

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 30th day of
May, 2006.

In the Matter of the Investigation into the Earnings of)
Cass County Telephone Company) **Case No. IR-2006-0374**

**ORDER APPROVING STIPULATION AND AGREEMENT AND FIRST
AMENDED STIPULATION AND AGREEMENT**

Issue Date: May 30, 2006

Effective Date: June 9, 2006

On March 30, 2006, the Staff of the Commission, Cass County Telephone Company, Limited Partnership (CassTel), Local Exchange Company, LLC (LEC), FairPoint Communications, Inc., FairPoint Communications Missouri, Inc., and the Office of the Public Counsel filed a Stipulation and Agreement. The Stipulation and Agreement resolves Staff's investigation into over earnings by CassTel. A copy of the Stipulation and Agreement is attached to this order as Attachment 1.

The Commission directed that notice of the Stipulation and Agreement be provided to other phone companies and to the public in the area served by CassTel. The Commission also established an intervention deadline of April 24. On April 24, AT&T Missouri filed a timely application to intervene and indicated its opposition to the Stipulation and Agreement. No other applications to intervene were submitted.

After engaging in further negotiations, the parties, now including AT&T Missouri, filed a First Amended Stipulation and Agreement on May 22. A copy of the First Amended Stipulation and Agreement is attached to this order as Attachment 2. Staff filed

suggestions in support of the stipulations on May 22, and the Commission conducted an on-the-record presentation regarding the stipulations on May 24.

The stipulations in this case are closely related to two other cases pending before the Commission. All three cases relate to financial misdeeds at CassTel over the past several years. Staff brought a complaint against CassTel in Case Number TC-2005-0357 and CassTel has agreed to pay an administrative penalty of \$1 million to resolve that complaint. CassTel has also agreed to sell its assets to FairPoint Communications, and approval of that transaction is pending in Case Number TM-2006-0306.

In this case, Staff investigated CassTel to determine whether that company was earning excess revenues. Staff established a test year ending December 31, 2004, trued-up through the first six months of 2005. After extensive negotiations with CassTel and Public Counsel, the parties agreed that CassTel was over earning. To rectify that situation, the parties agreed that CassTel would pay \$3.6 million to its qualifying customers, partly as a credit on bills and partly as a cash payment. Qualifying customers are customers who have been paying tariffed rates for services from CassTel continuously since January 1, 2005. Any funds that cannot be distributed to qualifying customers will be given to the West Central Missouri Community Action Agency for use in funding that agency's low-income housing energy assistance program. The funds to be used to provide the payments will be withheld from the proceeds from the sale of CassTel's assets to FairPoint Communications.

The Amended Stipulation and Agreement requires an additional cash distribution totaling \$500,000 to be paid to other telecommunications carriers that have paid for switched access telecommunications services from CassTel for the period of January 1,

2005, through April 30, 2006. The payments are based on the percentage of switched access payments made by those carriers during that period. After including the additional \$500,000 payments required by the Amended Stipulation and Agreement, CassTel will pay a total of \$4.1 million to its customers.

In return for the payments, the parties to the stipulations agree that they will not file a general rate increase case, or aid in the filing of a rate complaint case concerning the rates of CassTel or FairPoint Missouri during the two years (730 days) following the effective date of this order. The stipulations provide that the rate moratorium can be avoided if a significant, unusual event has a major impact on CassTel or FairPoint. CassTel and FairPoint also agree that they will not seek competitive or price-cap regulated status until after the next rate case, meaning after the expiration of the rate moratorium.

In addition, the stipulation and agreement provides that the Commission will issue three specified accounting authority orders regarding the amortization of the payments.

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case.¹ Furthermore, Section 536.090, RSMo Supp. 2005, provides that when accepting a stipulation and agreement, the Commission does not need to make either findings of fact or conclusions of law. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.² Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the Stipulation and Agreement and the First Amended Stipulation and Agreement.

¹Section 536.060, RSMo Supp. 2005.

² *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

IT IS ORDERED THAT:

1. The Stipulation and Agreement filed on March 30, 2006, and the First Amended Stipulation and Agreement filed on May 22, 2006, are approved as a resolution of all issues in this case (See Attachment 1).

2. All signatory parties are ordered to comply with the terms of the Stipulation and Agreement and the First Amended Stipulation and Agreement.

3. FairPoint Communications Missouri, Inc., is authorized to amortize, based on the actual days of the month, as a reduction of booked local revenues, and as more specifically set forth in Appendix A to the Amended Stipulation and Agreement, \$4.1 million – the sum total of the credits and cash distributions set forth in paragraph II of the Stipulation and Agreement – during the post-Closing Date moratorium set forth in paragraph IV of the Stipulation and Agreement.

4. Cass County Telephone Company, Limited Partnership, is authorized to amortize, based on the actual days of the month, as a reduction of booked local revenues, \$350,000 (i.e. the amount of the paragraph II.A., customer credit), for a period of one year commencing on the Effective Date, if the Closing Date is not within forty-five days after the Effective Date.

5. FairPoint Communications Missouri, Inc. is authorized to amortize, based on the actual days of the month, \$350,000 in accordance with the previous paragraph, if the Closing Date is after Cass County Telephone Company, Limited Partnership begins amortizing \$350,000 as a reduction of booked local revenues.

6. This order shall become effective on June 9, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton and Appling, CC., concur
Gaw, C., concurs, concurring opinion to follow

Woodruff, Deputy Chief Regulatory Law Judge