Bell Telephone, LP, d/b/a AT&T Missouri filed its application to intervene.

5. On May 2, 2006 the signatories to the original Stipulation met with AT&T Missouri and reached agreement for an amendment to the Stipulation.

6. On May 22, 2006 the Staff filed the amendment to the Stipulation with the Commission thereby presenting the First Amended Stipulation to the Commission for its consideration.

7. The signatories to the First Amended Stipulation are the Staff; the Office of the Public Counsel (Public Counsel), Cass County Telephone Company, LP (CassTel), Local Exchange Company, LLC (LEC)—the majority owner and managing partner of CassTel, FairPoint Communications Missouri, Inc. (FairPoint Missouri)—the proposed acquirer of the assets of CassTel in Commission Case No. TM-2006-0306, FairPoint Communications, Inc. (FairPoint)—the owner of FairPoint Missouri, and Southwestern Bell Telephone, LP, d/b/a AT&T Missouri—a CassTel customer (AT&T Missouri).

8. The terms of the original stipulation resulted from extensive negotiations between the signatories, particularly between CassTel, LEC, the Staff and Public Counsel. During the

negotiations that culminated in the original stipulation numerous drafts with significant changes preceding the final agreement were circulated between CassTel, LEC, the Staff and Public Counsel, and additional changes were made after the draft agreement was circulated to FairPoint and FairPoint Missouri. After AT&T Missouri intervened, the signatories to the original stipulation and AT&T Missouri quickly reached an agreement on additional terms that culminated in the First Amended Stipulation.

***Customer Credits and Cash Distributions***

9. Unlike more typical stipulations and agreements reached from earnings investigations where rates are adjusted, this First Amended Stipulation provides that credits and cash are to be distributed to qualifying customers of CassTel. The Staff's overriding objective has been for a change in the ownership of CassTel. In order to expedite the change in ownership and to avoid protracted litigation concerning the earnings of CassTel, the Staff agreed to the provision of credits and cash to the qualifying customers of CassTel.

***End User Customer Credits and Cash Distributions***

10. Customer credits and cash distributions to CassTel end user customers are addressed on pages 3-5 of the original part of the First Amended Stipulation.

11. With the exception of current or former owners or officers of CassTel or LEC, CassTel customers paying the full tariff rate and receiving basic local telecommunications service in Missouri from CassTel on a continuous basis since January 1, 2005 will receive an aggregate of \$350,000 in credits. The actual credit to each credit qualifying customer will be determined by the proportion of access lines the credit qualifying customer has divided by the total number of access lines of all credit qualifying customers. Credit qualifying customers will receive notice of the credit within thirty (30) days of the effective date of a Commission order

approving the Stipulation and the credits will issue by the completion of the second billing cycle following such a Commission order. The Staff anticipates each credit qualifying customer will receive a credit in excess of \$40 per access line.

12. Any CassTel customers who qualify for the credit who discontinue basic local service before receiving the credit are to receive a payment in the amount of the credit instead. Any of the \$350,000 that cannot be distributed to credit qualifying customers is to be paid to the West Central Missouri Community Action Agency for funding that agency's low-income housing energy assistance program.

13. With the exception of current or former owners or officers of CassTel or LEC, CassTel customers paying the full tariff rate and receiving basic local telecommunications service in Missouri from CassTel on a continuous basis from January 1, 2005 to the date of the closing of the sale of CassTel's assets to FairPoint Missouri will in the aggregate receive \$3.25 million within ten (10) days of the date the sale closes. Those customers will also receive a notice within thirty (30) days of the date the sale closes advising them of the cash distribution. Like the credits, the actual cash distribution will be determined by the proportion of access lines the cash distribution qualifying customer has divided by the total number of access lines of all cash distribution qualifying customers. The Staff anticipates each cash distribution qualifying customer will receive in excess of \$400 per access line.

14. Similarly to undistributed credits, any of the \$3.25 million that cannot be distributed to cash distribution qualifying customers is to be paid to the West Central Missouri Community Action Agency for funding that agency's low-income housing energy assistance program.

15. Depending on which is providing service to CassTel Missouri customers at the time the credits are issued, CassTel or FairPoint Missouri will issue the credits.

16. Because the cash distributions will issue after the closing of the sale of CassTel's assets to FairPoint Missouri, FairPoint Missouri will hold in trust from the sale proceeds the \$3.25 million to be distributed, and make the cash distributions.

17. Based on the foregoing, the Staff supports the agreement which provides cash distributions and credits to CassTel local exchange customers.

***Exchange Access Customer Cash Distributions***

18. The amendatory language of the First Amended Stipulation sets forth cash distributions to CassTel exchange access customers in the aggregate amount of \$500,000. The exchange access cash distributions will be paid to 29 CassTel exchange access customers who have subscribed to, and paid, Feature Group B, C, and D exchange access rates to CassTel from the period of January 1, 2005 to April 30, 2006. The amount of the cash distribution to each such customer is based on subscription to switched exchange access only; special exchange access subscription was not factored into the calculations. No cash distributions will be issued to eight (8) CassTel exchange access customers with unpaid balances over 120 days and/or no usage during the time period January 1, 2005 to April 30, 2006. Based on the foregoing, the Staff supports the agreement which provides cash distributions to CassTel exchange access customers

***Protections with regard to Credits and Cash Distributions***

19. Within one hundred twenty (120) days of the closing of the sale of CassTel's assets to FairPoint Missouri, CassTel or FairPoint Missouri will provide the Commission's Executive Director a report that shows: (1) the credits issued (and payments issued in lieu thereof), (2) the cash distributions made, and (3) the amounts paid to the West Central Missouri

Community Action Agency for funding that agency's low-income housing energy assistance program originating from (a) credits and (b) cash distributions.

20. As indicated above, none of the \$350,000 in credits or \$3.75 million in cash distributions will be returned to CassTel or LEC, their owners or officers. Further, to assure proper cash distributions post sale of CassTel's assets to FairPoint Missouri, FairPoint Missouri will hold the cash in trust and make the distributions.

***Moratoriums and Accounting Authority Orders***

21. Because a sale of CassTel's assets to FairPoint Missouri is both contemplated and pending, moratoriums and accounting authority orders are addressed separately for each company. The moratoriums and accounting authority orders are addressed on pages 6-8 of the original part of the First Amended Stipulation. Section III. D. on page 7 of the First Amended Stipulation expressly provides "[t]he purpose of the accounting authority orders is to spread, for accounting purposes, the impact of the credits and distributions (§§II.A. and II.B. above) over the rate moratorium period (§IV. below) rather than when they are incurred."

22. Cash distributions are only made if FairPoint Missouri acquires CassTel's assets; therefore, FairPoint Missouri will make the cash distributions if the pending sale of CassTel's assets to FairPoint Missouri closes.

23. If the sale of CassTel's assets to FairPoint closes, then the concern with customer rates no longer is with CassTel, but rather with FairPoint. In contemplation of the sale of CassTel's assets to FairPoint, the Staff agrees the Commission should, contingent on the sale of CassTel's assets to FairPoint Missouri closing, authorize FairPoint Missouri to amortize, based on actual days of the month, as a reduction to booked local revenues the sum of \$3.75 million—

the amount of the customer cash distributions—evenly over a period of two years beginning with the effective date of a Commission order approving the Stipulation..

24. CassTel, FairPoint Missouri, or both will issue the customer credits. Which issues the credits and when depend on (1) whether CassTel's assets are sold to FairPoint Missouri and, if the sale closes, (2) when it closes.

25. The Staff agrees the Commission should, contingent on the sale not closing within forty-five (45) days of the Commission order approving the Stipulation, authorize CassTel to amortize for a period of one year, based on the actual days of the month, a reduction of booked local revenues in the amount of \$350,000—the amount of the aggregate customer credits.

26. The Staff agrees the Commission should, contingent on the sale closing, authorize FairPoint Missouri to continue to amortize the \$350,000 on the same terms that CassTel was amortizing the \$350,000, if CassTel has begun but not fully amortized the \$350,000 when the sale of CassTel's assets to FairPoint Missouri closes.

27. If the sale of CassTel's assets to FairPoint Missouri closes within forty-five (45) days of the effective date of a Commission order approving the First Amended Stipulation and CassTel has not begun amortizing any of the \$350,000—the amount of the customer credits—the Staff agrees the Commission should authorize FairPoint Missouri to amortize the sum of \$350,000 over the same time period and under the same terms as the \$3.75 million amortization addressed in paragraph 23 above, *i.e.*, based on actual days of the month, as a reduction to booked local revenues, over a period of two years beginning with the effective date of a Commission order approving the Stipulation.

28. If the sale of CassTel's assets to FairPoint closes, the Staff and other signatories, except in extraordinary circumstances, agree not to file a general rate increase case or aid in the

filing of a rate complaint case concerning FairPoint Missouri's rates for a period of two years commencing with the effective date of a Commission order approving the First Amended Stipulation.

29. The signatories agree that if a general rate increase case or complaint case is filed due to extraordinary circumstances, any resulting rate adjustment would not become effective before six (6) months following the filing of the case resulting in the rate adjustment, and they acknowledge the Commission's authority to cause a contrary result. The signatory parties agree that filing revenue neutral tariffs does not violate their agreement.

***Rate-of-Return Review Before Any Non Rate-of Return Status***

30. This matter is addressed on page 8 of the original part of the First Amended Stipulation. CassTel agrees, and, contingent on acquiring the assets of CassTel, FairPoint Missouri also agrees to not seek a status where it is not rate-of-return regulated before a Commission order is effective, final and non-appealable in a case where Missouri basic local telephone service rates for CassTel, or FairPoint, as applicable, are reviewed by the Commission, and they both consent to inclusion of the foregoing as a condition to the transfer of CassTel's assets to FairPoint Missouri in Case No. TM-2006-0306.

***Termination of the Stipulation***

31. Page 6 of the original part of the First Amended Stipulation includes a provision that expressly provides that a failure to make any of the customer credits, customer cash distributions or any other payments set forth in the Stipulation is a material breach after which the Staff and Public Counsel may immediately file an earnings complaint or take other action they deem fit.



32. Section VI.B. provides that if the Commission finds CassTel or LEC failed to provide the Staff or Public Counsel with material and relevant information in the possession of either of them or that either misrepresented facts material and relevant to the First Amended Stipulation, the First Amended Stipulation is terminated.

***Effect on Agreement if Modified or Conditioned by Commission***

33. If the Commission does not accept the First Amended Stipulation without modification or condition, then, by the terms of the First Amended Stipulation (original part page 9-10, § VI.C.(1) and (3)), the First Amended Stipulation is void and may neither be used to bar any party from a decision on the merits in this case nor considered as part of the record in this case.

***Waivers and Limitation of Scope of Effect of Agreement***

34. The First Amended Stipulation includes the typical provisions that it is being entered into solely for resolution of the issues in the cases, that it does not constitute approval or acquiescence of any party to any ratemaking or procedural principle and that it is not binding, except as expressly specified in the agreement. It also includes an integration clause stating it includes all agreements made regarding the issues examined in the Staff's earnings investigation of CassTel. Further, if the First Amended Stipulation is accepted by the Commission, the First Amended Stipulation provides for the typical waivers of further contested proceedings and judicial review, and that the testimony prefiled in this case may be made part of the record in the case without the witnesses taking the stand.

**WHEREFORE** the Staff submits the foregoing Suggestions in Support of the First Amended Stipulation and Agreement filed with the Commission on March 30, 2006 (original part) and May 22, 2006 (amendment).

Respectfully submitted,

/s/ Nathan Williams

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 22<sup>nd</sup> day of May, 2006.

/s/ Nathan Williams

Nathan Williams