

**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 MOTION FOR SUMMARY DISPOSITION

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and, for its Motion for Summary Disposition pursuant to Missouri Public Service Commission (Commission) Rule 4 CSR 240-2.117, respectfully submits as follows:

1. On April 8, 2005, Staff filed its Complaint against Cass County Telephone Company Limited Partnership (CassTel) and Local Exchange Company LLC (LEC).¹
2. On May 13, 2005, CassTel filed its Answer.
3. On May 23, 2005, Staff filed its Reply to CassTel’s Answer.
4. Staff submits that Summary Disposition is appropriate in this case for the reasons set out in this Motion and the attached Legal Memorandum.

COUNT I

5. There is no genuine issue regarding paragraph 1 of Staff’s Complaint. CassTel’s answer merely states that Section 386.390.1 RSMo 2000 speaks for itself and no admission or denial is required (CassTel Answer at paragraph 1, page 1). Section

¹ On June 28, 2005, the Commission dismissed LEC from this Complaint.

386.390.1 RSMo 2000 does speak for itself and specifically provides when and by whom a complaint can be filed before the Commission. Accordingly, there is no genuine issue regarding this matter.

6. There is no genuine issue regarding paragraph 2 of Staff's Complaint. CassTel's answer merely states that Commission Rule 4 CSR 240-2.070 (1) speaks for itself and that no admission or denial is required (CassTel Answer at paragraph 1, page 1). Commission Rule 4 CSR 240-2.070 (1) does speak for itself and specifically provides that the Commission Staff through the General Counsel may file a complaint. Accordingly, there is no genuine issue regarding this matter.

7. There is no genuine issue regarding paragraph 3 of Staff's Complaint. CassTel's answer merely states that the Commission's "Order Establishing Investigation Case" in Case No. TO-2005-0237 speaks for itself and that no admission or denial is required (CassTel Answer at paragraph 3, page 2). The Commission Order in Case No. TO-2005-0237 does speak for itself and specifically provides that the Commission Staff is hereby authorized to file a complaint(s) on any matters within the scope of such order. Accordingly, there is no genuine issue regarding this matter.

8. There is no genuine issue regarding paragraph 4 of Staff's Complaint. CassTel's answer merely states that the case law quoted by Complainant speaks for itself and therefore no admission or denial is required (CassTel Answer at paragraph 4, page 2). CassTel further states that no answer is required to the other legal matters stated by Staff (CassTel Answer at paragraph 4, page 2). The case law cited by Staff does specifically provide as Staff stated in its Complaint. Accordingly, there is no genuine issue regarding this matter.

9. There is no genuine issue regarding paragraph 5 of Staff's Complaint. CassTel's answer merely states that Section 386.600 RSMo speaks for itself and no admission or denial is required (CassTel Answer at paragraph 5, page 2). Section 386.600 RSMo 2000 does speak for itself. Staff merely quoted the statute. Accordingly, there is no genuine issue regarding this matter.

10. There is no genuine issue regarding paragraph 6 of Staff's Complaint because CassTel admits these allegations (CassTel Answer at paragraph 6, page 2).

11. There is no genuine issue regarding paragraph 7 of Staff's Complaint. CassTel's answer merely states that the records of the Missouri Secretary of State speak for themselves (CassTel Answer at page 2, paragraph 7). Staff agrees that the records of the Missouri Secretary of State do speak for themselves and show that the general partner of CassTel is LEC. (Exhibit 2 attached to Staff's Complaint and to the Legal Memorandum in Support of Staff's Motion for Summary Disposition). Accordingly, there is no genuine issue regarding this matter.

12. There is no genuine issue regarding paragraph 8 of Staff's Complaint because CassTel admits these allegations (CassTel Answer at page 3, paragraph 8).

13. There is no genuine issue regarding paragraph 9 of Staff's Complaint because CassTel admits that it is a "telecommunications company" and a "public utility" as defined in Section 386.020 RSMo (CassTel Answer at page 3, paragraph 9). CassTel also admits that it provides "telecommunications services" in accordance with rates, terms and conditions of service on file with and approved by the Commission. Accordingly, there is no genuine issue regarding this matter.

14. There is no genuine issue regarding paragraph 10 of Staff's Complaint. CassTel merely states that paragraph 10 of Staff's Complaint is not "directed to CassTel" and therefore, no response is required (CassTel Answer page 3, paragraph 10). Paragraph 10 of Staff's Complaint merely recites records of the Secretary of State of Missouri. This document is attached as Exhibit 3 of the Complaint and incorporated therein by reference. A certified copy of this document is also attached to the Legal Memorandum in Support of Staff's Motion for Summary Disposition as Exhibit 3 and incorporated herein by reference. Accordingly, there is no genuine issue regarding this matter.

15. There is no genuine issue regarding paragraph 11 of Staff's Complaint. CassTel merely states that the FCC's rules speak for themselves (CassTel Answer page 3, paragraph 11). Staff agrees that the FCC's rules speak for themselves and these rules are accurately set out in paragraph 11 of Staff's Complaint. Accordingly, there is no genuine issue regarding this matter.

16. There is no genuine issue regarding paragraph 12 of Staff's Complaint. CassTel merely states that the FCC's rules speak for themselves (CassTel Answer page 3, paragraph 12). Staff agrees that the FCC's rules speak for themselves and these rules are accurately set out in paragraph 12 of Staff's Complaint. Accordingly, there is no genuine issue regarding this matter.

17. There is no genuine issue regarding paragraph 13 of Staff's Complaint because CassTel admits these allegations (CassTel Answer at page 3, paragraph 13).

18. There is no genuine issue regarding paragraph 14 of Staff's Complaint. CassTel alleges that CassTel is without specific information or belief upon the subject sufficient to enable CassTel to answer and therefore denies the allegations in paragraph

14 of Staff's Complaint (CassTel Answer at page 3, paragraph 14). There is no genuine issue regarding this matter since Exhibits 4 and 5 attached to Staff's Complaint clearly establish the allegations. Mr. Matzdorff did consent to the filing of this Information. (Exhibit 5 at p. 3). Certified copies of Exhibits 4 and 5 are attached to Staff's Legal Memorandum in Support of Staff's Motion for Summary Disposition and are incorporated herein by reference. Exhibit 4 is the Information charging Mr. Matzdorff with wire and mail fraud. Exhibit 5 is the Transcript of the Change of Plea Proceedings.

19. There is no genuine issue regarding paragraph 15 of Staff's Complaint. CassTel alleges that CassTel is without specific information or belief upon the subject sufficient to enable CassTel to answer and therefore denies the allegations in paragraph 15 of Staff's Complaint (CassTel Answer at page 3, paragraph 15). There is no genuine issue regarding this matter since Exhibit 5 attached to Staff's Complaint clearly establishes the allegations. A certified copy of Exhibit 5 is attached to Staff's Legal Memorandum in Support of Staff's Motion for Summary Disposition and is incorporated herein by reference.

20. There is no genuine issue regarding paragraph 16 of Staff's Complaint. CassTel admits that Kenneth M. Matzdorff was an officer of CassTel (CassTel Answer at page 4, paragraph 16). There is no genuine issue regarding this matter since Exhibits 4 and 5 attached to Staff's Complaint and to Staff's Legal Memorandum in Support of Staff's Motion for Summary Disposition clearly establish all of the allegations in paragraph 16 of Staff's Complaint. (See Exhibit 5 p. 10-13).

21. There is no genuine issue regarding paragraph 17 of Staff's Complaint. CassTel admits that Mr. Matzdorff was an officer of CassTel (CassTel Answer at page 4,

paragraph 17). There is no genuine issue regarding this matter since Exhibits 4 and 5 attached to Staff's Complaint and Staff's Legal Memorandum in Support of Staff's Motion for Summary Disposition clearly establish all of the allegations in paragraph 16 of Staff's Complaint. (See Exhibit 5 at pages 10-13).

22. There is no genuine issue regarding paragraph 18 of Staff's Complaint. CassTel's answer merely states that Section 386.570 RSMo speaks for itself and no admission or denial is required (CassTel Answer at paragraph 18, page 4). Section 386.570 RSMo 2000 does speak for itself. Staff merely accurately quoted the statute. Accordingly, there is no genuine issue regarding this matter.

23. There is no genuine issue regarding paragraph 19 of Staff's Complaint. Exhibits 4 and 5 attached to Staff's Complaint and Staff's Legal Memorandum in Support of Staff's Motion for Summary Disposition clearly establish the allegations in paragraph 19 of Staff's Complaint. (Exhibit 5 at p. 10-13). Accordingly, there is no genuine issue regarding this matter despite CassTel's denial.

24. There is no genuine issue regarding paragraph 20 of Staff's Complaint. CassTel admits that Mr. Matzdorff was an officer of CassTel. Exhibits 4 and 5 attached to Staff's Complaint and Staff's Legal Memorandum in Support of Staff's Motion for Summary Disposition clearly establish the allegations in paragraph 20 of Staff's Complaint. (Exhibit 5 at p. 10-13). Accordingly, there is no genuine issue regarding this matter.

25. There is no genuine issue regarding paragraph 21 of Staff's Complaint. CassTel admits that Mr. Matzdorff was an officer of CassTel during the period between 1998 and July, 2004 (CassTel Answer at p. 5, paragraph 21). Exhibits 4 and 5 attached to

Staff's Complaint and Staff's Legal Memorandum in Support of Staff's Motion for Summary Disposition clearly establish the other allegations in paragraph 21 of Staff's Complaint (Exhibit 5 at p. 10-13). Accordingly, there is no genuine issue regarding this matter.

26. There is no genuine issue regarding paragraph 22 of Staff's Complaint. Exhibits 4 and 5 attached to Staff's Complaint and to Staff's Legal Memorandum in Support of Staff's Motion for Summary Disposition are incorporated herein by reference and clearly establish the allegations regarding the actions of Kenneth Matzdorff in the conspiracy to defraud the Universal Service Administrative Company and the National Exchange Carriers Association. Matzdorff's position as an officer of CassTel shows that these criminal actions were performed within the scope of his official duties as an officer and/or agent and/or employee and, therefore, are the actions of CassTel within the meaning of Section 386.570.3. Accordingly, there is no genuine issue regarding this matter.

27. There is no genuine issue regarding paragraph 23 of Staff's Complaint. While CassTel denies the allegations in paragraph 23 of Staff's Complaint (CassTel Answer at page 5, paragraph 23), Exhibits 4 and 5, attached to Staff's Complaint and to Staff's Legal Memorandum in Support of Staff's Motion for Summary Disposition, establish that the actions of Kenneth Matzdorff were part of a conspiracy to defraud the Universal Administrative Company and the National Exchange Carriers Association. The fact that CassTel admits that Mr. Matzdorff was an officer of CassTel from 1998 through July 2004 establishes a continuing violation within the meaning of Section 386.570.2 such that each day constitutes a separate and distinct offense subject to a

penalty under Section 386.570.1 from 1998 through July 2004. Accordingly, there is no genuine issue regarding this matter.

28. There is no genuine issue regarding paragraph 24 of Staff's Complaint. While CassTel denies the allegations in paragraph 24 of Staff's Complaint (CassTel Answer at page 5, paragraph 24), Staff's Exhibits 6, 7, and 8, attached to the Complaint and to Staff's Legal Memorandum in Support of Staff's Motion for Summary Disposition, establish the crimes of Daniel D. Martino. Accordingly, there is no genuine issue regarding this matter.

29. There is no genuine issue regarding paragraph 25 of Staff's Complaint. While CassTel denies the allegations in paragraph 25 of Staff's Complaint, these admissions by Matzdorff are supported by the guilty plea of Richard T. Martino on February 23, 2005 before the Honorable Howard F. Sachs, Judge of Division No. 6 of the United States District Court for the Western District of Missouri in Kansas City, Missouri. Attachments 6, 7 and 9 to Staff's Complaint and to Staff's Legal Memorandum in Support of Staff's Motion for Summary Disposition establish the details of the crimes of Richard T. Martino. Accordingly, there is no genuine issue regarding this matter.

COUNT II

30. There is no genuine issue regarding paragraph 26 of Staff's Complaint. Paragraph 26 incorporates the allegations of paragraph nos. 1–25.

31. There is no genuine issue regarding paragraph 27 of Staff's Complaint. CassTel's answer merely states that Section 386.560 RSMo 2000 speaks for itself and no admission or denial is required (CassTel Answer, paragraph 1, at p. 1). Section 386.560

RSMo 2000 does speak for itself and Staff merely quoted the statute. Accordingly, there is no genuine issue regarding this matter.

32. There is no genuine issue regarding paragraph 28 of Staff's Complaint. Exhibits 1-9 attached to Staff's Complaint and to Staff's Legal Memorandum in Support of Staff's Motion for Summary Disposition establish the specific crimes of Kenneth Matzdorff and the clear violations of Section 386.560 RSMo. Accordingly, there is no genuine issue regarding this matter.

33. There is no genuine issue regarding paragraph 29 of Staff's Complaint. Exhibits 1-9 attached to Staff's Complaint and to Staff's Legal Memorandum in Support of Staff's Motion for Summary Disposition establish the specific crimes of Kenneth Matzdorff acting within the scope of his employment with CassTel, and the clear violations of Section 386.560 RSMo. Section 386.570.3 reads:

In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person, or public utility.

34. There is no genuine issue regarding paragraph 30 of Staff's Complaint. CassTel's answer merely states that Section 386.590 RSMo. 2000 speaks for itself and that no admission or denial is required. Section 386.590 RSMo. 2000 does speak for itself.

35. There is no genuine issue regarding paragraph 31 of Staff's Complaint. Exhibits 1-9 attached to Staff's Complaint and to Staff's Legal Memorandum in Support of Staff's Motion for Summary Disposition establish the specific crimes of Kenneth

Matzdorff, acting within the scope of his employment with CassTel, and the clear violations of Section 386.560 RSMo. Section 386.570.1 reads:

Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

36. There is no genuine issue regarding paragraph 32 of Staff's Complaint.

Paragraph 32 incorporates the allegations of paragraph nos. 1-29.

COUNT III

37. There is no genuine issue regarding paragraph 33 of Staff's Complaint.

Paragraph 33 of Staff's Complaint alleged that:

In determining the revenue requirement of CassTel and entering into the unanimous stipulation and agreement that the Commission approved in Case No. IR-2004-0354 that was designed to reduce CassTel's gross intrastate revenues by about \$320 thousand per year, the Staff relied on the accounts, books of account and records of CassTel that included the aforesaid false entries.

The sworn AFFIDAVIT of Staff Auditor David Winter is attached hereto and incorporated by reference as Exhibit 11. This shows that Staff did rely on the accounts, books of accounts and records of CassTel that included the aforesaid false entries. Accordingly, there is no genuine issue regarding this matter.

38. There is no genuine issue regarding paragraph 34 of Staff's Complaint.

The Commission promulgated Commission Rule 4 CSR 240-30.040 under the authority of Section 393.210.2. Accordingly, there is no genuine issue regarding this matter.

39. There is no genuine issue regarding paragraph 35 of Staff's Complaint. Staff correctly stated that Commission Rule 4 CSR 240-30.040 requires that CassTel keep its accounts in accordance with the uniform system of accounts prescribed by the Federal Communications Commission (FCC) effective January 1, 1988. Accordingly, there is no genuine issue regarding this matter.

40. There is no genuine issue regarding paragraph 36 of Staff's Complaint. CassTel's Answer merely states that Commission Rule 4 CSR 240-30.040 speaks for itself and no admission or denial is required (CassTel Answer at page 7, paragraph 36). Paragraph 36 of Staff's Complaint does incorporate FCC Rule 47 CFR 32.4 effective January 1, 1988. FCC Rule 47 CFR 32.4 does speak for itself. Accordingly, there is no genuine issue regarding this matter.

41. There is no genuine issue regarding paragraph 37 of Staff's Complaint. CassTel merely states that FCC Rule 47 CFR 32.4 speaks for itself and no admission or denial is needed. (CassTel Answer at page 7, paragraph 37). It is true that FCC Rule 47 CFR 32.4 does speak for itself. Exhibits 1-9 establish the specific crimes of Matzdorff. Accordingly, there is no genuine issue regarding this matter.

42. There is no genuine issue regarding paragraph 38 of Staff's Complaint. CassTel merely states that Section 392.360 RSMo 2000 speaks for itself and no admission or denial is required (CassTel Answer at page 7, paragraph 38). It is true that Section 392.360 RSMo 2000 speaks for itself. Furthermore, CassTel's criminal actions are punishable under Section 392.360. Accordingly, there is no genuine issue regarding this matter.

43. There is no genuine issue concerning paragraph 39 of Staff's Complaint. Paragraph 39 incorporates paragraphs nos. 1-38.

COUNT IV

44. There is no genuine issue regarding paragraph 40 of Staff's Complaint. CassTel merely states that the transcript of Mr. Matzdorff's testimony in Case No. IR-2004-0354 speaks for itself and no admission or denial is needed (CassTel Answer at page 8, paragraph 40). Staff agrees that the transcript speaks for itself. The transcript of Mr. Matzdorff's testimony in Case No. IR-2004-0354 was attached to Staff's Complaint as Exhibit 10 and is incorporated therein by reference and to Staff's Legal Memorandum in Support of Staff's Motion For Summary Disposition. Accordingly, there is no genuine issue regarding this matter.

45. There is no genuine issue regarding paragraph 41 of Staff's Complaint. CassTel merely states that Section 386.560 RSMo 2000 speaks for itself and no admission or denial is required (CassTel Answer at page 8, paragraph 41). It is true that Section 392.360 RSMo 2000 speaks for itself. Accordingly, there is no genuine issue regarding paragraph 41 of Staff's Complaint.

46. There is no genuine issue regarding paragraph 42 of Staff's Complaint. CassTel merely states that transcripts of Mr. Matzdorff's testimony before the Commission in Case No. IR-2004-0354 and before the United States District Court, Western District of Missouri on January 18, 2005 speak for themselves and no admission or denial is required (CassTel Answer at page 8, paragraph 42A). This is true and it is equally true that the transcripts show that Mr. Matzdorff lied to the Commission when he testified before the Commission in IR-2004-0354 as shown by his admissions when he

pled guilty to the federal charges of conspiracy to commit mail and wire fraud brought under sections 1341 and 1343 of title 18 of the United States Code. (See Exhibits 4, 5, 10). Accordingly, there is no genuine issue regarding this matter.

47. There is no genuine issue regarding the second paragraph 42 in Staff's Complaint. In the second paragraph 42², CassTel admits the fact that Mr. Matzdorff's statements were required to be made pursuant to Section 386.470 (CassTel Answer at pages 8-9, paragraph 42B). Accordingly, there is no genuine issue regarding this matter.

48. There is no genuine issue regarding paragraph 43 of Staff's Complaint. CassTel admits that Mr. Matzdorff was the President of CassTel on April 29, 2004 (CassTel Answer at page 9, paragraph 43). The facts stated in Staff's Complaint did not assert that Mr. Matzdorff was the President of CassTel, instead it alleged that Mr. Matzdorff ran the day to day operations of CassTel on April 19, 2004 (Staff Complaint at page 22, paragraph 43). Mr. Matzdorff's own guilty plea proves that he ran the day-to-day operations of CassTel (Exhibit 5 at 10-13). Accordingly, there is no genuine issue regarding this matter.

49. There is no genuine issue regarding paragraph 44 of Staff's Complaint. These statements of Kenneth Matzdorff were made within the scope of his official duties of employment as the operator of CassTel and, therefore, are the actions of CassTel within the meaning of Section 386.570.3. Accordingly, there is no genuine issue regarding this matter.

² Staff's Complaint inadvertently contained two paragraphs numbered 42. CassTel addressed these in its Answer as Paragraphs 42A and 42B (CassTel Answer at p. 8-9, Paragraphs 42A-B).

50. There is no genuine issue regarding paragraph 45 of Staff's Complaint. Each of these statements is a separate and distinct offense subject to a penalty under Section 386.570.1. Accordingly, there is no genuine issue regarding this matter.

WHEREFORE, the Staff requests that the Commission grant this Motion for Summary Disposition and take notice of the Legal Memorandum in Support of Staff's Motion for Summary Disposition and grant all of the relief sought by Staff in Staff's Complaint.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 30th day of August 2005.

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