

**BEFORE THE PUBLIC SERVICE COMMISSION  
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

**Staff's Recommendation to Subpoena Documents From New Florence  
Telephone Company and From Cass County Telephone Company LP**

COMES NOW the Staff of the Public Service Commission and, for its recommendation that the Commission issue *subpoenas duces tecum* to New Florence Telephone Company and to Cass County Telephone Company LP states:

1. In conducting the inquiries directed by the Commission in its Order that established this investigation case, the Staff has requested information from New Florence Telephone Company and from Cass County Telephone Company Limited Partnership. While New Florence and Cass County Telephone have provided much of the information that the Staff has requested, on March 10, 2005 they relayed their refusals to provide access to the workpapers of their outside auditors—Mize, Houser & Company and Warinner, Gesinger & Associates, LLC—and their assertions that the workpapers are privileged under section 326.322.2 RSMo Supp. 2004. Copies of their correspondence are attached as Appendix A and Appendix B.

2. In section 326.253 Supp. 2004 the Missouri Legislature has stated the following policy and purpose of Chapter 326, which includes section 326.322 RSMo Supp. 2004:

It is the policy of this state and the purpose of this chapter to promote the reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial status or performance of commercial, noncommercial and governmental enterprises. The protection of the public

interest requires that persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information shall have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications not be permitted to represent themselves as having such special competence or to offer such assurance; that the conduct of persons licensed as having special competence in accountancy be regulated in all aspects of their professional work; that a public authority competent to prescribe and assess the qualifications and to regulate the conduct of certified public accountants be established; and that the use of titles that have a capacity or tendency to deceive the public as to the status or competence of the persons using such titles be prohibited.

3. Section 326.322.2 RSMo Supp. 2004 provides:

A licensee shall not be examined by *judicial process or proceedings* without the consent of the licensee's client as to any communication made by the client to the licensee in person or through the media of books of account and financial records, or the licensee's advice, reports or working papers given or made thereon in the course of professional employment, nor shall a secretary, stenographer, clerk or assistant of a licensee, or a public accountant, be examined, without the consent of the client concerned, regarding any fact the knowledge of which he or she has acquired in his or her capacity as a licensee. This privilege shall exist in all cases except when material to the defense of an action against a licensee. (Emphasis added.)

The proceedings in this case are administrative, not judicial; therefore, the privilege is unavailable. Further, in light of the following actions the Missouri Legislature has taken in Chapter 386—conferring investigatory powers on the Commission with regard to telecommunications companies in section 386.330 RSMo 2000, authorizing the Commission to require the production from any “corporation, person or public utility” of “books, accounts papers or records” in section 386.450 RSMo 2000, criminalizing refusal to produce such records without reasonable cause in section 386.460, exempting a person from prosecution for production of documents that might tend to incriminate that person in section 386.470 RSMo 2000 and closing from public inspection information divulged to the Commission in section 386.480 RSMo 2000—it would be inapposite to apply the privilege found in section 326.322.2 RSMo Supp. 2004 in this investigation, or any other proceeding before the Missouri Public

Service Commission. Finally, if the privilege did apply, New Florence and Cass County Telephone could waive the privilege; in short, it is New Florence and Cass County Telephone that are attempting to refuse the Staff access to the requested independent auditor's workpapers.

3. The independent audit reports for New Florence and Cass County Telephone for 2003 were released to the Staff months after the dates the respective companies' representatives told the Staff they would be completed and available. The audit workpapers will reveal the scope of the work done by the auditors, including their review of related party transactions (affiliate transactions). Further, it is the Staff's belief that these auditors were selected by Kenneth Matzdorff and that there were significant restatements of books made during some of these audits. Obtaining these workpapers would assist the Staff and Commission in evaluating the independence of the outside auditors' reports on the financial statements of New Florence and from Cass County Telephone.

4. Review of the audit workpapers of both auditors will assist the Staff in understanding how the auditors arrived at the amounts that appear in the financial statements. For example, in the most recent independent auditor's report the auditor has significantly restated the financial statements of Cass County Telephone for year 2002. The Staff is unable to track the adjustments made to reconcile these restated financial statements with the statements made by the prior independent auditor. The audit workpapers will not only allow the Staff to better understand the amounts that appear in the financial statements, it will also allow the Staff to better understand the adjustments made to arrive at the restated amounts.

5. In New Florence's motion seeking Commission certification to receive federal Universal Service Funds, New Florence stated as part of its argument that "On December 23,

2004, New Florence forwarded its independent, third-party audit for fiscal year 2003 to the Commission Staff.”

6. Verifying the accuracy and reliability of the outside auditors’ independent reports on the financial statements of New Florence and Cass County Telephone through the independent auditors’ workpapers would also assist in investigating the accuracy and validity of the expenses of New Florence and Cass County Telephone.

7. The expenses of New Florence and of Cass County Telephone include expenses for work performed by Local Exchange Company, LLC, the general partner of the Cass County Telephone Limited Partnership.

8. Section 386.440.1, RSMo 2000<sup>1</sup> provides that Commission *subpoenas* shall be signed by a commissioner or the secretary of the commission, and shall extend to all parts of the state and may be served by any person authorized to serve process of courts of record or by any person of full age designated for that purpose by the commission or by a commissioner.

9. On March 7, 2005 Chairman Jeff Davis designated John VanEschen as a person authorized to serve *subpoenas* issued in this case.

10. According to records of the Missouri Secretary of State, the registered agent of Cass County Telephone Company Limited Partnership is William R. England, III, 312 E. Capitol Avenue, Jefferson City, Missouri 65102, and the registered agent of New Florence Telephone Company is Sondra B. Morgan, 312 E. Capitol Avenue, Jefferson City, Missouri 65101; service may be effected by serving the registered agents.

11. If the Commission decides that *subpoenas* should be issued to New Florence or Cass County Telephone, attached hereto as Appendix C is the form of the *subpoena* that the Staff

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<sup>1</sup> All statutory citations are to RSMo 2000, unless otherwise indicated.

recommends that the Commission use, including a listing of items to be produced. Attached hereto as Appendix D is a suggested format for a cover letter to accompany each *subpoena*.

12. The Staff recommends that the Commission require that the independent auditor workpapers of Mize, Houser & Company and Warinner, Gesinger & Associates, LLC for the independent audits they performed for the financial statements of New Florence and Cass County Telephone be produced by New Florence and by Cass County Telephone for inspection at the Commission's offices in the Governor's Office Building at 200 Madison Street, Jefferson City, Missouri 65102 at 9:00 a.m. ten business days after issuance of the *subpoenas*, unless the entity to which the *subpoena* is directed files copies of the requested documents in Commission Case No. TO-2005-0237, before the date fixed by the Commission for producing the requested documents or contacts the General Counsel of the Commission and makes other arrangements.

**WHEREFORE,** the Staff recommends that the Commission issue *subpoenas* to Cass County Telephone Company LP and New Florence Telephone Company substantially in the form of Appendix C and that each subpoena be accompanied by a letter substantially in the form of Appendix D.

Respectfully submitted,

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/s/ Nathan Williams

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 16<sup>th</sup> day of March 2005.

/s/ Nathan Williams

Nathan Williams