

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

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

**STAFF’S REPLY TO CASS COUNTY TELEPHONE LIMITED  
PARTNERSHIP**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff), and respectfully submits as follows:

1. On April 8, 2005, Staff filed its Complaint before the Missouri Public Service Commission against Cass County Telephone Company Limited Partnership (CassTel).
2. On May 13, 2005, CassTel filed its Answer.
3. Staff reiterates and incorporates all aspects of the Complaint herein against CassTel. CassTel’s answer responds to Staff’s complaint and asserts various “affirmative defenses.”
4. Staff will respond to the “affirmative defenses” asserted by CassTel.
5. In paragraph 46(A) (1) CassTel asserts that:

(1) Section 386.570 is unconstitutionally vague and overbroad in that the phrase “any other law” as used in subsection 1 thereof is unlimited in scope. It does not reasonably identify the nature of the conduct proscribed by the statute such that a corporation, person or public utility is reasonably put on notice as to what actions are punishable thereunder. The practical scope of this clause absent some meaningful boundaries is quite literally limitless. In this case, Complainant points to alleged violations of federal law to justify the claim of a violation of state law.

6. The first fundamental flaw in this “affirmative defense” is that CassTel seeks to have the Commission declare state statutes unconstitutional. The Commission has no such authority. *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69 (Mo. Banc 1982). See also *State ex rel Missouri Southern Railroad v. Public Service Commission*, 259 Mo. 704, 727, 168 S.W. 1156, 1164 (Mo. Banc 1914). Furthermore, the constitutionality of an ordinance or a statute for review after an administrative proceeding is within the scope of permissible judicial review. *Bezayiff v. City of St. Louis*, 963 S.W.2d 225, 230 (Mo. App., E.D. 1997). There are four requirements. The party raising the constitutionality of a statute must: 1) raise the question at the first opportunity; 2) designate specifically the constitutional provision claimed to have been violated, such as by explicit reference to the articles and section or by quotation of the provision itself; 3) state facts showing such violation; and 4) preserve the matter throughout for judicial review. *Id.* at 230.

7. Another flaw in this “affirmative defense” is that CassTel fails to provide any authority to explain what constitutes an unconstitutionally vague and overbroad statute. It is disingenuous to utilize the most unreasonable reading that a mind intent on finding a statute unconstitutional can dream up. Herein, “any other law” clearly applies. Ken Matzdorff used his position and the auspices of CassTel to commit crimes directly related to CassTel and these were the actions of CassTel. Count I of the Complaint specifies and documents the criminal acts admitted to by Kenneth Matzdorff to defraud the Universal Administrative Company and the

National Exchange Carriers Association and how these criminal acts are the actions of CassTel and thus constitute a violation of Section 386.570. Count II specifies how Matzdorff willfully made false, or willfully falsified entries in the accounts, books of account, records or memoranda of CassTel in violation of Section 386.590. Count III details the acts of Matzdorff regarding false invoices from Overland Data Center in recording false entries on the books of CassTel in violation of 4 CSR 240-30.040 and Section 392.360. Count IV details the acts of Mr. Matzdorff providing false testimony to the Commission and the responsibility of CassTel for these violations pursuant to 386.570 .1 and .3 RSMo 2000.

8. In the present case, the penalties are appropriate because the criminal acts of Ken Matzdorff were directly related to his operation and control of CassTel. The crimes were not unrelated matters. Accordingly, this first “affirmative defense” has no merit.

9. In paragraph 46(A)(2) CassTel’s second “affirmative defense” is that:

The penalty provided in Section 386.470 RSMo 2000 is not available for some or all of the violations of law alleged against CassTel in the Complaint because the laws purportedly violated by CassTel are not within the scope of the statute’s phrase “any other law” as properly construed based on the statutory and constitutional limitations on the Commission’s jurisdiction and powers.

10. The initial problem with this second “affirmative defense” is that Section 386.470 does not contain the term “any other law” nor does it contain any penalties. Section 386.470 is an immunity statute for people compelled to testify or produce documents before the Commission. The statute has no applicability to CassTel. Accordingly, any contention regarding the phrase “any other law” as used in Section 386.470 is meritless.

11. Assuming arguendo, that CassTel intended to make this argument about Section 386.570 instead of Section 386.470, then CassTel’s argument must fail because CassTel does not explain how the laws violated by CassTel are not within the scope of the term “any other law”

nor does CassTel explain how the term “any other law” must be “properly construed” based on the statutory and constitutional limitations on the Commission’s jurisdiction and powers. For this reason, the second “affirmative defense” must fail.

12. CassTel’s third “affirmative defense” is that:

The penalty provided in Section 386.570 RSMo 200 is not applicable to the conduct alleged against CassTel in Counts II and IV to the extent that a penalty under Section 386.560 RSMo is assessed, as Staff seeks herein, because the relief under Section 386.570 RSMo is only available ‘in a case in which a penalty has not herein been provided for such corporation, person or public utility.’ Complainant cannot recover penalties under both statutes based on the express terms of section 386.570.

13. CassTel has misstated the statute. While it is true that a person, Ken Matzdorff, may already have been subjected to a penalty for his criminal actions, it is also equally true that the “public utility” CassTel has not been subjected to a penalty. Accordingly, this claim has no merit.

14. In paragraph 46(B), Cass Tel claims:

The construction and interpretation of Chapters 386 and 392 RSMo. 2000 that Complainant seeks to apply in this action:

(1) constitutes an unreasonable, inconsistent, and arbitrary construction and interpretation of the statute;

(2) constitutes an unreasonable, inconsistent, and arbitrary application of the statute;

(3) exceeds the statutory authority, powers , and jurisdiction of the Commission;

(4) constitutes the making of law or an adjudication in violation of the authority, powers, and jurisdiction of the Commission as limited by the Constitution of Missouri, Article III, §§1 and 49, and by Chapters 386 and 392, RSMo. 2000.

The Staff denies each of these claims. Because CassTel provides no discernable legal argument in support of these non-responsive boilerplate defenses, the Staff is unable to provide an argument in reply.

15. In paragraph 46(C) CassTel also fundamentally misstates or misunderstands the parameters of Section 386.470 RSMo 2000. CassTel states:

CassTel is immune under Section 386.470 RSMo 2000 in that the Complaint purports to impose a penalty for alleged transactions or conduct with respect to which CassTel has provided documentary evidence or with respect to which the Complainant claims that CassTel has testified under oath through Kenneth Matzdorff. CassTel is also immune under that statute in that CassTel's alleged liability is based solely upon the alleged transactions or conduct of Kenneth Matzdorff who himself is immune from penalties under the same immunity statute under oath and/or his providing documentary evidence, and his immunity also exonerates CassTel from liability for penalties for that conduct.

CassTel apparently believes that it is immune from responsibility for its alleged actions under Section 386.470 RSMo 2000. This argument is obviously wrong. Section 386.470 RSMo 2000 indisputably states in pertinent part: "...Nothing herein contained is intended to give, or shall be construed as in any manner giving unto any corporation immunity of any kind." The term "corporation" as used in Section 386.470, is defined in Section 386.020(11) RSMo 2000 as "...includes a corporation, company, association and joint stock association or company." CassTel does not deny its status as a corporation under Section 386.470, which it undeniably is by definition in Section 386.020, and apparently has simply chosen to ignore the part of the statute making it ineligible for a grant of immunity under Section 386.470.

16. Furthermore, the statute clearly applies only to people. In addition to excluding its application to corporations, Section 386.470 RSMo states: "No *person* shall be excused from testifying or from producing any books or papers . . ." (emphasis added) However, for CassTel to argue that Kenneth Matzdorff is immune under Section 386.470 from penalties for his

testimony and evidence produced under oath, and claim therefore that CassTel is immune under this statute, is so ridiculous a proposition as to not merit a serious response. But Staff will respond anyway. First of all, CassTel fails to explain what testimony and evidence Kenneth Matzdorff provided under oath that it believes provides immunity under Section 386.470. If it is assumed that CassTel means that information Kenneth Matzdorff provided in the federal criminal proceedings immunize him from further penalty, it fails to note that that Section 386.470 is limited to testimony or other evidence in “any investigation or inquiry by or upon any hearing *before the commission* or any commissioner, when ordered to do so *by the commission* . . .” (emphasis added.) Staff also points out that Section 386.470 does not provide immunity to any person “for any perjury committed by him in his testimony,” which is the very claim raised in Count IV of the Complaint.

17. In paragraph 46(D), CassTel claims:

The Complaint is barred by limitation on actions provided by law and equitable principle of laches.

The Staff denies both of these claims. Because CassTel provides no discernable legal argument in support of these non-responsive boilerplate defenses, the Staff is unable to provide an argument in support of its reply.

18. In paragraph 46(E), CassTel claims: “Respondent CassTel reserves the right to raise additional affirmative defenses which may become apparent through the course of discovery.”

The Staff denies that CassTel has the authority to unilaterally reserve the right to later raise additional affirmative defenses. Commission Rule 4 CSR 240-2.070(8) reads, in part:

The Respondent shall file an answer to the complaint within the time provided. All grounds of defense, both of law and of fact, shall be raised in the answer.

WHEREFORE, Staff respectfully requests that the Commission deny CassTel's affirmative defenses.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

**/s/ Robert Franson**

Robert Franson  
Senior Counsel  
Missouri Bar No. 34643

Attorney for the Staff of the  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-6651 (Telephone)  
(573) 751-9285 (Fax)  
[robert.franson@psc.mo.gov](mailto:robert.franson@psc.mo.gov)

**/s/ William K. Haas**

William K. Haas  
Deputy General Counsel  
Missouri Bar No. 28701

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-7510 (Telephone)  
(573) 751-9285 (Fax)  
[william.haas@psc.mo.gov](mailto:william.haas@psc.mo.gov)

### **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 23<sup>rd</sup> day of May 2005.

William R. England III  
Registered Agent for Cass County  
Telephone Company Limited Partnership  
P.O. Box 456  
312 E. Capitol Avenue  
Jefferson City, MO 65102-0456

BRYDON, SWEARENGEN & ENGLAND  
Registered Agent for Local Exchange Company LLC  
312 E. Capitol Ave.  
Jefferson City, MO 65102

Mark A. Thornhill  
Peter Mirakian III  
Philip W. Goodin  
Barry L. Pickens  
SPENCER FANE BRITT & BROWNE LLP  
1000 Walnut Street, Suite 1400  
Kansas City, MO 64106-2140

Office of Public Counsel  
Governor Office Building  
200 Madison Street  
Jefferson City, MO 65101

**/s/ Robert Franson**  
Robert Franson