

**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-
)	
Respondent,)	
)	
and)	
)	
Local Exchange Company LLC,)	
)	
Respondent.)	

**STAFF’S COMPLAINT AGAINST
CASS COUNTY TELEPHONE COMPANY LIMITED PARTNERSHIP**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), pursuant to section 386.390.1 RSMo 2000,¹ Commission Rule 4 CSR 240-2.070 and the Commission’s Order Establishing Investigation Case entered in Case No. TO-2005-0237 on January 14, 2005 that “authorized [the Staff] to file a complaint(s) on any matters contained within the scope of this order,” and for its complaint against Cass County Telephone Company Limited Partnership and Local Exchange Company, LLC (LEC) states:

Count I

1. Section 386.390.1 provides that a “[c]omplaint may be made by the commission of its own motion, ...or by ... any... person... by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility..., in

¹ All statutory citations are to RSMo 2000, unless otherwise noted.

violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission [.]”

2. Commission Rule 4 CSR 240-2.070(1) provides that the “commission staff through the general counsel” may file a complaint.

3. The Commission’s “Order Establishing Investigation Case” entered in Case No. TO-2005-0237 and effective January 28, 2005 (Attached hereto as Exhibit 1 and incorporated by reference) in part provides: “That the Commission Staff is hereby authorized to file a complaint(s) on any matters within the scope of this order.” It also provides: “That case TO-2005-[0237] be established for the purpose of the investigation of the financial and operational status of any certificated company in which Mr. Kenneth Matzdorff has any ownership interest or operational control or influence resulting from his role as an officer or employee of such company” and “That the Commission Staff shall investigate any matters pertaining to the Universal Service Fund and report any irregularities to the Commission.”

4. The Missouri courts have imposed a duty upon the Public Service Commission to first determine matters within its jurisdiction before proceeding to those courts. As a result, “[t]he courts have ruled that the [Commission] cannot act only on the information of its staff to authorize the filing of a penalty action in circuit court; it can authorize a penalty action only after a contested hearing.” *State ex rel Sure-way Transp., Inc. v. Division of Transp., Dept. of Economic Development, State of Mo.*, 836 S.W.2d 23, 27 (Mo.App. W.D. 1992).

5. Section 386.600 provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the

commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

6. Cass County Telephone Company Limited Partnership (CassTel) is a Maryland limited partnership. The records of the Secretary of State of Missouri (Attached hereto as Exhibit 2 and incorporated by reference) show its registered agent to be William R. England, III, 312 East Capitol Avenue, Jefferson City, Missouri 65102.

7. The records of the Secretary of State of Missouri (Exhibit 2 attached hereto and incorporated by reference) show that the general partner of CassTel is Local Exchange Company LLC.

8. CassTel's business office is located in Peculiar, Missouri. CassTel's principal business is providing telecommunications services to approximately 8,000 customers in Cass County, Missouri as well as a small number of customers in Kansas.

9. CassTel is a "public utility" as that term is defined in section 386.020(42) and a "telecommunications company" as that term is defined in section 386.020(51), and is subject to the Commission's jurisdiction. Sections 386.020(42) and 386.250(2).

10. Local Exchange Company LLC (LEC) is a limited liability company registered in Maryland. The records of the Secretary of State of Missouri (attached hereto as Exhibit 3 and incorporated by reference) show its registered agent to be Kenneth Matzdorff, 192 West

Broadway, Peculiar, Missouri 64028. The records of the Secretary of State of Missouri (attached hereto as Exhibit 3A and incorporated by reference) also show its registered agent to be Brydon, Swearingen & England, 312 East Capitol Avenue, Jefferson City, Missouri 65102. On both Applications for Registration of a Foreign Limited Liability Company, LEC listed its purpose or general character of its business is to engage in ownership and operation of local telephone companies.

11. The National Exchange Carriers Association (hereinafter NECA) is a not-for-profit organization created by the Federal Communication Commission (FCC) pursuant to 47 C.F.R. § 69.601. NECA's purpose is to prepare and file access charge tariffs on behalf of all telephone companies that do not file separate tariffs. A tariff is the rate charged by one telephone company to another telephone company for access and use of that company's telephone system in the course of interstate telecommunications. 47 C.F.R. § 69.601 (c) requires that all data submissions made to NECA be accompanied by a certification statement from an officer or employee responsible for the overall preparation of the data submission that "the data have been examined and reviewed and are complete, accurate, and consistent with the rules of the Federal Communications Commission." 47 C.F.R. § 69.601 (c) further provides that "Persons making willful false statements in this data submission can be punished by fine or imprisonment under the provisions of the United States Code, Title 18, Section 1001." NECA collects money from individual telephone companies, known as "local exchange carriers," under 47 C.F.R., Part 69. NECA distributes the funds back to local exchange carriers based upon whether the individual exchange carrier has costs above the national average cost as determined by NECA.

12. The Universal Service Administrative Company (hereinafter USAC) is a not-for-profit corporation established to administer the Universal Service Fund (hereinafter USF). The USF was established by the FCC to subsidize high cost rural telephone systems. Pursuant to 47 C.F.R. § 36.611, each local exchange carrier must submit information to NECA by July 31st of each year which sets forth the allowable expenses of the carrier in the previous calendar year. Based upon this submission of expenses, the USAC makes a determination whether rural telephone companies are eligible for cost subsidies from the USF. The subsidies are disbursed by USAC to NECA to be paid out to the rural telephone companies the following calendar year.

13. The Overland Data Center (ODC) was a company located in Overland Park, Kansas, that provided software support and information technology support to CassTel.

14. On January 18, 2005, Mr. Kenneth M. Matzdorff appeared in the United States District Court, Western District of Missouri, before the Honorable Dean Whipple in Kansas City, Missouri. Mr. Matzdorff consented to the filing of an Information charging him with mail and wire fraud. (Exhibit 4 attached hereto and incorporated by reference).

15. On January 18, 2005, Mr. Matzdorff pled guilty to the crimes in the Information and admitted his guilt in substantial detail including admitting the allegations in Exhibit 4 (Transcript of Change of Plea Proceedings, attached hereto as Exhibit 5 and incorporated by reference.).

16. Kenneth M. Matzdorff, at all times relevant to this complaint, was an employee of LEC. At various times throughout the time of this complaint, Kenneth M. Matzdorff was the President of CassTel and/or LEC and/or in charge of the operations of CassTel and/or LEC (Exhibit 4 and 5) .

17. At all times relevant to this complaint, Mr. Matzdorff was an officer and/or agent and/or employee of CassTel.

18. Section 386.570 provides:

1. 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.

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. 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.

19. Kenneth M. Matzdorff admitted violating "other law" within the meaning of that term in section 386.570 by his guilty pleas to federal charges of conspiracy to commit mail and wire fraud brought under sections 1341 and 1343 of title 18 of the United States Code. The charges were based on a conspiracy to defraud the Universal Service Administrative Company (USAC) and the National Exchange Carriers Association (NECA) by including as expenses of Cass County Telephone Company Limited Partnership payments made to Overland Data Center on falsified or fictitious invoices. These expenses based on falsified or fictitious invoices were then used to qualify for unwarranted disbursements of subsidies from USAC and revenue distributions from NECA.

20. Mr. Matzdorff ran CassTel. During his guilty plea in the United States District Court, Western District of Missouri, before the Honorable Dean Whipple, on January 18, 2005, Mr. Matzdorff stated the following under oath:

Q: All right. Now, I'm going to have Mr. Becker give us a brief summary of the criminal conduct the government has against you.

THE COURT: Mr. Becker.

MR. BECKER: Mr. Matzdorff and others known to the United States Attorney entered into an agreement whereby they would seek to defraud two entities, the National Exchange Carriers Association, and the Universal Service Administrative Company. It's NECA and USAC.

The scheme involved the Cass County Telephone Company. Mr. Matzdorff was the president at certain times and essentially ran the Cass County Telephone Company.

The Cass County Telephone Company paid money to another company called the Overland Data Center based upon falsified or fictitious invoices. As alleged in the Information, the payments over that time period from CassTel to Overland Data were approximately \$11 million.

The government has estimated that the value of the actual services during that time period was approximately \$240,000.

By having these added expenses, the Cass County Telephone Company made submissions to NECA and to USAC for essentially cost subsidies. These two entities are free agents of the FCC and they subsidized high-cost rural telephone companies. They're two separate but very closely related programs.

The Universal Service Funds help Cass County Telephone and other rural telephone companies build up their infrastructure, and they are subsidized because their cost per customer are higher, obviously because of the rural nature of their services.

NECA is the cost-sharing between telecommunications companies, and the Cass County Telephone Company would, every year, if their average cost was higher than the national average, they would receive monies from NECA to make up the difference.

These expenses then were part of the submissions made by the Cass County Telephone Company to NECA and to USAC. They caused, obviously by having

approximately \$10 million worth of extra expenses in their reports, caused NECA to pay Cass County Telephone approximately \$5 million more than they would have.

Similarly, the added expenses in the submissions by Cass County Telephone resulted in Universal Service Fund paying approximately \$3.4 million more to CassTel than they otherwise would have.

As part of the scheme, it wasn't just CassTel paying money out to the Overland Data Company, the Overland Data Company then would send the money back either to CassTel or, later on, the parent company of CassTel, which is known as Local Exchange Carriers, LEC, for management fees or consulting fees

So, if you will, the money went into a circle; CassTel paid Overland Data for work not performed, and then Overland Data paid LEC for work not performed, so the money came back to CassTel.

But, then, that expense was put on their report to NECA and to USAC, which caused this higher rate of subsidy. The mails used were FEDEX'd from Peculiar, Missouri, where Cass County Telephone is located, to NECA, the submissions, and then the wire - - in furtherance of the fraud were the wire transfers and money from Mellon Bank, in either Pittsburgh or Philadelphia, to the bank account of the Cass County Telephone Company.

THE COURT: All right. Thank you, Mr. Becker.

Mr. Mortenson, do you want to add anything to that description of the criminal conduct?

MR. MORTENSON: No, your Honor.

THE COURT: Anything you want to correct?

MR. MORTENSON: No.

THE COURT: All right.

BY THE COURT:

Q. Mr. Matzdorff, does that accurately portray what you did?

A. Yes, it does, your Honor.

Q. Is there anything that you want to correct that Mr. Becker said?

A. The only correction I would make is that Local Exchange Company is LEC, LLC, there's two companies, and Local Exchange Company, but the characterization is correct.

Q. All right. And this manner and means says this conduct went on from about January of '98 and continuing on through about July 2004. Is that correct?

A. That's correct, your Honor.

THE COURT: And, Mr. Becker, I'm now reading stuff from the Information.

BY THE COURT:

Q. It says, paragraph 7 in the manner and means, it says that "false and fictitious expenses resulted in an overpayment by USAC to CassTel of approximately \$3.5 million." Is that correct?

A. Yes, it is, your Honor.

Q. And then, of course, I got ahead of myself, paragraph 4, which says, "the payments by CassTel to ODC based upon the fictitious invoices totaled approximately \$11 million between 1998 and 2003," and "the total value of the actual services performed during 1997 to 2002 by ODC for CassTel is approximately \$240,000." Is that correct?

A. Approximately, that's right.

Q. And, of course - -

MR. BECKER: Your Honor, I'm sorry. Let me give you - - - there's been a change in the language of the one that - -

THE COURT: What?

MR. BECKER: It's "estimated at," rather than "approximately."

THE COURT: Okay. It is estimated?

MR. BECKER: That's right.

THE COURT: What paragraph?

MR. BECKER: It is the bottom of page 4.

THE COURT: Is it that first paragraph I read?

MR. BECKER: Yes. Paragraph 4, on the bottom of page 4.

THE COURT: Estimated.

MR. BECKER: The one you just read.

THE COURT: Thank you.

BY THE COURT:

Q. It says "estimated at \$240,000."

A. That's correct, your Honor.

Q. All right. And, of course, Mr. Becker says the means you used to transmit this documentation and so forth was FEDEX. Is that correct?

A. That's correct.

Q. Now, is there anything about the charge that you don't understand, the charge and the Information?

A. No. I understand it, your Honor.

Q. And you're telling me you are guilty of that offense?

A. Yes, I am.

21. Mr. Matzdorff ran the day-to-day operations of Cass County Telephone Company Limited Partnership when the foregoing false or fictitious invoices were created and when CassTel included them in the expenses used by CassTel to qualify for unwarranted disbursements of subsidies and revenue distributions from 1998 through about July, 2004 (Exhibit 5).

22. The actions of Kenneth Matzdorff in the conspiracy to defraud the Universal Service Administrative Company and the National Exchange Carriers Association were 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.

23. The actions of Kenneth Matzdorff in the conspiracy to defraud the Universal Administrative Company and the National Exchange Carriers Association were part of 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.

24. These admissions by Matzdorff are supported by the guilty plea of Daniel D. 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, Mo. The indictment charging Daniel D. Martino with crimes involving CassTel is attached hereto and incorporated by reference as Exhibit 6. The transcript of Daniel D. Martino's guilty plea is attached hereto and incorporated by reference as Exhibit 7. Exhibit 8 is the Plea Agreement involving Daniel D. Martino attached hereto and incorporated by reference. In the plea agreement, Daniel D. Martino pled guilty to conspiracy to commit mail and wire fraud. Daniel D. Martino admitted that he committed the offenses charged in the indictment. Daniel D. Martino was the president of F.S.E. Consulting Corp., which controlled the finances of ODC.

25. 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, Mo. The indictment charging Richard T. Martino with crimes involving CassTel is Exhibit 6. The transcript of Richard T. Martino's guilty plea is Exhibit 7. Exhibit 9 is the Plea Agreement involving Richard T. Martino attached hereto and incorporated by reference. In the plea agreement, Richard T. Martino pled guilty to mail fraud and to conspiracy to commit mail and wire fraud. Richard T. Martino admitted that he committed the offenses charged in the

indictment. Richard T. Martino controlled LEC, CassTel, and ODC, and was the ultimate decision making authority at LEC, CassTel, and ODC.

WHEREFORE, the Staff requests that the Commission:

- (a) establish a case to address the allegations contained in Count I of this Complaint;
- (b) make CassTel a party to this case for purposes of Count I;
- (c) make LEC a party to this case for purposes of Count I;
- (d) find that CassTel violated “any other law” within the meaning of section 386.570.1 through the actions of Kenneth Matzdorff as part of the conspiracy to commit mail and wire fraud (18 U.S.C. section 1341 and 1343) as evidenced by his guilty plea admitting to defrauding the Universal Service Administrative Company and the National Exchange Carriers Association; and
- (e) authorize the General Counsel of the Commission to seek the maximum penalty against Cass County Telephone Company Limited Partnership allowed by law for this violation.

Count II

26. The Staff incorporates by reference the allegations of paragraph nos. 1-25 above.

27. Section 386.560 provides as follows:

Any person who shall willfully make any false entry in the accounts, books of account, records or memoranda kept by any corporation, person or public utility governed by the provisions of this chapter, or who shall willfully destroy, mutilate, alter or by any other means or device falsify the record of any such account, book of accounts, record or memoranda, or who shall willfully neglect or fail to make full, true and correct entries of such account, book of accounts, record or memoranda of all facts and transactions appertaining to the business of such corporations, persons or public utilities, or who shall falsely make any statement required to be made to the public service commission, in which a penalty has not heretofore been provided for, shall be deemed guilty of a felony, and upon conviction shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars, or by imprisonment for not less than two years nor more than five years, or by both such fine and imprisonment; provided, that the commission may, in its discretion, issue orders specifying such operating, accounting or financial papers, records, books, blanks, tickets, stubs or

documents, of carriers which may after a reasonable time be destroyed, and prescribing the length of time such books, papers or documents shall be preserved; and provided further, that such orders shall be in harmony with those of the Interstate Commerce Commission.

28. By relying on the false or fictitious invoices of Overland Data Center in making entries in the accounts, books of account, records or memoranda of Cass County Telephone Company Limited Partnership, Kenneth Matzdorff willfully made false, or willfully falsified, entries in the accounts, books of account, records or memoranda of Cass County Telephone Company Limited Partnership in violation of section 386.560.

29. These violations of law are the acts of CassTel under section 386.570.3.

30. Section 386.590 provides:

All penalties accruing under this chapter shall be cumulative of each other, and the suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any original prosecution against any corporation, person or public utility, or any officer, director, agent or employee thereof.

31. Therefore, CassTel is subject to penalties pursuant to section 386.570.1 for these violations.

WHEREFORE, the Staff requests that the Commission:

- (a) establish a case to address the allegations contained in Count II of this Complaint;
- (b) make CassTel a party to this case for purposes of Count II;
- (c) make LEC a party to this case for purposes of Count II;
- (d) find CassTel willfully made false, or willfully falsified, entries in the accounts and books of account of CassTel in violation of section 386.560; and
- (e) authorize the General Counsel of the Commission to seek the maximum penalty against CassTel allowed by law for this violation.

Count III

32. The Staff incorporates by reference the allegations of paragraph nos. 1-29 above.

33. 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.

34. The Commission promulgated Commission Rule 4 CSR 240-30.040 under the authority of Section 393.210.2 .

35. 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.

36. Commission Rule 4 CSR 240-30.040 incorporates by reference FCC rule 47 CFR 32.4 effective January 1, 1988.

37. In relying on the false invoices of Overland Data Center in making entries in the accounts and books of account, records or memoranda of CassTel, Kenneth Matzdorff willfully made false entries in the accounts, books of account, records or memoranda of CassTel in violation of Commission Rule 4 CSR 240-30.040, promulgated under the authority of section 392.210.2, which incorporates by reference FCC rule 47 CFR 32.4 effective January 1, 1988. This FCC rule states:

Attention is directed to the following extract from section 220 of the Communications Act of 1934, 47 U.S.C. 220 (1984):

(e) Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by any such carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction, to a fine of not less than \$1,000 nor more than \$5,000 or imprisonment for a term of not less than one year nor more than three years, or both such fine and imprisonment: Provided, that the Commission may in its discretion issue orders specifying such operating, accounting or financial papers, records, books, blanks, or documents which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

For regulations governing the periods for which records are to be retained, see part 42, Preservation of Records of Communications Common Carriers, of this chapter which relates to preservation of records.

38. CassTel's violations of the requirements of Commission Rule 4 CSR 240-30.040 are punishable under section 392.360 which provides:

Every telecommunications company, and all officers, agents and employees of any telecommunications company shall obey, observe and comply with every order, direction or requirement made by the commission, under authority of this chapter, so long as the same shall be and remain in force. Any telecommunications company which shall violate any provision of sections 392.190 to 392.530, or which fails, omits or neglects to obey, observe or comply with any order or decision or any direction or requirement of the commission, shall forfeit to the state of Missouri not to exceed the sum of five thousand dollars for each and every offense. Every violation of any such order or decision or direction or requirement, or of said sections, shall be a separate and distinct offense, and, in case of a continuing violation, every day's continuance thereof shall be and be deemed to be a separate and distinct offense.

WHEREFORE, the Staff respectfully requests that the Commission:

- (a) establish a case to address the allegations contained in Count III of this Complaint;
- (b) make CassTel a party to this case for purposes of Count III;
- (c) make LEC a party to this case for purposes of Count III;
- (d) find CassTel violated Commission Rule 4 CSR 240-30.040 by willfully making false entries into the accounts and books of account of CassTel; and,

- (e) authorize the General Counsel of the Commission to seek the maximum penalty against CassTel allowed by law for this violation.

Count IV

39. The Staff incorporates by reference the allegations of paragraph nos. 1-38 above.

40. Under oath at the April 19, 2004 evidentiary hearing held in the Commission case styled *In the Matter of the Investigation into the Earnings of Cass County Telephone Company*, Case No. IR-2004-0354 (Exhibit 10 attached hereto and incorporated by reference), Mr. Matzdorff testified as follows:

Q. So, to the best of your knowledge, the only thing that you're aware of that could be referred to in the article -- that could be referring to in the article in regard to transfers of money from CassTel to Overland Data Center is this \$970,000?

A. I don't know how to answer that, Commissioner, simply because my sources of information are much the same as yourself. I've seen the newspaper article and I've seen the indictment that referenced that. And I -- that's really the only thing I know how to answer on that without, you know, specifics and I don't know his sources beyond that.

Q. Well, would there be any other transfers of money that you're aware of from CassTel to Overland Park--Overland Data Center?

A. Overland Data Center provided services to Cass County. They provided data functions for the company. And that was listed --

Q. I see.

A. -- that was listed in our -- our responses.

Q. What kind of data functions were performed?

A. Oh, as an example, the Public Service Commission requires that we attempt to contact two customers -- or customers twice before we would ever attempt to disconnect them for non-payment. We utilize voice recognition units that they have. Our underlying network support technical expertise as it relates -- we chose not to hire that personnel and felt we could do it more effectively. We live in a very rural area and don't have that expertise nor is it easy to attract it, so we contract those services out.

Q. So there would have been additional monies paid from CassTel to Overland Data Center in the last several years?

A. That's correct.

Q. And you're saying that except for the \$970,000, to your knowledge, the only monies that were transferred were for services?

A. Okay. **To my knowledge, CassTel is only paid out for services rendered to the company.**

Q. And what period of time were those services rendered, if you know?

A. They -- the company started on April 1st, 1996 and they continued **until June, at which time I became aware of alleged improprieties** and I terminated the functions.

Q. **In June of what year?**

A. **2003.**

Emphasis added (Ex. 10, p. 57 – 59).

41. Section 386.560, in part, provides:

Any person . . . who shall falsely make any statement required to be made to the public service commission, in which a penalty has not heretofore been provided for, shall be deemed guilty of a felony, and upon conviction shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars, or by imprisonment for not less than two years nor more than five years, or by both such fine and imprisonment;

42. Each of Mr. Matzdorff's statements, **"To my knowledge, CassTel is only paid out for services rendered to the company"** and **"until June [2003], at which time I became aware of alleged improprieties"** are contradicted by his testimony 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. At the plea hearing held January 18, 2005, Mr. Matzdorff testified under oath, in part, as follows:

[THE COURT] Q. Now, this offense is alleged to have taken place during a period of time, I believe, from '98 to –

THE COURT: Is that correct, Mr. Becker?

MR. BECKER: Yes, sir.

THE COURT: '98 through '04?

MR. BECKER: Yes.

BY THE COURT:

Q. -- through '04. During that period of time when you did any of the acts, the overt acts, in the manner and means that are spelled out in this information, when did anything that was part of this criminal conduct, what was the condition of your physical health, good or bad?

[Mr. Matzdorff] A. It was good.

Q. What was the condition of your mental health?

A. It was sound.

Q. Were you under the influence of any drugs or alcohol when you committed any of the acts that comprise your criminal conduct in this information?

A. No, I was not.

Q. All right. Now, I'm going to have Mr. Becker give us a brief summary of the criminal conduct the government has against you.

THE COURT: Mr. Becker.

MR. BECKER: Mr. Matzdorff and others known to the United States Attorney entered into an agreement whereby they would seek to defraud two entities, The National Exchange Carriers Association, and the Universal Service Administrative Company. It's NECA and USAC.

The scheme involved the Cass County Telephone Company. Mr. Matzdorff was the president at certain times and essentially ran the Cass County Telephone Company.

The Cass County Telephone Company paid money to another company called the Overland Data Center based upon falsified or fictitious invoices. As alleged in the information, the payments over that time period from CassTel to Overland Data were approximately \$11 million.

The Government has estimated that the value of the actual services during that time period was approximately \$240,000.

By having these added expenses, the Cass County Telephone Company made submissions to NECA and to USAC for essentially cost subsidies. These two entities are free agents of the FCC and they subsidized high-cost rural telephone companies. They're two separate but very closely related programs.

The Universal Service Funds help Cass County Telephone and other rural telephone companies build up their infrastructure, and they are subsidized

because their cost per customer are higher, obviously because of the rural nature of their services.

NECA is the cost-sharing between telecommunications companies, and the Cass County Telephone Company would, every year, if their average cost was higher than the national average, they would receive monies from NECA to make up the difference.

These expenses then were part of the submissions made by the Cass County Telephone Company to NECA and to USAC. They caused, obviously by having approximately \$10 million worth of extra expenses in their reports, caused NECA to pay Cass County Telephone approximately \$5 million more than they would have.

Similarly, the added expenses in the submissions by Cass County Telephone resulted in Universal Service Fund paying approximately \$3.4 million more to CassTel than they otherwise would have.

As part of the scheme, it wasn't just CassTel paying money out to the Overland Data Company, the Overland Data Company then would send the money back either to CassTel or, later on, the parent company of CassTel, which is known as Local Exchange Carriers, LEC, for management fees or consulting fees.

So, if you will, the money went into a circle; CassTel paid Overland Data for work not performed, and then Overland Data paid LEC for work not performed, so the money came back to CassTel.

But, then, that expense was put on their report to NECA and to USAC, which caused this higher rate of subsidy. The mails used were FedEx'd from Peculiar, Missouri, where Cass County Telephone is located, to NECA, the submissions and then the wire—in furtherance of the fraud were wire transfers and money from Mellon Bank, in either Pittsburgh or Philadelphia, to the bank account of the Cass County Telephone Company.

THE COURT: All right. Thank you, Mr. Becker. Mr. Mortenson [Mr. Matzdorff's counsel], do you want to add anything to that description of the criminal conduct?

MR. MORTENSON: No, Your Honor.

THE COURT: Anything you want to correct?

MR. MORTENSON: No.

THE COURT: All right.

BY THE COURT:

Q. Mr. Matzdorff, does that accurately portray what you did?

A. Yes, it does, your Honor.

Q. Is there anything that you want to correct that Mr. Becker said?

A. The only correction I would make is that Local Exchange Company is LEC, LLC, there's two companies, and Local Exchange Company, but the characterization is correct.

Q. All right. And this manner and means says this conduct went on from about January of '98 and continuing on through about July 2004. Is that correct?

A. That's correct, your Honor.

THE COURT: And, Mr. Becker, I'm now reading stuff from the information.

BY THE COURT:

Q. It says, paragraph 7 in the manner and means, it says that "false and fictitious expenses resulted in an overpayment by USAC to CassTel of approximately \$3.5 million." Is that correct?

A. Yes, it is, your Honor.

Q. And then, of course, I got ahead of myself, paragraph 4, which says, "The payments by CassTel to ODC based upon the fictitious invoices totaled approximately \$11 million between 1998 and 2003," and "the total value of the actual services performed during 1997 to 2002 by ODC for CassTel is approximately \$240,000." Is that correct?

A. Approximately, that's right.

Q. And, of course –

MR. BECKER: Your Honor, I'm sorry. Let me give your—there's been a change in the language of the one that –

THE COURT: What?

Mr. Becker: It's "estimated at," rather than "approximately."

THE COURT: Okay. It is estimated?

MR. BECKER: That's right.

THE COURT: What paragraph?

MR. BECKER: It is the bottom of page 4.

THE COURT: Is it that first paragraph I read?

MR. BECKER: Yes. Paragraph 4, on the bottom of page 4.

THE COURT: Estimated.

MR. BECKER: The one you just read.

THE COURT: Thank you.

BY THE COURT:

Q. It says "estimated at \$240,000.

A. That's correct, your Honor.

Q. All right. And, of course, Mr. Becker says the means you used to transmit this documentation and so forth was FedEx. Is that correct?

A. That's correct.

Q. Now, is there anything about the charge that you don't understand, the charge and the information?

A. No. I understand it, your Honor.

Q. And you're telling me you are guilty of that offense?

A. Yes, I am.

42. Each of the statements made before the Commission on April 19, 2004 was required to be made to the Public Service Commission by section 386.470 which provides:

No person shall be excused from testifying or from producing any books or papers in any investigation or inquiry by or upon any hearing before the commission or any commissioner, when ordered to do so by the commission, upon the ground that the testimony or evidence, books or documents required of him may tend to incriminate him or subject him to penalty or forfeiture, but no

person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall under oath have testified or produced documentary evidence; provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein contained is intended to give, or shall be construed as in any manner giving unto any corporation immunity of any kind.

43. When Mr. Matzdorff made these statements on April 19, 2004, Mr. Matzdorff was running the day-to-day operations of CassTel.

44. 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.

45. Each of these statements is a separate and distinct offense subject to a penalty under section 386.570.1.

WHEREFORE, the Staff requests that the Commission:

- (a) establish a case to address the allegations contained in Count IV of this Complaint;
- (b) make CassTel a party to this case for purposes of Count IV;
- (c) find that CassTel violated “any other law” within the meaning of section 386.570.1 through the testimony of Kenneth Matzdorff before the Commission on April 19, 2004 that is contradicted by his allocution 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; and
- (d) authorize the General Counsel of the Commission to seek the maximum penalty against CassTel allowed by law for these violations;
- (e) make LEC a party to this case for purposes of Count IV.

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

/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

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 8th day of April 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
Petere Mirakian III
Philip W. Goodin
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

①

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

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 ESTABLISHING INVESTIGATION CASE

SYNOPSIS:

This order establishes a case within which the Staff of the Public Service Commission is directed to investigate all matters pertaining to the operations of two Missouri telecommunications utilities, Cass County Telephone Company ("Cass County") and New Florence Telephone Company ("New Florence"). These two utilities are either owned in part or operated by Ken Matzdorff who has recently plead, or is reportedly about to plead, guilty to certain felony fraud charges based primarily on charges of telephone cramming. As a result of this order, Staff is directed to investigate the continuing fiscal and operational reliability of telecommunications service for the customers of these companies.

FACTS:

1. On February 5, 2004, a docket was established to receive a Stipulation regarding the earnings of Cass County Telephone Company. Subsequent to the filing of the Stipulation, the Commission became aware of a federal indictment alleging that certain entities associated with Cass County shareholder and officer, Ken Matzdorff,

had been involved in a telecom cramming scheme. As a result of Commissioner concerns arising out of the indictment, an on-the-record presentation was conducted on April 19 at which Mr. Matzdorff appeared and testified. Ultimately, while it determined that the Stipulation should be allowed to go into effect, the Commission also expressed ongoing concerns regarding the allegations surrounding the Company and other companies associated with Mr. Matzdorff. As a result, the Commission noted its intentions to continue to monitor the developments regarding the allegations contained in the indictment.

2. On or about July 27, 2004, a federal arrest warrant was issued for Mr. Matzdorff. The affidavit underlying the warrant stated that Mr. Matzdorff "played an integral role, as an associate of the Gambino crime family" in a telephone cramming scheme, as well as an effort to launder the proceeds of both that scheme as well as a separate internet pornography scheme. Specifically, the affidavit indicated that Mr. Matzdorff was instrumental in establishing and operating USP&C, which was the primary vehicle used to place unauthorized charges on customer telephone bills (the cramming scheme). Furthermore, the affidavit indicates that Mr. Matzdorff was instrumental in the operation of LEC L.L.C., which was used as a vehicle for the laundering of proceeds realized as a result of the cramming scheme as well as proceeds realized as a result of the internet pornography scheme. LEC L.L.C. is the principal owner of Cass County Telephone. Finally, the affidavit indicates that Cass County overpaid for certain services provided by a company called Overland Data. The affidavit further stated that the practical effect of this overpayment was to defraud the federal Universal Service Fund ("USF") and that these defrauded funds were ultimately

laundered by the parent company, LEC L.L.C. and were distributed to Gambino associates.

3. On July 29, 2004, based upon the information contained within the Matzdorff arrest warrant, the Commission authorized its Staff to conduct an investigation surrounding the allegations contained in the arrest warrant. Specifically, the Commission sought information regarding whether Missouri customers or their rates would be affected by the allegations contained in the arrest warrant.

4. On September 30, 2004, the Commission, primarily as result of concerns regarding the allegations contained in the Matzdorff arrest warrant, declined to certify Cass County and New Florence for receipt of high-cost service support from the federal USF. Shortly thereafter, the Federal Communications Commission directed the Universal Service Administrative Company to immediately suspend monthly USF support payments to Cass County and New Florence.

5. Although the charges against Mr. Matzdorff had been temporarily withdrawn, newspaper articles indicate that Mr. Matzdorff has recently plead guilty in Brooklyn federal court to one count of conspiracy to commit wire fraud and one count of conspiracy to launder money. Moreover, subsequent media articles have indicated that Mr. Matzdorff intends to plead guilty in Kansas City federal court to another charge of defrauding the federal USF.

6. Furthermore, the United States government has given notice of its intent to seek criminal forfeiture of certain of Mr. Matzdorff's assets in accordance with Title 18, United States Code, Section 981 (a)(1)(C) and Title 28, United States Code, Section 2461(c). Inasmuch as this forfeiture could reach to operating capital or plant used by

telecommunications companies in Missouri, any potential forfeiture concerns the Commission.

7. As a result of the investigation authorized on July 29, 2004, Staff was anticipating that it would file its Report in the immediate future. Staff and the Commission have concerns, however, that certain information requested from LEC L.L.C. and other affiliated companies may not be forthcoming. Therefore, the Commission deems it appropriate to create a docket for the formal establishment of this investigation as well as the receipt of any Staff discovery problems, for the issuance of any necessary discovery orders, and in order to take additional actions found necessary to protect the customers of the telephone companies affected by these events aforesaid.

LEGAL AUTHORITY TO INTERVENE:

Based upon the Commission's general investigatory power specified in Sections 386.320, 386.330 and 392.250, in addition to specific authority over telecommunications companies found throughout Chapter 392 and set out *infra*, the Staff of the Commission is hereby directed to investigate all matters pertaining to operations of the companies, including assessment of the continuing fiscal and operational reliability of

telecommunications service for the customers of Cass County and New Florence.¹ This investigation includes extensive on-site review and inspections² and may include the need for a change of management and control of the companies by legal means.

Staff is hereby directed to complete a financial review concerning the receipt and disbursement of Universal Service Funds. Missouri statutes provide that:

Any person who shall willfully make any false entry in the accounts, books of account, records or memoranda kept by any corporation, person or public utility governed by the provisions of this chapter, . . . or who shall willfully neglect or fail to make full, true and correct entries . . . of all facts and transactions appertaining to the business of such corporations, . . . or who shall falsely make any statement required to be made to the public service commission, . . . shall be deemed guilty of a felony, and upon conviction shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars, or by imprisonment for not less than two years nor more than five years, or by both such fine and imprisonment.³

In addition, Section 386.570 provides that any person who violates any law, or who fails to obey any order is subject to a penalty of not less than \$100 nor more than \$2,000 for each offense. Every violation is a separate and distinct offense, and each day's

¹ The commission shall have the general supervision of all telegraph corporations or telephone corporations, and telegraph and telephone lines, as herein defined, and shall have power to and shall examine the same and keep informed as to their general condition, their capitalization, their franchises and the manner in which their lines and property, owned, leased, controlled or operated are managed, conducted and operated, not only with respect to adequacy, security and accommodation afforded by their service, but also with respect to their compliance with all the provisions of law, orders and decisions of the commission and charter and franchise requirements. Section 386.320.1 RSMo 2000.

The commission may, of its own motion, investigate or make inquiry, in a manner to be determined by it, as to any act or thing done or omitted to be done by any telecommunications company subject to its supervision, and the commission shall make such inquiry in regard to any act or thing done or omitted to be done by any such public utility, person or corporation in violation of any provision of law or in violation of any order or decision of the commission. Section 386.330 RSMo 2000.

² The commission shall have power, either through its members or responsible engineers or inspectors or employees duly authorized by it, to enter in and upon and to inspect the property, equipment, building, plants, factories, powerhouses, offices, apparatus, machines, devices and lines of any of such corporations or persons. Section 386.320.2 RSMo 2000.

³ Section 386.560 RSMo 2000. Mishandling records - - false statements - - penalty - - order provisions

continuance thereof shall be and be deemed to be a separate and distinct offense. Similarly, every officer or employee who aids or abets any violation is guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail not exceeding one year, or by both.⁴ Staff shall pursue evidence of any circumstances discovered during the course of its investigation.

Staff shall also review the conduct of the officers and employees of these companies to determine whether either company has suffered a financial loss, or other damage, as a result of illegal acts. Such a loss should include, but would not be limited to, the companies' loss of USF support. Any such loss, along with attorneys fees and punitive damages, should be recoverable by the company pursuant to Section 392.350.⁵ Circumstances which might support such an action shall be reported to the Commission and the company so affected. In addition, any telecommunications company officer or employee who violates certain provisions of Chapter 392 shall forfeit to the state a sum not to exceed \$5,000 for each day of a recurring offense and this, too, shall be investigated by Staff.⁶

Lastly, the Commission may impose any condition or conditions that it deems reasonable and necessary upon any company providing telecommunications service if such conditions are in the public interest and consistent with the provisions and purposes of this chapter.⁷ This same statutory section provides that the Commission

⁴ Section 386.580 RSMo 2000 Employee of public utility guilt of misdemeanor, when

⁵ Section 392.350 RSMo 2000. See also, Overman v. Southwestern Bell Telephone Co., 675 S.W.2d 419 (Mo.App. 1984).

⁶ Section 386.360 RSMo 2000. Forfeiture - - penalties

⁷ Section 392.470 RSMo 2000 Conditions, commission may impose, when - - compensation to other companies, when, commission may order

may review any certificate of public convenience and necessity issued prior to September 28, 1987, and modify such certificate to impose any reasonable and necessary conditions authorized by this section. The certificates for these companies were both issued prior to that date.⁸

The primary concern of the Commission is the ongoing safe and reliable provision of telecommunications services to the citizens of Missouri. Staff's goal in this investigation should be to ensure the viability of those services. Furthermore, pursuant to the authority contained in Section 386.390, Staff shall be authorized to file complaints on any matters contained within the scope of this order and may further file such complaints or request the Commission authorize the filing of such complaints in this matter as it deems appropriate.

Given the scope of the investigation as set forth herein, the Commission has determined that this docket does not, at this time, meet the definition of a contested case as contained in Section 536.010. As such, the dictates of the Commission's *ex parte* rule are not applicable, and the Staff is directed to seek such additional clarification or authorization it deems appropriate to further the goals contained in this order.⁹ Furthermore, given the inapplicability of the *ex parte* rule, Staff is directed to meet with the Commission, either individually or in a properly noticed agenda session, for the purpose of bringing to light new events as they occur.

⁸ Cass County Telephone was in existence prior to establishment of the Public Service Commission, on April 15, 1913, and is deemed to be certificated as of that date. New Florence Telephone received its certificate on June 28, 1960.

⁹ To the extent that Staff seeks a resolution of a discovery matter or the issuance of subpoenas as discussed in paragraph 7, *supra*, those matters would involve a determination of legal rights and would be subject to the constraints of the *ex parte* rule.

IT IS THEREFORE ORDERED:

1. That case TO-2005-xxxx be established for the purpose of the investigation of the financial and operational status of any certificated company in which Mr. Kenneth Matzdorff has any ownership interest or any operational control or influence resulting from his role as an officer or employee of such company.

2. That the Commission Staff shall undertake any discovery, audit, investigation, or other action it deems appropriate to investigate the financial and operational status of any certificated company in which Mr. Kenneth Matzdorff has any ownership interest or any operational control or influence resulting from his role as an officer or employee of such company.

3. That the Commission Staff shall investigate any matters pertaining to the Universal Service Fund and report any irregularities to the Commission.

4. That the Commission Staff shall file a status report on February 1, 2005, and every 30 days thereafter to inform the Commission of the status of its work herein.

5. That the Commission Staff is hereby authorized to file a complaint(s) on any matters contained within the scope of this order.

6. That this order shall become effective on January 28, 2005.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, somewhat stylized script.

Dale Hardy Roberts
Secretary / Chief Regulatory Law Judge

(SEAL)

Roberts, Chief Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri
on this 14th day of January, 2005.



State of Missouri
Judith K. Moriarty, Secretary of State
P.O. Box 778, Jefferson City, Mo. 65102
Corporation Division

Application for Registration or Amendment
of a Foreign Limited Partnership in Missouri

(Submit in duplicate with filing fee of \$100.00)

FILED

NOV 03 1994

- (1) The name of the foreign limited partnership is:
Cass County Telephone Company Limited Partnership
- (2) The name it will use in Missouri is: (must include L.P. or Limited Partnership in name)
Cass County Telephone Company Limited Partnership
- (3) The limited partnership was formed in the state of Maryland on the date of November 2, 1994
- (4) The name and address (including street, city and zip code) of the limited partnership's registered agent in this state is:
William R. England III P. O. Box 456 Jefferson City, MO
Name Brydon, Swearengen & England Address 312 East Capitol Avenue City/State/Zip 65102-0456
- (5) The address of the office required to be maintained in the state of its organization by the laws of that state or if not required, state the address or the principal office of the foreign limited partnership:
c/o Lawrence M. Katz 36 South Charles Street Baltimore, MD 21202
Name Piper & Marbury Address 1100 South Charles Center City/State/Zip
- (6) List all general partners (with business addresses):
Local Exchange Company LLC c/o Lawrence M. Katz
Piper & Marbury, 36 South Charles Street, 1100 Charles Center South
Baltimore, MD 21202
Name Address City/State/Zip
- (7) The address of the office at which a list of the names and addresses and capital contributions of limited partners is kept:
Lawrence M. Katz 36 South Charles Street Baltimore, MD 21202
Name Piper & Marbury Address 1100 Charles Center South City/State/Zip
- (8) The effective date of this document is the date it is filed by the Secretary of State of Missouri, unless you indicate a future date, as follows:

(Date may not be more than 90 days after the filing date in this office)

In affirmation thereof, the facts stated above are true.

LOCAL EXCHANGE COMPANY LLC

By: Kenneth Matzdoff President

A General Partner

STATE OF MISSOURI



Richard A. Hanson

SECRETARY OF STATE

CERTIFICATE OF FOREIGN LIMITED PARTNERSHIP

WHEREAS,
CASS COUNTY TELEPHONE COMPANY LIMITED PARTNERSHIP

USING IN MISSOURI THE NAME
CASS COUNTY TELEPHONE COMPANY LIMITED PARTNERSHIP

AND EXISTING UNDER THE LAWS OF THE STATE OF MARYLAND
HAS FILED WITH THIS STATE ITS APPLICATION FOR REGISTRATION AND
WHEREAS THIS APPLICATION FOR REGISTRATION CONFORMS TO THE
MISSOURI REVISED UNIFORM LIMITED PARTNERSHIP ACT;

NOW, THEREFORE, I, RICHARD A. HANSON, SECRETARY OF STATE, STATE
OF MISSOURI, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY LAW, DO
CERTIFY AND DECLARE THAT ON THE 3RD DAY OF NOVEMBER, 1994,
THE ABOVE FOREIGN LIMITED PARTNERSHIP IS DULY AUTHORIZED TO
TRANSACTION BUSINESS IN THE STATE OF MISSOURI AND IS ENTITLED
TO ANY RIGHTS GRANTED LIMITED PARTNERSHIPS
UNDER THE MISSOURI REVISED UNIFORM LIMITED
PARTNERSHIP ACT.

IN TESTIMONY WHEREOF, I HAVE SET MY
HAND AND IMPRINTED THE GREAT SEAL OF
THE STATE OF MISSOURI, ON THIS, THE
3RD DAY OF NOVEMBER, 1994.


Secretary of State

\$105.00



STATE OF MISSOURI



Matt Blunt
Secretary of State


CERTIFICATE OF CORPORATE RECORDS

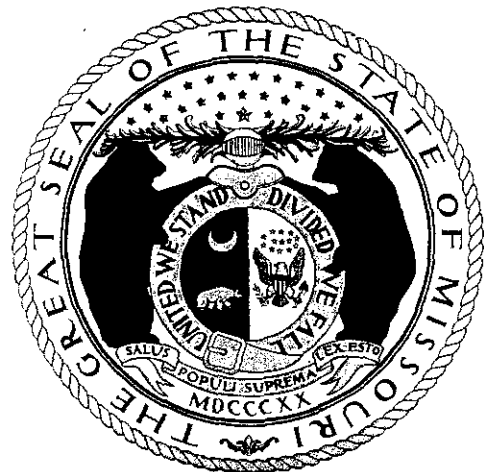
LOCAL EXCHANGE COMPANY L.L.C.

FL0006949

I, MATT BLUNT, Secretary of the State of the State of Missouri and Keeper of the Great Seal thereof, do hereby certify that the annexed pages contain a full, true and complete copy of the original documents on file and of record in this office and for which certification has been requested.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 18TH day of August, 2004.


Secretary of State



MAR 27 '96 12:22 RRM



State of Missouri

Rebecca McDowell Cook, Secretary of State
P.O. Box 778, Jefferson City, Mo. 65102

Corporation Division

Application for Registration of a Foreign Limited Liability Company

(Submit in duplicate with registration fee of \$105)

1. The name of the foreign limited liability company is:

Local Exchange Company LLC

and is organized in Maryland on November 2, 1994
(Jurisdiction) (Date of formation)

and is to dissolve on: December 31, 2044
Month/Day/Year

2. The name under which the foreign limited liability company will conduct business in this state is: _____

Local Exchange Company LLC

3. The purpose of the foreign limited liability company or general character of the business it proposes to transact in this state is:

To engage in the ownership and operations of local telephone companies,
whether directly or indirectly, through one or more corporations, general
or limited partnership, limited liability companies or otherwise.

4. The name and address of the limited liability company's registered agent in Missouri is:

Mr. Kenneth Matzdorff 192 West Broadway Peculiar, Missouri 64078
Name Street address City/State/Zip

5. The address of the registered office in the jurisdiction organized. If not required, then the principal office address of the foreign limited liability company is:

192 West Broadway Peculiar, Missouri 64078
Street address City/State/Zip

6. For tax purposes, is the limited liability company considered a corporation? ☐ yes ☒ no

In affirmation thereof, the facts stated above are true:

Kenneth Matzdorff Authorized signature

Authorized signature

Authorized signature

FILED AND CERTIFICATE
ISSUED

MAR 28 1996

Rebecca McDowell Cook
SECRETARY OF STATE

LLC(1200)

7 1

WPM-1 ** TOTAL PAGE.003 **

STATE OF MISSOURI



Rebecca McDowell Cook
Secretary of State

**CERTIFICATE OF REGISTRATION
FOREIGN LIMITED LIABILITY COMPANY**

WHEREAS,
LOCAL EXCHANGE COMPANY LLC

USING IN MISSOURI THE NAME
LOCAL EXCHANGE COMPANY L.L.C.

AND EXISTING UNDER THE LAWS OF THE STATE OF MARYLAND
HAS FILED WITH THIS STATE ITS APPLICATION FOR REGISTRATION AND
WHEREAS THIS APPLICATION FOR REGISTRATION CONFORMS TO THE
MISSOURI LIMITED LIABILITY COMPANY ACT;

NOW, THEREFORE, I, REBECCA MCDOWELL COOK, SECRETARY OF STATE,
STATE OF MISSOURI, BY VIRTUE OF AUTHORITY VESTED IN ME BY LAW,
DO CERTIFY AND DECLARE THAT ON THE 28TH DAY OF MARCH, 1996,
THE ABOVE FOREIGN LIMITED LIABILITY COMPANY IS DULY AUTHORIZED
TO TRANSACT BUSINESS IN THE STATE OF MISSOURI
AND IS ENTITLED TO ANY RIGHTS GRANTED
LIMITED LIABILITY COMPANIES.

IN TESTIMONY WHEREOF, I HAVE SET MY
HAND AND IMPRINTED THE GREAT SEAL OF
THE STATE OF MISSOURI, ON THIS, THE
28TH DAY OF MARCH, 1996.

Rebecca McDowell Cook

Secretary of State

\$105.00



STATE OF MISSOURI



Rebecca McDowell Cook
Secretary of State

**CERTIFICATE OF REGISTRATION
 FOREIGN LIMITED LIABILITY COMPANY**

WHEREAS,
 LOCAL EXCHANGE COMPANY LLC

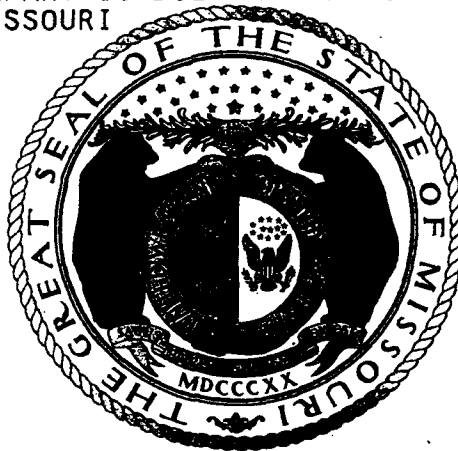
USING IN MISSOURI THE NAME
 LEC L.L.C.

AND EXISTING UNDER THE LAWS OF THE STATE OF MARYLAND
 HAS FILED WITH THIS STATE ITS APPLICATION FOR REGISTRATION AND
 WHEREAS THIS APPLICATION FOR REGISTRATION CONFORMS TO THE
 MISSOURI LIMITED LIABILITY COMPANY ACT;

NOW, THEREFORE, I, REBECCA MCDOWELL COOK, SECRETARY OF STATE,
 STATE OF MISSOURI, BY VIRTUE OF AUTHORITY VESTED IN ME BY LAW,
 DO CERTIFY AND DECLARE THAT ON THE 20TH DAY OF MARCH, 1997,
 THE ABOVE FOREIGN LIMITED LIABILITY COMPANY IS DULY AUTHORIZED
 TO TRANSACT BUSINESS IN THE STATE OF MISSOURI
 AND IS ENTITLED TO ANY RIGHTS GRANTED
 LIMITED LIABILITY COMPANIES.

IN TESTIMONY WHEREOF, I HAVE SET MY
 HAND AND IMPRINTED THE GREAT SEAL OF
 THE STATE OF MISSOURI, ON THIS, THE
 20TH DAY OF MARCH, 1997.

Rebecca McDowell Cook
 Secretary of State



\$105.00



State of Missouri

Rebecca McDowell Cook, Secretary of State

P.O. Box 778, Jefferson City, Mo. 65102

Corporation Division

Application for Registration of a Foreign Limited Liability Company

(Submit in duplicate with registration fee of \$105)

1. The name of the foreign limited liability company is:

LOCAL EXCHANGE COMPANY LLC

and is organized in MARYLAND on NOVEMBER 1, 1994,
(Jurisdiction) (Date of formation)

and is to dissolve on: DECEMBER 31, 2044
Month/Day/Year

2. The name under which the foreign limited liability company will conduct business in this state is: _____

LEC L.L.C.

3. The purpose of the foreign limited liability company or general character of the business it proposes to transact in this state is:

1) ENGAGE IN OWNERSHIP AND OPERATION OF LOCAL TELEPHONE COMPANIES

2) TO DO AND PERFORM ALL ACTS NECESSARY TO CARRY OUT FOREGOING PURPOSES

3) ENGAGE IN ANY OTHER LAWFUL ACT OR ACTIVITY AUTHORIZED BY THE MEMBERS

4. The name and address of the limited liability company's registered agent in Missouri is:

BYRON SWANSON, ENGLAND 312 E. CAPITOL AVE JEFFERSON CITY, MO, 65102
Name Street address City/State/Zip

5. The address of the registered office in the jurisdiction organized. If not required, then the principal office address of the foreign limited liability company is:

192 W. BROADWAY PEULHAR, MISSOURI, 64078
Street address City/State/Zip

6. For tax purposes, is the limited liability company considered a corporation? ☒ yes ☐ no

In affirmation thereof, the facts stated above are true:

x Kenneth Matloff Authorized signature

Authorized signature

Authorized signature

FILED AND CERTIFICATE
ISSUED

MAR 20 1997

Rebecca McDowell Cook
SECRETARY OF STATE

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. <u>05-00020-01-CR-W-SOW</u>
)	Count One
KENNETH M. MATZDORFF,)	18 U.S.C. § 371
[DOB: XX/XX/XX],)	[NMT: Five Years Imprisonment,
)	\$250,000 Fine, Three Years
<u>Defendant.</u>)	Supervised Release, Plus \$100
		Special Assessment]
		Count Two
		(Criminal Forfeiture)
		18 U.S.C. § 981(a)(1)(C)
		28 U.S.C. § 2461(c)

I N F O R M A T I O N

THE UNITED STATES ATTORNEY CHARGES THAT:

COUNT ONE

1. At all times relevant to this Information:

(a) Cass County Telephone Company, LP (hereinafter CassTel) is a limited partnership located in Peculiar, Missouri. CassTel's principal business is providing telecommunications services to approximately 8,000 customers in Cass County, Missouri, as well as a small number of customers in the State of Kansas. CassTel is primarily (99%) owned by Local Exchange Company, LLC (hereinafter LEC).

(b) Local Exchange Company, LLC (LEC) is a limited liability company registered in Maryland. The corporation consists of approximately 43 persons and trusts which own "units" of the company.

(c) The National Exchange Carriers Association (hereinafter NECA) is a not-for-profit organization created by the Federal Communications Commission (FCC) pursuant to 47 C.F.R. § 69.601. NECA's purpose is to prepare and file access charge tariffs on behalf of all telephone companies that do not file separate tariffs. A tariff is the rate charged by one telephone company to another telephone company for access and use of that company's telephone system in the course of interstate telecommunications. 47 C.F.R. § 69.601(c) requires that all data submissions made to NECA be accompanied by a certification statement from an officer or employee responsible for the overall preparation of the data submission that "the data have been examined and reviewed and are complete, accurate, and consistent with the rules of the Federal Communications Commission." 47 C.F.R. § 69.601(c) further provides that "Persons making willful false statements in this data submission can be punished by fine or imprisonment under the provisions of the United States Code, Title 18, Section 1001."

NECA collects money from individual telephone companies, known as "local exchange carriers" under 47 C.F.R., Part 69. NECA distributes the funds back to local exchange carriers based upon whether the individual exchange carrier has costs above the national average cost as determined by NECA.

(d) The Universal Service Administrative Company (hereinafter USAC) is a not-for-profit corporation established to administer the Universal Service Fund (hereinafter USF). The USF was established by the FCC to subsidize high cost rural telephone systems. Pursuant to C.F.R § 36.611, each local exchange carrier must submit information to NECA by July 31st of each year which sets forth the allowable expenses of the carrier in the previous calendar year. Based upon this submission of expenses, the USAC makes a determination whether rural telephone companies are eligible for cost subsidies from the USF. The subsidies are disbursed by USAC to NECA to be paid out to the rural telephone companies the following calendar year.

(e) The Overland Data Center (ODC) was a company located in Overland Park, Kansas, that provided software support and information technology support to CassTel.

(f) F.S.E. Consulting Corp. (FSE) was a corporation located in New York, New York, which provided financial and accounting services to ODC.

(g) Defendant KENNETH M. MATZDORFF was at all times relevant to this information an employee of LEC. At various times throughout the conspiracy, defendant KENNETH M. MATZDORFF was the President of CassTel and LEC.]

2. From on or about January 1998, to on or about July 2004, in the Western District of Missouri and elsewhere, defendant KENNETH M. MATZDORFF, and others known and unknown to the United States Attorney, did knowingly conspire, combine, confederate and agree together and with each other to violate the laws of the United States of America, specifically, mail and wire fraud in violation of Title 18, United States Code, Sections 1341 and 1343.

MANNER AND MEANS

The manner and means by which the conspiracy operated included the following:

3. From on or about January 1998, and continuing to on or about July 2004, in the Western District of Missouri and elsewhere, the defendant KENNETH M. MATZDORFF, and other persons known to the United States Attorney, devised and intended to devise a scheme and artifice to defraud the USF and NECA.

4. Defendant KENNETH M. MATZDORFF and others agreed to create false and fictitious ODC invoices to CassTel. The payments by CassTel to ODC based upon the fictitious invoices totaled approximately \$11 million between 1998 and 2003. The total value of the actual services performed during 1997 to 2002 by ODC for CassTel is estimated at \$240,000.

5. Defendant M. KENNETH MATZDORFF and others agreed to have CassTel, and later LEC, charge ODC for "consulting" and "management" fees. The payments from ODC to CassTel and LEC totaled approximately \$11 million from 1998 to 2003.

6. The payments from CassTel to ODC and from ODC to LEC were coordinated by persons known to the United States Attorney that were employed by FSE in New York, New York.

7. The fictitious ODC expenses were included by CassTel as allowable expenses in the submissions to NECA for the calculation by USAC of the Universal Service Fund payments to CassTel. The false and fictitious expenses resulted in an overpayment by USAC to CassTel of approximately \$3.5 million from 1999 to 2004.

8. The fictitious ODC expenses were included as allowable expenses in the cost studies filed by CassTel with NECA for determination of the payments to CassTel from the "cost pools" administered by NECA. The false and fictitious expenses resulted in an overpayment by NECA to CassTel of approximately \$5.4 million from 1998 to 2003.

OVERT ACTS

In furtherance of the conspiracy, the following Overt Acts, among others, were committed in the Western District of Missouri and elsewhere.

1. On or about January 1998, defendant KENNETH M. MATZDORFF and other LEC shareholders met to review the 1998 budget for

CassTel. At that meeting, defendant KENNETH M. MATZDORFF and other persons known to the United States Attorney agreed to inflate the expenses of CassTel in order to generate additional capital to expand the assets and services of CassTel. The additional capital would be received from the increased payments from the USF and NECA based upon the fictitious ODC expenses reported by CassTel.

2. On or about July 30, 1999, CassTel sent the 1998 USF submission to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

3. On or about July 31, 2001, CassTel sent the 2000 USF submission to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

4. On or about September 5, 2001, CassTel sent the 2000 cost study to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

5. On or about October 22, 2002, CassTel sent the 2001 cost study to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

6. On or about October 28, 2003, CassTel sent the 2002 cost study to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

7. On, about and between January 1998, and September 2004, NECA sent to CassTel, via wire transfers, approximately \$36,906,078.29.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

The allegations contained in Count One of this Information are realleged and incorporated by reference for the purpose of alleging a forfeiture pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c). Defendant KENNETH M. MATZDORFF shall forfeit to the United States \$2,500,000 in U.S. currency which constitutes or is derived from the proceeds traceable to the violation incorporated by reference in this Count.

All in violation of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

If any of these assets, as a result of any act or omission of the defendant KENNETH M. MATZDORFF:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to or deposited with a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficulty;
it is the intention of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any property of said defendant KENNETH M. MATZDORFF up to the value of the assets set-out above.

Todd P. Graves
United States Attorney

January 18, 2005
DATE

By: /s/
Paul S. Becker
Assistant United States Attorney
Western District of Missouri
Chief, Organized Crime Strike Force Unit

/s/ /s/
Bruce E. Clark, #31443
Assistant United States Attorney
Western District of Missouri
Organized Crime Strike Force Unit

/s/
Jess E. Michaelson, #52253
Assistant United States Attorney
Western District of Missouri
Organized Crime Strike Force Unit

psb:sgs

1

1 IN THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MISSOURI
3 WESTERN DIVISION

3 UNITED STATES OF AMERICA,)
4)
4 PLAINTIFF,) NO. 05-00020-01-CR-W-SOW
5 V.) TUESDAY, JANUARY 18, 2005
5) KANSAS CITY, MISSOURI
6 KENNETH M. MATZDORFF,) CRIMINAL
6)
7 DEFENDANT.)

8

9 TRANSCRIPT OF CHANGE OF PLEA PROCEEDINGS

10 BEFORE THE HONORABLE DEAN WHIPPLE
11 UNITED STATES CHIEF DISTRICT JUDGE

12 PROCEEDINGS RECORDED BY ELECTRONIC STENOGRAPHY
13 TRANSCRIPT PRODUCED BY COMPUTER

13

APPEARANCES

14

14 FOR PLAINTIFF: MR. PAUL S. BECKER
15 CHIEF, ORGANIZED CRIME STRIKE FORCE
16 ASSISTANT UNITED STATES ATTORNEY
17 CHARLES EVANS WHITTAKER COURTHOUSE
18 400 EAST NINTH STREET, FIFTH FLOOR
19 KANSAS CITY, MISSOURI 64106
20 (816) 426-2771

19 FOR DEFENDANT: MR. R. STAN MORTENSON
20 BAKER BOTTS, LLP
21 1299 PENNSYLVANIA AVENUE, N.W.
22 WASHINGTON, D.C. 20004-2400
23 (202) 639-7700

22

23 SANDRA D. LAMKEN, COURT REPORTER
24 UNITED STATES DISTRICT COURT
25 CHARLES EVANS WHITTAKER COURTHOUSE
400 EAST NINTH STREET
KANSAS CITY, MISSOURI 64106

CHANGE OF PLEA

EXHIBIT 5

2

1

2

TUESDAY, JANUARY 18, 2005

3

THE COURT: ARE WE READY ON MR. MATZDORFF'S CASE?

4

MR. MORTENSON: YES, WE ARE, YOUR HONOR.

5

THE COURT: DO YOU WANT TO HAVE YOUR CLIENT COME UP

6

TO THE PODIUM WITH YOU?

7

IS IT MATZDORFF?

8

THE DEFENDANT: IT'S MATZDORFF.

9

THE COURT: MATZDORFF. THANK YOU.

10

THE COURT WILL CALL THE CASE UNITED STATES OF

11

AMERICA VS. KENNETH M. MATZDORFF.

12

YOU'RE KENNETH M. MATZDORFF?

13

THE DEFENDANT: YES, I AM, YOUR HONOR.

14

THE COURT: AND YOU'RE REPRESENTED BY MR. MORTENSON,

15

IS THAT CORRECT?

16

THE DEFENDANT: THAT'S CORRECT.

17

THE COURT: MR. MATZDORFF, I HAVE SOME PAPERS ON MY

18

BENCH THAT INDICATE TO ME THAT YOU'VE BEEN ADVISED OF THE

19

CHARGES THAT THE GOVERNMENT PROPOSES TO FILE AGAINST YOU BY

20

WAY OF INFORMATION. TO DO THAT, YOU HAVE TO CONSENT AND AGREE

21

AND WAIVE YOUR RIGHT TO LET THOSE CRIMINAL CHARGES BE

22

PRESENTED TO A GRAND JURY AND LET THEM RETURN AN INDICTMENT.

23

DO YOU UNDERSTAND THAT?

24

THE DEFENDANT: I DO, YOUR HONOR.

25

THE COURT: AND IS THAT WHAT YOU WISH TO DO THIS

CHANGE OF PLEA

3

1 AFTERNOON?

2 THE DEFENDANT: YES, IT IS.

3 THE COURT: AND, MR. MORTENSON, HAVE YOU COUNSELED
4 YOUR CLIENT AND ARE YOU SATISFIED HE KNOWS AND UNDERSTANDS
5 WHAT HE'S AGREEING TO DO HERE?

6 MR. MORTENSON: I HAVE, AND HE DOES, YOUR HONOR.

7 THE COURT: ALL RIGHT. THANK YOU.

8 THE COURT, AFTER QUESTIONING THE DEFENDANT,
9 DETERMINES THAT HE HAS KNOWINGLY WAIVED HIS RIGHT TO HAVE A
10 GRAND JURY RETURN AN INDICTMENT AGAINST HIM, AND CONSENTS TO
11 THE GOVERNMENT FILING AN INFORMATION AND PROCEEDING BY
12 INFORMATION RATHER THAN BY INDICTMENT, SO I'LL SHOW THAT
13 FILED.

14 NOW, I NEED TO AGAIN CALL THE CASE, AS IT NOW HAS A
15 CASE NUMBER.

16 THE COURT WILL CALL CASE NO. 05-00020-01, UNITED
17 STATES OF AMERICA VS. KENNETH M. MATZDORFF.

18 AGAIN, YOU'RE KENNETH M. MATZDORFF?

19 THE DEFENDANT: YES.

20 THE COURT: AND YOU'RE REPRESENTED BY MR. MORTENSON,
21 IS THAT CORRECT?

22 THE DEFENDANT: THAT'S CORRECT, YOUR HONOR.

23 THE COURT: ALL RIGHT. MR. MATZDORFF, YOU'VE JUST
24 CONSENTED TO THE FILING OF AN INFORMATION, AND I'M NOW SHOWING
25 THAT FILED.

CHANGE OF PLEA

4

1 MY PROCEDURE, OF COURSE, IS TO HAVE THE U.S.

2 ATTORNEY READ THE INFORMATION TO YOU. THIS IS A RATHER LONG

3 INFORMATION. HAVE YOU READ IT WITH YOUR ATTORNEY AND HAVE YOU

4 CONSULTED WITH YOUR ATTORNEY ABOUT IT?

5 THE DEFENDANT: YES, I HAVE, YOUR HONOR.

6 THE COURT: HAVE YOU READ IT?

7 THE DEFENDANT: YES, I HAVE.

8 THE COURT: HAVE YOU DISCUSSED IT WITH YOUR

9 ATTORNEY?

10 THE DEFENDANT: YES, I HAVE.

11 THE COURT: HAS HE EXPLAINED ANY PART OF IT TO YOU

12 THAT YOU DON'T UNDERSTAND?

13 THE DEFENDANT: NO, YOUR HONOR.

14 THE COURT: NOW, DO YOU WISH TO HAVE THE ENTIRE

15 INFORMATION READ TO YOU?

16 THE DEFENDANT: NO, YOUR HONOR.

17 THE COURT: ALL RIGHT. MR. BECKER?

18 MR. BECKER: JUDGE, THE INFORMATION WAS THE SUBJECT

19 OF SOME NEGOTIATED ITEMS BETWEEN THE PARTIES.

20 THE COURT: I'M GETTING THAT.

21 MR. BECKER: I THINK WE'RE PRETTY COMFORTABLE WITH

22 THE LANGUAGE.

23 THE COURT: ALL RIGHT. MR. MATZDORFF, DO YOU

24 UNDERSTAND WHAT YOU'RE CHARGED WITH IN COUNT I OF THIS

25 INFORMATION?

CHANGE OF PLEA

5

1 THE DEFENDANT: YES, I DO, YOUR HONOR.

2 THE COURT: YOU'RE CHARGED WITH ACTS OF WIRE FRAUD.

3 MR. BECKER: IT'S A CONSPIRACY TO COMMIT MAIL FRAUD
4 AND WIRE FRAUD.

5 THE COURT: MAIL FRAUD AND WIRE FRAUD. THANK YOU.
6 AND THE RANGE OF PUNISHMENT, MR. BECKER?

7 MR. BECKER: YES. IT IS NOT MORE THAN 5 YEARS'
8 IMPRISONMENT, A FINE OF NOT MORE THAN \$250,000, 3 YEARS'
9 SUPERVISED RELEASE, PLUS A \$100 SPECIAL PENALTY ASSESSMENT.

10 THE COURT: ALL RIGHT. THANK YOU, MR. BECKER.

11 MR. MATZDORFF, DO YOU UNDERSTAND WHAT YOU'RE CHARGED
12 WITH IN COUNT I OF THE INFORMATION?

13 THE DEFENDANT: I DO, YOUR HONOR.

14 THE COURT: DO YOU UNDERSTAND THE RANGE OF
15 PUNISHMENT THAT MR. BECKER JUST ADVISED YOU OF ON THE RECORD?

16 THE DEFENDANT: I DO, YOUR HONOR.

17 THE COURT: TO MAKE SURE, MR. MATZDORFF, IT TALKS
18 ABOUT THREE YEARS OF SUPERVISED RELEASE. THAT'S LIKE
19 PROBATION OR PAROLE. YOU MAY HAVE HEARD THOSE TERMS. IT IS
20 CONSIDERED PART OF THE PUNISHMENT, BECAUSE IF YOU SERVE ANY
21 TIME IN JAIL OR IN PRISON, WHEN YOU'RE RELEASED, YOU'RE PLACED
22 ON SUPERVISED RELEASE.

23 THERE ARE RULES YOU MUST FOLLOW TO SUCCESSFULLY
24 COMPLETE THAT PERIOD OF SUPERVISED RELEASE. IF YOU VIOLATE
25 THE RULES, THAT CAN BE THE BASIS, AFTER A HEARING TO DETERMINE

CHANGE OF PLEA

6

1 IF YOU DID VIOLATE THOSE RULES, TO REVOKE YOUR SUPERVISED
2 RELEASE AND ORDER YOU TO SPEND MORE TIME IN JAIL OR IN PRISON.
3 DO YOU UNDERSTAND THAT?

4 THE DEFENDANT: I DO, YOUR HONOR.

5 THE COURT: THAT'S WHY SUPERVISED RELEASE IS
6 CONSIDERED TO BE PART OF THE PUNISHMENT.

7 NOW, KNOWING THE OFFENSE WITH WHICH YOU'RE CHARGED
8 AND THE RANGE OF PUNISHMENT FOR THAT OFFENSE IN COUNT I, WHAT
9 IS YOUR PLEA TO COUNT I OF THE INFORMATION, GUILTY OR NOT
10 GUILTY?

11 THE DEFENDANT: GUILTY, YOUR HONOR.

12 THE COURT: ALL RIGHT. NOW, YOU'RE CHARGED WITH A
13 SECOND COUNT. DO YOU UNDERSTAND WHAT YOU'RE CHARGED WITH IN
14 THE SECOND COUNT?

15 THE DEFENDANT: I DO, YOUR HONOR.

16 THE COURT: THE SECOND COUNT IS A FORFEITURE COUNT.
17 DO YOU UNDERSTAND THAT?

18 THE DEFENDANT: YES, I DO.

19 THE COURT: IS THERE ANYTHING ABOUT COUNT II YOU DO
20 NOT UNDERSTAND?

21 THE DEFENDANT: NO, YOUR HONOR.

22 THE COURT: AND DO YOU AT THIS TIME CONSENT AND
23 AGREE AND CONFESS FORFEITURE ON COUNT II?

24 THE DEFENDANT: I DO, YOUR HONOR.

25 THE COURT: ALL RIGHT. MR. BECKER, IS THERE

CHANGE OF PLEA

7

1 ANYTHING ELSE I NEED TO ADVISE HIM ABOUT ON COUNT II?

2 MR. BECKER: NO, SIR.

3 THE COURT: AND DO I HAVE TO ASK HIM IF HE'S GUILTY
4 IN COUNT II OR JUST CONSENT TO THE FORFEITURE?

5 MR. BECKER: I BELIEVE HE'S CONSENTING TO THE
6 FORFEITURE.

7 THE COURT: ALL RIGHT. THAT'S THE WAY I UNDERSTAND
8 IT.

9 ALL RIGHT. MR. MATZDORFF, BEFORE I CAN ACCEPT YOUR
10 PLEA OF GUILTY AND YOUR CONSENT TO FORFEITURE, I NEED TO ASK
11 YOU SOME ADDITIONAL QUESTIONS UNDER OATH, AND SO I NEED YOU TO
12 RAISE YOUR RIGHT HAND AND BE SWORN IN TO TESTIFY AS A WITNESS.

13 THIS IS OUR WITNESS STAND AROUND HERE TO THE LEFT,
14 IF YOU'LL COME AROUND AND HAVE A SEAT. COUNSEL MAY BE SEATED
15 AT THE COUNSEL TABLE.

16 KENNETH M. MATZDORFF,

17 BEING FIRST DULY SWORN BY THE COURTROOM DEPUTY, TESTIFIED AS
18 FOLLOWS:

19 EXAMINATION

20 BY THE COURT:

21 Q. MR. MATZDORFF, HAVE YOU ALREADY GONE TO COURT IN NEW YORK
22 OR NOT?

23 A. YES. WE HAVE ENTERED OUR PLEA IN NEW YORK.

24 Q. ALL RIGHT. I DON'T KNOW HOW THAT JUDGE DID IT. I MAY DO
25 IT A LITTLE DIFFERENT. I DON'T KNOW WHAT THEIR PROCEDURE IS

CHANGE OF PLEA

8

1 IN NEW YORK, BUT MY PROCEDURE IS I'M GOING TO GET A LITTLE
2 MORE BACKGROUND INFORMATION ABOUT YOU, AND I'M GOING TO ASK
3 YOU SOME QUESTIONS ABOUT THE CHARGE YOU'RE PLEADING GUILTY TO
4 AND THEN I'M GOING TO ADVISE YOU OF YOUR CONSTITUTIONAL RIGHTS
5 AND MAKE SURE YOU UNDERSTAND THEM.

6 AFTER I EXPLAIN EACH OF THOSE CONSTITUTIONAL RIGHTS
7 TO YOU AND YOU TELL ME YOU UNDERSTAND IT, I WILL ASK YOU TO
8 WAIVE OR GIVE UP THAT CONSTITUTIONAL RIGHT. DO YOU
9 UNDERSTAND?

10 A. I DO, YOUR HONOR.

11 Q. NOW, LET'S START WITH YOU TELLING ME YOUR FULL NAME.

12 A. MY FULL NAME IS KENNETH MICHAEL MATZDORFF.

13 Q. HOW OLD ARE YOU?

14 A. I'M 48 YEARS OLD.

15 Q. WHERE DO YOU LIVE?

16 A. I LIVE IN BELTON, MISSOURI.

17 Q. ARE YOU MARRIED OR SINGLE?

18 A. I AM MARRIED.

19 Q. HOW MUCH FORMAL EDUCATION DO YOU HAVE?

20 A. I HAVE A MASTER'S DEGREE.

21 Q. ALL RIGHT. AND I KNOW THE INFORMATION JUST TALKED ABOUT
22 YOUR WORK. WHAT KIND OF WORK DO YOU DO?

23 A. I'VE BEEN INVOLVED IN THE TELECOMMUNICATIONS INDUSTRY.

24 Q. ALL RIGHT. WHAT IS THE CONDITION OF YOUR PHYSICAL HEALTH
25 TODAY?

CHANGE OF PLEA

9

1 A. GENERALLY SOUND.

2 Q. WHAT IS THE CONDITION OF YOUR MENTAL HEALTH?

3 A. SOUND.

4 Q. ARE YOU UNDER THE INFLUENCE OF ANY DRUGS OR ALCOHOL NOW,
5 RIGHT NOW?

6 A. NO, I'M NOT.

7 Q. NOW, THIS OFFENSE IS ALLEGED TO HAVE TAKEN PLACE DURING A
8 PERIOD OF TIME, I BELIEVE, FROM '98 TO --

9 THE COURT: -- IS THAT CORRECT, MR. BECKER?

10 MR. BECKER: YES, SIR.

11 THE COURT: '98 THROUGH 04?

12 MR. BECKER: YES.

13 BY THE COURT:

14 Q. -- THROUGH '04. DURING THAT PERIOD OF TIME WHEN YOU DID
15 ANY OF THE ACTS, THE OVERT ACTS, IN THE MANNER AND MEANS THAT
16 ARE SPELLED OUT IN THIS INFORMATION, WHEN YOU DID ANYTHING
17 THAT WAS PART OF THIS CRIMINAL CONDUCT, WHAT WAS THE CONDITION
18 OF YOUR PHYSICAL HEALTH, GOOD OR BAD?

19 A. IT WAS GOOD.

20 Q. WHAT WAS THE CONDITION OF YOUR MENTAL HEALTH?

21 A. IT WAS SOUND.

22 Q. WERE YOU UNDER THE INFLUENCE OF ANY DRUGS OR ALCOHOL WHEN
23 YOU COMMITTED ANY OF THE ACTS THAT COMPRISE YOUR CRIMINAL
24 CONDUCT IN THIS INFORMATION?

25 A. NO, I WAS NOT.

CHANGE OF PLEA

10

1 Q. ALL RIGHT. NOW, I'M GOING TO HAVE MR. BECKER GIVE US A
2 BRIEF SUMMARY OF THE CRIMINAL CONDUCT THE GOVERNMENT HAS
3 AGAINST YOU.

4 THE COURT: MR. BECKER.

5 MR. BECKER: MR. MATZDORFF AND OTHERS KNOWN TO THE
6 UNITED STATES ATTORNEY ENTERED INTO AN AGREEMENT WHEREBY THEY
7 WOULD SEEK TO DEFRAUD TWO ENTITIES, THE NATIONAL EXCHANGE
8 CARRIERS ASSOCIATION, AND THE UNIVERSAL SERVICE ADMINISTRATIVE
9 COMPANY. IT'S NECA AND USAC.

10 THE SCHEME INVOLVED THE CASS COUNTY TELEPHONE
11 COMPANY. MR. MATZDORFF WAS THE PRESIDENT AT CERTAIN TIMES AND
12 ESSENTIALLY RAN THE CASS COUNTY TELEPHONE COMPANY.

13 THE CASS COUNTY TELEPHONE COMPANY PAID MONEY TO
14 ANOTHER COMPANY CALLED THE OVERLAND DATA CENTER BASED UPON
15 FALSIFIED OR FICTITIOUS INVOICES. AS ALLEGED IN THE
16 INFORMATION, THE PAYMENTS OVER THAT TIME PERIOD FROM CASSTEL
17 TO OVERLAND DATA WERE APPROXIMATELY \$11 MILLION.

18 THE GOVERNMENT HAS ESTIMATED THAT THE VALUE OF THE
19 ACTUAL SERVICES DURING THAT TIME PERIOD WAS APPROXIMATELY
20 \$240,000.

21 BY HAVING THESE ADDED EXPENSES, THE CASS COUNTY
22 TELEPHONE COMPANY MADE SUBMISSIONS TO NECA AND TO USAC FOR
23 ESSENTIALLY COST SUBSIDIES. THESE TWO ENTITIES ARE FREE
24 AGENTS OF THE FCC AND THEY SUBSIDIZED HIGH-COST RURAL

25 TELEPHONE COMPANIES. THEY'RE TWO SEPARATE BUT VERY CLOSELY

CHANGE OF PLEA

11

1 RELATED PROGRAMS.

2 THE UNIVERSAL SERVICE FUNDS HELP CASS COUNTY
3 TELEPHONE AND OTHER RURAL TELEPHONE COMPANIES BUILD UP THEIR
4 INFRASTRUCTURE, AND THEY ARE SUBSIDIZED BECAUSE THEIR COST PER
5 CUSTOMER ARE HIGHER, OBVIOUSLY BECAUSE OF THE RURAL NATURE OF
6 THEIR SERVICES.

7 NECA IS THE COST-SHARING BETWEEN TELECOMMUNICATIONS
8 COMPANIES, AND THE CASS COUNTY TELEPHONE COMPANY WOULD, EVERY
9 YEAR, IF THEIR AVERAGE COST WAS HIGHER THAN THE NATIONAL
10 AVERAGE, THEY WOULD RECEIVE MONIES FROM NECA TO MAKE UP THE
11 DIFFERENCE.

12 THESE EXPENSES THEN WERE PART OF THE SUBMISSIONS
13 MADE BY THE CASS COUNTY TELEPHONE COMPANY TO NECA AND TO USAC.
14 THEY CAUSED, OBVIOUSLY BY HAVING APPROXIMATELY \$10 MILLION
15 WORTH OF EXTRA EXPENSES IN THEIR REPORTS, CAUSED NECA TO PAY
16 CASS COUNTY TELEPHONE APPROXIMATELY \$5 MILLION MORE THAN THEY
17 WOULD HAVE.

18 SIMILARLY, THE ADDED EXPENSES IN THE SUBMISSIONS BY
19 CASS COUNTY TELEPHONE RESULTED IN UNIVERSAL SERVICE FUND
20 PAYING APPROXIMATELY \$3.4 MILLION MORE TO CASSTEL THAN THEY
21 OTHERWISE WOULD HAVE.

22 AS PART OF THE SCHEME, IT WASN'T JUST CASSTEL PAYING
23 MONEY OUT TO THE OVERLAND DATA COMPANY, THE OVERLAND DATA
24 COMPANY THEN WOULD SEND THE MONEY BACK EITHER TO CASSTEL OR,

25 LATER ON, THE PARENT COMPANY OF CASSTEL, WHICH IS KNOWN AS

CHANGE OF PLEA

12

1 LOCAL EXCHANGE CARRIERS, LEC, FOR MANAGEMENT FEES OR
2 CONSULTING FEES.

3 SO, IF YOU WILL, THE MONEY WENT INTO A CIRCLE;
4 CASSTEL PAID OVERLAND DATA FOR WORK NOT PERFORMED, AND THEN
5 OVERLAND DATA PAID LEC FOR WORK NOT PERFORMED, SO THE MONEY
6 CAME BACK TO CASSTEL.

7 BUT, THEN, THAT EXPENSE WAS PUT ON THEIR REPORT TO
8 NECA AND TO USAC, WHICH CAUSED THIS HIGHER RATE OF SUBSIDY.
9 THE MAILS USED WERE FEDEX'D FROM PECULIAR, MISSOURI, WHERE
10 CASS COUNTY TELEPHONE IS LOCATED, TO NECA, THE SUBMISSIONS,
11 AND THEN THE WIRE -- IN FURTHERANCE OF THE FRAUD WERE THE WIRE
12 TRANSFERS AND MONEY FROM MELLON BANK, IN EITHER PITTSBURGH OR
13 PHILADELPHIA, TO THE BANK ACCOUNT OF THE CASS COUNTY TELEPHONE
14 COMPANY.

15 THE COURT: ALL RIGHT. THANK YOU, MR. BECKER.

16 MR. MORTENSON, DO YOU WANT TO ADD ANYTHING TO THAT
17 DESCRIPTION OF THE CRIMINAL CONDUCT?

18 MR. MORTENSON: NO, YOUR HONOR.

19 THE COURT: ANYTHING YOU WANT TO CORRECT?

20 MR. MORTENSON: NO.

21 THE COURT: ALL RIGHT.

22 BY THE COURT:

23 Q. MR. MATZDORFF, DOES THAT ACCURATELY PORTRAY WHAT YOU DID?

24 A. YES, IT DOES, YOUR HONOR.

25 Q. IS THERE ANYTHING THAT YOU WANT TO CORRECT THAT MR.

CHANGE OF PLEA

13

1 BECKER SAID?

2 A. THE ONLY CORRECTION I WOULD MAKE IS THAT LOCAL EXCHANGE
3 COMPANY IS LEC, LLC, THERE'S TWO COMPANIES, AND LOCAL EXCHANGE
4 COMPANY, BUT THE CHARACTERIZATION IS CORRECT.

5 Q. ALL RIGHT. AND THIS MANNER AND MEANS SAYS THIS CONDUCT
6 WENT ON FROM ABOUT JANUARY OF '98 AND CONTINUING ON THROUGH
7 ABOUT JULY 2004. IS THAT CORRECT?

8 A. THAT'S CORRECT, YOUR HONOR.

9 THE COURT: AND, MR. BECKER, I'M NOW READING STUFF
10 FROM THE INFORMATION.

11 BY THE COURT:

12 Q. IT SAYS, PARAGRAPH 7 IN THE MANNER AND MEANS, IT SAYS
13 THAT "FALSE AND FICTITIOUS EXPENSES RESULTED IN AN OVERPAYMENT
14 BY USAC TO CASSTEL OF APPROXIMATELY \$3.5 MILLION." IS THAT
15 CORRECT?

16 A. YES, IT IS, YOUR HONOR.

17 Q. AND THEN, OF COURSE, I GOT AHEAD OF MYSELF, PARAGRAPH 4,
18 WHICH SAYS, "THE PAYMENTS BY CASSTEL TO ODC BASED UPON THE
19 FICTITIOUS INVOICES TOTALED APPROXIMATELY \$11 MILLION BETWEEN
20 1998 AND 2003," AND "THE TOTAL VALUE OF THE ACTUAL SERVICES
21 PERFORMED DURING 1997 TO 2002 BY ODC FOR CASSTEL IS
22 APPROXIMATELY \$240,000." IS THAT CORRECT?

23 A. APPROXIMATELY, THAT'S RIGHT.

24 Q. AND, OF COURSE --

25 MR. BECKER: YOUR HONOR, I'M SORRY. LET ME GIVE YOU

CHANGE OF PLEA

1 -- THERE'S BEEN A CHANGE IN THE LANGUAGE OF THE ONE THAT -- 14

2 THE COURT: WHAT?

3 MR. BECKER: IT'S "ESTIMATED AT," RATHER THAN
4 "APPROXIMATELY."

5 THE COURT: OKAY. IT IS ESTIMATED?

6 MR. BECKER: THAT'S RIGHT.

7 THE COURT: WHAT PARAGRAPH?

8 MR. BECKER: IT IS THE BOTTOM OF PAGE 4.

9 THE COURT: IS IT THAT FIRST PARAGRAPH I READ?

10 MR. BECKER: YES. PARAGRAPH 4, ON THE BOTTOM OF
11 PAGE 4.

12 THE COURT: ESTIMATED.

13 MR. BECKER: THE ONE YOU JUST READ.

14 THE COURT: THANK YOU.

15 BY THE COURT:

16 Q. IT SAYS "ESTIMATED AT \$240,000."

17 A. THAT'S CORRECT, YOUR HONOR.

18 Q. ALL RIGHT. AND, OF COURSE, MR. BECKER SAYS THE MEANS YOU
19 USED TO TRANSMIT THIS DOCUMENTATION AND SO FORTH WAS FEDEX.
20 IS THAT CORRECT?

21 A. THAT'S CORRECT.

22 Q. NOW, IS THERE ANYTHING ABOUT THE CHARGE THAT YOU DON'T

- 23 UNDERSTAND, THE CHARGE AND THE INFORMATION?
- 24 A. NO. I UNDERSTAND IT, YOUR HONOR.
- 25 Q. AND YOU'RE TELLING ME YOU ARE GUILTY OF THAT OFFENSE?

CHANGE OF PLEA

- 15
- 1 A. YES, I AM.
- 2 Q. NOW, COUNT II IS THE FORFEITURE COUNT WHERE IT SAYS YOU
- 3 CONSENTED AND AGREED THAT YOU SHALL FORFEIT \$2,500,000 IN U.S.
- 4 CURRENCY WHICH CONSTITUTES OR IS DERIVED FROM THE PROCEEDS
- 5 TRACEABLE TO THE VIOLATION INCORPORATED BY REFERENCE IN THIS
- 6 COUNT. DO YOU CONSENT AND AGREE TO THAT FORFEITURE?
- 7 A. YES, I DO, YOUR HONOR.
- 8 Q. IS THERE ANYTHING ABOUT COUNT II THAT YOU DON'T
- 9 UNDERSTAND?
- 10 A. NO. I UNDERSTAND IT.
- 11 Q. THAT'S ALL I'M GOING TO ASK YOU ABOUT THE OFFENSE UNTIL
- 12 WE GET TO THE COOPERATION AGREEMENT THAT TOUCHES A LITTLE MORE
- 13 ABOUT IT.
- 14 WHEN YOU, OR ANYBODY, PLEADS GUILTY, MR. MATZDORFF,
- 15 BY THE MERE ACT OF PLEADING GUILTY YOU WAIVE VARIOUS
- 16 CONSTITUTIONAL RIGHTS. I'M SURE THAT JUDGE IN SOME WAY
- 17 EXPLAINED IT TO YOU, DIDN'T HE?
- 18 A. YES. YES, SHE DID.
- 19 Q. ALL RIGHT. I'M GOING TO ALSO. I MAY GO A LITTLE FASTER,
- 20 ASSUMING YOU'VE ALREADY HEARD THIS RECENTLY FROM ANOTHER
- 21 JUDGE. OKAY?
- 22 A. THAT'S FINE.

23 Q. IF THERE'S ANYTHING THAT I EXPLAIN TO YOU THAT YOU DON'T
24 UNDERSTAND OR THE WAY I EXPLAIN IT TO YOU DOESN'T RING A BELL,
25 STOP ME AND I'LL GO INTO IT IN MORE DETAIL. ALL RIGHT?

CHANGE OF PLEA

16

1 A. I WILL.

2 Q. FIRST OF ALL, WE'VE ALREADY COVERED THE FACT THAT YOU
3 DIDN'T HAVE TO AGREE TO THE FILING OF AN INFORMATION. YOU
4 COULD HAVE ASKED THE U.S. ATTORNEY'S OFFICE TO PRESENT THIS
5 EVIDENCE TO A GRAND JURY AND LET THEM RETURN AN INDICTMENT.
6 DO YOU UNDERSTAND THAT?

7 A. YES, I DO.

8 Q. NOW, EVEN THOUGH YOU CONSENTED TO THAT AND THE
9 INFORMATION WAS FILED, I NEED TO ADVISE YOU, YOU COULD HAVE
10 STILL ENTERED YOUR PLEA OF NOT GUILTY TO THE INFORMATION AS
11 OPPOSED TO THE INDICTMENT. DO YOU UNDERSTAND THAT?

12 A. I DO, YOUR HONOR.

13 Q. IF YOU HAD ELECTED TO DO THAT, OF COURSE, THEN WE WOULD
14 HAVE EMPANELED A JURY AND LET THEM HEAR THE EVIDENCE AND
15 DECIDE IF YOU WERE GUILTY OR NOT OF BOTH COUNTS. DO
16 UNDERSTAND THAT?

17 A. I DO, YOUR HONOR.

18 Q. BY PLEADING GUILTY HERE TODAY, YOU'RE GIVING UP YOUR
19 RIGHT TO A JURY TRIAL AND PLEADING GUILTY. DO YOU UNDERSTAND
20 THAT?

21 A. YES, I DO.

22 Q. SO DO YOU NOW GIVE UP YOUR RIGHT TO A JURY TRIAL ON COUNT
23 I AND COUNT II?
24 A. I DO, YOUR HONOR.
25 Q. FURTHER, IF WE HAD THE JURY TRIAL, THE GOVERNMENT HAS THE

CHANGE OF PLEA

17
1 BURDEN OF PROOF. THEY ARE RESPONSIBLE FOR PRESENTING
2 SUFFICIENT EVIDENCE TO THE JURY AND MAKING IT UNDERSTANDABLE
3 FOR THAT JURY TO DETERMINE WHETHER OR NOT YOU WERE GUILTY OR
4 NOT GUILTY OF BOTH COUNTS. DO YOU UNDERSTAND THAT?
5 A. I DO.
6 Q. TO DO THAT, THEY WOULD CALL IN WITNESSES. EVERY WITNESS
7 THE GOVERNMENT CALLS IN IS LABELED OR CONSIDERED TO BE YOUR
8 ACCUSERS. DO YOU UNDERSTAND THAT?
9 A. YES, I DO.
10 Q. NOW, EACH ACCUSER WOULD HAVE TO COME IN AND TESTIFY IN
11 YOUR PRESENCE ABOUT WHAT THEY KNOW ABOUT YOUR CONDUCT IN
12 COMMITTING THESE ACTS. DO YOU UNDERSTAND THAT?
13 A. I DO.
14 Q. AFTER EACH ACCUSER HAD TESTIFIED, YOU WOULD HAVE AN
15 OPPORTUNITY TO CROSS-EXAMINE THAT ACCUSER THROUGH YOUR
16 ATTORNEY. DO YOU UNDERSTAND THAT?
17 A. I DO.
18 Q. THAT'S ALL UNDER YOUR CONSTITUTIONAL RIGHT TO CONFRONT
19 AND FACE YOUR ACCUSERS THAT ACCUSE YOU OF CRIMINAL ACTIVITY
20 AND TO CROSS-EXAMINE THEM. DO YOU UNDERSTAND THAT?
21 A. I DO, YOUR HONOR.

22 Q. NOW, BY PLEADING GUILTY AND ADMITTING YOUR GUILT, THAT
23 RELIEVES THE GOVERNMENT OF THE RESPONSIBILITY OF BRINGING YOUR
24 ACCUSERS IN. DO YOU UNDERSTAND THAT?
25 A. YES, I DO.

CHANGE OF PLEA

18
1 Q. SO DO YOU NOW GIVE UP YOUR RIGHT TO CONFRONT AND FACE
2 YOUR ACCUSERS AND TO CROSS-EXAMINE THEM ON THESE TWO COUNTS?
3 A. I DO, YOUR HONOR,
4 Q. FURTHER, IF WE HAD HAD THE TRIAL, AFTER THE GOVERNMENT
5 HAD PRESENTED ALL ITS EVIDENCE AGAINST YOU BY BRINGING THESE
6 ACCUSERS IN, THEN IT WOULD HAVE BEEN TIME FOR YOU TO PUT ON
7 ANY DEFENSE, ANY EXPLANATION TO THE JURY OF WHY YOU WERE NOT
8 GUILTY OF EITHER ONE OR BOTH OF THOSE CHARGES. DO YOU
9 UNDERSTAND THAT?
10 A. YES, YOUR HONOR.
11 Q. TO DO THAT, YOU WOULD NEED TO CALL IN WITNESSES. AFTER
12 YOU AND YOUR ATTORNEY DETERMINED WHO YOU WANTED TO CALL AS
13 WITNESSES, YOUR ATTORNEY WOULD REQUEST THAT SUBPOENAS BE
14 ISSUED OUT OF THIS COURT AND SERVED ON THOSE WITNESSES,
15 ASSUMING THEY COULD BE LOCATED WHERE YOU ADVISED US THAT THEY
16 WERE LOCATED, AND THOSE WITNESSES WOULD BE REQUIRED OR
17 COMPELLED TO COME TO COURT AND TESTIFY IN YOUR DEFENSE WHETHER
18 THEY WANTED TO COME OR NOT. DO YOU UNDERSTAND THAT?
19 A. YES, YOUR HONOR.
20 Q. THAT'S A RIGHT YOU HAVE, TO SUBPOENA WITNESSES IN YOUR

21 OWN DEFENSE AND TO COMPEL THEIR ATTENDANCE AT YOUR TRIAL. DO
22 YOU UNDERSTAND THAT?
23 A. YES, I DO.
24 Q. BY PLEADING GUILTY TO THIS INFORMATION, YOU'RE NOT
25 RAISING ANY DEFENSE, SO THERE'S NO NEED TO SUBPOENA WITNESSES

CHANGE OF PLEA

19
1 TO TRY TO PROVE YOUR INNOCENCE. DO YOU UNDERSTAND THAT?
2 A. YES, YOUR HONOR.
3 Q. SO DO YOU NOW GIVE UP YOUR RIGHT TO SUBPOENA WITNESSES IN
4 YOUR OWN DEFENSE ON BOTH OF THESE COUNTS?
5 A. YES, I DO.
6 Q. FURTHER, IF WE HAD HAD THE TRIAL AND AFTER YOU HAD CALLED
7 YOUR WITNESSES TO TESTIFY DURING YOUR TRIAL, IT WOULD HAVE
8 BEEN TIME FOR YOU TO DECIDE IF YOU WANTED TO TESTIFY. AT NO
9 TIME WOULD YOU HAVE BEEN FORCED OR REQUIRED TO TESTIFY UNLESS
10 YOU YOURSELF DECIDED THAT YOU WANTED TO TESTIFY. DO YOU
11 UNDERSTAND THAT?
12 A. YES.
13 Q. THAT'S YOUR RIGHT NOT TO HAVE TO INCRIMINATE YOURSELF OF
14 ANY CRIMINAL ACT OR WRONGDOING. DO YOU UNDERSTAND THAT?
15 A. I DO, YOUR HONOR.
16 Q. NOW, YOU'VE ALREADY GIVEN UP OR WAIVED THAT RIGHT IN THIS
17 CASE BY PLEADING GUILTY AND ADMITTING TO ME THAT YOU COMMITTED
18 THE WRONGFUL ACTS AS SPELLED OUT IN THE INFORMATION. DO YOU
19 UNDERSTAND THAT?
20 A. I DO, YOUR HONOR.

21 Q. BUT, NOW, FOR THE RECORD, DO YOU GIVE UP YOUR RIGHT
22 AGAINST SELF-INCRIMINATION ON COUNT I AND COUNT II?

23 A. I DO, YOUR HONOR.

24 Q. NOW, IF WE HAD THE TRIAL AND THE JURY, AFTER HEARING THE
25 EVIDENCE AND RETIRING TO THE JURY ROOM AND DELIBERATING, HAD

CHANGE OF PLEA

20
1 RETURNED TO THE COURTROOM AND ANNOUNCED THEY HAD FOUND YOU
2 GUILTY OF EITHER ONE OR BOTH OF THESE COUNTS, YOU WOULD HAVE A
3 RIGHT TO APPEAL THAT JURY'S FINDING OF GUILTY TO THE FEDERAL
4 APPELLATE COURTS THAT REVIEW WHAT GOES ON DURING A TRIAL. DO
5 YOU UNDERSTAND THAT?

6 A. I DO, YOUR HONOR.

7 Q. AN ATTORNEY WOULD CONTINUE TO REPRESENT YOU ON THAT
8 APPEAL. IF YOU COULDN'T AFFORD TO HIRE ONE, ONE WOULD BE
9 APPOINTED TO REPRESENT YOU. DO YOU UNDERSTAND THAT?

10 A. I DO, YOUR HONOR.

11 Q. THE PURPOSE OF THAT IS TO ASK THE APPELLATE COURT TO
12 REVIEW WHAT WENT ON AT THE TRIAL. YOU WOULD BE ASKING THE
13 APPELLATE COURT TO SET ASIDE THAT JURY'S FINDING OF GUILTY AND
14 GIVE YOU A NEW TRIAL. DO YOU UNDERSTAND THAT?

15 A. I DO, YOUR HONOR.

16 Q. NOW, SINCE YOU'RE WAIVING YOUR RIGHT TO A JURY TRIAL,
17 THERE IS NOTHING TO APPEAL, BECAUSE THERE'S NEVER GOING TO BE
18 A TRIAL TAKE PLACE. SO WHEN YOU GIVE UP YOUR RIGHT TO A JURY
19 TRIAL, YOU GIVE UP YOUR RIGHT TO APPEAL A JURY'S FINDING OF

20 GUILTY THAT COULD FOLLOW THAT JURY TRIAL. DO YOU UNDERSTAND
21 THAT?
22 A. I DO.
23 Q. SO DO YOU GIVE UP YOUR RIGHT TO APPEAL ANY FINDING OF A
24 JURY'S VERDICT OF GUILTY ON COUNT I OR II?
25 A. I DO, YOUR HONOR.

CHANGE OF PLEA

21

1 Q. ALL RIGHT.
2 THE COURT: NOW, MR. BECKER, WAS ANY SEARCH
3 CONDUCTED?
4 MR. BECKER: THERE WAS A CONSENT SEARCH BUT NOT OF
5 ANY -- IT WAS OF A BUSINESS, NOT OF MR. MATZDORFF'S
6 POSSESSIONS OR PROPERTY.
7 THE COURT: ALL RIGHT. COULD IT HAVE RESULTED IN
8 EVIDENCE THAT WOULD HAVE BEEN USED AT HIS TRIAL?
9 MR. BECKER: YES, SIR.
10 THE COURT: HOW ABOUT THE POLICE LINEUP?
11 MR. BECKER: NO, SIR.
12 THE COURT: ADMISSIONS OR CONFESSIONS?
13 MR. BECKER: NO.
14 THE COURT: ALL RIGHT. YOUR INVESTIGATOR IS WANTING
15 TO TELL YOU SOMETHING.
16 MR. BECKER: THERE WERE SEARCH WARRANTS ALSO
17 EXECUTED IN THE EASTERN DISTRICT AND SOUTHERN DISTRICT OF NEW
18 YORK.
19 THE COURT: WELL, I ASSUMED THE JUDGE TOUCHED ON

20 THAT, BUT I'LL TOUCH ON THAT.

21 BY THE COURT:

22 Q. THAT EXCHANGE WAS TO HAVE ME SO I COULD ASK YOU, THERE
23 WERE SOME SEARCHES CONDUCTED. DO YOU UNDERSTAND BY PLEADING
24 GUILTY HERE TODAY YOU'RE GIVING UP YOUR RIGHT TO FURTHER
25 CHALLENGE WHETHER THOSE SEARCHES WERE PROPERLY CONDUCTED?

CHANGE OF PLEA

22

1 A. I DO, YOUR HONOR.

2 Q. ALL RIGHT. DO YOU GIVE UP THAT RIGHT AT THIS TIME?

3 A. I DO.

4 Q. NOW, THAT'S ALL I'M GOING TO TALK TO YOU ABOUT YOUR
5 CONSTITUTIONAL RIGHTS.

6 THE COURT: NOW, THE COPY OF THE COOPERATIVE
7 AGREEMENT, THE ONE THAT WE'RE WORKING OFF OF, HAS IT BEEN
8 CHANGED ANY?

9 MR. BECKER: NO, SIR. AND WE WOULD ASK THAT THAT BE
10 ADMITTED AS GOVERNMENT'S EXHIBIT 1 FOR PURPOSES OF THIS
11 HEARING.

12 THE COURT: ALL RIGHT. GOVERNMENT'S EXHIBIT 1 WILL
13 BE ADMITTED.

14 (GOVERNMENT'S EXHIBIT NO. 1 WAS RECEIVED IN
15 EVIDENCE.)

16 BY THE COURT:

17 Q. NOW, BEFORE YOU PLED GUILTY TODAY, AND, OF COURSE, I'VE
18 READ THE COOPERATIVE AGREEMENT ALONG WITH THE INDICTMENT, AND

19 I UNDERSTAND THAT THERE IS A PARALLEL CASE GOING OR IN
20 PROCESS, I THINK, IN BROOKLYN?
21 A. THAT'S CORRECT.
22 Q. IN BROOKLYN, NEW YORK, AND YOU TOLD ME YOU ALREADY HAVE
23 BEEN THERE AND ENTERED A PLEA ON THAT PART OF THE CASE. IS
24 THAT CORRECT?
25 A. THAT'S CORRECT.

CHANGE OF PLEA

23
1 Q. AND THIS SAME COOPERATIVE AGREEMENT COVERS THAT CASE AND
2 THIS CASE, IS THAT CORRECT?
3 A. THAT'S CORRECT, YOUR HONOR.
4 Q. OKAY. NOW, ONCE AGAIN, I'M GOING TO HAVE MR. BECKER GIVE
5 US A SUMMARY OF WHAT'S IN HERE AND THEN I'LL ASK YOU IF YOU
6 UNDERSTAND IT AND IF THAT'S WHAT YOU AGREE TO. ALL RIGHT?
7 A. YES.
8 THE COURT: MR. BECKER?
9 MR. BECKER: YOUR HONOR, THE AGREEMENT IS BETWEEN
10 THE DEFENDANT AND HIS ATTORNEYS AND THE OFFICES OF THE UNITED
11 STATES ATTORNEY FOR THE EASTERN DISTRICT OF NEW YORK AND
12 WESTERN DISTRICT OF MISSOURI.
13 THE DEFENDANT AGREES TO WAIVE INDICTMENT AND PLEAD
14 GUILTY TO A TWO-COUNT INFORMATION IN THE EASTERN DISTRICT OF
15 NEW YORK CHARGING HIM WITH CONSPIRACY, TWO COUNTS OF
16 CONSPIRACY. HE HAS DONE SO.
17 THE AGREEMENT PROVIDES THAT HE WILL WAIVE INDICTMENT
18 AND PLEAD GUILTY IN THIS COURT AS WELL. IT SETS FORTH THE

19 MAXIMUM POSSIBLE PENALTIES FOR EACH OF THOSE INFORMATION.

20 THE PLEA AGREEMENT STATES THAT THE DEFENDANT'S

21 SENTENCE IS GOVERNED BY THE UNITED STATES SENTENCING

22 GUIDELINES. I'M NOT SURE THAT APPLIES ANY MORE, BUT THE

23 PARTIES HAVE AGREED TO THAT.

24 THE PARAGRAPH 4 IS, AS A RESULT OF HIS GUILTY PLEAS

25 IN BOTH DISTRICTS, THE DEFENDANT HAS CONSENTED TO THE ENTRY OF

CHANGE OF PLEA

24
1 FORFEITURE MONEY JUDGMENTS AGAINST HIM IN THE AMOUNT OF \$2.5
2 MILLION EACH; THAT IS, FOR EACH DISTRICT, A TOTAL SUM OF \$5
3 MILLION AS PROPERTY CONSTITUTING PROCEEDS OR PROPERTY DERIVED
4 FROM PROCEEDS TRACEABLE TO THE OFFENSES TO WHICH THE DEFENDANT
5 HAS PLED GUILTY.

6 THE DEFENDANT AGREES TO HELP THE GOVERNMENT COLLECT
7 THAT AMOUNT.

8 PARAGRAPH 5 SETS FORTH A PAYMENT SCHEDULE THAT
9 INITIALLY THE DEFENDANT WILL PAY \$250,000 TO EACH DISTRICT BY
10 MARCH 1ST AND THE REMAINDER BY DECEMBER 31ST OF THIS YEAR.

11 THE DEFENDANT HAS AGREED AND HAS DONE A FINANCIAL
12 DISCLOSURE FORM, WHICH WAS EXECUTED IN THE EASTERN DISTRICT OF
13 NEW YORK.

14 THE DEFENDANT WILL USE HIS BEST EFFORTS TO DIVEST
15 HIMSELF OF HIS HOLDING IN THE LOCAL EXCHANGE COMPANY, LLC, AND
16 NOTIFY THE U.S. ATTORNEY'S OFFICE IN THE WESTERN DISTRICT OF
17 MISSOURI WHEN HE'S DONE SO.

18 PARAGRAPH 8 SETS FORTH THAT THE DEFENDANT WILL
19 PROVIDE TRUTHFUL AND COMPLETE AND ACCURATE INFORMATION AND
20 COOPERATE FULLY WITH THE UNITED STATES ATTORNEY'S OFFICES AND
21 WILL TESTIFY IN MATTERS IN BOTH DISTRICTS.

22 THE PARAGRAPH 9, THEN, THE UNITED STATES ATTORNEY'S
23 OFFICE HAS AGREED TO LIMIT CHARGES TO THOSE TO WHICH HE HAS
24 ENTERED PLEAS OF GUILTY; SPECIFICALLY, IN THIS DISTRICT TO
25 PLEAD TODAY WILL CONSTITUTE THE CHARGES BROUGHT AGAINST MR.

CHANGE OF PLEA

25

1 MATZDORFF FOR THE SCHEME TO DEFRAUD USAC AND NECA.

2 SHOULD THE DEFENDANT CONTINUE HIS COOPERATION AND
3 PROVIDE SUBSTANTIAL ASSISTANCE TO LAW-ENFORCEMENT AUTHORITIES,
4 AND I SUBMIT SO FAR MR. MATZDORFF HAS, THE GOVERNMENT WILL
5 FILE A MOTION FOR DOWNWARD DEPARTURE IF THAT'S AT ALL
6 APPLICABLE GIVEN THE PRESENT STATE OF THE GUIDELINES.

7 DEFENDANT WAIVES HIS RIGHTS UNDER THE HYDE
8 AMENDMENT.

9 DEFENDANT AGREES THAT HE WILL AT ALL TIMES GIVE
10 COMPLETE, TRUTHFUL, AND ACCURATE INFORMATION AND TESTIMONY AND
11 NOT COMMIT ANY FURTHER CRIMES.

12 THE GOVERNMENT RETAINS THE RIGHT TO USE THE
13 DEFENDANT'S STATEMENTS SHOULD HE AT SOME POINT FAIL TO COMPLY
14 WITH THE TERMS OF THE AGREEMENT.

15 THE AGREEMENT DOES NOT BIND ANY OTHER FEDERAL,
16 STATE, OR LOCAL PROSECUTING AUTHORITIES OTHER THAN THE EASTERN
17 DISTRICT OF NEW YORK AND THE WESTERN DISTRICT OF MISSOURI, AND

18 THERE ARE NO OTHER AGREEMENTS OTHER THAN THE WRITTEN PROFFER
19 AGREEMENT BETWEEN THE PARTIES WHICH WAS EXECUTED ON
20 AUGUST 24TH OF 2004.

21 THE COURT: THANK YOU, MR. BECKER.

22 MR. MORTENSON, DO YOU WANT TO ADD ANYTHING TO THAT
23 OR CORRECT ANYTHING?

24 MR. MORTENSON: JUST FOR CLARIFICATION, I THINK IN
25 TERMS OF THE REFERENCE TO THE INITIAL FINANCIAL PAYMENT, MR.

CHANGE OF PLEA

26
1 BECKER MADE REFERENCE TO A \$250,000 PAYMENT ON MARCH 1ST, JUST
2 FOR CLARIFICATION, HALF OF THAT IS TO GO TOWARDS THE PAYMENT
3 DUE IN NEW YORK AND HALF OF IT IS TO GO TO THE PAYMENT HERE.

4 THE COURT: DO YOU UNDERSTAND THAT, MR. BECKER?

5 MR. BECKER: I DO NOW, JUDGE.

6 THE COURT: YOU SAY YOU DO NOW?

7 MR. BECKER: THERE HAVE BEEN OTHER ATTORNEYS WORKING
8 ON THE FORFEITURE ASPECT OF THE CASE QUITE EXTENSIVELY.

9 THE COURT: OKAY.

10 BY THE COURT:

11 Q. IS THAT HOW YOU UNDERSTAND IT?

12 A. THAT IS MY UNDERSTANDING, YOUR HONOR.

13 Q. NOW, IS THERE ANYTHING YOU WANT TO ADD TO THE SUMMARY OF
14 THE COOPERATION AGREEMENT THAT WAS ENTERED INTO BY YOU WITH
15 THE TWO U.S. ATTORNEY'S OFFICES WITH THE HELP OF YOUR
16 ATTORNEY?

17 A. NO, YOUR HONOR.

18 Q. ALL RIGHT. NOW, TWO THINGS -- WELL, MORE THAN TWO
19 THINGS, BUT SOME THINGS I WANT TO TALK TO YOU ABOUT, THERE'S
20 PUNISHMENT TO BE ASSESSED ON THAT CASE IN NEW YORK, AND
21 THERE'S PUNISHMENT TO BE ASSESSED HERE. DO YOU UNDERSTAND
22 THAT?

23 A. I DO, YOUR HONOR.

24 Q. IN THIS COOPERATION AGREEMENT, IN PARAGRAPH 1, YOU
25 UNDERSTAND AND AGREE THAT THE SENTENCE IMPOSED THERE, THEY CAN

CHANGE OF PLEA

27
1 EACH BE RUN CONSECUTIVE OR ONE TO THE OTHER; IN OTHER WORDS,
2 ONE COURT COULD GIVE YOU THE MAXIMUM OF 5 YEARS AND THE OTHER
3 COURT COULD GIVE YOU A MAXIMUM OF 5 YEARS AND ORDER THEY BE
4 SERVED ONE AFTER THE OTHER. DO YOU UNDERSTAND THAT?

5 A. I DO, YOUR HONOR.

6 Q. KNOWING THAT, DO YOU STILL WISH TO MAINTAIN THESE PLEAS
7 OF GUILTY?

8 A. I DO, YOUR HONOR.

9 Q. NOW, MR. BECKER REFERRED IN A COUPLE OF PLACES THAT YOU
10 HAD ENTERED INTO THIS AGREEMENT WHEN THE FEDERAL SENTENCING
11 GUIDELINES WERE MANDATORY, IN FULL FORCE AND EFFECT, AND YOU
12 AGREED THAT ANY SENTENCE WOULD BE CONTROLLED BY THAT, AND I'M
13 SURE YOUR ATTORNEY HAS TOLD YOU, THAT'S NOT THE CASE. THEY
14 ARE NOT MANDATORY, BUT THEY'RE STILL USABLE BY A COURT AS AN
15 INSTRUMENT TO GIVE US MORE INFORMATION TO DETERMINE AN
16 APPROPRIATE SENTENCE. DO YOU UNDERSTAND THAT?

17 A. I DO, YOUR HONOR.

18 Q. AND, AS I UNDERSTAND IT, I'M SENDING THIS BACK TO JUDGE
19 WRIGHT, AND I DON'T KNOW WHETHER HE'LL USE IT OR NOT, BUT
20 LET'S ASSUME THAT HE WILL USE THE PRESENTENCE. I'M GOING TO
21 ORDER A PRESENTENCE, AND I'M GOING TO ORDER THE PROBATION
22 OFFICE TO APPLY THE FEDERAL SENTENCING GUIDELINES TO GIVE
23 JUDGE WRIGHT, OR ME, OR ANY OTHER JUDGE, SOME RELEVANT
24 INFORMATION AS TO THE APPROPRIATE SENTENCE. DO YOU UNDERSTAND
25 THAT?

CHANGE OF PLEA

28

1 A. I DO, YOUR HONOR.

2 Q. NOW, ONE OF THE THINGS THAT JUDGE WRIGHT MAY DO, OR ANY
3 OTHER JUDGE MAY DO, IS THERE MAY NEED TO BE SOME FACTUAL
4 FINDINGS MADE. IF THERE'S A DISPUTE ON YOUR PART, IF THERE'S
5 SOMETHING IN THAT PRESENTENCE THAT YOU DON'T THINK IS CORRECT
6 AND THERE IS A NEED TO BE A HEARING AND JUDGE WRIGHT WANTS TO
7 HAVE IT, IF HE WANTS TO MAKE SOME FACTUAL FINDING AND YOU
8 DON'T AGREE WITH IT. DO YOU UNDERSTAND THAT?

9 A. I DO.

10 Q. AND IF THAT HAPPENS, YOU'RE AGREEING IN THIS PLEA
11 AGREEMENT TO THAT HEARING, NUMBER ONE; AND, NUMBER TWO, YOU'RE
12 CONSENTING AND AGREEING THAT JUDGE WRIGHT CAN MAKE THE FACTUAL
13 DETERMINATIONS THAT COULD HAVE SOME EFFECT ON THE SENTENCE
14 THAT HE IMPOSES ON YOU. DO YOU UNDERSTAND THAT?

15 A. I DO, YOUR HONOR.

16 Q. IN OTHER WORDS, THE FACTUAL DETERMINATION SHOULD BE
17 DETERMINED BY A JURY, BUT YOU'RE CONSENTING THAT THE JUDGE CAN
18 MAKE THOSE FACTUAL DETERMINATIONS. DO YOU UNDERSTAND THAT?

19 A. I DO.

20 Q. AND DO YOU CONSENT TO THAT AT THIS TIME?

21 A. I DO.

22 Q. ALL RIGHT. DO YOU UNDERSTAND THAT IN COUNT II THERE'S
23 GOING TO BE A FORFEITURE JUDGMENT ENTERED AGAINST YOU IN THE
24 AMOUNT OF \$2.5 MILLION IN THIS COURT IN THIS CASE, AND THE
25 PAYMENT SCHEDULE IS AS SPELLED OUT IN PARAGRAPH 5 EXCEPT

CHANGE OF PLEA

29
1 PROBABLY FOR THE ONE PROVISIO THAT'S NOT IN THERE THAT THAT
2 \$250,000 IS GOING TO BE SPLIT, \$125,000 TO GO TO THIS COURT
3 AND 125,000 --

4 THE COURT: WAIT, IS THAT THE EASTERN DISTRICT OF
5 NEW YORK?

6 MR. MORTENSON: YES, SIR.

7 BY THE COURT:

8 Q. -- IN THE EASTERN DISTRICT OF NEW YORK. DO YOU
9 UNDERSTAND THAT?

10 A. THAT'S MY UNDERSTANDING.

11 Q. ALL RIGHT. I THINK THAT'S ALL I'M GOING TO ASK YOU ABOUT
12 THE COOPERATION AGREEMENT UNLESS THERE'S SOMETHING THAT YOU
13 WANT FURTHER CLARIFIED OR SOMETHING THAT YOU DON'T UNDERSTAND.

14 A. I'M FINE, YOUR HONOR.

15 Q. AND YOU'RE TELLING ME THAT YOU KNOW AND UNDERSTAND WHAT'S

16 IN THERE, IN THE COOPERATION AGREEMENT? I'M ASKING YOU, DO
17 YOU KNOW AND UNDERSTAND WHAT'S IN THERE?
18 A. YES, I DO, YOUR HONOR.
19 Q. AND YOU'RE COMFORTABLE WITH WHAT'S IN THERE?
20 A. YES, I AM.
21 Q. AND DO YOU AT THIS TIME CONSENT AND AGREE AND OBLIGATE
22 YOURSELF TO THE TERMS OF THIS AGREEMENT AND TO THE PERFORMANCE
23 OF THE TERMS OF THIS AGREEMENT?
24 A. I DO, YOUR HONOR.
25 Q. ALL RIGHT. YOU'RE REPRESENTED BY MR. STAN MORTENSON.

CHANGE OF PLEA

30
1 ARE YOU SATISFIED WITH HIS REPRESENTATION OF YOU IN THIS CASE?
2 A. YES, I AM.
3 Q. HAS HE DONE FOR YOU EVERYTHING YOU'VE ASKED HIM TO DO IN
4 REGARD TO REPRESENTING YOU IN THIS CASE?
5 A. YES, HE HAS.
6 Q. HAS HE FAILED TO DO FOR YOU ANYTHING YOU'VE ASKED HIM TO
7 DO IN REPRESENTING YOU IN THIS CASE?
8 A. NO, HE HAS NOT.
9 THE COURT: MR. MORTENSON, DO YOU HAVE ANY QUESTIONS
10 YOU WISH TO ASK YOUR CLIENT?
11 MR. MORTENSON: NO, YOUR HONOR.
12 THE COURT: MR. BECKER, DO YOU KNOW OF ANYTHING ELSE
13 I NEED TO COVER IN TAKING THIS PLEA OF GUILTY?
14 MR. BECKER: NOT THAT I CAN THINK OF.

15 THE COURT: LET ME ASK YOU THIS, THE MONEY HE'S
16 PAYING TO THE GOVERNMENT, WHERE DOES IT GO?

17 MR. BECKER: IT IS THE GOVERNMENT'S INTENTION TO
18 SEEK REMISSION OF THOSE FUNDS SO THOSE FUNDS WILL BE RETURNED
19 TO NECA AND USAC.

20 THE COURT: OKAY.

21 BY THE COURT:

22 Q. DO YOU UNDERSTAND THAT?

23 A. I DO, YOUR HONOR.

24 Q. DO YOU HAVE ANY DISPUTE?

25 A. NO.

CHANGE OF PLEA

31
1 Q. OKAY. I'M DONE, EXCEPT I NEED TO ASK YOU ONE LAST TIME,
2 HAS ANYTHING GONE ON HERE IN RESOLVING THIS CASE BY YOUR PLEAS
3 OF GUILTY TO COUNT I AND COUNT II, THE FORFEITURE COUNT, THAT
4 YOU DON'T UNDERSTAND?

5 A. NO. I UNDERSTAND, YOUR HONOR.

6 Q. OKAY. IF YOU'LL STEP DOWN AND COME BACK TO THE PODIUM
7 WITH YOUR ATTORNEY, I'LL ACCEPT YOUR PLEAS OF GUILTY AND ORDER
8 THAT PRESENTENCE INVESTIGATION WE'VE TALKED ABOUT.

9 MR. MORTENSON: YOUR HONOR, JUST FOR PURPOSES OF THE
10 RECORD, I'M PROMPTED BY YOUR COMMENT ABOUT THE PROVISION ABOUT
11 WHERE THE MONEY, INITIAL PAYMENT, WILL BE SENT. IT IS INDEED
12 WRITTEN IN THERE AT PARAGRAPH 5, PAGE 5, WHERE IT SAYS THE
13 DEFENDANT SHALL PAY \$250,000 TOWARDS --

14 THE COURT: YES.

15 MR. MORTENSON: -- ON MARCH 1ST. THAT MEANS THAT
16 THE TOTAL PAYMENT ON MARCH 1ST IS TO BE \$250,000.

17 THE COURT: YES.

18 MR. MORTENSON: AND, THEN, IF YOU GO DOWN, IT SAYS
19 THOSE PAYMENTS ARE TO BE MADE BY CERTIFIED OR BANK CHECK IN
20 THE AMOUNT OF HALF OF EACH INSTALLMENT SET FORTH ABOVE, HALF
21 GOING TO NEW YORK AND HALF GOING TO THE WESTERN DISTRICT OF
22 MISSOURI.

23 THE COURT: ALL RIGHT. THANK YOU, MR. MORTENSON.

24 MR. MATZDORFF, AFTER QUESTIONING YOU UNDER OATH, THE
25 COURT DETERMINES THAT YOUR PLEAS OF GUILTY TO COUNT I AND YOUR

CHANGE OF PLEA

32
1 CONSENT TO FORFEITURE IN COUNT II WERE BOTH ENTERED INTO BY
2 YOU THIS AFTERNOON UNDERSTANDINGLY, KNOWINGLY, AND
3 VOLUNTARILY, AND THE COURT ACCEPTS YOUR PLEAS OF GUILTY IN
4 COUNT I AND YOUR CONSENT TO FORFEITURE ON COUNT II, AND ENTERS
5 JUDGMENT IN ACCORDANCE WITH THOSE TWO PLEAS.

6 AT THIS TIME I'M GOING TO ORDER THE PRESENTENCE
7 INVESTIGATION TO BE CONDUCTED BY THE U.S. PROBATION AND PAROLE
8 OFFICE.

9 NOW, WHEN IT'S DONE, YOU WILL GET A COPY OF IT;
10 ALONG WITH YOUR ATTORNEY, AND YOU HAVE 10 DAYS TO REVIEW IT,
11 AND IF THERE'S ANYTHING IN THERE THAT YOU THINK IS INACCURATE
12 OR INCORRECT, THE FIRST THING THAT HAPPENS, OF COURSE, IS YOUR
13 ATTORNEY CONTACTS THE PROBATION OFFICER THAT WROTE THE REPORT

14 AND POINTS OUT WHAT YOU DISAGREE WITH, AND THEY'LL TRY TO GET
15 THOSE DISPUTES RESOLVED. IF THEY DON'T, THEN THERE MAY OR MAY
16 NOT BE A HEARING. USUALLY WE WOULD HAVE A HEARING, BUT WE'RE
17 ALL PLOWING NEW GROUND SINCE THE SENTENCING GUIDELINES HAVE
18 BEEN MADE VOLUNTARY OR ADVISORY, HOWEVER YOU WANT TO CALL IT.
19 BUT THERE MAY BE A HEARING ON ANY DISPUTED FACTS, BECAUSE THAT
20 STILL CAN AFFECT YOUR SENTENCING. DO YOU UNDERSTAND THAT.

21 THE DEFENDANT: I DO, YOUR HONOR.

22 THE COURT: ALL RIGHT. ANYTHING FURTHER ON BEHALF
23 OF THE GOVERNMENT?

24 MR. BECKER: NO, YOUR HONOR.

25 THE COURT: DO YOU HAVE ANY OBJECTION TO MR.

CHANGE OF PLEA

33
1 MATZDORFF REMAINING ON BOND? I'M ASSUMING HE'S ALREADY ON
2 BOND?

3 MR. BECKER: IT WAS A SIGNATURE BOND, JUDGE, THAT
4 MAGISTRATE LARSEN ENTERED EARLIER TODAY, AND HE'S ALSO ON
5 SIGNATURE BOND OUT OF THE EASTERN DISTRICT OF NEW YORK.

6 THE COURT: ALL RIGHT. THANK YOU.

7 MR. MATZDORFF, YOU'LL BE PERMITTED TO REMAIN ON
8 THOSE BONDS SUBJECT TO THE CONDITIONS THAT THE JUDGES WENT
9 OVER WITH YOU WHEN THEY PLACED YOU ON BOND.

10 KEEP YOUR ATTORNEY ADVISED AT ALL TIMES SO HE CAN
11 GET AHOLD OF YOU WHEN HE NEEDS TO TALK TO YOU ABOUT THESE
12 PRESENTENCE REPORTS AND ALSO HE CAN TELL YOU WHEN YOU NEXT
13 NEED TO COME TO COURT HERE, AND PROBABLY NEW YORK TOO. ALL

14 RIGHT?

15 THE DEFENDANT: YES.

16 THE COURT: NOW, IS THERE ANYTHING FURTHER BY THE
17 DEFENSE?

18 MR. MORTENSON: NOTHING, YOUR HONOR.

19 THE COURT: ALL RIGHT. WE'RE DONE, MR. MATZDORFF,
20 EXCEPT ONE LAST QUESTION: HAS ANYTHING GONE ON IN RESOLVING
21 THIS CASE AGAINST YOU THAT YOU DON'T UNDERSTAND?

22 THE DEFENDANT: NO, YOUR HONOR.

23 THE COURT: OKAY. THEN, YOU MAY STEP ASIDE, AND I'M
24 GOING TO ORDER THIS, I THINK IT GOES BACK TO JUDGE WRIGHT, SO
25 I'LL ORDER IT BACK TO JUDGE WRIGHT. I DON'T KNOW HOW LONG THE

CHANGE OF PLEA

34

1 PRESENTENCE WILL TAKE, PROBABLY A COUPLE OF MONTHS OR MORE,
2 DON'T YOU IMAGINE, MR. BECKER?

3 MR. BECKER: YES, SIR.

4 THE COURT: WHAT DO THEY DO IN NEW YORK, WILL THEY
5 SET A SENTENCING DATE OF THE PLEA OR NOT?

6 MR. MORTENSON: THEY SET A DATE, BUT THE ASSISTANT
7 TO THE U.S. ATTORNEY HAS ADVISED ME THAT THAT WILL INEVITABLY
8 BE PUSHED OVER.

9 THE COURT: OKAY. WELL, WE DON'T SET A DAY HERE.
10 WE WAIT UNTIL WE GET THE REPORT AND THEN WE'LL TRY TO FIND A
11 DATE. THANK YOU. YOU MAY STEP ASIDE.

12 MR. BECKER: THANK YOU, JUDGE.

13 THE COURT: BE IN RECESS.

14 * * * * *

15

16

17 CERTIFICATE

18 I, SANDRA D. LAMKEN, REGISTERED PROFESSIONAL REPORTER,
DO HEREBY CERTIFY THAT I AM A DULY APPOINTED, QUALIFIED AND
19 ACTING OFFICIAL COURT REPORTER FOR THE WESTERN DISTRICT OF
MISSOURI; THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
20 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER. THE
PROCEEDINGS WERE REPORTED IN MECHANICAL AND COMPUTER
21 STENOGRAPHY AND TRANSCRIBED BY COMPUTER.

22 _____ RPR
OFFICIAL COURT REPORTER

23

DATE: _____

24

25

CHANGE OF PLEA

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

No. _____

RICHARD T. MARTINO,)

[DOB: XX/XX/59],)

DANIEL D. MARTINO,)

[DOB: XX/XX/50],)

Defendants.)

Count One (Both Defendants)

18 U.S.C. § 371

[NMT: Five Years Imprisonment,

\$250,000 Fine, Three Years

Supervised Release, Plus \$100

Special Assessment]

Counts Two and Three

(Both Defendants)

18 U.S.C. §§ 1341 & 2

[NMT: Five Years Imprisonment,

\$250,000 Fine, Three Years

Supervised Release, Plus \$100

Special Assessment]

Counts Four and Five

(Both Defendants)

18 U.S.C. §§ 1341 & 2

[NMT: Twenty Years Imprisonment,

\$250,000 Fine, Five Years

Supervised Release, Plus \$100

Special Assessment]

Counts Six, Seven and Eight

(Both Defendants)

18 U.S.C. §§ 1343 & 2

[NMT: Five Years Imprisonment,

\$250,000 Fine, Three Years

Supervised Release, Plus \$100

Special Assessment]

Counts Nine and Ten

(Both Defendants)

18 U.S.C. §§ 1343 & 2

[NMT: Twenty Years Imprisonment,

\$250,000 Fine, Five Years

Supervised Release, Plus \$100

Special Assessment]

EXHIBIT 6

Count Eleven
(Criminal Forfeiture)
(Both Defendants)
18 U.S.C. § 981(a)(1)(C)
28 U.S.C. § 2461(c)

INDICTMENT

THE GRAND JURY CHARGES THAT:

COUNT ONE

1. At all times relevant to this Indictment:

(a) Cass County Telephone Company, LP (hereinafter CassTel) is a limited partnership located in Peculiar, Missouri. CassTel's principal business is providing telecommunications services to approximately 8,000 customers in Cass County, Missouri, as well as a small number of customers in the State of Kansas. CassTel is primarily (99%) owned by Local Exchange Company, LLC (hereinafter LEC).

(b) Local Exchange Company, LLC (LEC) is a limited liability company registered in Maryland. The company consists of approximately 42 persons, trusts and organizations which own "units" of the company. Defendant RICHARD T. MARTINO controlled 12 units of LEC through various trusts he had established. Defendant DANIEL D. MARTINO owned or controlled 18 units of LEC through various trusts he had established.

(c) The National Exchange Carriers Association (hereinafter NECA) is a not-for-profit organization created by the Federal Communications Commission (FCC) pursuant to 47 C.F.R.

§ 69.601. NECA's purpose is to prepare and file access charge tariffs on behalf of all telephone companies that do not file separate tariffs. A tariff is the rate charged by one telephone company to another telephone company for access and use of that company's telephone system in the course of interstate telecommunications. 47 C.F.R. § 69.601(c) requires that all data submissions made to NECA be accompanied by a certification statement from an officer or employee responsible for the overall preparation of the data submission that "the data have been examined and reviewed and are complete, accurate, and consistent with the rules of the Federal Communications Commission." 47 C.F.R. § 69.601(c) further provides that "Persons making willful false statements in this data submission can be punished by fine or imprisonment under the provisions of the United States Code, Title 18, Section 1001."

NECA collects money from individual telephone companies, known as "local exchange carriers" under 47 C.F.R., Part 69. NECA distributes the funds back to local exchange carriers based upon whether the individual exchange carrier has costs above the national average cost as determined by NECA.

(d) The Universal Service Administrative Company (hereinafter USAC) is a not-for-profit corporation established to administer the Universal Service Fund (hereinafter USF). The USF was established by the FCC to subsidize high cost rural telephone

systems. Pursuant to C.F.R § 36.611, each local exchange carrier must submit information to NECA by July 31st of each year which sets forth the allowable expenses of the carrier in the previous calendar year. Based upon this submission of expenses, the USAC makes a determination whether rural telephone companies are eligible for cost subsidies from the USF. The subsidies are disbursed by USAC to NECA to be paid out to the rural telephone companies the following calendar year.

(e) The Overland Data Center (ODC) was a company located in Overland Park, Kansas, that provided software support and information technology support to CassTel.

(f) F.S.E. Consulting Corp. (FSE) was a corporation located in New York, New York, which controlled the finances of ODC.

(g) Defendant RICHARD T. MARTINO was at all times relevant to this Indictment was the President and owner of Mical Properties, Inc., and in control of LEC, CassTel, ODC and FSE. Defendant RICHARD T. MARTINO had the ultimate decision making authority at LEC, CassTel, ODC and FSE.

(h) Defendant DANIEL D. MARTINO was the President of FSE.

(i) Kenneth M. Matzdorff was at all times relevant to this Indictment an employee of LEC. At various times throughout

the conspiracy, Kenneth M. Matzdorff was the President of CassTel and LEC.

2. From on or about January 1998, to on or about July 2004, in the Western District of Missouri and elsewhere, defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, and Kenneth M. Matzdorff, and others known and unknown to the Grand Jury, did knowingly conspire, combine, confederate and agree together and with each other to violate the laws of the United States of America, specifically, false statements, mail and wire fraud in violation of Title 18, United States Code, Sections 1001, 1341 and 1343.

MANNER AND MEANS

The manner and means by which the conspiracy operated included the following:

3. From on or about January 1998, and continuing to on or about July 2004, in the Western District of Missouri and elsewhere, defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, Kenneth M. Matzdorff, and other persons known and unknown to the Grand Jury, devised and intended to devise a scheme and artifice to defraud money from the USF and NECA.

4. Defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, Kenneth M. Matzdorff and others agreed to create false and fictitious ODC invoices to CassTel. The payments by CassTel to ODC based upon the fictitious invoices totaled approximately

\$11 million between 1998 and 2003. The total value of the actual services performed during 1997 to 2002 by ODC for CassTel is estimated at \$240,000.

5. Defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, Kenneth M. Matzdorff, and others agreed to have CassTel, and later LEC, charge ODC for false and fictitious "consulting" and "management" fees. The payments from ODC to CassTel and LEC totaled approximately \$11 million from 1998 to 2003.

6. The payments from CassTel to ODC and from ODC to LEC were coordinated by defendant DANIEL D. MARTINO, Kenneth M. Matzdorff, and other persons known to the Grand Jury that were employed by FSE and Mical in New York, New York and by LEC in Peculiar, Missouri. The payments were also coordinated by outside accountants for defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO and others.

7. The fictitious ODC expenses were included by CassTel as allowable expenses in the submissions to NECA for the calculation by USAC of the Universal Service Fund payments to CassTel. The false and fictitious expenses resulted in an overpayment by USAC to CassTel of approximately \$3.5 million from 1999 to 2004.

8. The fictitious ODC expenses were included as allowable expenses in the cost studies filed by CassTel with NECA for determination of the payments to CassTel from the "cost pools" administered by NECA. The false and fictitious expenses resulted

in an overpayment by NECA to CassTel of approximately \$5.4 million from 1998 to 2003.

OVERT ACTS

In furtherance of the conspiracy, the following Overt Acts, among others, were committed in the Western District of Missouri and elsewhere.

1. On or about January 1998, defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, Kenneth M. Matzdorff, and other LEC shareholders met to review the 1998 budget for CassTel. At that meeting, defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, Kenneth M. Matzdorff, and other persons known to the Grand Jury agreed to inflate the expenses of CassTel in order to generate additional capital to expand the assets and services of CassTel. The additional capital would be received from the increased payments from the USF and NECA based upon the fictitious ODC expenses reported by CassTel.

2. On or about July 29, 1999, CassTel sent the 1998 USF submission to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

3. On or about July 31, 2001, CassTel sent the 2000 USF submission to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

4. On or about September 5, 2001, CassTel sent the 2000 cost study to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

5. On or about October 22, 2002, CassTel sent the 2001 cost study certification form to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

6. On or about October 28, 2003, CassTel sent the 2002 cost study to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

7. On, about and between January 1998, and September 2004, NECA sent to CassTel, via wire transfers, approximately \$36,906,078.29.

8. On or about February 29, 2000, NECA, via Mellon Bank, NA, wire transferred \$819,927 to the United Missouri Bank (UMB) account of CassTel.

9. On or about September 29, 2000, NECA, via Mellon Bank, NA, wire transferred \$891,074 to the United Missouri Bank (UMB) account of CassTel.

10. On or about September 28, 2001, NECA, via Mellon Bank, NA, wire transferred \$819,482 to the United Missouri Bank (UMB) account of CassTel.

11. On or about August 30, 2002, NECA, via Mellon Bank, NA, wire transferred \$798,431 to the Community Bank of Raymore account of CassTel.

12. On or about April 30, 2003, NECA, via Mellon Bank, NA, wire transferred \$606,118.99 to the Community Bank of Raymore account of CassTel.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH FIVE

The allegations contained in Count One of this Indictment are realleged and incorporated by reference for Counts Two, Three, Four, and Five.

On or about the dates specified below, in the Western District of Missouri and elsewhere, defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, Kenneth M. Matzdorff, and others known and unknown to the Grand Jury, having knowingly devised a scheme and artifice for obtaining money by means of false and fraudulent pretenses, representations and promises, did, for the purpose of executing the scheme and artifice, knowingly cause to be deposited USF submissions and NECA cost studies to be sent or delivered by Federal Express, a private and commercial interstate carrier, from the Cass County Telephone Company, Peculiar, Missouri, to NECA in St. Louis, Missouri.

<u>Count</u>	<u>Date</u>	<u>Document Submitted</u>
2	07/31/2001	2000 USF submission
3	09/05/2001	2000 NECA cost study
4	10/22/2002	2001 NECA cost study certification form
5	10/28/2003	2002 NECA cost study

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS SIX THROUGH TEN

The allegations contained in Count One of this Indictment are realleged and incorporated by reference for Counts Six, Seven, Eight, Nine, and Ten.

On or about the dates specified below, in the Western District of Missouri and elsewhere, defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, Kenneth M. Matzdorff, and others known and unknown to the Grand Jury, having knowingly devised a scheme and artifice for obtaining money by means of false and fraudulent pretenses, representations and promises, transmitted or caused to be transmitted by means of wire communication in interstate commerce, writings, signs, signals, pictures and sounds for the purpose of executing said scheme and artifice to defraud. The interstate wire communications were wire transfers of funds from Mellon Bank, NA, in Pennsylvania to Cass County Telephone bank accounts in Missouri.

<u>Count</u>	<u>Date</u>	<u>Amount of Wire Transfer</u>
6	02/29/2000	\$819,927
7	09/29/2000	\$891,074
8	09/28/2001	\$819,482
9	08/30/2002	\$798,431
10	04/30/2003	\$606,118.99

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT ELEVEN

The allegations contained in Count One of this Indictment are realleged and incorporated by reference for the purpose of alleging a forfeiture pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c). Defendant RICHARD T. MARTINO and defendant DANIEL D. MARTINO shall forfeit to the United States \$8.9 million in U.S. currency for which they are jointly and severably liable and all "shares" or "units" of LEC, which constitute or are derived from the proceeds traceable to the violation incorporated by reference in this Count.

All in violation of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

If any of these assets, as a result of any act or omission of the defendant RICHARD T. MARTINO and defendant DANIEL D. MARTINO:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to or deposited with a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intention of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any property of defendant RICHARD T. MARTINO and defendant DANIEL D. MARTINO up to the value of the assets set-out above, including but not limited to the defendants' shares or units of LEC.

/s/January 25, 2005
DATE

/s/Darrell P. Yokley
FOREPERSON OF THE SPECIAL GRAND JURY

/s/Paul S. Becker
Paul S. Becker
Assistant United States Attorney
Western District of Missouri
Chief, Organized Crime Strike Force Unit

/s/Bruce E. Clark
Bruce E. Clark, #31443
Assistant United States Attorney
Western District of Missouri
Organized Crime Strike Force Unit

/s/Jess E. Michaelson
Jess E. Michaelson, #52253
Assistant United States Attorney
Western District of Missouri
Organized Crime Strike Force Unit

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 WESTERN DISTRICT OF MISSOURI
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA,)

5 Plaintiff,)

6 -vs-

) Nos. 05-0027-01/02-CR-W-HFS

7 RICHARD T. MARTINO and)

8 DANIEL D. MARTINO,)

9 Defendants.)

10 TRANSCRIPT OF PROCEEDINGS
11 PLEA HEARING

12 BE IT REMEMBERED, that on this 23rd day of
13 February, 2005, the above-entitled matter comes on
14 for hearing before the Honorable Howard F. Sachs,
15 Judge of Division No. 6 of the United States District
16 Court for the Western District of Missouri, sitting
17 in Kansas City without a jury.

18 A P P E A R A N C E S:

19 The Government appears by and through its
20 attorneys of record, Mr. Paul Becker and Mr. Bruce
21 Clark, Assistant United States Attorneys, Federal
22 Courthouse, Kansas City, Missouri.

23 The Defendant, Richard T. Martino, appears
24 in person and with his counsel of record, Mr. Mark J.
25 Sachse, 748 Ann Avenue, Kansas City, Missouri; and

EXHIBIT 7

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1 Mr. Gustave H. Newman, 950 Third Avenue, 32nd Floor,
2 New York, New York 10022.

3 The Defendant, Daniel D. Martino, appears
4 in person and with his counsel of record, Mr. Mark J.
5 Sachse, 748 Ann Avenue, Kansas City, Kansas 66101;
6 and Mr. Alan S. Futerfas, Attorney-at-Law, 260
7 Madison Avenue, 22nd Floor, New York, New York 10016.

8
9 (WHEREUPON, the following proceedings are
10 had and entered of record.)

11 (WHEREUPON, THE FOLLOWING PROCEEDINGS ARE HAD IN
12 CHAMBERS OUT OF THE PRESENCE OF THE DEFENDANTS.)

13 THE COURT: I thought we ought to have a
14 preliminary visit just to get a little better idea
15 where we are going. I take it you are going to be
16 taking the -- maybe you are the only attorney for
17 Richard Martino.

18 MR. SACHSE: No, Judge, I think our pro hac
19 vic motions sought to have Gustave Newman on behalf
20 of Richard Martino. I am only acting as local
21 counsel. In addition, Judge, since the matter has
22 been resolved by a plea, the defendants are going to
23 waive any conflict, and I am going to enter my
24 appearance as local counsel for Daniel Martino as
25 well. So, my only role is as local counsel.

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1 THE COURT: So, Mr. Newman will be lead
2 counsel for Richard Martino; is that correct?

3 MR. NEWMAN: That is correct, sir.

4 THE COURT: And how about Daniel?

5 MR. FUTERFAS: Your Honor, Alan Futerfas
6 for Daniel Martino. I will be appearing for him in
7 this matter.

8 THE COURT: On the description of the
9 offense, I think I have a fairly good general idea of
10 what is involved, but I would think I probably should
11 call on you for a description of the counts of the
12 Indictment that we are dealing with, maybe Counts One
13 and Two, and then the forfeiture.

14 MR. BECKER: Yes, sir.

15 THE COURT: Because this case has some
16 relationship apparently with the Matzdorff
17 prosecution that is before Judge Wright; is that
18 correct?

19 MR. BECKER: Yes, sir.

20 THE COURT: Well, I will proceed today. I
21 have not talked to Judge Wright as to his thoughts on
22 who the sentencing judge should be. So it is
23 possible that Judge Wright would be the sentencing
24 judge if we decide there was sufficient reason
25 because of his having the Matzdorff case for him to

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1 take the sentencing role here.

2 It did seem to me that counsel ought to be
3 sure that we would have discussed with the defendants
4 the issue of concurrent and consecutive sentencing,
5 because while I note a provision in the Plea
6 Agreement for the Government's recommendation of
7 concurrent sentencing, I would understand that that
8 is only a recommendation and that the sentencing
9 judge could easily decide that consecutive sentences
10 should be used.

11 I am not predicting that, but the
12 possibility is something that I think is important
13 that the defendants would understand, and my reason
14 for raising the issue is that I am not familiar with
15 all the publicity that has occurred here and
16 elsewhere.

17 But since the case in New York, or is it
18 Brooklyn, has been referred to in the newspapers as
19 being possibly the largest consumer fraud that has
20 come down the pike, I would suppose that the
21 sentencing judge would at least consider whether, if
22 I understand the maximum here, that that is the total
23 punishment that should be imposed considering this
24 case also.

25 I think for the sake of the sentencing

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1 judge, that we ought to have some assurance that the
2 defendants don't later claim surprise or
3 misinformation, or whatever, about the possibilities
4 on sentencing.

5 I do understand the Plea Agreement on that
6 point, do I?

7 MR. BECKER: Yes, sir. I think, I am sure
8 counsel will state that there has been extensive
9 discussion about the possibilities of either the
10 judges of this court or the judges in the Eastern
11 District of New York imposing a sentencing
12 consecutive to one another.

13 It has been a matter of discussion between
14 counsel about which sentencing would go first or, in
15 fact, today Mr. Newman requested and I added a
16 provision to the Plea Agreement, for whatever it is
17 worth, that the defendant, Richard Martino, will be
18 able to appeal a decision by the Court to impose a
19 sentence consecutive to that imposed in the Eastern
20 District of New York.

21 Again, we both understand the value of
22 that. But it is there. I think it shows that all
23 parties, particularly the defendants, are focused on
24 that issue and we have discussed it.

25 THE COURT: Are aware of it?

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1 MR. BECKER: Yes, Your Honor.

2 THE COURT: And the defendants want to
3 reserve the right to say it is an unreasonable
4 sentence if it was to be consecutive. I have not
5 looked at the Guidelines. The Guidelines deal with
6 this issue but, of course, we are not entirely bound
7 by the Guidelines at this point.

8 MR. NEWMAN: I can indicate, for whatever
9 assurance it provides the same problem arose as far
10 as Richard Martino was concerned in the Eastern
11 District of New York where he pled to two counts,
12 Your Honor.

13 He was also aware of the fact that the
14 recommendation, the recommendation as such,
15 recognizing that the power the Court has in
16 connection with such recommendation. It doesn't
17 obviate your concern, but I can assure you that has
18 been discussed with him.

19 THE COURT: Okay. As a matter of
20 curiosity, I am not quite clear what I am likely to
21 hear as to what Daniel Martino did in furthering the
22 conspiracy that is alleged, other than I think there
23 is an allegation about serving as an officer of one
24 of the entities involved.

25 What am I likely to hear when we have the

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1 factual disclosures?

2 MR. FUTERFAS: Your Honor, Mr. Daniel
3 Martino will fully allocute to the defense charged in
4 Count One. In his allocution, he will state that he
5 spoke with individuals in 1998 and reviewed financial
6 reports, financial data, and that the purpose of such
7 review and the meetings that he had were a part of
8 this design to inflate the invoices and receive more
9 money from these funds as alleged in Count One.

10 THE COURT: In addition to knowing about
11 it, he served as an officer of one of the entities?

12 MR. FUTERFAS: He was president of a
13 separate financial company called FSE that was based
14 in New York, but in that capacity and in the capacity
15 as being involved in having a few shares, having some
16 shares in CassTel, he reviewed these financial
17 reports. He met with individuals who were involved
18 in running CassTel at that time.

19 So, I believe, and I think the Government
20 agrees with me, that he will state a full and
21 satisfactory allocution to Count One.

22 MR. BECKER: And FSE, the financial end of
23 this other company, Overland Data, the financials
24 were handled at Overland Data. When the false
25 invoices went to Overland Data, FSE paid those false

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1 invoices. Then when these false invoices went from
2 the holding company of CassTel, LEC to Overland, FSE
3 handled those finances as well. Now, Mr. Daniel
4 Martino physically didn't do it himself. He had
5 people that did that.

6 THE COURT: It was a company that he was in
7 charge of?

8 MR. BECKER: Yes.

9 MR. FUTERFAS: He was president of that
10 company.

11 THE COURT: I was a little curious as to
12 whether the Indictment is accurately written up on
13 Page 6, and there is a five. It seemed a little out
14 of keeping of what I understood the rest of the plan
15 was to have CassTel supposedly offering consulting
16 and management, and then charging ODC.

17 The general pattern, except for that, seems
18 to have been that CassTel was paying funds and that
19 then the expenses were being reimbursed through
20 fraudulent representations.

21 Is this particular thing a turnaround where
22 CassTel is being paid?

23 MR. BECKER: Correct. Not only do they get
24 to put the expenses on their books and get reimbursed
25 by the various funds, but they get the money back.

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1 THE COURT: Okay. I see.

2 MR. BECKER: So, the money went to ODC and
3 then it came back from ODC. But the expenses --

4 THE COURT: Then the expenses were also
5 reimbursed by the Fed, if I can call them the federal
6 entities?

7 MR. BECKER: Yes, sir.

8 THE COURT: So they were getting it two
9 ways?

10 MR. BECKER: Well, they were getting their
11 money back and getting the benefit of an increased
12 expenses on their reports to the various funds.

13 THE COURT: Okay. My practice generally is
14 to rely on the lawyers to ask questions that would
15 establish the factual basis, and I take it that
16 probably the defense counsel are prepared to handle
17 it in that fashion and the rest of us can chime in.

18 That is if I have some question maybe for
19 clarification, I would ask questions, and I would
20 generally invite Government counsel to ask some
21 further questions if I have got some concern about
22 the adequacy for the record.

23 MR. BECKER: Defense counsel have prepared
24 and I have reviewed allocution statements by the
25 defendants that will make out a factual basis for the

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1 plea.

2 THE COURT: Okay. And I would suppose that
3 the natural order would be -- well, I will take them
4 both together for things that can be described for
5 both of them, but as far as establishing the factual
6 basis, I suppose I would go to Richard first and then
7 Daniel, unless there is some reason to think that I
8 should switch the order.

9 All right. I think I have what I need
10 unless counsel want to ask me something or bring up
11 some other procedural issue.

12 MR. NEWMAN: There is just one particular
13 issue, Your Honor, and we can do it as well here, if
14 you don't mind. That is in connection with the
15 forfeiture. There are three Trusts that are referred
16 to. That is the Que Trust, the Yankee Trust and the
17 Aly Trust, and they are merged in the Indictment -- I
18 am sorry.

19 They are merged in the Plea Agreement, and
20 my client is relinquishing his right as Trustee,
21 which he has already done. But we have not provided
22 the documentation that Mr. Becker required. We are
23 leaving it in the Plea Agreement with the
24 understanding that when we provide the documentation
25 those items will be taken out of the Plea Agreement.

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1 MR. BECKER: Those particular Trusts that
2 Richard Martino was listed as a Trustee for holds
3 shares of units of LEC of Casstel, and we have
4 provided in the Plea Agreement that other Trusts, and
5 those Trusts as well, be subject to new Trustees.

6 Mr. Newman's office has provided some
7 documentation that those particular Trusts were not
8 for the benefit of Richard Martino's children but
9 were for the benefit of another individual, Sef
10 Mustafa, another defendant in Brooklyn.

11 In any event, the agreement between the
12 parties is that Mr. Richard Martino resign as
13 Trustee, and I believe Ms Mustafa agrees to be the
14 Trustee for those particular three Trusts, that they
15 would not be subject to the Trustee Agreement that is
16 set forth in the Plea Agreement.

17 THE COURT: Well, I don't think I probably
18 need to go through all this.

19 MR. NEWMAN: No.

20 THE COURT: But you can add it for the
21 record.

22 MR. BECKER: We wanted to put that on the
23 record.

24 THE COURT: Okay. I guess we are ready to
25 start the proceedings.

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1 (WHEREUPON, THE FOLLOWING PROCEEDINGS ARE HAD IN THE
2 COURTROOM IN THE PRESENCE OF THE DEFENDANTS.)

3 THE COURT: Court is in session for a
4 reported change of plea in the case of the United
5 States of America against Richard T. Martino and
6 Daniel D. Martino. Both defendants, I understand,
7 are in the courtroom.

8 I note Mr. Becker representing the United
9 States, and I understand that Mr. Newman will be lead
10 counsel as far as Richard Martino is concerned, and
11 Mr. Futerfas as counsel for Daniel Martino. The
12 proceeding may be somewhat longer, more involved than
13 the ordinary change of plea.

14 It seems to me that I need not call counsel
15 and the defendants up to the podium at this time, but
16 I would address the two Martino defendants and advise
17 that these proceedings are very important to their
18 rights and, therefore, they should listen carefully
19 to what is said.

20 If there is something that they may not
21 understand or that may seem different from what their
22 attorneys have said, then they should indicate that
23 they want me to stop, and there would be an
24 opportunity to confer with counsel.

25 The first procedural requirement is that I

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1 review with the defendants the nature of the charges
2 and the maximum punishment under the law. The
3 charges, particularly Count One is quite long and
4 involved, and I am going to call upon Mr. Becker to
5 help me out in describing these charges.

6 I understand that under the Plea Agreement
7 we are dealing with Count One and Count Two, as well
8 as the forfeiture count, which is Count Eleven.
9 Count One is described as a conspiracy charge, and it
10 might be best, I think at this time, to have Mr.
11 Becker give his description of that charge.

12 MR. BECKER: Thank you, Judge. Count One
13 alleges a conspiracy in violation of Title 18, United
14 States Code, Section 371. The maximum possible
15 penalty is not more than five years imprisonment, a
16 fine of \$250,000, three years supervised release, and
17 a \$100 special penalty assessment.

18 The Indictment alleges that a conspiracy to
19 violate the laws of the United States, that is mail
20 fraud and wire fraud, and making false statements to
21 a federal agency pursuant to 18 U.S.C., Sections
22 1341, 1343 and 1001.

23 The scheme involved, the ownership of the
24 Cass County Telephone Company, which is located in
25 Peculiar, Missouri. The Cass County Telephone

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1 Company was owned by a holding company called the
2 Local Exchange Company, LLC, also known as LEC.

3 Richard Martino and Daniel Martino were
4 shareholders in LEC, along with other individuals,
5 principally Kenneth Matzdorff, who was the president
6 or chief operating officer of the Cass County
7 Telephone Company.

8 As a rural telephone company, the Cass
9 County Telephone Company was eligible for subsidies
10 from the Universal Service Fund. The Universal
11 Service Fund had various programs, the principal one
12 being something called a high cost loop, which
13 subsidizes rural telephone companies for the
14 increased cost that they bear to connect people in
15 rural areas with a modern telephone system.

16 The Universal Service Fund is administered
17 by an agency known as the Universal Service
18 Administrative Company, USAC. Every July, Cass
19 County Telephone Company submits to USAC, through
20 another agency actually, a statement of their prior
21 year's expenses that are qualified for reimbursement
22 under USAC.

23 In January, 1998, these two defendants and
24 others, including Mr. Matzdorff and others, agreed
25 that Cass County Telephone would create false and

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1 fictitious invoices to another company that was
2 controlled by these defendants, the Overland Data
3 Company.

4 Overland Data would send false and
5 fictitious invoices to the Cass County Telephone
6 Company for services that were not rendered. Cass
7 County Telephone Company would pay these invoices to
8 the Overland Data Company.

9 Those expenses thereafter would be
10 submitted to the Universal Service Fund for
11 reimbursement pursuant to a formula that they
12 reimbursed certain costs. As part of this scheme,
13 the Overland Data Company then agreed to pay on false
14 invoices from, first, Cass County Telephone Company
15 and then LEC.

16 You can see, Judge, the Indictment alleges
17 that the money went from Cass County Telephone
18 Company to the Overland Data Company and then back to
19 the holding company of Cass County Tel. That is LEC.

20 Thereafter, the expenses were submitted to
21 USAC for reimbursement, and over the time period of
22 the Indictment the total was determined increased
23 subsidies to these false expenses was approximately
24 \$3.5 million.

25 The Indictment kind of also alleges that it

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1 was a scheme to defraud another program, that is
2 NECA, the National Exchange Carriers Association,
3 which administers the transfer of funds between
4 telephone companies in America.

5 These companies share wires, obviously, to
6 transfer funds from one place to another, and under
7 the cost formula the Cass County Telephone Company
8 was eligible for subsidies for their system. The
9 false and fictitious invoices to NECA resulted in
10 approximately \$5.4 million in excess funds from NECA
11 to CasTel from 1998 through 2003.

12 The overt act in Count One alleges certain
13 mailings and/or wire transfers that were made, the
14 mailings being from the Cass County Telephone
15 Company, either to USAC or NECA, and the wire
16 transfers being from the disbursing bank, Mellon Bank
17 in Pennsylvania, to the Cass County Telephone
18 Company.

19 Count Two of the Indictment, to which
20 defendants have agreed to enter a plea of guilty,
21 sets forth in the same scheme to defraud and that the
22 mailing alleged is a mailing that went via Federal
23 Express from Cass County Telephone Company in
24 Peculiar, Missouri, to NECA in St. Louis, Missouri,
25 on or about July 31, 2001.

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1 It was the year 2000 Universal Service Fund
2 submission, which contained the false and fictitious
3 expenses of that work previously outlined. The
4 penalty for Count Two is not more than five years
5 imprisonment, a \$250,000 fine, and three years of
6 supervised release, plus a \$100 special penalty
7 assessment.

8 The forfeiture alleges in Count Eleven
9 seeks the forfeiture of the funds illegally gained by
10 the defendants in the scheme and that being \$8.9
11 million.

12 THE COURT: All right. Count One that has
13 been described as a conspiracy charge, and the
14 statutes provide that if two or more persons conspire
15 to commit an offense against the United States or an
16 agency thereof, and do any act to effect the object
17 of the conspiracy, that there may be imprisonment up
18 to five years or a fine, or both.

19 Count Two is the fraud, a specific fraud
20 charge in violation of the statute that provides that
21 if a person has a scheme to defraud or to obtain
22 money by false pretenses or representations, and for
23 the purpose of executing the scheme, causes delivery
24 by private or commercial interstate carrier or by
25 mail, for that matter, that that also would be a

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1 violation of law.

2 Would counsel clarify a point for me on the
3 statute? The violation of 1341 would appear to have
4 a 20-year maximum period of imprisonment under the
5 section I am looking at, but in the Indictment form
6 there is a five-year maximum recited.

7 Have I missed something on this?

8 MR. BECKER: Judge, there was an amendment
9 to the mail fraud and wire fraud statute, I believe,
10 that was effective April, 2002. So, those acts
11 occurring before that time were subject to the five-
12 year maximum penalty.

13 THE COURT: All right. I am looking at
14 that. Okay. That is an adequate explanation that we
15 are dealing with a five-year maximum punishment under
16 each of the charges.

17 I advise that the punishment can be imposed
18 either concurrently or consecutively, so that the
19 sentencing judge could use two five-year sentences,
20 one after another, or could impose those sentences to
21 run concurrently so that the five-year sentences
22 would be served at the same time.

23 I also advise, because I am aware of the
24 prosecution in Brooklyn, that the Court would have
25 authority at sentencing, I think we will have a

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1 reference to this in the Plea Agreement, the Court
2 would have the authority at sentencing to use
3 consecutive sentencing or concurrent sentencing with
4 the sentence that would be imposed in Federal Court
5 in the case pending in the State of New York.

6 Similarly, I advise that the \$250,000 fine,
7 which applies on Count One and Count Two, could be
8 imposed as a total \$500,000 fine, or that the Court
9 would have authority to limit it to \$250,000.

10 There has been reference to the period of
11 supervised release not to exceed three years after
12 imprisonment, and I advise that that means that after
13 imprisonment there would be a period of supervision
14 by a federal probation officer.

15 One purpose of the supervision would be to
16 assure that certain conditions of release have been
17 complied with, and the conditions of release are
18 varied from case to case that are established at
19 sentencing.

20 Typically, they would include or invariably
21 they would include no further law violations. If it
22 was reported to the Court that there was a violation
23 of condition of release during the period of post-
24 imprisonment supervision, then the Court would have
25 to determine if the violation had occurred and, if

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1 so, as punishment for the violation there could be an
2 additional period of imprisonment. The second period
3 of imprisonment would be up to two years.

4 I also advise that there is no credit given
5 for complying with conditions of release, which means
6 that the same punishment would be imposed for a
7 violation if the violation occurred after a good deal
8 of supervision as would be imposed if the violation
9 occurred shortly after supervision began.

10 I also advise that at sentencing the Court
11 would have to determine whether to impose the cost of
12 imprisonment and the cost of supervision after
13 imprisonment. That depends largely on the Court's
14 view of reasonable ability to pay.

15 I think that the \$100 mandatory special
16 assessment on each count has already been referred
17 to. I also advise to the extent that there is a
18 money loss that has not been repaid, that is a money
19 loss to a victim, that an order of restitution would
20 be required as part of the sentencing process.

21 I will inquire of Richard Martino if he
22 understands the nature of the charges against him and
23 the maximum punishment under the law.

24 DEFENDANT RICHARD MARTINO: Yes, I do, Your
25 Honor.

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1 THE COURT: I would ask Daniel Martino if
2 he understands the charges against him and the
3 maximum punishment under the law.

4 DEFENDANT DANIEL MARTINO: Yes, I do, Your
5 Honor.

6 THE COURT: I need to review various
7 procedural rights. You both are represented by
8 counsel and you have a right to be represented by an
9 attorney at all stages of the proceedings. If
10 necessary, by reason of poverty, counsel is
11 appointed.

12 I advise that there is a right to plead not
13 guilty to the charges and to persist in that plea.
14 In the event there is persistence in the not guilty
15 plea, then there would be a trial to determine if the
16 Government could prove its charges.

17 It would be a jury trial in which there
18 would be, of course, the right to counsel. There
19 would be the right to hear witnesses against you in
20 open court. There would be the right to have the
21 witnesses cross-examined by your attorneys.

22 There would have a right at trial not to be
23 compelled to incriminate yourself. You would have
24 the privilege against self-incrimination. That means
25 that there would no requirement of testimony from the

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1 defendant at the trial, and there could be no comment
2 made to the jury if a defendant chose not to testify.
3 So, the jury could not conclude there was guilt
4 simply because the defendant does not testify.

5 If a defendant wishes to testify, of
6 course, the defendant can be a witness and can also
7 call witnesses to testify on his behalf. At a trial,
8 there would be a presumption of innocence, which
9 means that the defendants would not have to prove
10 innocence.

11 It would be the responsibility of the
12 prosecution, the Government, to establish by sound
13 legal evidence that there was guilt, and the
14 Government would be required to satisfy the jury of
15 guilt beyond a reasonable doubt before there could be
16 a conviction.

17 There would be 12 members of the jury and
18 all 12 would have to agree on guilt beyond a
19 reasonable doubt before there could be a conviction,
20 and the decision would have to be unanimous. If the
21 jury was unable to reach a unanimous agreement, there
22 could be another trial but there could not be a
23 conviction without all 12 jurors agreeing.

24 In the event of a trial and a conviction,
25 there would be the right to appeal to another Court,

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1 and a panel of three judges would be available to
2 review the proceedings to be sure there had been
3 essentially a fair trial and enough evidence at the
4 trial to allow a verdict of guilty.

5 I must inform you that if you plead guilty
6 to the charges that there would be no trial, and by
7 that plea you would be giving up the trial rights
8 that I have reviewed and also the right to appeal
9 from the finding of guilt.

10 Richard Martino, do you understand the
11 procedural rights I have reviewed with you?

12 DEFENDANT RICHARD MARTINO: Yes, I do, Your
13 Honor.

14 THE COURT: And, Daniel Martino, do you
15 understand the procedural rights?

16 DEFENDANT DANIEL MARTINO: Yes, I do, Your
17 Honor.

18 THE COURT: I next need to advise that if
19 guilty pleas are tendered, I have to find more than
20 that a defendant says he wants to plead guilty. I
21 have to find that there is a factual basis for
22 acceptance of the plea.

23 In order to do that, the usual procedure is
24 to have questions asked of the defendants about the
25 offense. Because of what I have said about the

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1 privilege against self-incrimination, you should both
2 understand that there is no legal duty to answer the
3 questions about the offense, but you can make what
4 amounts to a voluntary confession in the courtroom if
5 you choose to do so.

6 You will each be under oath, sworn to tell
7 the truth at that point in the proceedings. I advise
8 that your answers could be used in a prosecution for
9 perjury for making a false statement if the
10 Government would conclude there had been some false
11 statement in these proceedings.

12 Richard Martino, do you understand the
13 questioning process?

14 DEFENDANT RICHARD MARTINO: Yes, I do.

15 THE COURT: And Daniel Martino, do you
16 understand the questioning process?

17 DEFENDANT DANIEL MARTINO: Yes, I do, Your
18 Honor.

19 THE COURT: I understand there are Plea
20 Agreements in both cases and I have been supplied
21 with signed copies, which I will return to the Clerk
22 for her records.

23 We need to have a review of the Plea
24 Agreements to make sure that the defendants
25 understand what has been agreed to, and we have got

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1 some 26 pages of documents here, counting both
2 Agreements.

3 We don't have to take the time to review
4 everything, but I would ask that the principal points
5 in the Plea Agreements should be described by
6 counsel, and they can be described by Mr. Becker or
7 by defense counsel as you choose.

8 Mr. Becker.

9 MR. BECKER: Thank you, Judge. The Plea
10 Agreements are identical. There are some small
11 points that I will mention as we move along. Richard
12 Martino agrees to plead guilty to Counts One and Two
13 of the Indictment, charging conspiracy and mail
14 fraud, and Daniel Martino agrees to plead guilty to
15 Count One of the Indictment, conspiracy.

16 Both defendants agree to plead guilty to
17 Count Eleven, the forfeiture allegations in the
18 Indictment. The Agreement is between the United
19 States Attorney's Office for the Western District of
20 Missouri, the Organized Crime and Racketeering
21 Section of the Department of Justice, and each
22 individual defendant and their attorneys.

23 The defendants are prepared to make a
24 factual basis for their plea and the Plea Agreement
25 sets forth the allegations in the Indictment are to

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1 be true and will support the forfeiture and the
2 allegations in the Indictment.

3 THE COURT: Let me interrupt to say that
4 anyone interested in more exact understanding of what
5 is charged and what is being admitted is free to
6 study the Indictments rather than to just rely on
7 what they think they have heard in the courtroom.

8 Go ahead.

9 MR. BECKER: The Plea Agreements set forth
10 the maximum possible penalties for each of the counts
11 of conviction, and thereafter sets forth the
12 sentencing provisions that the Court will now apply
13 according to the Booker decision.

14 The Government agrees that based upon the
15 plea guilty, the Government will move as to Mr.
16 Daniel Martino to dismiss Counts Two through Ten of
17 the Indictment at the time of sentencing, and for Mr.
18 Richard Martino move to dismiss Counts Three through
19 Ten of the Indictment.

20 Further, the United States Attorney's
21 Office agrees not to bring any further charges in
22 this district arising out of the conduct alleged in
23 the Indictment. Also, the United States Attorney's
24 Office for the Western District of Missouri agrees to
25 recommend to the Court that a sentence in this case

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1 shall run concurrently with any sentence imposed in
2 the Eastern District of New York, in the case against
3 these defendants entitled United States versus
4 Salvatore LoCascio, Criminal Docket No. 03-304.

5 THE COURT: Again, I think I should
6 interrupt to emphasize that this is only a
7 recommendation by the United States Attorney and,
8 therefore, the Court is free to use the sentencing
9 authority that I referred to earlier.

10 MR. BECKER: The Plea Agreement provides
11 the defendant will comply with the forfeiture
12 provision contained in this Agreement, and the United
13 States would recommend to the Court that no fine be
14 imposed.

15 Further, if the defendants fully comply
16 with the forfeiture provisions of the procedure, that
17 the United States Attorney for the Western District
18 of Missouri agrees to recommend to the Department of
19 Justice that the forfeited currency be remitted to
20 the victims, the Universal Service Administrative
21 Company and the National Exchange Carriers
22 Association.

23 Judge, that is the procedure by which the
24 victims have an opportunity to get the funds that are
25 forfeited. Each has prepared petitions for remission

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1 and we have been in contact with counsel for both of
2 those entities, and they are fully prepared to go
3 forward with that procedure.

4 There is a paragraph about the preparation
5 of the Presentence Report will be done by the
6 Probation Department. There is the provision that
7 the defendant will not be able to withdraw his plea
8 if he is not happy with the sentence imposed by the
9 Court.

10 Then there is the agreement between the
11 parties on what we would believe to be the applicable
12 Guidelines, the applicable Guideline Manual being
13 that of November, 2000, and then an estimate of the
14 Guideline range with certain enhancements for the
15 dollar amount, more than minimal planning and
16 particularly --

17 THE COURT: The dollar amount is apparently
18 agreed to be in excess of \$5 million in both?

19 MR. BECKER: Yes, sir. The particular
20 allegation alleged \$8.9 million. The Guideline
21 cutoff at that time was more than \$5 million, and
22 with the next level being more than \$10 million.

23 THE COURT: All right.

24 MR. BECKER: There is an estimate of the
25 Guideline for each defendant based upon the

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1 particular factors to be applied. For Richard
2 Martino, that would be a Level 23, Criminal History
3 Category I, and a 46 to 57-month sentence, and for
4 Mr. Daniel Martino, an Offense Level 22, a Criminal
5 History Category I, with a resulting Guideline range
6 of 41 to 51 months. There are several paragraphs
7 relating to sentence and stating that this does not
8 bind the Court or the Probation Department.

9 The Plea Agreement states there are no
10 other agreements or any other Guideline provisions
11 other than those set forth in Paragraph 10.

12 Paragraph 13 sets forth the forfeiture
13 provisions. Mr. Richard Martino agrees to forfeit to
14 the United State specific property, that is, \$5.9
15 million in United States currency, and Mr. Daniel
16 Martino agrees to forfeit to the United States
17 specific property, that is, \$500,000 in United States
18 currency.

19 The numbers frankly were arrived at in
20 conjunction with the prosecution in the Eastern
21 District of New York, recognizing that the allegation
22 here is of a total loss of \$8.9 million. Mr.
23 Matzdorff has agreed to forfeit to the United States
24 \$2.5 million, leaving \$6.4 million to be agreed upon
25 for forfeiture by these defendants, which would

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1 represent the balance of that amount, \$6.4 million.

2 Both defendants agree that they will use
3 their best effort to divest themselves of their
4 holdings in LEC, LLC, also known as the Local
5 Exchange Company. For each defendant, as we spoke
6 earlier, there are certain Trusts that hold some of
7 these LEC units for Mr. Richard Martino, those Trusts
8 being the Yankee Irrevocable Trust, the Aly
9 Irrevocable Trust, and the Que Irrevocable Trust, and
10 some unit shares in a company called Qualitel.

11 Mr. Newman and I have discussed those
12 particular Trusts. As we said in chambers, counsel
13 has indicated and provided some documentation that
14 those Trusts are not for the benefit of Richard
15 Martino's children, but for another person's
16 children, and should the trusteeship of those Trusts
17 be transferred, I can imagine by the time of
18 sentencing that will be accomplished, that those
19 particular Trusts, that is the Que Trust, the Aly
20 Trust and the Yankee Trust would not be subject to
21 the filing provision relating to other Trusts.

22 The other Trusts are set forth in Daniel
23 Martino's Plea Agreement and those Trusts are for the
24 benefit of Richard Martino's children, and they are
25 called the Dee Irrevocable Trust, the Jan Irrevocable

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1 Trust and the May Irrevocable Trust. Those Trusts
2 will be subject to the appointment of two Trustees.

3 The Plea Agreement provides that the United
4 States Attorney's Office will designate one Trustee
5 and the defendant would designate another Trustee,
6 both parties having the opportunity to approve of the
7 other's Trustees.

8 Those Trustees will manage those Trusts
9 until such time as they divested themselves of the
10 interest in LEC, and then thereafter the Trustees'
11 role would dissolve, I guess, revert to whatever name
12 the defendants would name as the Trustee of those
13 Trusts.

14 There is a recitation of the waiver of
15 constitutional rights that the Court has reviewed.
16 Paragraph 17 relates to the waiver of appellate
17 rights. Both defendants waive their right to appeal
18 a finding of guilt upon the entry of a plea of
19 guilty.

20 The Defendant, Daniel Martino, waives his
21 right to appeal a sentence, other than a sentence
22 that is in excess of the statutory maximum or even a
23 sentence that is contrary to law. Richard Martino
24 has reserved the right to appeal the decision by the
25 Court to impose a sentence consecutively on any

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1 sentence that the defendant may receive in the United
2 States versus Richard Martino, No. 03-304, in the
3 Eastern District of New York.

4 The defendants waive their rights under the
5 Freedom of Information Act, and they waive their
6 right to make a claim under the Hyde Amendment for
7 attorney's fees. That is a recitation of the
8 significant consequence for a breach of the Plea
9 Agreement, and that the defendants have acknowledged
10 that each of them has read the Plea Agreement,
11 reviewed it with counsel, and there is a signature of
12 the attorneys for the United States as well as the
13 defendants and their attorneys.

14 THE COURT: Mr. Newman, on behalf of
15 Richard Martino, is there anything that you would
16 want to disagree with on the description of the Plea
17 Agreement, or is there something of importance that
18 you think should be mentioned?

19 MR. NEWMAN: No, sir.

20 THE COURT: And, Mr. Futerfas, on behalf of
21 Daniel Martino, I will ask the same question. Is
22 there anything you disagree with or that you think is
23 important that should be added?

24 MR. FUTERFAS: No, Your Honor.

25 THE COURT: Richard Martino, I take it that

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1 you have reviewed the Agreement with your attorney
2 before signing it and also you have heard the
3 description in the courtroom. Is there anything that
4 you believe you don't understand after that sort of
5 review?

6 DEFENDANT RICHARD MARTINO: No, Your Honor.

7 THE COURT: And, Daniel Martino, having
8 presumably reviewed it before signing it, and also
9 having heard the description, are you satisfied that
10 you do understand the Plea Agreement?

11 DEFENDANT DANIEL MARTINO: Yes, I do
12 understand it, Your Honor.

13 THE COURT: I would ask the defense counsel
14 to state the reasons for recommending the Agreements
15 to your clients.

16 Mr. Newman.

17 MR. NEWMAN: If Your Honor please, after
18 considering the evidence and the situation, and the
19 evidence against my client, and the fact that in a
20 trial what chances might or might not be in
21 connection with this, and after a long consideration
22 of this and a matter pending in the Eastern District
23 of New York, we came to the conclusion that the best
24 interest of the client would be protected by entering
25 into this Agreement and putting it behind him and

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1 allowing him to go on with the balance of his young
2 life.

3 THE COURT: All right. And, Mr. Futerfas,
4 can you state the reasons that you may have had for
5 recommending the Agreement to Daniel Martino?

6 MR. FUTERFAS: Your Honor, for the same
7 reasons that are articulated by Mr. Newman for Mr.
8 Martino. They are brothers and they have had many
9 discussions amongst themselves and with counsel, and
10 we think for all of the reasons articulated by Mr.
11 Newman went into the decision to enter into this
12 Agreement on behalf of Daniel Martino.

13 THE COURT: The record should reflect that
14 I have not participated in the negotiations regarding
15 the Agreement, and I would accept the Agreements
16 conditionally, subject to further consideration when
17 I receive a Presentence Report.

18 If I should reject one or both of the Plea
19 Agreements, then I would afford that defendant an
20 opportunity to withdraw the plea. This almost never
21 happens. But I mention it simply to indicate that if
22 despite the proceedings here there should be a trial,
23 nothing said today could be used to prove the charges
24 brought by the Government.

25 Now, having made that reference to a

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1 possible withdrawal of the plea, I do want the
2 defendants to understand that other than a rejection
3 of the Plea Agreement it is almost impossible to
4 obtain the Court's approval for withdrawal of a
5 guilty plea once it has been tendered to the Court
6 and accepted by the Court. It does take Court
7 approval before a plea can be withdrawn.

8 I will now ask Richard Martino how he
9 wishes to plead to Count One, the conspiracy charge,
10 guilty or not guilty?

11 DEFENDANT RICHARD MARTINO: Guilty, Your
12 Honor.

13 THE COURT: And how do you wish to plead to
14 Count Two, guilty or not guilty?

15 DEFENDANT RICHARD MARTINO: Guilty, Your
16 Honor.

17 THE COURT: And as to the forfeiture, Count
18 Eleven, do you agree to the forfeiture that is set
19 forth in Count Eleven?

20 DEFENDANT RICHARD MARTINO: Yes, I do, Your
21 Honor.

22 MR. NEWMAN: Your Honor, just one proviso
23 is modified, Your Honor, by the Plea Agreement, as
24 you heard Mr. Becker state it.

25 THE COURT: There is a limitation?

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1 MR. NEWMAN: Yes.

2 THE COURT: Yes. All right. And, Daniel
3 Martino, how do you wish to plead to the conspiracy
4 charge, Count One, guilty or not guilty?

5 DEFENDANT DANIEL MARTINO: Guilty, Your
6 Honor.

7 THE COURT: And I believe the only other
8 count in the Agreement is Count Eleven, the
9 forfeiture charge. Do you consent to the forfeiture
10 as further limited in the Plea Agreement?

11 DEFENDANT DANIEL MARTINO: Yes, I do, Your
12 Honor.

13 THE COURT: And could I ask the defense
14 counsel if they are satisfied that the defendants are
15 competent to enter the pleas?

16 MR. NEWMAN: Yes, sir, on behalf of Richard
17 Martino, we have consulted and gone over the prior
18 drafts, which I might add were approximately nine,
19 and Mr. Martino has been involved in the discussions
20 concerning them, and he is fully competent and able
21 to enter into both the Plea Agreement and the plea
22 today, Your Honor.

23 MR. FUTERFAS: The same with Mr. Daniel
24 Martino, Your Honor. We reviewed all the drafts.
25 Mr. Martino and I have been in numerous discussions

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1 about the various drafts, including the final draft
2 which Your Honor has in hand, and I am confident that
3 he is competent to proceed here today.

4 THE COURT: Mr. Becker, to what extent has
5 the investigative file been disclosed in this case?

6 MR. BECKER: The materials really were
7 derived, the discovery materials, from part of the
8 investigation of the Eastern District of New York.
9 The defendants have had a full opportunity to review
10 those documents, which consists of business records
11 from CassTel, business records from LEC and business
12 records from the Overland Data Company.

13 THE COURT: And, Mr. Newman, for the
14 record, would you advise whether you have reviewed
15 the materials made available by the Government and
16 made appropriate inquiry and investigation on your
17 own?

18 MR. NEWMAN: Yes, I have, Your Honor. In
19 addition to the material Mr. Becker alluded to, there
20 was also 3500 materials in the form of 302s, and
21 interviews of various individuals, all of which we
22 have acquainted ourselves with and read through and
23 discussed with our clients.

24 THE COURT: And the same question to you,
25 Mr. Futerfas.

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1 MR. FUTERFAS: Yes, Your Honor, we have.
2 We have reviewed all those materials.

3 THE COURT: All right. We will now take
4 the defendants one by one. Daniel Martino and
5 counsel can return to the table, and I would ask the
6 Clerk to administer the oath to Richard Martino.

7 (Whereupon, Defendant Richard Martino was
8 duly sworn at this time.)

9 THE COURT: The file indicates that you
10 were born in 1959.

11 Would that be correct?

12 DEFENDANT RICHARD MARTINO: That is
13 correct.

14 THE COURT: How much education have you
15 completed?

16 DEFENDANT RICHARD MARTINO: High school,
17 the twelfth grade.

18 THE COURT: Are you satisfied with the way
19 your attorney has handled the case?

20 DEFENDANT RICHARD MARTINO: Yes, Your
21 Honor.

22 THE COURT: And have you conferred with him
23 as much as you believe you need to before entering a
24 plea?

25 DEFENDANT RICHARD MARTINO: Yes, I have.

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1 THE COURT: Are you mentally under the
2 influence of any drugs, medicine, pills, alcohol or
3 anything you have had to eat or drink in the past 48
4 hours?

5 DEFENDANT RICHARD MARTINO: No, Your Honor.

6 THE COURT: Have you understood the
7 proceedings so far?

8 DEFENDANT RICHARD MARTINO: Yes.

9 THE COURT: Was there any physical force
10 used to cause you to enter into the Agreement or to
11 plead guilty?

12 DEFENDANT RICHARD MARTINO: No, Your Honor.

13 THE COURT: Were there any threats made
14 causing you to enter into the Agreement or plead
15 guilty?

16 DEFENDANT RICHARD MARTINO: No, Your Honor.

17 THE COURT: Were there any promises made,
18 other than the Plea Agreement itself, that caused you
19 to plead guilty?

20 DEFENDANT RICHARD MARTINO: No, Your Honor.

21 THE COURT: We now have reached the place
22 where I need to have the factual basis for the pleas
23 that have been tendered, and this is the time when I
24 remind the defendant that there is a privilege
25 against self-incrimination, but I understand that he

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1 is prepared to answer questions about the offenses,
2 and I also understand that Mr. Newman is prepared
3 with questions to establish the factual basis.

4 If that is so, Mr. Newman, you may proceed.

5 MR. NEWMAN: If Your Honor please, with
6 your permission, I don't know the procedure here, I
7 have prepared something for Mr. Martino to read, Your
8 Honor, which is based on my discussions with him and
9 his understanding.

10 I have gone over it with him. With your
11 permission, he will read it. If there is anything
12 factually you want me to add to it, I will be pleased
13 to do that.

14 THE COURT: Well, go ahead in the way you
15 are used to doing it. We will see how we proceed.

16 DEFENDANT RICHARD MARTINO: From on or
17 about January, 1998, until on or about October, 2001,
18 in the Western District of Missouri and elsewhere, I
19 began with others to agree that inflated invoices
20 would be sent from Overland Data Company to the Cass
21 County Telephone Company and LEC, LLC, for the
22 purposes of obtaining additional monies for CasTel
23 from the Universal Service Administration, a trader
24 company.

25 More specifically, I and others knew that

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1 false invoices were prepared by ODC for LEC, LLC and
2 Casstel, which reflected inflated false expenses to
3 Casstel.

4 THE COURT: Pardon me. It might be a
5 little better if you swing the equipment up a little
6 closer to you.

7 DEFENDANT RICHARD MARTINO: I knew that
8 these inflated expenses would then be included by
9 Casstel and submission to be mailed to USAC in order
10 to obtain additional funds from these programs.

11 On or about January, 1998, I met with
12 others to discuss the 1998 budget for Casstel, for
13 the inflation of Casstel expenses to obtain
14 additional funds from USAC were discussed.

15 Count Two, I aided and abetted in the
16 devising of the scheme to defraud the Universal
17 Service Fund, by knowingly and intentionally causing
18 the submission of false claims to the Universal
19 Service Fund knowing that the submission would be
20 through mail or by wire. I did this knowingly and
21 intentionally by allowing the claims to be submitted
22 to the Universal Service Fund on July 31, 2001, by
23 mail.

24 THE COURT: Mr. Becker, is there any
25 additional questioning that you would think would be

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1 helpful to establish the factual basis?

2 MR. BECKER: Your Honor, I believe that
3 makes an adequate factual basis.

4 THE COURT: All right. I note that in the
5 Plea Agreement that you have signed, Mr. Martino,
6 that you recite that you admit that the facts in the
7 allegations set forth in the Indictment are true.

8 Is that still accurate, having heard the
9 description of the Indictment here in the courtroom?

10 DEFENDANT RICHARD MARTINO: Yes, it is,
11 Your Honor.

12 MR. NEWMAN: Your Honor, may I just add
13 this one caveat, sir? That is a number of the acts
14 that Your Honor is familiar with as overt acts, he
15 may not have participated in directly. Yet he knew
16 these facts were true but he had no individual
17 knowledge of it.

18 THE COURT: He may not have personal
19 knowledge of everything?

20 MR. NEWMAN: That is what I am trying to
21 get to. I didn't do it artfully, so thank you for
22 your assistance.

23 THE COURT: Based on the testimony and
24 statements of the defendant, I do accept the plea of
25 guilty to Count One and the plea of guilty to Count

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1 Two, and I accept the response that has been given to
2 the forfeiture charge.

3 I find that the pleas are voluntarily made
4 and that there is a factual basis for acceptance of
5 the pleas, and that the defendant understands the
6 consequences of the plea.

7 A Presentence Investigation is ordered. A
8 draft of the report will be made available to both
9 sides, and both sides will have an opportunity to ask
10 the Probation Officer to make changes in the
11 Presentence Report.

12 When there is as much agreement as
13 possible, then it will be prepared in final form and
14 submitted to the Court, at which time a sentencing
15 proceeding can be scheduled at the mutual convenience
16 of counsel and the Court's schedule.

17 I take it there also is going to be some
18 coordination, attempted coordination with the
19 scheduling in New York. It isn't clear to me if
20 there is any preferred priority that either the
21 Government or defense counsel has as to proceeding
22 with sentencing.

23 Is there any suggestion at this time from
24 counsel?

25 MR. BECKER: The defense counsel indicated

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1 a preference to be sentenced here first in this
2 district.

3 THE COURT: In this case first, and is that
4 your view?

5 MR. NEWMAN: We have been treated
6 hospitably, Your Honor, and that is our preference.

7 THE COURT: All right. I think I have
8 mentioned, I told the lawyers in our preliminary
9 conference that I was not positive at this time
10 whether I would be doing the sentencing or perhaps
11 Judge Wright would be because he is already in a
12 related case. So that is something that we will need
13 to work out.

14 Has a sentencing date been scheduled in New
15 York?

16 MR. NEWMAN: Yes, sir. The tentative
17 scheduling date has been set for May 20th in New
18 York, Your Honor. I might add, Your Honor, with
19 leave for counsel to make application to the Court to
20 put it over, because as you can see by the extent of
21 the forfeiture, you are not familiar with the
22 forfeiture in New York, in order to get all our ducks
23 in a row to make that available, we may need some
24 additional time.

25 So, the Judge has given us leave in

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1 Brooklyn to make application for an extension on that
2 particular sentencing.

3 THE COURT: We may try to do a little
4 conferring with the Sentencing Judge there so that
5 there is a mutual agreement as to both the procedures
6 and as to how rapidly we should try to get this done.

7 I take it the Government does not ask that
8 the defendant be taken into custody at this time; is
9 that correct?

10 MR. BECKER: That is correct, Judge.

11 THE COURT: All right. Then, Mr. Martino,
12 you may remain at liberty until further order of the
13 Court, and you are subject to any previous conditions
14 about bonds and conditions of release that have
15 previously been established by the Magistrate. So
16 the two of you may now return to the counsel table.

17 DEFENDANT RICHARD MARTINO: Thank you.

18 THE COURT: I don't think I had the oath
19 administered to both at the same time.

20 MR. FUTERFAS: You did not, Your Honor.

21 THE COURT: All right. Will the clerk
22 administer the oath to Mr. Daniel Martino.

23 (Whereupon, Defendant Daniel Martino was
24 duly sworn at this time.)

25 THE COURT: The file indicates you were

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1 born in 1950.

2 Would that be correct?

3 DEFENDANT DANIEL MARTINO: That is correct,
4 Your Honor.

5 THE COURT: How much education have you
6 completed?

7 DEFENDANT DANIEL MARTINO: I have a
8 Master's Degree in Chemical Engineering.

9 THE COURT: Are you satisfied with the way
10 your attorney has handled the case?

11 DEFENDANT DANIEL MARTINO: Very much
12 satisfied.

13 THE COURT: Have you conferred with him as
14 much as you believe you need to before entering the
15 plea?

16 DEFENDANT DANIEL MARTINO: Yes, I have.

17 THE COURT: Are you under the influence of
18 any drugs, medicine, pills, alcohol or anything you
19 have had to eat or drink in the past 48 hours?

20 DEFENDANT DANIEL MARTINO: No, Your Honor.

21 THE COURT: Have you understood the
22 proceedings so far?

23 DEFENDANT DANIEL MARTINO: Yes, I have.

24 THE COURT: Was there any physical force
25 used to cause you to enter into the Plea Agreement or

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1 to plead guilty?

2 DEFENDANT DANIEL MARTINO: No, Your Honor.

3 THE COURT: Were there any threats made
4 causing you to enter into the Agreement or plead
5 guilty?

6 DEFENDANT DANIEL MARTINO: No, Your Honor.

7 THE COURT: Were there any promises, other
8 than the Plea Agreement itself, that caused you to
9 plead guilty?

10 DEFENDANT DANIEL MARTINO: No, Your Honor.

11 THE COURT: We have again reached the need
12 for establishing the factual basis, and on the
13 assumption that this defendant also is prepared to
14 answer questions or make a statement in support of
15 the factual basis of the plea, I will ask that
16 counsel proceed with him.

17 MR. FUTERFAS: Yes, Your Honor. At this
18 time we have a statement by Mr. Martino. The
19 Government has reviewed the statement, and he is
20 prepared to read that statement which will, I
21 believe, give a full-blown factual recitation.

22 THE COURT: Similar to the procedure that
23 was used with the other defendant?

24 MR. FUTERFAS: Yes, similar.

25 THE COURT: All right. I would ask him to

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1 make the statement to the Court.

2 DEFENDANT DANIEL MARTINO: From on or about
3 January, 1998, until on or about October, 2001, in
4 the Western District of Missouri, and elsewhere, I,
5 together with others, agreed that inflated invoices
6 would be sent between Overland Data and Cass County
7 Telephone and LEC/LOC for the purpose of obtaining
8 additional monies for CassTel from the National
9 Exchange Carriers Association and the Universal
10 Service Administration Company.

11 More specifically, I and others knew that
12 false invoices were prepared from ODC and LEC/LOC to
13 CassTel, which were inflated, false expenses to
14 CassTel. These inflated expenses were then included
15 by CassTel in its submission to NECA and USAC in
16 order to obtain additional funds from these programs.

17 On or about January, 1998, I met with
18 others to discuss the 1998 budget for CassTel, and
19 the inflation of CassTel's expenses to obtain
20 additional funds from USAC.

21 THE COURT: All right. I would suppose,
22 Mr. Becker, you have no further questioning that you
23 think is needed?

24 MR. BECKER: That is correct, Judge.

25 THE COURT: I will ask the question that I

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1 asked of the co-defendant. The Plea Agreement
2 recites that you admit the facts and the allegations
3 set forth in the Indictment, and the qualification
4 was offered that that would be to the best, as you
5 observed it and to the best of your knowledge as to
6 the things you did not observe.

7 Would that be correct, that the Indictment
8 is sound?

9 DEFENDANT DANIEL MARTINO: Yes, it is, Your
10 Honor.

11 THE COURT: Based on the record before me,
12 I will accept the plea of guilty to Count One, and
13 direct that that plea be entered in the record, and
14 also the consent to forfeiture that is established in
15 the record.

16 I find that the plea is voluntarily made
17 and there is a factual basis for acceptance, and that
18 the defendant understands the consequences of the
19 plea. Again, I will advise that the Presentence
20 Investigation will be ordered and that the report
21 will be made available.

22 A draft will be made available for whatever
23 changes counsel on each side might suggest, and that
24 sentencing will be scheduled when we have a completed
25 Presentence Report. And I also mention again that it

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1 is possible that I would not be the Sentencing Judge.
2 I would think the alternative would be Judge Wright
3 as the Sentencing Judge.

4 Do I understand, Mr. Futerfas, that the
5 same scheduling is desired here as in the co-
6 defendant's case, that is, that if it can be worked
7 out that sentencing should occur first in this court?

8 MR. FUTERFAS: That is our preference, yes,
9 Your Honor.

10 THE COURT: All right. We will see how it
11 works out. Again, I would ask confirmation by the
12 Government that you are not asking that this
13 defendant be taken into custody.

14 MR. BECKER: We are not, Judge.

15 THE COURT: All right. Mr. Martino, you
16 may remain at liberty until further order of the
17 Court and the bonding conditions and conditions of
18 release will be the same as previously established by
19 the Magistrate.

20 If there is nothing further to take up with
21 me in this litigation today, court will be adjourned.

22
23
24
25
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REPORTER'S CERTIFICATE

I, JOHN M. BOWEN, hereby certify that
I am the Official Court Reporter for Division
No. 6 of the Western District of Missouri;
that the foregoing pages numbered 1 through 50,
inclusive, contain a true and correct transcript
of the proceedings had in the above-entitled
cause on the date stated herein and that said
transcript is a true transcription of my
shorthand notes taken therein.

IN WITNESS WHEREOF, I hereunto set my
hand this 15th day of March, 2005.


Official Reporter

JOHN M. BOWEN & ASSOCIATES, COURT REPORTERS

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**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL D. MARTINO,

Defendant.

No. 05-00027-02-CR-W-HFS

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement:

1. **The Parties.** The parties to this agreement are the United States Attorney's Office for the Western District of Missouri and the Organized Crime and Racketeering Section ("OCRS") of the United States Department of Justice, Criminal Division, acting on its behalf (otherwise referred to as "the Government" or "the United States"), represented by Todd P. Graves, United States Attorney, and Paul S. Becker, Bruce E. Clark and Jess E. Michaelsen, Assistant United States Attorneys, and the defendant, Daniel D. Martino ("the defendant"), represented by Ronald P. Fischetti and Alan S. Futerfas.

The defendant understands and agrees that this plea agreement is only between him and the United States Attorney for the Western District of Missouri and the OCRS, and that it does not bind any other federal, state, or local prosecution authority or any other government agency, unless otherwise specified in this agreement.

2. Defendant's Guilty Plea. The defendant agrees to and hereby does plead guilty to Count One of the Indictment, charging him with a violation of 18 U.S.C. § 371, that is, conspiracy to commit mail and wire fraud. The defendant also agrees to forfeit to the United States the property described in Count Eleven of the Indictment, as modified by Paragraph 13 below. By entering into this plea agreement, the defendant admits that he knowingly committed these offenses, and is in fact guilty of these offenses.

3. Factual Basis for Guilty Plea. To furnish a factual basis to support his guilty plea to the charge contained in the Indictment, the defendant admits that the facts and allegations set forth in the Indictment are true and that those facts support the forfeiture of the property described in the Indictment.

4. Use of Factual Admissions. The defendant acknowledges, understands and agrees that the admissions contained in Paragraph 3 and other portions of this plea agreement will be used for the purpose of determining his guilt and advisory sentencing range under the United States Sentencing Guidelines ("U.S.S.G."), including the calculation of the defendant's offense level in accordance with U.S.S.G. § 1B1.3(a)(2). The defendant acknowledges, understands and agrees that the conduct charged in any dismissed counts of the indictment as well as all other uncharged related criminal activity may be considered as "relevant conduct" pursuant to U.S.S.G. § 1B1.3(a)(2) in calculating the offense level for the charges to which he is pleading guilty.

5. Statutory Penalties. The defendant understands that upon his plea of guilty to Count One of the Indictment charging him with conspiracy to commit mail and wire fraud, the maximum penalty the Court may impose on the count is not more than five years of imprisonment, a \$250,000 fine, three years of supervised release, an order of restitution and a \$100 mandatory special

assessment which must be paid in full at the time of sentencing. The defendant further understands that the offense to which he is pleading guilty is a Class D felony.

6. Sentencing Procedures. The defendant acknowledges, understands and agrees to the following:

- a. in determining the appropriate sentence, the Court will consult and consider the United States Sentencing Guidelines promulgated by the United States Sentencing Commission; these Guidelines, however, are merely advisory in nature, and the Court may impose a sentence either less than or greater than the defendant's applicable Guidelines range, unless the sentence imposed is "unreasonable";
- b. the Court will determine the defendant's applicable Sentencing Guidelines range at the time of sentencing;
- c. in addition to a sentence of imprisonment, the Court may impose a term of supervised release of up to three years; that the Court must impose a period of supervised release if a sentence of imprisonment of more than one year is imposed;
- d. if the defendant violates a condition of his supervised release, the court may revoke his supervised release and impose an additional period of imprisonment of up to two years, without credit for time previously spent on supervised release, and that in addition to a new term of imprisonment, the Court may impose a new period of supervised release, the length of which cannot exceed three years, less the term of imprisonment imposed upon revocation of the defendant's first supervised release;
- e. the Court may impose any sentence authorized by law, including a sentence that is outside of, or departs from, the applicable Sentencing Guidelines range;
- f. any sentence of imprisonment imposed by the Court will not allow for parole.
- g. the Court must order restitution to be paid to victims of the offense to which he is pleading guilty, the conduct charged in any dismissed counts of the indictment, and all other uncharged related criminal activity;

- h. the Court is not bound by any recommendation regarding the sentence to be imposed or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Office; and
- i. the defendant may not withdraw his guilty plea solely because of the nature or length of the sentence imposed by the Court.

7. **Government's Agreements.** Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea agreement, agrees not to bring any additional charges against defendant for any federal criminal offenses related to conspiracy to commit mail and wire fraud and the commission of mail and wire fraud for which it has venue and which arose out of the defendant's conduct described above. Additionally, the United States Attorney for the Western District of Missouri agrees to dismiss Counts Two through Ten at the time of sentencing. Further the United States Attorney for the Western District of Missouri agrees to recommend to the Court that any sentence shall run concurrent with any sentence imposed in the Eastern District of New York in United States v. Salvatore LoCascio, et al., Criminal Docket No. 03-304.

If the defendant fully complies with the forfeiture provisions contained in this plea agreement prior to sentencing, the United States Attorney for the Western District of Missouri agrees to recommend to the Court that no fine be imposed. If the defendant fully complies with the forfeiture provisions contained in this plea agreement prior to sentencing, the United States Attorney for the Western District of Missouri agrees to recommend to the Department of Justice that the forfeited currency be remitted to the victims, the Universal Service Administrative Company and the National Exchange Carriers Association.

The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical or sexual violence against the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives his right to challenge the initiation of the dismissed or additional charges against him if he breaches this agreement. The defendant expressly waives his right to assert a statute of limitations defense if the dismissed or additional charges are initiated against him following a breach of this agreement. The defendant further understands and agrees that if the Government elects to file additional charges against him following his breach of this plea agreement, he will not be allowed to withdraw his guilty plea.

8. Preparation of Presentence Report. The defendant understands the United States will provide to the Court and the United States Probation Office a government version of the offense conduct. This may include information concerning the background, character, and conduct of the defendant, including the entirety of his criminal activities. The defendant understands these disclosures are not limited to the count to which he has pleaded guilty. The United States may respond to comments made or positions taken by the defendant or the defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any

limitations set forth in this plea agreement. The United States and the defendant expressly reserve the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

9. **Withdrawal of Plea.** The defendant understands that if the Court accepts his plea of guilty and this plea agreement but imposes a sentence that is outside the defendant's applicable Sentencing Guidelines range, or imposes a sentence that the defendant does not expect, like or agree with, he will not be permitted to withdraw his plea of guilty.

10. **Agreed Guidelines Applications.** With respect to the application of the Sentencing Guidelines to this case, the parties stipulate and agree as follows:

- a. The Sentencing Guidelines do not bind the Court and are merely advisory in nature. The Court may impose a sentence that is either above or below the defendant's applicable Guidelines range, provided the sentence imposed is not "unreasonable";
- b. The applicable Guidelines Manual is the one that took effect on November 1, 2000;
- c. The applicable Guidelines section for the offense of conviction is U.S.S.G. § 2F1.1, which provides for a base offense level of six;
- d. The defendant is subject to a fourteen-level enhancement for an amount of loss in excess of five million dollars pursuant to U.S.S.G. § 2F1.1(b)(1)(O);
- e. The defendant is subject to a two-level enhancement because the offense involved more than minimal planning pursuant to U.S.S.G. § 2F1.1(b)(2)(A);
- f. The defendant is also subject to a three-level enhancement because he was a manager or supervisor of a criminal activity that involved five or more participants or was otherwise extensive pursuant to U.S.S.G. § 3B1.1(b);
- g. The defendant has admitted his guilt and clearly accepted responsibility for his actions, and has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting

the Government and the Court to allocate their resources efficiently. Therefore, he is entitled to a three-level reduction pursuant to U.S.S.G. § 3E1.1(b) of the Sentencing Guidelines. The Government, at the time of sentencing, will file a written motion with the Court to that effect;

h. The parties estimate that the defendant's criminal history category is Category I. The parties agree that the Court will determine his applicable criminal history category after receipt of the presentence investigation report prepared by the United States Probation Office;

i. The parties agree that these estimates provide for a adjusted offense level of 22, which results in a sentencing range of 41 to 51 months in prison.

j. The defendant understands that the estimate of the parties with respect to the Guidelines computation set forth in the subsections of this paragraph does not bind the Court or the United States Probation Office with respect to the appropriate Guidelines levels. Additionally, the failure of the Court to accept these stipulations will not, as outlined in paragraph nine of this plea agreement, provide the defendant with a basis to withdraw his plea of guilty;

k. The United States agrees not to seek an upward departure from the Guidelines or a sentence outside the Guidelines range, and defendant agrees to not seek a downward departure from the Guidelines or a sentence outside the Guidelines range. However, the defendant is permitted to seek a motion for downward departure from the Guidelines upon the limited basis of U.S.S.G. § 5H1.4. The agreement by the parties to not seek a departure from the Guidelines is not binding upon the Court or the United States Probation Office and the Court may impose any sentence authorized by law, including any sentence outside the applicable Guidelines range that is not "unreasonable";

l. The defendant consents to judicial fact-finding by a preponderance of the evidence of any contested issues pertaining to the determination of the defendant's sentence under the United States Sentencing Guidelines. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to have those facts alleged in the indictment. The defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence under the Guidelines, may consider any reliable information, including hearsay; and

m. The defendant understands and agrees that the factual admissions contained in paragraphs 3 and 4 of this plea agreement, and any admissions that he will make during his plea colloquy, support the imposition of the agreed Guidelines calculations contained in this agreement.

11. Effect of Non-Agreement on Guidelines Applications. The parties understand, acknowledge and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed in Paragraph 10, and its subsections. As to any other Guidelines issues, the parties are free to advocate their respective positions at the sentencing hearing.

12. Change in Guidelines Prior to Sentencing. The defendant agrees that if any applicable provision of the Guidelines changes after the execution of this plea agreement, then any request by defendant to be sentenced pursuant to the new Guidelines will make this plea agreement voidable by the United States at its option. If the Government exercises its option to void the plea agreement, the United States may charge, reinstate, or otherwise pursue any and all criminal charges that could have been brought but for this plea agreement.

13. Forfeiture. In satisfaction of the forfeiture allegation in the Indictment, the defendant agrees to forfeit the following specific property: \$500,000 in U.S. Currency. With respect to this forfeiture the defendant waives any constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment under the Eighth Amendment to the United States Constitution.

Defendant agrees that the United States may institute civil judicial or administrative forfeiture proceedings against all forfeitable assets in which he has an interest up to \$500,000 and that he will not contest any such forfeiture proceedings. Defendant agrees to take all steps to comply with the forfeiture matters set forth herein before his sentencing.

14. **Divestiture.** The defendant will promptly use his best efforts to divest all of his securities, rights, or interests in LEC, LLC, also known as Local Exchange Company, LLC, over which he exercises control either directly or indirectly, including, but not limited to LEC, LLC units held by entities as follows: 5.0227 units in the Dee Irrevocable Trust; 5.0227 units in the Jan Irrevocable Trust; 5.0227 units in the May Irrevocable Trust; and two units in Qualitel, Inc. Upon the defendant's plea of guilty he shall convey his trusteeship in all trusts that hold an interest in LEC, LLC, to two trustees approved by both parties. One trustee shall be designated by the United States Attorney for the Western District of Missouri, and one trustee shall be designated by the defendant. Both trustees must agree to all trust matters. All trustee costs, expenses and fees shall be paid for out of the assets of the trusts. The trusts shall be administered by the two approved trustees until the trusts have sold or otherwise divested any and all interest in LEC, LLC. Within 10 days of the sale, transfer or divestiture of the above-described LEC, LLC interests, the defendant shall provide written documentation of the foregoing transaction to the United States Attorney for the Western District of Missouri. Upon satisfaction of the United States Attorney for the Western District of Missouri that the LEC, LLC interests have been sold, transferred or otherwise divested from the trusts, the trustee designated by the United States Attorney for the Western District of Missouri shall be terminated.

15. **Government's Reservation of Rights.** The defendant understands that the United States expressly reserves the right in this case to:

- a. oppose or take issue with any position advanced by defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;
- b. comment on the evidence supporting the charges in the Indictment;

c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentences imposed; and

d. oppose any post-conviction motions for reduction of sentence, or other relief.

16. Waiver of Constitutional Rights. The defendant, by pleading guilty, acknowledges that he has been advised of, understands, and knowingly and voluntarily waives the following rights:

- a. the right to plead not guilty and to persist in a plea of not guilty;
- b. the right to be presumed innocent until his guilt has been established beyond a reasonable doubt at trial;
- c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;
- d. the right to confront and cross-examine the witnesses who testify against him;
- e. the right to compel or subpoena witnesses to appear on his behalf; and
- f. the right to remain silent at trial, in which case his silence may not be used against him.

The defendant understands that by pleading guilty, he waives or gives up those rights and that there will be no trial. The defendant further understands that if he pleads guilty, the Court may ask him questions about the offense or offenses to which he pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making a false statement. The defendant also understands he has pleaded guilty to a felony offense and, as a result, will lose his right to possess a firearm or ammunition and might be deprived of other rights, such as the rights to vote or register to vote, hold public office, or serve on a jury.

17. Waiver of Appellate and Post-Conviction Rights.

- a. The defendant acknowledges, understands and agrees that by pleading guilty pursuant to this plea agreement he waives his right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement.
- b. The defendant expressly waives his right to appeal his sentence, directly or collaterally, on any ground except a sentence imposed in excess of the statutory maximum or an illegal sentence, *i.e.*, a sentence that is contrary to law. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government's appeal, cross-appeal his sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

18. Waiver of FOIA Request. The defendant waives all of his rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

19. Waiver of Claim for Attorney's Fees. The defendant waives all of his claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

20. Defendant's Breach of Plea Agreement. If the defendant commits any crimes, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete, or untruthful, or otherwise breaches this plea agreement, the United States will be released from its

obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw his plea of guilty.

The defendant also understands and agrees that in the event he violates this plea agreement, all statements made by him to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by him before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against him in any and all criminal proceedings. The defendant waives any rights that he might assert under the United States Constitution, any statute, Federal Rules of Criminal Procedure, Section 11(e)(6), Federal Rules of Evidence, Section 410, or any other federal rule that pertains to the admissibility of any statements made by him subsequent to this plea agreement.

21. Defendant's Representations. The defendant acknowledges that he has entered into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that he is satisfied with the assistance of counsel, and that counsel has fully advised him of his rights and obligations in connection with this plea agreement. The defendant further acknowledges that no threats or promises, other than the promises contained in this plea agreement, have been made by the United States, the Court, his attorneys or any other party to induce him to enter his plea of guilty.

22. No Undisclosed Terms. The United States and defendant acknowledge and agree that the above-stated terms and conditions constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement do not constitute any part of the parties' agreement and will not be enforceable against either party.

23. Standard of Interpretation. The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement should be interpreted according to general contract principles and the words employed are to be given their normal and ordinary meanings. The parties further agree that, in interpreting this agreement, any drafting errors or ambiguities are not to be automatically construed against either party, whether or not that party was involved in drafting or modifying this agreement.

DATED this 23rd day of February 2005.

Todd P. Graves
United States Attorney

Dated: 2/23/05

By: Paul S. Becker

Paul S. Becker
Assistant United States Attorney
Chief, Organized Crime Strike Force Unit

Bruce E. Clark, #31443

Bruce E. Clark, #31443
Assistant United States Attorney
Organized Crime Strike Force Unit

Jess E. Michaelson, #52253
for Jess E. Michaelson, #52253
Assistant United States Attorney
Organized Crime Strike Force Unit

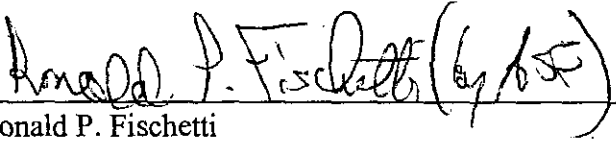
I have consulted with my attorneys and fully understand all of my rights with respect to the offenses charged in the Indictment. Further, I have consulted with my attorneys and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorneys. I understand this plea agreement and I voluntarily agree to it.

Dated: 2/23/05

Daniel D. Martino
Daniel D. Martino, Defendant

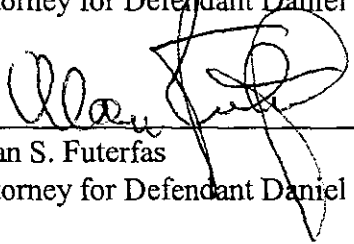
We are defendant Daniel D. Martino's attorneys. We have fully explained to him his rights with respect to the offenses charged in the Indictment. Further, we have reviewed with him the provisions of the Sentencing Guidelines which might apply in this case. We have carefully reviewed every part of this plea agreement with him. To our knowledge, Daniel D. Martino's decision to enter into this plea agreement is an informed and voluntary one.

Dated: 2/23/03



Ronald P. Fischetti
Attorney for Defendant Daniel D. Martino

Dated: 2/23/03



Alan S. Futerfas
Attorney for Defendant Daniel D. Martino

psb:sgs

that is, conspiracy to commit mail and wire fraud and mail fraud. The defendant also agrees to forfeit to the United States the property described in Count Eleven of the Indictment, as modified by paragraph 13 below. By entering into this plea agreement, the defendant admits that he knowingly committed these offenses, and is in fact guilty of these offenses.

3. Factual Basis for Guilty Plea. To furnish a factual basis to support his guilty plea to the charges contained in the Indictment, the defendant admits that the facts and allegations set forth in the Indictment are true and that those facts support the forfeiture of the property described in the Indictment.

4. Use of Factual Admissions. The defendant acknowledges, understands and agrees that the admissions contained in Paragraph 3 and other portions of this plea agreement will be used for the purpose of determining his guilt and advisory sentencing range under the United States Sentencing Guidelines ("U.S.S.G."), including the calculation of the defendant's offense level in accordance with U.S.S.G. § 1B1.3(a)(2). The defendant acknowledges, understands and agrees that the conduct charged in any dismissed counts of the indictment as well as all other uncharged related criminal activity may be considered as "relevant conduct" pursuant to U.S.S.G. § 1B1.3(a)(2) in calculating the offense level for the charges to which he is pleading guilty.

5. Statutory Penalties. The defendant understands that upon his plea of guilty to Counts One and Two of the Indictment charging him with conspiracy to commit mail and wire fraud, and mail fraud, the maximum penalty the Court may impose on each count is not more than five years of imprisonment, a \$250,000 fine, three years of supervised release, an order of restitution and a \$100 mandatory special assessment which must be paid in full at the time of sentencing. The defendant further understands that the offenses to which he is pleading guilty are Class D felonies.

6. Sentencing Procedures. The defendant acknowledges, understands and agrees to the

following:

- a. in determining the appropriate sentence, the Court will consult and consider the United States Sentencing Guidelines promulgated by the United States Sentencing Commission; these Guidelines, however, are merely advisory in nature, and the Court may impose a sentence either less than or greater than the defendant's applicable Guidelines range, unless the sentence imposed is "unreasonable";
- b. the Court will determine the defendant's applicable Sentencing Guidelines range at the time of sentencing;
- c. in addition to a sentence of imprisonment, the Court may impose a term of supervised release of up to three years; that the Court must impose a period of supervised release if a sentence of imprisonment of more than one year is imposed;
- d. if the defendant violates a condition of his supervised release, the court may revoke his supervised release and impose an additional period of imprisonment of up to two years, without credit for time previously spent on supervised release, and that in addition to a new term of imprisonment, the Court may impose a new period of supervised release, the length of which cannot exceed three years, less the term of imprisonment imposed upon revocation of the defendant's first supervised release;
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- g. the Court must order restitution to be paid to victims of the offense to which he is pleading guilty, the conduct charged in any dismissed counts of the indictment, and all other uncharged related criminal activity;
- h. the Court is not bound by any recommendation regarding the sentence to be imposed or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Office; and

- i. the defendant may not withdraw his guilty plea solely because of the nature or length of the sentence imposed by the Court.

7. **Government's Agreements.** Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea agreement, agrees not to bring any additional charges against defendant for any federal criminal offenses related to conspiracy to commit mail and wire fraud and the commission of mail and wire fraud for which it has venue and which arose out of the defendant's conduct described above. Additionally, the United States Attorney for the Western District of Missouri agrees to dismiss counts Three through Ten at the time of sentencing. Further the United States Attorney for the Western District of Missouri agrees to recommend to the Court that any sentence shall run concurrent with any sentence imposed in the Eastern District of New York in United States v. Salvatore LoCascio, et al., Criminal Docket No. 03-304.

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The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical or sexual violence against

the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives his right to challenge the initiation of the dismissed or additional charges against him if he breaches this agreement. The defendant expressly waives his right to assert a statute of limitations defense if the dismissed or additional charges are initiated against him following a breach of this agreement. The defendant further understands and agrees that if the Government elects to file additional charges against him following his breach of this plea agreement, he will not be allowed to withdraw his guilty plea.

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the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

9. **Withdrawal of Plea.** The defendant understands that if the Court accepts his plea of guilty and this plea agreement but imposes a sentence that is outside the defendant's applicable Sentencing Guidelines range, or imposes a sentence that the defendant does not expect, like or agree with, he will not be permitted to withdraw his plea of guilty.

10. **Agreed Guidelines Applications.** With respect to the application of the Sentencing Guidelines to this case, the parties stipulate and agree as follows:

a. The Sentencing Guidelines do not bind the Court and are merely advisory in nature. The Court may impose a sentence that is either above or below the defendant's applicable Guidelines range, provided the sentence imposed is not "unreasonable";

b. The applicable Guidelines Manual is the one that took effect on November 1, 2000;

c. The applicable Guidelines section for the offense of conviction is U.S.S.G. § 2F1.1, which provides for a base offense level of six;

d. The defendant is subject to a fourteen-level enhancement for an amount of loss in excess of five million dollars pursuant to U.S.S.G. § 2F1.1(b)(1)(O);

e. The defendant is subject to a two-level enhancement because the offense involved more than minimal planning pursuant to U.S.S.G. § 2F1.1(b)(2);

f. The defendant is also subject to a four-level enhancement because he was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive pursuant to U.S.S.G. § 3B1.1(a);

g. The defendant has admitted his guilt and clearly accepted responsibility for his actions, and has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and the Court to allocate their resources efficiently. Therefore, he

is entitled to a three-level reduction pursuant to U.S.S.G. § 3E1.1(b) of the Sentencing Guidelines. The Government, at the time of sentencing, will file a written motion with the Court to that effect;

h. The parties estimate that the defendant's criminal history category is Category I. The parties agree that the Court will determine his applicable criminal history category after receipt of the presentence investigation report prepared by the United States Probation Office;

i. The parties agree that these estimates provide for a adjusted offense level of 23, which results in a sentencing range of 46 to 57 months in prison.

j. The defendant understands that the estimate of the parties with respect to the Guidelines computation set forth in the subsections of this paragraph does not bind the Court or the United States Probation Office with respect to the appropriate Guidelines levels. Additionally, the failure of the Court to accept these stipulations will not, as outlined in paragraph nine of this plea agreement, provide the defendant with a basis to withdraw his plea of guilty;

k. The United States agrees not to seek an upward departure from the Guidelines or a sentence outside the Guidelines range, and defendant agrees to not seek a downward departure from the Guidelines or a sentence outside the Guidelines range. The agreement by the parties to not seek a departure from the Guidelines is not binding upon the Court or the United States Probation Office and the Court may impose any sentence authorized by law, including any sentence outside the applicable Guidelines range that is not "unreasonable";

l. The defendant consents to judicial fact-finding by a preponderance of the evidence of any contested issues pertaining to the determination of the defendant's sentence under the United States Sentencing Guidelines. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to have those facts alleged in the indictment. The defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence under the Guidelines, may consider any reliable information, including hearsay; and

m. The defendant understands and agrees that the factual admissions contained in paragraphs 3 and 4 of this plea agreement, and any admissions that he will make during his plea colloquy, support the imposition of the agreed Guidelines calculations contained in this agreement.

11. Effect of Non-Agreement on Guidelines Applications. The parties understand, acknowledge and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed in Paragraph 10, and its subsections. As to any other Guidelines issues, the parties are free to advocate their respective positions at the sentencing hearing.

12. Change in Guidelines Prior to Sentencing. The defendant agrees that if any applicable provision of the Guidelines changes after the execution of this plea agreement, then any request by defendant to be sentenced pursuant to the new Guidelines will make this plea agreement voidable by the United States at its option. If the Government exercises its option to void the plea agreement, the United States may charge, reinstate, or otherwise pursue any and all criminal charges that could have been brought but for this plea agreement.

13. Forfeiture. In satisfaction of the forfeiture allegation in the Indictment, the defendant agrees to forfeit the following specific property: \$5.9 million in U.S. Currency. With respect to this forfeiture the defendant waives any constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment under the Eighth Amendment to the United States Constitution.

Defendant agrees that the United States may institute civil judicial or administrative forfeiture proceedings against all forfeitable assets in which he has an interest up to \$5.9 million and that he will not contest any such forfeiture proceedings. Defendant agrees to take all steps to comply with the forfeiture matters set forth herein before his sentencing.

14. Divestiture. The defendant will promptly use his best efforts to divest all of his securities, rights, or interests in LEC, LLC, also known as Local Exchange Company, LLC, over which he exercises control either directly or indirectly, including, but not limited to LEC, LLC units held by entities as follows: four units in the Que Irrevocable Trust; four units in the Aly Irrevocable Trust; four units in the Yankee Irrevocable Trust; and 5.5 units in Qualitel, Inc. Upon the defendant's plea of guilty he shall convey his trusteeship in all trusts that hold an interest in LEC, LLC, to two trustees approved by both parties. One trustee shall be designated by the United States Attorney for the Western District of Missouri, and one trustee shall be designated by the defendant. Both trustees must agree to all trust matters. All trustee costs, expenses and fees shall be paid for out of the assets of the trusts. The trusts shall be administered by the two approved trustees until the trusts have sold or otherwise divested any and all interest in LEC, LLC. Within 10 days of the sale, transfer or divestiture of the above-described LEC, LLC interests, the defendant shall provide written documentation of the foregoing transaction to the United States Attorney for the Western District of Missouri. Upon satisfaction of the United States Attorney for the Western District of Missouri that the LEC, LLC interests have been sold, transferred or otherwise divested from the trusts, the trustee designated by the United States Attorney for the Western District of Missouri shall be terminated.

15. Government's Reservation of Rights. The defendant understands that the United States expressly reserves the right in this case to:

- a. oppose or take issue with any position advanced by defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;
- b. comment on the evidence supporting the charges in the Indictment;

c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentences imposed; and

d. oppose any post-conviction motions for reduction of sentence, or other relief.

16. Waiver of Constitutional Rights. The defendant, by pleading guilty, acknowledges that he has been advised of, understands, and knowingly and voluntarily waives the following rights:

- a. the right to plead not guilty and to persist in a plea of not guilty;
- b. the right to be presumed innocent until his guilt has been established beyond a reasonable doubt at trial;
- c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;
- d. the right to confront and cross-examine the witnesses who testify against him;
- e. the right to compel or subpoena witnesses to appear on his behalf; and
- f. the right to remain silent at trial, in which case his silence may not be used against him.

The defendant understands that by pleading guilty, he waives or gives up those rights and that there will be no trial. The defendant further understands that if he pleads guilty, the Court may ask him questions about the offense or offenses to which he pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making a false statement. The defendant also understands he has pleaded guilty to a felony offense and, as a result, will lose his right to possess a firearm or ammunition and might be deprived of other rights, such as the rights to vote or register to vote, hold public office, or serve on a jury.

17. Waiver of Appellate and Post-Conviction Rights.

- a. The defendant acknowledges, understands and agrees that by pleading guilty pursuant to this plea agreement he waives his right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement.
- b. The defendant expressly waives his right to appeal his sentence, directly or collaterally, on any ground except a sentence imposed in excess of the statutory maximum or an illegal sentence, *i.e.*, a sentence that is contrary to law. Further, the defendant reserves his right to appeal a decision by the Court to impose a sentence consecutive to any sentence the defendant may receive in United States v. Martino, No. 03-304 (EDNY). However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government's appeal, cross-appeal his sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

18. Waiver of FOIA Request. The defendant waives all of his rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

19. Waiver of Claim for Attorney's Fees. The defendant waives all of his claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

20. Defendant's Breach of Plea Agreement. If the defendant commits any crimes, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete, or untruthful, or otherwise breaches this plea agreement, the United States will be released from its

obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw his plea of guilty.

The defendant also understands and agrees that in the event he violates this plea agreement, all statements made by him to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by him before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against him in any and all criminal proceedings. The defendant waives any rights that he might assert under the United States Constitution, any statute, Federal Rules of Criminal Procedure, Section 11(e)(6), Federal Rules of Evidence, Section 410, or any other federal rule that pertains to the admissibility of any statements made by him subsequent to this plea agreement.

21. Defendant's Representations. The defendant acknowledges that he has entered into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that he is satisfied with the assistance of counsel, and that counsel has fully advised him of his rights and obligations in connection with this plea agreement. The defendant further acknowledges that no threats or promises, other than the promises contained in this plea agreement, have been made by the United States, the Court, his attorneys or any other party to induce him to enter his plea of guilty.

22. No Undisclosed Terms. The United States and defendant acknowledge and agree that the above-stated terms and conditions constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement do not constitute any part of the parties' agreement and will not be enforceable against either party.

23. Standard of Interpretation. The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement should be interpreted according to general contract principles and the words employed are to be given their normal and ordinary meanings. The parties further agree that, in interpreting this agreement, any drafting errors or ambiguities are not to be automatically construed against either party, whether or not that party was involved in drafting or modifying this agreement.

DATED this 23rd day of February 2005.

Todd P. Graves
United States Attorney

Dated: 2/23/05

By: Paul S. Becker
Paul S. Becker
Assistant United States Attorney
Chief, Organized Crime Strike Force Unit

Bruce E. Clark, #31443
Bruce E. Clark, #31443
Assistant United States Attorney
Organized Crime Strike Force Unit

Jess E. Michaelson, #52253
for Jess E. Michaelson, #52253
Assistant United States Attorney
Organized Crime Strike Force Unit

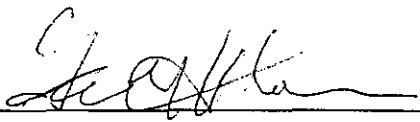
I have consulted with my attorneys and fully understand all of my rights with respect to the offenses charged in the Indictment. Further, I have consulted with my attorneys and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorneys. I understand this plea agreement and I voluntarily agree to it.

Dated: 2/23/05

Richard T. Martino
Richard T. Martino, Defendant

I am defendant Richard T. Martino's attorney. I have fully explained to him his rights with respect to the offenses charged in the Indictment. Further, I have reviewed with him the provisions of the Sentencing Guidelines which might apply in this case. I have carefully reviewed every part of this plea agreement with him. To my knowledge, Richard T. Martino's decision to enter into this plea agreement is an informed and voluntary one.

Dated: 2/23/03



Gustave H. Newman
Attorney for Defendant Richard T. Martino

psb:sgs

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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS
HEARING
April 19, 2004
Jefferson City, Missouri
Volume 1

In the Matter of the Investigation) Case No. IR-2004-0354
into the Earnings of Cass County)
Telephone Company)

MORRIS L. WOODRUFF, Presiding
SENIOR REGULATORY LAW JUDGE.

STEVE GAW, Chair
ROBERT CLAYTON, III
COMMISSIONERS.

REPORTED BY:
TRACY L. THORPE, CSR, CCR
MIDWEST LITIGATION SERVICES

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A P P E A R A N C E S

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FOR: Staff of the Missouri Public Service Commission

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P R O C E E D I N G S

JUDGE WOODRUFF: Okay. Let's go on the record. We're here in Case No. IR-2004-0354, which is in the matter of the investigation into the earnings of Cass County Telephone Company.

And we're here today for an on-the-record presentation concerning a Stipulation and Agreement that was presented by the parties to resolve Staff's complaint about the earnings of the company.

We'll begin by taking entries of appearance beginning with Cass County Telephone.

MR. ENGLAND: Thank you, your Honor. Let the record reflect the appearance of WR England and Sondra B. Morgan on behalf of the Cass County Telephone Company.

JUDGE WOODRUFF: Thank you.

And for Staff?

MR. POSTON: Marc Poston appearing for the Staff of the Missouri Public Service Commission.

JUDGE WOODRUFF: And for Public Counsel?

MR. DANDINO: Michael Dandino, Office of the Public Counsel representing the Office of Public Counsel and the public.

JUDGE WOODRUFF: Thank you.

As I indicated, we're here today for an on-the-record presentation. And primarily the purpose is

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for the parties to answer questions from the Commissioners, but I'm going to start out by asking you to give a brief statement explaining the status of this case, what the Commission has ask-- has been asked to decide. And I'll begin with Staff.

MR. POSTON: Would you like me to stand --

JUDGE WOODRUFF: If you would, come on up to the podium.

MR. POSTON: Would you like me to go into a little background into this case at all?

JUDGE WOODRUFF: If you would, please.

MR. POSTON: Last year the Staff conducted a thorough audit of Cass County Telephone Company and concluded that Cass was over-earning by roughly \$320,000. Cass, OPC and Staff agreed upon specific rate reductions and entered into a Stipulation and Agreement which the parties filed on February 5th.

It was after this agreement when the Staff first learned that Cass had ties to several individuals in the company named as defendants in a federal indictment. The Staff and OPC then met with Mr. Matzdorff with Cass County and with Mr. England representing Cass County to discuss this indictment.

And through this meeting and follow-up data requests that the Staff sent to Cass County, the Staff

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concluded that the federal indictment has no impact on the Staff's audit or upon the terms of the Stipulation and Agreement. And the Staff continues to believe that the rate reductions agreed to in the stipulation are in the public interest and since the Staff -- excuse me.

They are in the public interest since the Staff uncovered nothing to suggest that the Staff's audit results were tainted in any way. And for this reason, the

9 Staff recommends that the Commission approve the
10 Stipulation.
11 JUDGE WOODRUFF: Public Counsel wish to make a
12 statement?
13 MR. DANDINO: Yes, your Honor.
14 JUDGE WOODRUFF: All right. May it please the
15 Commission. The Office of Public Counsel represents the
16 Stipulation and Agreement in this case. As Mr. Poston
17 said -- described the situation of the negotiations, our
18 office got involved with it at that early stage at the
19 invitation of the company and the Staff.
20 At that time I believe that there was a --
21 most of the reduction was going to be given to one tier of
22 the MCA and then the access reduction. And Public Counsel
23 thought it would be more in line to divide the reduction
24 between the M-- the two tiers of the MCA in order to bring
25 them a little bit closer together and achieve a greater
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1 reduction for more customers.
2 At that point, we've entered into the
3 stipulation and Agreement. Office of Public Counsel, we do
4 not have any problem with the responses and the information
5 that we've received from the Staff. We've reviewed it and
6 it appears that the funds have been used for the benefit of
7 the ratepayers in Cass County. And with this reduction of
8 rates, we support it, we would ask the Commission to approve
9 it.
10 JUDGE WOODRUFF: Thank you. For Cass County
11 Telephone then?
12 MR. ENGLAND: Thank you, your Honor. I have
13 nothing to add to the presentations of Staff and Public
14 Counsel. Would urge the Commission to approve the
15 Stipulation and Agreement.
16 JUDGE WOODRUFF: Very good. Then we'll go to
17 questions from Chairman Gaw.
18 CHAIR GAW: Thank you, Judge.
19 Ask Staff when you determined the
20 over-earnings in this case, what test year was used?
21 MR. POSTON: 2002.
22 CHAIR GAW: 2002. Was that the only year
23 examined?
24 MR. POSTON: I believe so.
25 CHAIR GAW: Has Staff seen the books and
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1 records of the company for any other year besides that year?
2 MR. POSTON: If I may -- am I on?
3 JUDGE WOODRUFF: I think you are.
4 MR. POSTON: Mr. Winter is here and he
5 actually performed the audit and would better be able to
6 answer your questions, if he may.
7 JUDGE WOODRUFF: Mr. Winter, why don't you
8 come forward and we'll swear you in.
9 (Witness sworn.)
10 JUDGE WOODRUFF: You may be seated. Tell us
11 your name.
12 THE WITNESS: My name is David Winter.
13 JUDGE WOODRUFF: I assume you're employed with
14 the Commission?
15 THE WITNESS: Yes. I'm an accountant with the
16 auditing staff of the Commission, PO Box 360, Jefferson
17 City, Missouri.
18 JUDGE WOODRUFF: Thank you.
19 Ask your questions.

20 CHAIR GAW: Thank you, Judge.

21 DAVID WINTER testified as follows:

22 QUESTIONS BY CHAIR GAW:

23 Q. Mr. Winter, I'll ask you the same question.

24 First of all, the test year, as I understand it, was the

25 year 2002. Is that calendar year?

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1 A. Yes. Our test year ran through 12/31/2002.
2 we also looked -- on an analytical basis we looked at
3 previous years to determine whether those years fluctuated,
4 high, low, in between. We also looked at the other
5 financial statements of Cass County from 1988 through 2002.

6 Q. All right. 1998 through 2002?

7 A. Yes, sir.

8 Q. What did you determine when you looked through
9 those other years?

10 A. Everything was -- from our analytical review,
11 everything was pretty much in line, what we would normally
12 see.

13 Q. I guess what I'm asking is, when you used the
14 test year 2002 and found -- I assume you found these
15 over-earnings in that test year?

16 A. Yes, sir.

17 Q. Would that have been -- if you had used those
18 other years from 1998 forward, do you think you would have
19 varied very much in regard to what you would have found as
20 to over-earnings?

21 A. We started noticing over-earnings when we did
22 our analytical review. And 2002 was probably the largest we
23 saw because it was pretty much zero or positive need a rate
24 increase. Most of the increase that we're seeing came from
25 probably Universal Service Fund dollars they were getting

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1 from NECA.

2 Q. Okay. When you say that's where the source of
3 it was, does that mean anything in regard to whether or not
4 they received more than what they were entitled to receive?

5 A. No.

6 Q. It just means that that amount coupled with
7 their other revenues resulted in total revenues that you
8 believe exceeded what should be the case going forward?

9 A. Yes.

10 Q. Have you looked at -- is this the first review
11 that you personally have done of this company?

12 A. Yes, it is.

13 Q. All right. Do you know when the last review
14 was done of the company previous to this one?

15 A. This company is rather new. It was really
16 established I believe in 1995, 1996. When Cass County was
17 formed they bought some exchanges from GTE. That was
18 probably a series of exchanges that were purchased. There
19 was another purchase in the southeast part of the state and
20 another piece in the southwest part of the state. And this
21 is the first time we've really looked at their rates since
22 that period of time.

23 Q. Okay. So you would say since the company has
24 come into existence, this is their first review?

25 A. Yes, sir.

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1 Q. And the purchase -- was the purchase that was
2 done in 1995, was that an asset purchase or a corporate
3 stock purchase?

4 A. It was an asset purchase. They sold the

5 exchanges. It was a standard contract for X dollars at that
6 particular time.

7 Q. All right. The stipulation and the settlement
8 in regard to the amount of over-earnings and -- I guess
9 would be -- results in a revenue decrease --

10 A. Yes.

11 Q. -- correct?

12 And is there a rate of return authorized as a
13 result of this stipulation?

14 A. No, there's not. It's a dollar settlement.

15 Q. Yes. Okay. Was there an authorized rate of
16 return previous to this? How were rates determined prior to
17 this stip since it was a new company?

18 A. As part of the agreement for this -- just not
19 for Cass County, but for all the GTE exchanges that were
20 bought in 1995, 1996, the agreement was that they would
21 adopt GTE's rates. In other words, the rates that GTE had
22 in that particular time would just flow straight over to
23 Cass County or, as I said, to the other companies, BPS and
24 Ozark and Modern Telephone which was bought by Northeast
25 Missouri Rural. It was just a straight -- they just changed

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1 the tariffs, the same rates.

2 Q. Okay. The revenue stream then that came into
3 the company, were those revenues -- I guess they would have
4 been paid out in the form of expenses of the company and in
5 shareholder profits. That would be the case, wouldn't it?
6 Revenues of Cass County, Cass-- CasTel?

7 A. Revenues? The revenue streams coming into the
8 company?

9 Q. That were going out. After the revenues come
10 in, where do they go?

11 A. This particular company usually turned the
12 revenues back -- they did two things. They primarily put
13 the money back into the company, back into plant.

14 Q. Okay. What kinds of things did they do?

15 A. There in the process they upgrade their
16 switch. Basically they built a new telephone company. They
17 put a fiber ring in, they provide fiber, they provide DSL
18 services to their customers. They've spent a great deal of
19 money on plant and plant improvements since they bought the
20 company.

21 Q. Okay. And the decisions that -- the decisions
22 to do that would have been made by whom?

23 A. Mr. Matzdorff as president.

24 Q. Okay. Who are the corporate officers of this
25 company?

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1 A. I can give you one name. I don't have the
2 other two names in front of me. It's Mr. Ken Matzdorff is
3 one. And I'll have to defer to -- I don't have those other
4 two names in front of me right now.

5 Q. You have them somewhere though?

6 A. Yes, I do.

7 Q. Okay. So the investments that were made back
8 in the company, did that take up all of the corporate
9 profits then?

10 A. Most of the corporate profits. They did --
11 the other piece of Cass County is that it's a sub-S
12 Corporation.

13 Q. Yes.

14 A. So some of the profits were paid to the
15 stockholders to pay their taxes.

16 Q. who are the stockholders or are those -- is
17 this an open company or is it privately held?
18 A. It's privately held. There's a number of
19 different stockholders. I don't know if I can divulge the
20 number of stockholders, but there's a number of stockholders
21 right now.
22 Q. I believe there was reference earlier to some
23 information that came out after this initial settlement was
24 reached regarding CasTel Company and perhaps some federal
25 investigation; is that correct?

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1 A. Yes.
2 Q. Can you tell me what you know about that?
3 A. There was a federal indictment that came down
4 that we first became aware of in mid-February. It involved
5 organized crime on the East Coast in relationship to a
6 couple different schemes that they had developed.
7 One scheme was to have these 1-800 numbers.
8 People would call the 1-800 numbers and then their phone
9 number would go to another company, in this case was
10 Overland Data.
11 Overland Data would use that information
12 and -- through another company called USP&G, I believe,
13 which was a third party aggregator, which you see in the
14 industry. And then they would put those charges on a
15 telephone -- on your bill, for instance, if you called that
16 number. It would show up as a -- I believe it's a voice
17 mail number.
18 Q. was that voice mail number -- was that a voice
19 mail service that was continued thereafter on your phone
20 bill?
21 A. In most cases what I've seen through the
22 indictment, that you would -- once you got that number on
23 there, that voice extra service, it would stay on there.
24 Q. All right. So there's some sort of an
25 allegation about -- that that was a cramming --

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1 A. That was --
2 Q. -- mechanism?
3 A. -- a cramming. In this particular case, what
4 came out in the argument was Mr. Matzdorff's name was on as
5 president in 19-- I believe 1998, 1999 of USP&G, which is
6 the cramming company, which is the agg--
7 Q. Was it USP&C or USP&G?
8 A. Is it P&C? USP&C probably.
9 Q. And how is that company, if at all, tied into
10 the company that's in front of us?
11 A. The only -- the only common denominator was
12 Mr. Matzdorff.
13 Q. You mentioned another company. Was it
14 Overland --
15 A. Overland.
16 Q. -- Park?
17 Overland Data Center?
18 A. Overland Data has no relationship to this
19 company or to LEC, LLC.
20 Q. All right. They don't have any relationship
21 at all?
22 A. No. Not to Staff's knowledge.
23 Q. Have you ever heard of an affidavit that may
24 have been filed that said that something to the effect that
25 LEC received -- do you know who LEC is? Let me strike that

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1 first question.
 2 A. There's two LECs.
 3 Q. All right. Tell me who they are.
 4 A. There's Local Exchange Carriers, which was an
 5 investment vehicle to buy Spectra Communications. This is
 6 another case that was before the Commission. And there's
 7 Local Exchange Company, which is the holding company of Cass
 8 County Telephone.
 9 Q. Are those two LECs related to one another?
 10 A. There's -- there's probably some common
 11 stockholders at the time.
 12 Q. Where are they based?
 13 A. They're based in Kansas City.
 14 Q. And where is Overland Data Center based?
 15 A. I believe it's Overland Park, Kansas.
 16 Q. Let me refer to -- let me ask you this. Have
 17 you heard about any allegation that Local Exchange Company
 18 received money and I'll say in the form of millions of
 19 dollars from Overland Data Center which, in turn, received
 20 millions of dollars from Local Exchange Company's
 21 subsidiary, CassTel? Have you heard anything about that?
 22 A. I have not. The only thing I have seen is in
 23 the indictment which indicates there was \$940,000 that went
 24 from Overland Data to LEC, Local Exchange Company, LLC.
 25 We inquired as to -- into where that money

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1 came from and why it was sent to Local Exchange Company.
 2 And the answer was is they were in the process of buying
 3 Spectra Communications at the time.
 4 Local Exchange Carriers had not been fully set
 5 up to include the bank accounts, so the down payment that
 6 was being paid for the GTE properties -- at the time Spectra
 7 properties -- was coming through the Local Exchange Company
 8 bank accounts and then they were transferred out to pay GTE
 9 for the properties. As to the hundreds of millions of
 10 dollars, I have no idea.
 11 Q. I don't know about hundreds of millions.
 12 A. Millions of dollars, I --
 13 Q. Okay. Tell me how that money went again, the
 14 money transfers. Could you do that?
 15 A. Do we have a -- can I use this a second?
 16 Q. If somebody knows how to make it work.
 17 A. Are these erasable?
 18 Q. I think you go over here to this, don't you?
 19 A. Is it dry eraser?
 20 JUDGE WOODRUFF: I think so.
 21 THE WITNESS: Now, I don't want to get in
 22 trouble if it doesn't erase.
 23 JUDGE WOODRUFF: There are markers there,
 24 that's why I assume it's for use.
 25 THE WITNESS: We're going to put this in the

00017

1 categories of company and carrier. Company -- let's see if
 2 we can do this.
 3 BY CHAIR GAW:
 4 Q. I think that's an electronic thing.
 5 JUDGE WOODRUFF: We've got a paper board over
 6 there.
 7 THE WITNESS: We've got a paper board. Okay.
 8 JUDGE WOODRUFF: Since I don't know how to use
 9 the technology.
 10 CHAIR GAW: I don't know how to use it either.
 11 That's better. We'll just use that. Turn it just a little

12 bit more, Mr. Winter, so they can -- I don't know, Judge,
 13 what --
 14 MR. ENGLAND: I don't think he's going to find
 15 a clean sheet.
 16 BY CHAIR GAW:
 17 Q. May have to turn it over and use the back side
 18 of one of those pages. I mean like flip it -- whatever
 19 works. Can you do that?
 20 A. Yeah. We can do that. We're going to use the
 21 cardboard, if that's okay.
 22 Q. Whatever works.
 23 A. Permanent record here.
 24 what we've got -- we're going to talk about
 25 carrier and company. Okay? Carrier equals -- and I'm going
 00018
 1 to use it as the investment vehicle for Spectra. It was an
 2 investment company that was set up to invest in Spectra
 3 Communications. So we'll do that -- and I take no
 4 responsibility for my writing. The next one was company.
 5 That is the company -- Local Exchange Company that owns
 6 CasSTel or Cass County Telephone.
 7 Q. All right.
 8 A. Per the indictment, what happened was there
 9 was an Overland Data that transferred money, 900 and -- I
 10 believe \$940,000 to the company, Local Exchange Company.
 11 They transferred money to the company because, from my
 12 understanding from our investigation, the carrier -- Local
 13 Exchange Carrier, the investment vehicle to buy Spectra, had
 14 not set up -- been fully set up to include their banking
 15 arrangements.
 16 The money went into Cass County Company and
 17 then it came back out here to buy the GTE exchange. In
 18 other words, it was just -- it came in and went out. It was
 19 not -- it was more set up because they had not set up their
 20 banking arrangements. It was said -- they need to money to
 21 close with GTE to buy the GTE properties at that particular
 22 time so they transferred the dollars into here.
 23 Now, what the indictment says is that the
 24 \$940,000 was ill-gotten gain and that's why it shows up.
 25 Local Exchange Company, those dollars, because it went to
 00019
 1 that company. Whether it went in and out, it still went
 2 here and that's why it was mentioned in the indictment.
 3 Q. What year did that occur?
 4 A. 2000, I believe. That was -- that was a case
 5 before the Commission and I believe it was TM-2000-262; is
 6 that right? I have my notes. Excuse me, it's TM-2000-182,
 7 the purchase of GTE properties by Century Telephone and
 8 Spectra.
 9 Q. Okay. Now, the purchase of the -- okay. Help
 10 me out here. The money transfer went from Overland Data --
 11 A. To CasSTel.
 12 Q. -- to CasSTel?
 13 A. Well, to the company, the holding company of
 14 CasSTel.
 15 Q. The holding company, which is --
 16 A. The company --
 17 Q. -- LEC --
 18 A. -- LEC.
 19 Q. -- LLC?
 20 A. Yes.
 21 Q. And then it went from there to where?
 22 A. GTE.

23 Q. Okay. And then what did they get for that?
 24 A. They bought -- what they got for that was they
 25 bought the GTE Midwest -- a portion of the GTE Midwest

00020

1 properties in the state of Missouri.

2 Q. All right.

3 A. There was three sales in the state of Missouri
 4 of GTE properties. The first sale is what we previously
 5 talked about, the Modern Telephone, which was exchanges up
 6 in the northeast part of the state. The other piece was
 7 Ozark Telephone, which is in the far southwest of the state.
 8 BPS, which is on the other side, and then Cass County, which
 9 is connected to Kansas City.

10 Q. Now, all of those carriers that you just
 11 mentioned --

12 A. That was the first GTE sale.

13 Q. That was the first sale. Are those carriers
 14 related to one another that you just mentioned?

15 A. No. No. They're all independent.

16 The second sale, GTE came out and said we're
 17 selling properties. So the second sale involves this
 18 \$940,000. That was the CenturyTel piece that bought the
 19 second sale of GTE properties in the state of Missouri. And
 20 that was in TM-2000-182.

21 Q. Okay. Now, where you have -- you have this
 22 top line up here you have carrier equals -- you have
 23 Spector?

24 A. Spectra. That was the investment vehicle that
 25 was set up for investors to buy into -- to get some equity

00021

1 dollars to buy in-- to buy the GTE properties so they --
 2 they set up another company called Spectra.

3 Q. Is it Spectra or Spector? That's what --

4 A. S-p-e-c-t-r-a.

5 Q. So what you have up there is actually --
 6 should be t-r-a- instead of t-o-r. Correct?

7 A. All right.

8 Q. Just making sure there wasn't another
 9 company --

10 A. Yeah.

11 Q. -- that had a similar name.

12 A. Yeah. It's called Spectra Communications.

13 Q. Okay.

14 A. And I -- yeah, I spelled it right there.

15 Q. Now, how is Overland Data related to Local
 16 Exchange Company?

17 A. As far as I know, there is no connection
 18 between the two companies whatsoever other than there is
 19 off -- some people that were investors in Overland Data in
 20 the indictment owned pieces of Overland Data.

21 Q. So why would they give money, \$940,000 from
 22 Overland Data to --

23 A. I can't --

24 Q. -- Local Exchange Company?

25 A. That's -- my understanding, that's how they

00022

1 were taking care of their equity piece to buy --

2 Q. Whose equity piece?

3 A. The other stockholders that were buying into
 4 Spectra.

5 Q. Who were they? You're saying the other
 6 stockholders.

7 A. I do not have a list of those. There's

8 probably somebody from the company that could probably tell
9 you that.

10 Q. Do those stockholders have interest in any of
11 these other companies that you've got listed up there?

12 A. My understanding, they have an interest in
13 Local Exchange Company. And I am not quite sure -- I have
14 no idea who the stockholders are of Local Exchange Carrier,
15 I have no idea.

16 Q. Is there any common -- any common connector in
17 between -- that's obvious to you between CasSTel and Local
18 Exchange Company other than the ownership?

19 A. Not to my knowledge.

20 Q. An employee, perhaps?

21 A. No.

22 Q. Let me ask you, how did you find out about
23 this \$940,000 transfer?

24 A. It's stated in the -- first of all, it's one
25 of the Staff questions that I had when I read the

00023

1 indictment. It was listed for the \$940,000 that went from
2 the Overland Data to LEC, LLC. From there, we inquired to
3 the company what happened here.

4 Q. All right. And the other thing that happened
5 there was -- I assume is that assets were transferred from
6 GTE to CasSTel?

7 A. No. CasSTel was not involved in that
8 arrangement.

9 Q. Where did the assets go?

10 A. The assets went to Spectra.

11 Q. To Spectra.

12 A. Spectra and to CenturyTel.

13 Q. To CenturyTel?

14 A. There was -- remember we can go back out when
15 the second series of sales was to Spectra CenturyTel. And
16 that's who GTE sold the property to.

17 Q. How are Spectra and CenturyTel connected?

18 A. Spectra -- my understanding is CenturyTel was
19 recruited to buy more equity to buy the GTE properties and
20 connected as into a business relationship. I do not know
21 if -- at that time what the business relationship was. I'm
22 sure there's somebody here that could tell you -- give you
23 more information.

24 Q. Who might that be, do you know?

25 A. I believe Mr. Matzdorff is here.

00024

1 Q. Okay. Go ahead.

2 A. Previously you had asked whether Cass County
3 had -- the officers of Cass County. I believe there's
4 three. We don't have the right information. I'll get that
5 information to you.

6 Q. Now, who owns CasSTel?

7 A. CasSTel is owned by Local Exchange Company.

8 Q. 100 percent?

9 A. It's -- yes, 100 percent is owned by Local
10 Exchange Company.

11 Q. And when --

12 JUDGE WOODRUFF: If I can interrupt,
13 Mr. Winter, I've had a request that you speak into the
14 microphone. If you'd come over to the podium.

15 THE WITNESS: Oh, okay.

16 Local Exchange Company owns CasSTel Telephone.
17 Within Local Exchange Company, they have a large number of
18 equity investors.

19 BY CHAIR GAW:
20 Q. In Local Exchange Company?
21 A. Yes. Local Exchange Company, there's a large
22 number of equity investors.
23 Q. And were you given any of those -- lists of
24 any owners?
25 A. Yes. We have a complete list of all the
00025
1 owners of Local Exchange Company, yes, we do.
2 Q. All right. In 1995, that would have been when
3 CasTel was formed. How does that relate in time to the
4 Spectra GTE transfer?
5 A. This is about five years afterwards.
6 Q. Which -- five years after what?
7 A. 1995. This was about 1999, 2000 time period.
8 Q. For purposes of the record --
9 A. Excuse me.
10 Q. -- when you're pointing, I'm just trying to
11 get you to describe it.
12 A. Cass County was established in 1995, 1996.
13 Spectra Communications was 1999, 2000 time period. GTE at
14 the time nationwide was examining a number of their rural
15 exchanges, a number of states of where to stay in business,
16 where to leave.
17 For instance, they sold the state of Arkansas,
18 they've sold the state of Alabama, Missouri -- they're no
19 longer in the state of Missouri. There's other states also.
20 They've sold some of the rural exchanges they've had. And
21 this is -- the Spectra piece, the 2000 piece was the second
22 phase of that divestiture of those exchanges.
23 Q. Okay. The purchase though of the -- and the
24 formation of CasTel, how did that come about? How did
25 the -- where did the money come from to purchase the assets?
00026
1 A. The money at that particular time came from --
2 I believe it's a CoBank loan. And I do not have that amount
3 in front of me. And then there was a series of investors
4 that put equity money into -- for the difference from the
5 CoBank piece to purchase the GTE exchanges.
6 Q. What do you mean by a CoBank loan?
7 A. CoBank is a -- it is a part of I believe
8 agricultural -- they provide credit to telephone companies,
9 rural telephone companies, water companies. And they're
10 kind of a step before you go to RUS for money. And CoBank
11 provided, I believe, the bulk of the dollars to purchase
12 Cass County Telephone through a loan they gave.
13 JUDGE WOODRUFF: Mr. Winter, if you'd move the
14 microphone in front of your mouth more, they're having a
15 hard time hearing you over the Internet.
16 BY CHAIR GAW:
17 Q. Where did you say USP&C was based, if you did?
18 A. I did not say, but I do believe it's in
19 Overland Park, Kansas also.
20 Q. And do you know who owns USP&C?
21 A. No, I do not. The indictment does provide
22 some information as to that, but I do not have that
23 information right now.
24 Q. Have you been in touch with anyone that's
25 conducting the investigation on the indictments that you
00027
1 mentioned?
2 A. No, I have not.
3 Q. Has anyone with Staff been in touch with

4 anyone to that -- conducting that investigation, to your
5 knowledge?

6 A. Not to my knowledge.
7 JUDGE WOODRUFF: Commissioner Clayton?
8 CHAIR GAW: I'm going to temporarily halt
9 inquiry.

10 QUESTIONS BY COMMISSIONER CLAYTON:

11 Q. In my notes I'm a little confused, so I want
12 to go back to your chart here. And I apologize to the
13 people listening that we can't get that displayed.

14 You made reference to several stages of the
15 sale of the GTE rural exchanges --

16 A. Yes.
17 Q. -- in the state of Missouri; is that correct?

18 A. Yes.
19 Q. How many total stages were there?

20 A. There were three stages.

21 Q. And the first stage occurred in approximately
22 what year?

23 A. 1995, 1996. And that was the individual
24 exchanges that were sold. And that came the genesis of Cass
25 County Telephone.

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1 Q. Okay. So that first sale they became what
2 CasTel is today?

3 A. Yes.

4 Q. Okay. The second stage -- and actually let me
5 go back. Just briefly, you listed a number of properties
6 that were included in that. You mentioned Ozark?

7 A. Ozark Telephone is in the southwest part of
8 the state. It's in McDonald County.

9 Q. And you also mentioned Modern?

10 A. Modern is owned by Northeast Missouri Rural.
11 It is -- I can't give you a physical description, but it's
12 northeast of Kirksville.

13 Q. Northeast of Kirks-- can't get too much
14 further northeast of Kirksville. Right?

15 A. No. Northeast -- northeast, east of
16 Kirksville is where it is.

17 Q. And those properties are currently part of
18 CasTel?

19 A. No. Those were part of the properties that
20 were sold to different companies, but those were divested by
21 GTE.

22 Q. Okay. I understand. Stage one involved a
23 number of purchasers, not just CasTel?

24 A. Yes.

25 Q. Okay. I was confused. Thank you.

00029

1 Now, the second stage included some additional
2 GTE properties --

3 A. Yes.

4 Q. -- correct?

5 A. It did.

6 Q. And generally what were those properties
7 again?

8 A. Those properties were spread throughout the
9 state of Missouri. It's very difficult to give you a
10 description of exactly where they're at, but they were
11 mostly -- again, in the rural areas of the state of
12 Missouri.

13 Q. Okay. And were there multiple purchasers or
14 was there one purchaser?

15 A. The way GTE did it, they only wanted to sell
16 to one person those exchanges. They did not want to divide
17 them up into three or four different sales. So when they
18 put a state out to bid, it was one purchaser for their
19 properties in the state.

20 Q. Okay. Now, that's different than what
21 happened in stage one. Correct?

22 A. Yes.

23 Q. So stage two there was one purchaser for the
24 whole lot?

25 A. Yes.

00030

1 Q. And that was Spectra?

2 A. That -- that was Spectra, yes, sir.

3 Q. Okay. And Spectra is owned entirely by Local
4 Exchange Carrier?

5 A. That was -- Local Exchange Carrier was a
6 investment vehicle. And I believe they owned the stock of
7 Spectra, but I'm -- I'm fuzzy on that piece.

8 Q. Okay. Do you know the purchase price for the
9 total package of second stage GTE properties?

10 A. I do not have that information with me.

11 Q. Was it --

12 A. It's public knowledge.

13 Q. Was it 940,000 or was it more than 940,000?

14 A. It was several million dollars. It was -- I
15 don't have that information. I believe there are people
16 here that could give you that information, but it was
17 considerably more than \$940,000.

18 Q. Okay. Well, several million if we say
19 \$3 million, then a third of the purchase price came from
20 Overland Data?

21 A. Yes. I believe you're talking well over
22 \$100 million.

23 Q. Oh, 100 million?

24 A. Yes.

25 Q. That's significantly different than several

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1 million.

2 A. I believe. If I -- I'm just going from my
3 remembrances of the deal.

4 Q. Well, maybe we can find that out from
5 somebody, just generally what that price is. We can narrow
6 it down somewhere closer between several million and several
7 hundred million. There's some zeroes that we're missing
8 somewhere.

9 A. Yeah.

10 Q. Now, when Overland Data transferred in the 2--
11 excuse me, the \$940,000 into Casstel, Casstel immediately or
12 soon thereafter sent a check for the same amount to GTE to
13 effectuate that purchase of the second stage properties?

14 A. The dollars were not transferred to Casstel.
15 They were -- they were -- move this over here. They were
16 transferred to Local Exchange Company.

17 Q. Okay. So they went to Local Exchange Company
18 and then LE -- LE Company sent it to GTE?

19 A. Yes. Yes.

20 Q. Okay.

21 A. Again, Cass-- the company owns Casstel.

22 Q. I understand.

23 A. And the dollars went from Overland Data to
24 Local Exchange Company and then from Local Exchange Company
25 it bounced over here for the purchase of the second phase of

00032

1 the GTE exchanges.
 2 Q. And when that money was transferred and GTE
 3 transferred title, at that point the properties were titled
 4 as Spectra?
 5 A. I believe they were titled Spectra CenturyTel.
 6 Remember when we went back, there was two -- there was two
 7 equity investors in the second sale. There was -- and I
 8 mentioned that sales case. There was Spectra
 9 Communications, which was an investment vehicle of a number
 10 of different stockholders and there was also Century
 11 Telephone. So both of those two entities were the
 12 purchasers of the second phase of those GTE properties.
 13 Q. Now, at any point did Local Exchange Company
 14 ever own an interest in Spectra?
 15 A. Not to my knowledge.
 16 Q. How soon after the creation of Spectra was
 17 Local Exchange Carrier created?
 18 A. I can't answer that question.
 19 Q. And we do not -- we're not aware of who the
 20 shareholders or directors of Overland Data Company are?
 21 A. Not to my knowledge.
 22 Q. Okay. And I think you've already answered
 23 this. CassTel is owned 100 percent by Local Exchange
 24 Company?
 25 A. Yes.

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1 Q. And did you state how many owners, how many --
 2 and if you can't give me the exact number, that's fine --
 3 how many multiple of owners is -- are there of Local
 4 Exchange Company?
 5 A. We have that information, by it's been
 6 classified as confidential. We can probably provide you
 7 that information.
 8 Q. Okay. And then are we aware of who the
 9 shareholders are of Local Exchange Carrier?
 10 A. No.
 11 Q. We are not. Okay.
 12 A. I was going to say, the reason why -- again,
 13 why we put that on there, because the indictment is
 14 rather -- it mentions LEC three times. One as a definition
 15 of a local operating company or Local Exchange Company and
 16 then it gets in -- as a telephone acronym name, and then it
 17 gets into Local Exchange Carrier and Local Exchange Company.
 18 Q. Well, the indictment, when it references LEC,
 19 does it mean the carrier or the company?
 20 A. They're both mentioned.
 21 Q. Both of them are mentioned. Are either Local
 22 Exchange Carrier -- and I'm using proper names. Local
 23 Exchange Carrier or Local Exchange Company, are either of
 24 them indicted?
 25 A. No.

00034

1 Q. Neither are subject defendants?
 2 A. No.
 3 Q. Is Overland Data a named Defendant?
 4 A. I believe the shareholders of Overland Data
 5 are defendants in --
 6 Q. In their entirety or just a few shareholders
 7 of Overland Data?
 8 A. I do not know all the shareholders, but I
 9 believe some of the shareholders are indicted as part of the
 10 indictment. Just like Local Exchange Company, some of the

11 stockholders have been indicted.
 12 Q. Okay. Regarding USP&C -- excuse me.
 13 Before I go to that, Local Exchange Carrier,
 14 Local Exchange Company, are either of them utilities under
 15 Missouri law?
 16 A. No.
 17 Q. Okay. And Overland Data certainly would not
 18 be.
 19 A. No.
 20 Q. It's out of Kansas.
 21 USP&C, is it a utility under Missouri?
 22 A. No.
 23 Q. Are you aware of any relationship between
 24 USP&C and Local Exchange Company or Local Exchange Carrier?
 25 A. The only thing I'm aware of is that they might

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1 have similar stockholders. And that's the only thing I'm
 2 aware of.
 3 Q. Okay. At any point in your investigation
 4 subsequent to learning about the indictment, has the subject
 5 company, CassTel or Local Exchange Company, provided all the
 6 information that you have requested?
 7 A. They've been very open with any information.
 8 Any request that we've -- we've asked for, they've given to
 9 us a very quickly.
 10 Q. Is there any other information that you
 11 believe would be helpful in determining whether or not a
 12 regulated utility has been involved in any alleged
 13 wrongdoing at all?
 14 A. Once we found out, we went through there and
 15 had a meeting with the company and followed up with data
 16 requests. And we believe we're satisfied that Local
 17 Exchange Company in our earnings investigation has not been
 18 tainted by this indictment.
 19 Q. In your assessment in the rate case, is it
 20 your opinion that the books, accounting records appear to be
 21 in order and that there is no overt appearance of
 22 impropriety?
 23 A. The books, as far as we can see from our audit
 24 tests and from the audit financial statements we have seen,
 25 are in order. We don't see anything out of line that we

00036

1 would -- that would call into question the earnings of the
 2 company.
 3 JUDGE WOODRUFF: If I could interrupt again,
 4 apparently the podium mike is not functioning. Why don't
 5 you come back over to the witness seat. We have a lot of
 6 viewers out there and they keep us sending me e-mails. All
 7 right.
 8 COMMISSIONER CLAYTON: Do you want me to start
 9 over, Judge?
 10 JUDGE WOODRUFF: No. That's not necessary.
 11 BY COMMISSIONER CLAYTON:
 12 Q. Did Staff, when looking at CassTel, determine
 13 whether there were any types of inappropriate telephone or
 14 Internet billing charges that were not authorized by the
 15 customer?
 16 A. What we did, we did a two-prong attack on that
 17 particular area. First, we got our consumer area --
 18 consumer complaint area involved in that and they looked --
 19 went back and looked at the complaints by -- about CassTel.
 20 We found very, low non-existent complaints about CassTel and
 21 their charges on the bill.

22 And the second piece, we went back and looked
23 if there was any contracts between any of the indicted
24 parties and CasTel in relationship of the cramming
25 allegations. There are no contracts at the present time

00037

1 that -- the information we provided that were a cramming --
2 cramming contracts or third-party contracts with CasTel.

3 Q. This type of activity is called cramming?

4 A. Yes.

5 Q. And exactly what is the definition of
6 cramming?

7 A. Cramming is putting unauthorized charges on a
8 legitimate telephone bill. In other words, we have this --
9 charges, for instance, from Overland Data. We'll take
10 Overland Data as an example.

11 They provided the telephone numbers that were
12 called into their 1-800 number. They gave those telephone
13 numbers to the third-party aggregators, which is US&C, I
14 believe. US&C has contracts probably with a number of
15 companies. In fact, one of the companies mentioned in the
16 indictment was Southwestern Bell. And what they would do,
17 they --

18 Q. How named Southwestern Bell?

19 A. It was just that they were doing the same
20 scheme through Southwestern Bell.

21 Q. Oh, doing it through, but they weren't doing
22 the scheme?

23 A. They weren't doing. They were just using -- a
24 legitimate third-party biller was putting these things on
25 the bill, they were being billed as voice mail charges. And

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1 that's what you're cramming, an unauthorized charge onto
2 your bill -- onto a customer's bill.

3 Q. And the customer services department was not
4 able to find any amount of cramming in this instance that
5 would be greater than I guess the averages --

6 A. No.

7 Q. -- with any other company?

8 A. No. They've had rather good quality of
9 service reports and customer service reports about CasTel.

10 Q. Okay. Does Staff believe there are any other
11 safeguards that the Commission should consider with regard
12 to the allegations surrounding the parties in this case?

13 A. I believe we've pretty well covered -- we're
14 continuing to monitor the situation. We're monitoring
15 the -- there's a sale process going on with some of the
16 shareholders. We're monitoring that to ensure that nothing
17 like this happens with one of our companies in the state of
18 Missouri.

19 Q. Is Local Exchange Company a Missouri
20 corporation or is it a Missouri LLC? I think you said it
21 was an LLC.

22 A. I believe it's either a Delaware or Maryland
23 company. I'm not quite sure.

24 Q. And it owns properties in multiple states --

25 A. I --

00039

1 Q. -- or are you aware?

2 A. I do not know.

3 Q. You're not aware of that.

4 Okay. Does Staff believe it has the tools
5 necessary to monitor the transfers that you referenced
6 before --

7 A. Yes.
8 Q. -- and the ongoing activity of the company?
9 A. The company has been very forthright with us
10 and been very willing to work with the Staff regarding
11 investigation and monitoring the current situation with the
12 company. So I think we have enough tools right now to take
13 care of it.
14 COMMISSIONER CLAYTON: Okay. Thank you.
15 JUDGE WOODRUFF: Chair Gaw?
16 CHAIR GAW: Yeah. Thank you, Judge.
17 FURTHER QUESTIONS BY CHAIR GAW:
18 Q. You may have said this, I'm not sure. Did you
19 say that Local Exchange Company is a certificated
20 telecommunications company?
21 A. They're not certificate, no. They're not
22 certificate. They're a holding company. The certificate
23 company is CassTel or Cass Telephone Company.
24 Q. Do they own any other certificated companies?
25 A. Not to my knowledge in the state of Missouri.
00040
1 Q. Do they own anything else other than CassTel?
2 A. I believe they might, but I'm not sure at the
3 present time what they own.
4 Q. And the money for the purchase of the CassTel
5 assets came from where?
6 A. From stockholders and from CoBank.
7 Q. Okay. And the stockholders, are they the same
8 stockholders that own stock in Local Exchange Company today
9 as owned them when the purchase was made?
10 A. I can't give you a definitive answer on that.
11 I believe -- I can't give you a definitive answer. I do not
12 think there's been much movement in the stockholders of LEC,
13 LLC since the purchase of Cass County Telephone.
14 Q. Were the stockholders of Local Exchange
15 Company, LLC individuals or corporations or other entities?
16 A. You saw a combination of three things. It's
17 one company, there's individuals and then there's trust
18 funds.
19 Q. Is it true that Mr. Matzdorff at one time was
20 a high-ranking executive officer of USP&C?
21 A. The only thing I know is what I read in the
22 newspaper that he was president of USP&C.
23 Q. Do you know when that was?
24 A. I believe until when he sold his interest
25 in -- it may be up to 19-- the late 90's. I can't give you
00041
1 a specific date.
2 Q. At one time Mr. Matzdorff had an interest in
3 USP&C. Is that what you're saying?
4 A. It's my understanding, yes.
5 Q. As the president?
6 A. It's my understanding, yes.
7 Q. And he sold his interest; is that correct?
8 A. That's what was relayed to us, he had sold his
9 interest in it.
10 Q. Was he 100 percent owner at the time?
11 A. It was relayed to the Staff that he was -- had
12 a very, very small piece of the company.
13 Q. And do you know who the purchasers of his
14 interest were?
15 A. No, I do not.
16 Q. Did you have occasion to read an article in
17 the village -- from The Village Voice that I think may be

18 written by a Tom Robbins dealing with Cass County?

19 A. No.

20 Q. So you haven't seen that article?

21 A. No, I have not.

22 Q. So you wouldn't have had an occasion to check

23 to see whether or not some of the statements made in that

24 article were accurate?

25 A. No. I've not seen the article.

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1 CHAIR GAW: That's all I have right now for

2 Mr. Winter.

3 JUDGE WOODRUFF: Mr. Winter, you can go ahead

4 and step down.

5 Do you have any other questions, Chair Gaw?

6 CHAIR GAW: I'll ask Staff, Staff's counsel,

7 if they have any more information about the questions that

8 were asked of the witness, Mr. Winter?

9 MR. POSTON: If I have any more responses to

10 his questions?

11 CHAIR GAW: Yes.

12 MR. POSTON: No, I don't. I believe the 940

13 was actually 970, but that's all.

14 CHAIR GAW: 970-- when you're saying the

15 940,000, it was actually 970,000?

16 MR. POSTON: Yeah. Other than that, I have

17 nothing else.

18 CHAIR GAW: Public Counsel, have you had any

19 occasion to look into any of these questions that we've been

20 asking?

21 MR. DANDINO: Basically, we rely upon the

22 Staff's audit. And when we reviewed it, we were satisfied

23 that it was -- with the results of it. Other than taking an

24 independent investigation, no, we did not.

25 CHAIR GAW: Would Public Counsel have any

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1 concern about some of these -- let me ask you this. Have

2 you seen any of these stories regarding this company that

3 have come out in the last few months in The Kansas City Star

4 or The Village Voice?

5 MR. DANDINO: I saw them in The Kansas City

6 Star. I didn't see them in The Village Voice.

7 CHAIR GAW: Did Public Counsel have any

8 concern about some of the statements that have been made in

9 those stories?

10 MR. DANDINO: Well, at first we did. Just

11 looking at it, we said, what's going on here? And I think

12 after looking at the -- after meeting with the company and

13 then looking at the data requests and discussing with the

14 Staff, you know, we were satisfied.

15 And also we were looking at what -- and the

16 two things that really -- that really made it I think for us

17 is that we were looking at if over-earning -- in an

18 over-earnings case and the history of the company has shown

19 that the revenues derived from it have gone into the

20 plant -- into the company to be used, you know, for the

21 benefit of the ratepayers improving the system and that when

22 this over-earnings occurred, that we were able to -- the

23 company was willing to agree to a reduction in the

24 earnings -- in the revenues in order to eliminate this

25 over-earnings in revenue. We saw it as benefiting the local

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1 ratepayers and also the access ratepayers, plus the 911 --

2 the contract for the 911.

3 And basically we were looking at it in terms
4 of what does this mean for our -- you know, for our clients
5 and we felt comfortable with that.

6 We would say if this was a question of
7 under-earnings and it was -- there was a rate increase, we
8 probably would have taken a much harder look at it. But I
9 think, you know, looking back on it and the confidence we
10 had in Mr. Winter and the Staff, the people that examined it
11 and I think we were very -- we were comfortable with it.

12 CHAIR GAW: Mr. England, are you taking lead
13 on this?

14 MR. ENGLAND: Yes, your Honor.

15 CHAIR GAW: There's been some suggestion by
16 Staff that if the Commission desired to look any further
17 into some of these statements and allegations that have been
18 made in some of these news stories, that we could do that
19 and close this case out and move forward if we wanted to do
20 that.

21 I guess what I'm interested in knowing from
22 you is whether or not you believe that there's -- that if
23 you want to -- first of all, do you want to respond to any
24 of those statements or does anyone from the company wish to
25 respond to those -- some of those stories?

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1 And, second of all, do you have an argument
2 about why the Commission shouldn't look further into some of
3 those allegations?

4 MR. ENGLAND: Those are a lot of questions,
5 your Honor.

6 CHAIR GAW: I know. And if it weren't you, I
7 would have done them one at a time, but I know you can
8 handle it, Mr. England.

9 MR. ENGLAND: I do have responses. I think
10 Staff did a very good job of explaining the situation and
11 responding to your questions. There would be a few nits and
12 picks, but I think the large substance is correct.

13 The thing that I'd like for the Commission to
14 recognize is the fact that Mr. Matzdorff has been involved
15 in the telephone industry all his life. I believe he worked
16 part-time in summers when he put himself through college at
17 Iowa State, went to work immediately for Contel, at that
18 time, Telephone Company.

19 I got to know him in the early 80's when he
20 was working for Contel headquartered in Wentzville,
21 Missouri. Then he went -- I mean, he progressed through the
22 ranks there, had increasing areas of responsibility, was
23 with Contel until they were acquired by GTE.

24 He came back to Missouri, he had been
25 stationed in Dullus -- around Dullus Airport in the eastern

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1 region at that time. Came back to Missouri, went to work
2 for Fidelity Telephone Company where he worked for several
3 years, then had an opportunity to go out and acquire an
4 ownership interest in his own telephone company, and that
5 was the Cass County Telephone Company.

6 His whole life has been involved in the
7 telephone business and nothing else. He look this
8 company -- acquired it on April 1st, 1996. Our office was
9 fortunate enough to be able to represent them there.

10 They had -- approximately 40 percent of their
11 lines were multi-party service at that time. These folks in
12 Peculiar, in Drexler, Garden City were being served by
13 analog service that had been put in service in the 1960's.

14 Since 1996 they have eliminated all party line
 15 service. They have implemented digital switches in all of
 16 their exchanges. They have rolled out a DSL service to all
 17 of their customers. They've increased the customer count
 18 from approximately 5,700 access line count -- from about
 19 5,700 to about 8,500 access lines today.

20 They have done that without a rate increase
 21 from this Commission. They essentially inherited the rates
 22 from GTE, agreed to provide or charge those, which they did
 23 until this point in time when there's been a situation where
 24 the earnings are finally sufficient that they're excessive,
 25 if you will, and were able to return those to some of the

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1 local subscribers as well as to the access customer.

2 One other thing you may not know is that
 3 during Mr. Matzdorff's tenure with the company, they took
 4 the I believe Drexler exchange, which at that time was
 5 outside the MCA, and collapsed it into the Garden City
 6 exchange, thereby making it part of the MCA, so providing
 7 MCA service to a group of customers that had previously not
 8 had that.

9 I guess it's a long-winded way of saying that
 10 Mr. Matzdorff and this company have been committed to
 11 providing good quality telephone service and have, in fact,
 12 done so.

13 As part of Staff's audit, they got the general
 14 ledger, as they do of any company -- particularly every
 15 small company and that shows every what I call put and take.
 16 That has every receipt and disbursement for at least a
 17 12-month period of time, if not longer. Staff traditionally
 18 looks at that, looks hard at that as well as all the other
 19 financial information.

20 I don't believe there's been any indication of
 21 wrongdoing, any indication of misspent monies. And as
 22 Mr. Dandino indicated, what monies they have made in large
 23 measure have been returned to the company and the people
 24 that they serve.

25 Now, having said all of that, if you feel like
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1 you need further assurances and further information, we're
 2 more than willing to provide that. As Mr. Winter indicated,
 3 we've done that with Staff and Public Counsel up to this
 4 point in time.

5 Our only reservation would be some of that
 6 information I anticipate may be confidential and we, of
 7 course, would want to provide it under a protective order.

8 CHAIR GAW: Mr. England, I did give you at
 9 least an opportunity, if you wish, to respond to any of
 10 the -- to those articles that have been in the paper. And
 11 particularly in regard to whether or not we would do
 12 anything further with this case.

13 I recognize it as not necessarily being tied
 14 to -- from what I've heard so far, to the issue of whether
 15 or not this stipulation should be approved or not, whether
 16 or not there should be further inquiry at least in regard to
 17 some of the alleged connections here that seem to be woven
 18 in some of these articles together. Now, I don't know
 19 whether you want to do that or not, but --

20 MR. ENGLAND: I don't know that it's -- one, I
 21 do not represent Mr. Matzdorff personally. I don't
 22 represent LEC, LLC. I have not been involved at all in any
 23 of the federal proceedings that have been going on, so I
 24 don't think it would be my place to respond. And, frankly,

25 even if it were, probably under the circumstances it would
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1 be best not to.

2 I think as far as the regulated activities of
3 this company are concerned, they're pretty much an open
4 book. And I think they've been examined and, as I said, I
5 think everything is above board.

6 If there's something you feel -- extra that
7 you feel you need in order to give you a comfort level to
8 approve this Stipulation and Agreement, within reason, we're
9 willing to provide it. I mean, that's all I can offer or
10 say at this time.

11 CHAIR GAW: would it be accurate to say
12 that Mr. Matzdorff would rather not testify today?

13 MR. ENGLAND: Well, as with everything, it
14 depends on what you'd ask. I think, frankly, he'd love to
15 testify because he could say a lot better and with a heck of
16 a lot more emotion what I said about how committed he is to
17 providing telephone service to his customers.

18 CHAIR GAW: I understand.

19 MR. ENGLAND: So, I mean, I think again
20 with -- if you're talking about the regulated telephone
21 company, its operations, monies in and out, Mr. Matzdorff is
22 perfectly capable of testifying and telling you about that.

23 CHAIR GAW: My real question is in regard to
24 how that may impact the issue of whether or not we do
25 anything further with inquiring about some of these alleged
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1 connections with some of these companies that appear to be
2 in a number of transactions woven in together. And I'm just
3 giving you the opportunity, if you want to -- since this is
4 obviously a hearing on the Stipulation, that I don't think
5 it's appropriate for us to require it today.

6 MR. ENGLAND: Well, and let me suggest that
7 the Stipulation really only addresses the earnings of the
8 company. It's going to continue to be subject to your
9 jurisdiction and your regulation on an ongoing basis. So if
10 there's anything that comes to light in the future that you
11 all want to inquire about, I don't think by approving this
12 Stipulation and Agreement that's going to preclude you from
13 doing so.

14 CHAIR GAW: I agree with you. I'm just trying
15 to determine whether or not Mr. Matzdorff wants to say
16 anything to us today.

17 MR. ENGLAND: Well, I'll ask him and see if
18 there's anything I haven't said that he'd like to address.

19 MR. DANDINO: Mr. Chairman?

20 JUDGE WOODRUFF: Yes, Mr. Dandino.

21 MR. DANDINO: If I can make just a brief
22 comment. Talking about when you were discussing the
23 interrelationship of the companies and the earnings
24 investigation is that Public Counsel and I believe the Staff
25 did too is that the -- it calls for a three-year rate
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1 moratorium on filing a complaint. Of course, a moratorium
2 does not bind the Commission.

3 And as far as -- and Public Counsel and I
4 believe the Staff also reserve the right to conduct the rate
5 investigation, file a complaint, notwithstanding that, that
6 should the US attorney file an indictment against Cass
7 County or any officer employee of Cass County.

8 It was to that effect that even though we
9 couldn't see anything here, if something would subsequently

10 come up, that we would -- it would still not bind our hands
11 to get involved with this. Thank you.

12 MR. ENGLAND: I'm advised by Mr. Matzdorff,
13 surprisingly enough, that he thinks I did an adequate job
14 explaining everything so we'll leave it at that.

15 CHAIR GAW: I take it he doesn't want to add
16 to that?

17 MR. ENGLAND: Not right now. As I said, if
18 there are additional questions, inquiries about this that
19 you all have, we're willing to respond to them and answer.

20 CHAIR GAW: Take just five minutes, Judge.

21 JUDGE WOODRUFF: Let's take about a 10-minute
22 break. We'll come back at 3:30.

23 (A recess was taken.)

24 JUDGE WOODRUFF: We're back on the Internet
25 again.

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1 Chairman Gaw, did you have anything further?

2 CHAIR GAW: Mr. England, before we close this
3 out, I have got -- I feel that we have a responsibility to
4 get a response on a couple of paragraphs in The Kansas City
5 Star article of February the 14th because it directly
6 mentions CasTel in regard to what they refer to as
7 something that probably was used to launder money from an
8 individual. And I feel like we need a response --

9 MR. ENGLAND: Sure.

10 CHAIR GAW: -- on that and I'd like to ask
11 Mr. Matzdorff his response to it.

12 MR. ENGLAND: Okay. Do you want to have him
13 take the stand?

14 JUDGE WOODRUFF: Good afternoon.
15 (Witness sworn.)

16 JUDGE WOODRUFF: Can you tell us your name,
17 please?

18 THE WITNESS: My name is Kenneth Matzdorff.

19 JUDGE WOODRUFF: And what is your position?

20 THE WITNESS: I am president of Cass County
21 Telephone.

22 THE COURT REPORTER: Could you spell your last
23 name?

24 THE WITNESS: It's spelled M-a-t-z-d-o-r-f-f.

25 KENNETH MATZDORFF testified as follows:

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1 QUESTIONS BY CHAIR GAW:

2 Q. Good afternoon, Mr. Matzdorff.

3 A. Good afternoon.

4 Q. I will ask you first, have you seen the
5 article in The Kansas City Star that was dated 2/14 of '04
6 that's entitled Belton Exec Linked to Phone Scam?

7 A. Yes, I have.

8 Q. All right. In that article there are three
9 paragraphs. And if you wouldn't mind -- and bear with me,
10 please. I will read them to you and then I'd like to get
11 your response, in particular, to one of the allegations --
12 or the suggestions may be a more fitting way of stating
13 it -- that relates to CasTel.

14 It says, In September, authorities searched a
15 company called Telecom Online, Inc. in New York which
16 allegedly ran the deceptive websites. The affidavits
17 supported the warrant charged -- supporting the warrant
18 charged that alleged Gambino family members Richard Martino
19 and Salvator LaCassio (ph.) -- do you know if I pronounced
20 that correctly?

21 A. I don't know.
 22 Q. -- infiltrated a series of related telephone
 23 companies based in Missouri in furtherance of the schemes.
 24 Next paragraph, The affidavit referred to
 25 Local Exchange Company, LLC, or LEC, which was created in
 00054 1 1996 to purchase CasSTel, and Local Exchange Carriers which
 2 was set up in 2000 to buy interest in Spectra Communications
 3 Group.
 4 Matzdorff is the president of LEC and chief
 5 executive of CasSTel. According to bank records, in 2002
 6 Matzdorff owned 7.4 percent of LEC and 5.6 percent of
 7 Spectra.
 8 And then the third paragraph, The affidavit
 9 said that LEC received millions of dollars from an Overland
 10 Park business called Overland Data Center, which in turn,
 11 received millions of dollars from LEC's subsidiary CasSTel.
 12 The affidavit stated that Overland Data Center probably was
 13 used to launder money for Martino.
 14 First of all, can you tell me your response to
 15 the allegation in regard to the millions of dollars from
 16 LEC's subsidiary CasSTel that was allegedly turned over I
 17 guess to Overland Data Center?
 18 A. Can you repeat -- I want to make sure I'm
 19 clear on what you're saying.
 20 Q. Well, and I guess if you could answer the
 21 question, if you would, as to whether or not the statement
 22 that LEC received millions of dollars from an Overland Park
 23 business called Overland Data Center which, in turn,
 24 received millions of dollars from LEC's subsidiary CasSTel
 25 is true?
 00055 1 A. I can only assume that the dollars in question
 2 relate to the \$970,000 that we received. If you look at the
 3 indictment -- and I'm going pretty much from the same
 4 documents you've seen, Commissioner Gaw -- is there's a
 5 \$970,000 reference on December 15th of 2000. And the best I
 6 can tell from the records, that's the reference that they're
 7 making.
 8 And I think that Mr. Winter indicated in his
 9 data request to the company, trying to track that back, the
 10 best we can tell, that matches up with payments -- I think I
 11 can clarify a little bit Spectra Communications was formed
 12 as a partnership between -- or an LLC, I should say to be
 13 correct, between CenturyTel, a publicly traded company, and
 14 a company that was formed, Local Exchange Carriers,
 15 specifically to buy exchanges, it's 107 exchanges in the
 16 state of Missouri representing approximately 130,000 access
 17 lines.
 18 I was heavily engaged in that and served as
 19 the president of that company and was the one indeed that
 20 brought CenturyTel in as a potential partner for many
 21 reasons, one which was their capital power because the
 22 acquisition was in -- it was close to \$300 million for the
 23 acquisition, so that kind of puts it in perspective.
 24 The partnership between those companies led to
 25 the development of that company at which time later
 00056 1 CenturyTel -- in a third time, as Mr. Winter indicated,
 2 purchased CenturyTel Missouri which is another 350,000 lines
 3 in which I became president of those operations and oversee
 4 pretty much 60 percent of the land-line based operations for
 5 the state of Missouri.

6 Q. And for which company is that again?
 7 A. Not only for Spectra, which continues to
 8 exist, but also CenturyTel Missouri. And those two
 9 properties -- those two properties we run contiguously. And
 10 this fall CenturyTel purchased the ownership interest from
 11 Local Exchange Carrier, so Local Exchange Carrier no longer
 12 has interest in that property but I continue on in my
 13 capacity with CenturyTel.
 14 Q. So you have a position with CenturyTel?
 15 A. Yes, I do.
 16 Q. Which is what again?
 17 A. I am the executive vice president.
 18 Q. All right. You also have a position with
 19 CassTel?
 20 A. That's correct. I serve as president.
 21 Q. All right. And you have a position with Local
 22 Exchange Company --
 23 A. That's correct.
 24 Q. -- LLC?
 25 A. I'm the president of that company, which

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1 serves as the holding company for Cass County Telephone.
 2 Q. Yes. And all of Cass County Telephone is
 3 owned by LEC?
 4 A. Actually, 99 percent. It's a limited
 5 partnership -- a Maryland limited partnership. And there
 6 are two small interests owned in order to create that
 7 limited partnership.
 8 Q. I don't know whether it would be appropriate
 9 to disclose that in public session or not.
 10 A. I think those are part of the annual reports
 11 that we file each year with the company.
 12 Q. Would you tell me who they are?
 13 A. I believe one is -- one of the officers is a
 14 gentleman by the name of Elia Fiata. And the other one is a
 15 company and I --
 16 MR. WINTER: Lexicom.
 17 THE WITNESS: It's Lexicom is the name of the
 18 company, it's an Illinois-based company.
 19 BY CHAIR GAW:

20 Q. Is that a publicly held company?
 21 A. No, it's not.
 22 Q. So, to the best of your knowledge, the only
 23 thing that you're aware of that could be referred to in the
 24 article -- that could be referring to in the article in
 25 regard to transfers of money from CassTel to Overland Data

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1 Center is this \$970,000?
 2 A. I don't know how to answer that, Commissioner,
 3 simply because my sources of information are much the same
 4 as yourself. I've seen the newspaper article and I've seen
 5 the indictment that referenced that. And I -- that's really
 6 the only thing I know how to answer on that without, you
 7 know, specifics and I don't know his sources beyond that.
 8 Q. Well, would there be any other transfers of
 9 money that you're aware of from CassTel to Overland Park --
 10 Overland Data Center?
 11 A. Overland Data Center provided services to Cass
 12 County. They provided data functions for the company. And
 13 that was listed --
 14 Q. I see.
 15 A. -- that was listed in our -- our responses.
 16 Q. What kind of data functions were performed?

17 A. Oh, as an example, the Public Service
18 Commission requires that we attempt to contact two
19 customers -- or customers twice before we would ever attempt
20 to disconnect them for non-payment.
21 We utilize voice recognition units that they
22 have. Our underlying network support technical expertise as
23 it relates -- we chose not to hire that personnel and felt
24 we could do it more effectively. We live in a very rural
25 area and don't have that expertise nor is it easy to attract

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1 it, so we contract those services out.

2 Q. So there would have been additional monies
3 paid from CasTel to Overland Data Center in the last
4 several years?

5 A. That's correct.

6 Q. And you're saying that except for the
7 \$970,000, to your knowledge, the only monies that were
8 transferred were for services?

9 A. Okay. To my knowledge, CasTel is only paid
10 out for services rendered to the company.

11 Q. And what period of time were those services
12 rendered, if you know?

13 A. They -- the company started on April 1st, 1996
14 and they continued until June, at which time I became aware
15 of alleged improprieties and I terminated the functions.

16 Q. In June of what year?

17 A. 2003.

18 Q. 2003. Do you know anything about the
19 ownership of Overland Data Center?

20 A. No, I do not.

21 Q. Do you know if it's a corporation or something
22 else?

23 A. I really don't.

24 Q. And you're not familiar with any -- you don't
25 know any of the owners?

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1 A. I only -- I only know of the services and the
2 personnel that's responsible for providing the services to
3 me really. That's -- beyond the ownership, I really don't
4 know.

5 Q. When did -- did you know -- were you familiar
6 with that company prior to 1996?

7 A. I became aware of them when I initiated the
8 formation of Cass County Telephone and started looking at
9 vendors that would be required in order to provide the phone
10 services. We essentially bought the assets and, as we
11 described, needed to build the infrastructure in order to
12 support those services. So I became aware of them in
13 probably 1995.

14 Q. And do you know if they have any relation to
15 USP&C?

16 A. To my knowledge, there's no relationship
17 there.

18 Q. You used to have one, is that correct, with
19 USP&C?

20 A. Used to have?

21 Q. A relationship with that company.

22 A. Yes, I did.

23 Q. What was that?

24 A. I -- I was a stockholder in the company and
25 helped to form that company. And then in 1998, sold my

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1 interest.

2 Q. To whom did you sell your interest?
 3 A. I sold my interest to a Mr. Mike Laurel.
 4 Q. And I'm sorry. You probably said this. What
 5 was the period of time that you had that relationship with
 6 USP&C?

7 A. USP&C was formed in late 1996. I believe it
 8 was 1998 I sold my interest.

9 Q. Okay. And you're aware that -- are you aware
 10 whether or not the indictments draw any connection between
 11 Overland Data Center and USP&C?

12 A. Only what I've read in the indictment itself,
 13 which -- which is not clear what the relationship is.

14 Q. How much -- if you know, how much were the
 15 amounts that were being paid from Casstel to Overland Data
 16 Center on an annual basis for services?

17 A. I really can't give you a correct indication.
 18 I know that the services varied by the functions. They were
 19 larger amounts until some of our systems were built, as an
 20 example, trouble reporting systems and interface systems for
 21 accounting functions like that. So it really varied by
 22 year, but I know the -- I know I responded to that in a
 23 highly confidential -- in the response to the Commission
 24 Staff.

25 CHAIR GAW: Let me ask Staff very quickly, do
 00062 you have that information?

2 MR. POSTON: Yeah. I can give you that data
 3 request, if you give me a minute.

4 BY CHAIR GAW:

5 Q. Mr. Matzdorff, did that amount very much from
 6 year to year?

7 A. There was a peak period where we did a lot of
 8 systems work and there was a peak year. It was centered
 9 around when we initially were looking to buy local exchange
 10 carriers and form Spectra before we brought CenturyTel on.

11 That was one of the key reasons bringing
 12 CenturyTel on was we were supporting a lot of systems and
 13 the concern I had was being able to handle an acquisition
 14 that large. We initially were putting a lot of dollars into
 15 supporting and beefing up the system. We were initially
 16 with a vendor that, in my opinion, couldn't -- couldn't
 17 provide the adequate service for the people in Missouri.

18 Q. Now that you have made that statement, I'm not
 19 sure if I want to ask you who that was, but -- I'm not --

20 A. Well --

21 Q. -- I'm not so -- if you feel like you can tell
 22 me, I'll be glad to hear it, but -- who did you work with
 23 before?

24 A. MidAmerica Computer out of Blair, Nebraska.

25 Q. All right. And when you changed to Overland
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1 Data Center, why did you choose that company as opposed to
 2 some other company?

3 A. Well, let me clarify. We used both systems,
 4 but one system was really designed for companies of 1,000
 5 lines or less that support companies throughout the United
 6 States. I was looking for something that was more attuned
 7 to the needs of the state of Missouri and something that
 8 potentially would have 150,000 access lines.

9 Q. And go ahead and finish your sentence. What
 10 does that lead you to what conclusion?

11 A. I think I stated it.

12 Q. I think you did too, but would you go ahead

13 and restate it for me? That caused you to choose Overland
14 Data Center?

15 A. Yeah. They -- it was not a relational
16 database, which means that you had several flat files --
17 what are called flat files. And flat files, by such, if
18 you're out of -- out of sync, then it affects all of your
19 other systems, so they don't force reconciliation.

20 That's fine for a company that has a hand
21 calculation with less than 1,000 lines, but you can imagine
22 with hundreds of employees and trying to have relationships
23 between databases for billing, customer service, service
24 provisioning, those type of things, that's what leads, quite
25 frankly, to the large companies having difficulties is when

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1 they don't have relationship files that stay in sync with
2 each other. And I'm sure you've had that discussion with
3 various billing entities as they have impacted your
4 services.

5 Q. Okay. And you chose that company as opposed
6 to some other company because?

7 A. I chose the company because their location.
8 Many of the employees had experience in Sprint billing
9 system, so I had a comfort level that they had worked in
10 large database applications and they'd supported us prior to
11 that and -- and were the most familiar with our databases
12 and what they were going to convert.

13 Q. You were involved with Local Exchange Company,
14 LLC at its beginning. Correct?

15 A. That's correct.

16 Q. And you were not the only one involved with
17 it?

18 A. I was the founder and was the one responsible
19 for putting together the partnership arrangement with
20 CenturyTel.

21 Q. Okay. With Local Exchange Company; is that
22 correct?

23 A. With Local Exchange Carriers, I believe you
24 said, Commissioner.

25 Q. I'm --

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1 A. If you didn't, I apologize.

2 Q. That's okay. I'll ask you this question then.
3 were you involved with Local Exchange Company, LLC?

4 A. Yes, I was.

5 Q. Okay. And did it have any other purpose when
6 it was formed other than to be the holding company for
7 CassTel?

8 A. No. That was the purpose for which it was
9 formed.

10 Q. And were you the only individual involved in
11 its formation?

12 A. I was the -- I was the founder and the one
13 responsible for putting together the transaction.
14 Continental Illinois Bank had originally contacted me about
15 possibility of some sales that were being announced by GTE.
16 And I -- when they lost interest in the transaction, I asked
17 that I take it on and -- and form Cass County Telephone from
18 them.

19 Q. All right. And did anyone else go into that
20 investment with you?

21 A. Yes. I had a list of investors that joined
22 with me on that venture.

23 Q. All right. Was that a long list, short list?

24 A. It's a fairly substantive list. I'd say
25 approximately 46 members.

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1 CHAIR GAW: Okay. And I'll ask Staff, is that
2 information that we have?

3 MR. POSTON: I think so.

4 THE WITNESS: Yes, it is.

5 CHAIR GAW: It's been provided? Am I correct
6 to say up to this point that's highly confidential?

7 MR. ENGLAND: If not, it's certainly
8 proprietary. I think we marked it as highly confidential.

9 CHAIR GAW: All right. And is that a part --
10 Staff has that in its possession, I take it; is that
11 correct?

12 MR. POSTON: We're looking. I believe we do.

13 MR. ENGLAND: It's Data Request No. 13.

14 CHAIR GAW: Thank you, Mr. England.

15 For the record, Judge, so it's on the record,
16 Staff has handed me that Data Request No. 13.

17 BY CHAIR GAW:

18 Q. Mr. Matzdorff, how were these investors found?

19 A. Some were acquaintances, others were referred
20 to me by -- by individuals that I found to be very
21 trustworthy and of high integrity and, quite frankly, very
22 surprising relationship. I'm hesitant to name names, but
23 people that I felt I knew and trusted.

24 Q. Yes, sir.

25 CHAIR GAW: I don't think I can go further

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1 with this question-- with this questioning where we are
2 today, but I'm going to pass for the moment back to
3 Commissioner Clayton and if he has any questions.

4 COMMISSIONER CLAYTON: I just have a few.

5 CHAIR GAW: Thank you, sir.

6 QUESTIONS BY COMMISSIONER GAW:

7 Q. Mr. Matzdorff, the questioning by Commissioner
8 Gaw has answered a lot of my questions. Generally speaking,
9 I was interested in the relationship among the various
10 companies that have been discussed here today. Does the
11 company Spectra still exist?

12 A. Yes, it does.

13 Q. Is it simply a fictional entity owned by
14 CenturyTel or does it remain to be a partnership between
15 various entities? What is Spectra right now?

16 A. Spectra Communications was a stand-alone
17 company that the primary support services were performed by
18 CenturyTel. And CenturyTel is the majority owner of that
19 company. They purchased the interest of Local Exchange
20 Carriers in November of 2003.

21 There are two -- two individuals from Monroe,
22 Louisiana that have an affiliate relationship with
23 CenturyTel that are also shareholders, but for all practical
24 purposes, CenturyTel has 99.X percent of the ownership.

25 Q. So Spectra is now almost entirely owned by

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1 CenturyTel?

2 A. That's correct. And I believe that's the
3 intent.

4 Q. You stated that you sold out your interest in
5 USP&C in 1998; is that correct?

6 A. That's correct.

7 Q. What was the year of the activities listed in
8 the indictment? Were you affiliated with the company during

9 that time?

10 A. The indictment, as I understand it, implies
11 that the activity began from the time of its inception
12 until -- until I assume the indictment was passed down,
13 which included 1996, '97. The company had no functions
14 during '96 and really didn't get started in its operations.

15 My role in getting involved and why my name, I
16 believe, was in the paper was tied to the fact that when it
17 was founded, I was the one that put together the paperwork.
18 In order to get registered, you have to have an officer. We
19 had no employees at the time so I placed myself as the
20 president, but I've never held an active function with that
21 company nor as an officer of that company.

22 Q. You were simply a stockholder, you were never
23 an officer?

24 A. That's correct.

25 Q. Okay. And Overland Data Center, you have

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1 never in the past nor currently acted as either a
2 shareholder or an officer --

3 A. No.

4 Q. -- or an employee of Overland Data Center?

5 A. No.

6 Q. It was your testimony earlier that you were a
7 founder and organizer of both Local Exchange Company, LLC,
8 which is the holding company of CassTel. Correct?

9 A. That's correct.

10 Q. And also a founder and organizer of Local
11 Exchange Carrier?

12 A. That's correct.

13 Q. And Local Exchange Carrier does not exist
14 anymore?

15 A. Local Exchange Carrier exists only until we
16 get the tax returns so I can can it, close it down.

17 Q. Okay. Has CassTel or Local Exchange Company
18 ever had any type of relationship with USP&C --

19 A. No.

20 Q. -- as a vendor or otherwise?

21 A. No.

22 Q. So no dollars have gone back and forth in
23 either direction between those two entities?

24 A. No, there have not.

25 COMMISSIONER CLAYTON: I don't believe I have

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1 any further questions. Thank you.

2 THE WITNESS: Thank you, Commissioner.

3 JUDGE WOODRUFF: Chair Gaw, anything further?

4 CHAIR GAW: No, thank you.

5 JUDGE WOODRUFF: You can step down. Thank
6 you.

7 THE WITNESS: Thank you.

8 JUDGE WOODRUFF: Any other questions for any
9 other witnesses?

10 I'll give the parties an opportunity to make a
11 closing statement if they wish. Staff?

12 MR. POSTON: I have nothing to close other
13 than we continue to support the Stipulation and Agreement.

14 JUDGE WOODRUFF: Public Counsel?

15 MR. DANDINO: I have nothing further, your
16 Honor.

17 JUDGE WOODRUFF: Cass County Telephone?

18 MR. ENGLAND: Nothing further, your Honor.

19 JUDGE WOODRUFF: With that, then we are

20 adjourned.

21 CHAIR GAW: One question. The data request is
22 not a part of the record unless you admit it, I assume?

23 JUDGE WOODRUFF: That would be correct.

24 CHAIR GAW: would it be possible to have that
25 admitted as an HC document?

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1 JUDGE WOODRUFF: We can mark it as HC
2 exhibits.

3 CHAIR GAW: I think there were two of them.
4 And I don't know -- just because I asked for it doesn't mean
5 it has to be -- I would like for it to be if it's -- if we
6 could have it in the record, Judge. Thank you.

7 MR. ENGLAND: I have no objection, your Honor.
8 I'd point out that it's my understanding that
9 no protective order has actually been issued in this case.
10 It's fairly young, if you will. So I would request that a
11 protective order be issued and then if you want to make that
12 part of the record as a highly confidential exhibit, that's
13 fine.

14 JUDGE WOODRUFF: All right. A protective
15 order will be issued. I'll go ahead and issue one -- well,
16 I can do it from the Bench at this point and the formal
17 protective order will also be issued through EFIS tomorrow.

18 MR. ENGLAND: That would be fine.

19 JUDGE WOODRUFF: We've got the two data
20 requests, Data Request No. 9, which concerns the amount of
21 fees that were paid by Cass County Telephone to Overland
22 Data Center. We'll mark that as Exhibit 1-HC. And the
23 other is the list of investors in LEC, LLC and we'll mark
24 that as Exhibit No. 2-HC.

25 All right. Anything else while we're on the

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1 record? with that then, we are adjourned.

2 (Exhibit Nos. 1 and 2 were marked for
3 identification.)

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I N D E X

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