

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 5th day of  
May, 2005.

An Investigation of the Fiscal and )  
Operational Reliability of Cass County )  
Telephone Company and New Florence )  
Telephone Company, and Related Matters )  
of Illegal Activity )

**Case No. TO-2005-0237**

**ORDER DENYING MOTION TO QUASH**

Syllabus: The Commission determines that the claim of privilege asserted by Cass County Telephone Company and New Florence Telephone Company is invalid, that the scope of the subpoenas is not overbroad, and therefore denies the motion to quash.

On March 25, 2005, Cass County Telephone Company and New Florence Telephone Company (referred to as "CassTel and New Florence" or "the Companies") filed a motion to quash subpoenas. The subpoenas at issue are two subpoenas duces tecum requested by the Staff of the Commission. The Companies ask that the Commission quash the subpoenas because they seek information protected by privilege and that their scope is overbroad.

The privilege asserted is codified in Section 326.322 RSMo 2000:

2. A licensee shall not be examined by judicial process or proceedings without the consent of the licensee's client as to any communication made by the client to the licensee in person or through the media of books of account and financial records, or the licensee's advice, reports or working papers given or made thereon in the course of professional employment, nor shall a secretary, stenographer, clerk or assistant of a licensee, or a public accountant, be examined, without the consent of the client concerned,

regarding any fact the knowledge of which he or she has acquired in his or her capacity as a licensee. This privilege shall exist in all cases except when material to the defense of an action against a licensee.

On April 22, 2005, Staff filed a response opposing the motion to quash. Staff argues that the statute cited by the Companies does not apply because it deals only with individuals, not accounting firms like the ones whose workpapers are sought here. Similarly, Staff argues that the statute does not apply in an administrative proceeding, but only in judicial proceedings. Staff states that court decisions concerning the scope of privileges have held that statutes creating testimonial privileges are to be strictly construed against the party asserting the privilege. Staff asserts that public policy, and the broad authority of the Commission over regulated utilities, argue against allowing the Companies to assert the privilege.

The statute cited by the Companies (Section 326.322 RSMo 2000) allows an accountant (a licensee) to assert privilege. Specifically, it provides that an accountant cannot be required to divulge a client's information without the client's consent. The accountant-client privilege serves to protect the client, not the accountant. It is simply not applicable here. The subpoenas do not seek to obtain information from the accountants that performed the audits of CassTel and New Florence, but from CassTel and New Florence. The accountants have not asserted the privilege; CassTel and New Florence themselves assert the privilege. Furthermore, the statute would not allow their accountants to assert the privilege if CassTel and New Florence consented to the disclosure of the information. CassTel and New Florence cite no cases that indicate the privilege is available to regulated companies when the regulator seeks (from the regulated companies) the information asserted to be privileged. The Commission finds that it is not available.

The Companies also argue that the subpoenas are overbroad in that they are not limited by date. But they also point out that, although no date is specified, the information sought only goes back to 1996. They do not allege that information from 1996 is beyond the scope of this case; they simply assert that seeking information from the last nine years must be overbroad. The Commission finds that the subpoenas, which seek information dating to 1996, are not overbroad. The circumstances that led to the creation of this case are extraordinary, and the scope of this case is quite broad. The Commission does not agree with the Companies that seeking information dating back to 1996 is by definition overbroad.

Because the asserted privilege is not applicable, and because the scope of the subpoenas is not overbroad, the Commission will deny the motion to quash.

**IT IS THEREFORE ORDERED:**

1. That the motion to quash subpoenas filed by Cass County Telephone Company and New Florence Telephone Company on March 25, 2005, is denied, and Cass County Telephone Company and New Florence Telephone Company shall forthwith produce the information sought.
2. That this order shall become effective on May 5, 2005.

**BY THE COMMISSION**

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Mills, Deputy Chief Regulatory Law Judge