

number 937-6083578-19, which matured on or about June 3, 2003, and which as of March 7, 2003, had an approximate value of \$679,719.70.

106. If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c) to seek forfeiture of any other property of such defendants up to the value of the forfeitable property described in subparagraphs 100(a) through (e), including but not limited to the following:

- a. all right, title and interest in the premises and real property located at One Tara Way, Tuckahoe, New York 10707;
- b. all right, title and interest in the premises and real property located at 495 Ox Pasture Road, Southampton, New York 11968;

- c. all right, title and interest in the premises and real property located at 299 Dune Road, Southampton, New York 11932;
- d. all right, title and interest in the premises and real property located at 320 Central Park West, Apt. 11F, New York, New York 10025;
- e. all right, title and interest in the premises and real property located at 279 Central Park West, Apt. 18B, New York, New York 10024;
- f. all right, title and interest in the premises and real property located at Lot 27, City: Harrison; Subdivision: Purchase Estates Inc., Country Club at Purchase; Recorder's Map Reference: Map 26094;
- g. all right, title and interest in the premises and real property located at 6 Raintree Court, Holmdel, New Jersey 07733;
- h. all right, title and interest in the premises and real property located at 5160 Bridleway Circle Boca Raton, Florida 33496; and
- i. all right, title and interest in the premises and real property located at 301 Brookline Street Hawthorne, New York 10532.

(Title 28, United States Code, Section 2461(c), Title 18, United States Code, Section 981(a)(1)(C), and Title 21, United States Code, Section 853(p))

CRIMINAL FORFEITURE ALLEGATION FOUR  
(Counts Twelve through Seventeen)  
(Money Laundering Conspiracy and Money Laundering)

107. The United States hereby gives notice to the defendants charged in Counts Twelve through Seventeen that, upon their conviction of such offenses the government will seek forfeiture in accordance with Title 18, United States Code, Section 982, of all property involved in each offense in

violation of Title 18, United States Code, Section 1956, or conspiracy to commit such offense, and all property traceable to such property.

108. The value of the forfeitable property is a sum of money equal to \$730 million in United States currency, for which the defendants are jointly and severally liable, including but not limited to all funds on deposit in a certificate of deposit at Chase Manhattan Bank, now known as JP Morgan Chase, number 937-6083578-19, which matured on or about June 3, 2003, and which as of March 7, 2003 had an approximate value of \$679,719.70.

109. If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any

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other property of such defendants up to the value of the forfeitable property described in subparagraphs 103(a) through (e), including but not limited to the following:

- a. all right, title and interest in the premises and real property located at One Tara Way, Tuckahoe, New York 10707;
- b. all right, title and interest in the premises and real property located at 495 Ox Pasture Road, Southampton, New York 11968;
- c. all right, title and interest in the premises and real property located at 299 Dune Road, Southampton, New York 11932;
- d. all right, title and interest in the premises and real property located at 320 Central Park West, Apt. 11F, New York, New York 10025;
- e. all right, title and interest in the premises and real property located at 279 Central Park West, Apt. 18B, New York, New York 10024;
- f. all right, title and interest in the premises and real property located at Lot 27, City: Harrison; Subdivision: Purchase Estates Inc., Country Club at Purchase; Recorder's Map Reference: Map 26094;
- g. all right, title and interest in the premises and real property located at 9778 Bent Grass Bend, Naples, Florida 34108;
- h. all right, title and interest in the premises and real property located at 2 Timmons Road, Scarsdale, New York 10583;
- i. all right, title and interest in the premises and real property located at 608 East 187<sup>th</sup> Street, Bronx, New York 10458;
- j. all right, title and interest in the premises and real property located at 2361 Hoffman Street, Bronx, New York 10458;
- k. funds representing the net proceeds of the sale of


Riviera Colony Shopping Plaza, also known as Am South Plaza, located at Section 18, Township 50 South, Range 26 East, Collier County Florida, Lot 1, Block 1, Rivera Colony, Plat Book 8, Pages 17 and 18, on deposit in the interest bearing equity account maintained by the Clerk of the United States District Court for the Eastern District of New York pursuant to a Stipulation and Order, dated January 9, 2004, and which as January 9, 2004, had an approximate value of \$1,096.904.68;

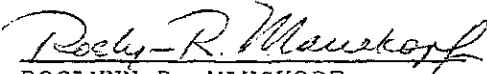
- l. all right, title and interest in the premises and real property located at 2928 Indigobush Way, Naples, Florida 34105;
- m. all right, title and interest in the premises and real property located at 16 Bonmar Road, Pelham Manor, New York 10803;
- n. all right, title and interest in the premises and real property located at 1520 Gulf Boulevard, Belleair Shores, Florida 34634;
- o. all right, title and interest in the premises and real property located at 9 Apple Court, Eastchester, New York 10709;
- p. all right, title and interest in the premises and real property located at 2384 Hoffman Street, Bronx, New York 10458;
- q. all right, title and interest in the premises and real property located at 2376 Hoffman Street, Bronx, New York 10458; and

- r. all right, title and interest in the premises and real property located at 301 Brookline Street Hawthorne, New York 10532.

(Title 18, United States Code, Section 982, Title 21,  
United States Code, Section 853(p))

A TRUE BILL

  
FOREPERSON

  
ROSLYNN R. MAUSKOPF  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

No. CR

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**UNITED STATES DISTRICT COURT**

EASTERN *District of* NEW YORK

CRIMINAL *Division*

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**THE UNITED STATES OF AMERICA**

vs.

SALVATORE LOCASCIO,  
also known as "Tore," et al.

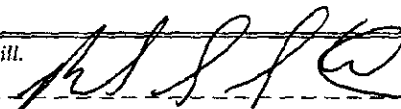
Defendants.

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**INDICTMENT**

(T. 18 U.S.C., §§ 371, 981(a)(1)(c), 982, 1343,  
1956(a)(1)(A)(i), 1956(a)(1)(B)(i), 1956(h), 1962(c),  
1962(d) 1963, 2 and 3551 et seq.; T. 21,  
U.S.C., § 853; T.28, U.S.C § 2461

A true bill.



Foreman

Filed in open court this \_\_\_\_\_ day,

of Sept 21 A.D. 19 04

Clerk

Bail, \$ \_\_\_\_\_

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AUSA Eric Komitee (718) 254-6240

## Attachment 9

# Telephone Cramming Scheme Description

## Telephone Cramming Scheme

### 1. The Telephone Billing and Collection Industry

Local telephone companies, also called Local Exchange Carriers ("LECs"), permitted third parties to include charges for telecommunications services ordered by consumers on the consumers' local telephone bills. To facilitate the inclusion of their charges on consumers' local telephone bills, such third-party service providers contracted with telephone billing aggregators. Telephone billing aggregators acted as intermediaries between the third-party service providers and the LECs. These aggregators received the billing information from the service providers, which were the aggregators' clients, and submitted the billing information to the appropriate LEC for inclusion on the consumer's monthly local telephone bill. The telephone billing aggregators did this pursuant to "Billing and Collection Agreements" with the LECs.

Once the consumers paid their telephone bills, the billing aggregators collected the payments for their clients' services from the LECs. The billing aggregators then passed those payments back to their service-provider clients, and charged a fee for their billing and collection services.

Before the LECs would accept charges for inclusion on their phone bills, they typically required the billing aggregators to provide them with copies of the advertising material and descriptions of the services and programs offered by the clients whose charges were to be included on consumers' telephone bills. In addition, the entries on telephone bills that described the services for which the consumer was being charged ("Bill Phrases") were subject to approval by the LEC and were generally required to be clear and concise descriptions of the service actually offered by the client and purchased

by the consumer. The LECs imposed these requirements on the billing aggregators, among other reasons, in an effort to combat the placement of unauthorized charges on their customers' local telephone bills – a fraudulent practice commonly known in the telecommunications industry as “cramming.”

## 2. The Scheme to Defraud

In or about and between approximately 1996 and 2002, the federal defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, ANDREW CAMPOS, THOMAS PUGLIESE, LAWRENCE NADELL, YITZXHAK LEVY, KENNETH SCHAEFFER AND USP&C together with others, knowingly and intentionally devised and executed a scheme to defraud consumers by causing USP&C to place unauthorized charges on local telephone bills of victims within the Eastern District of New York and elsewhere, and collecting payment on those unauthorized charges

To execute this Cramming Scheme, defendants RICHARD MARTINO and NORMAN CHANES, together with employees of Harvest and others acting at their direction, produced advertisements offering free samples of adult entertainment services, such as psychic hotlines, dating services, and sexually oriented talk-lines, over various "1-800" telephone numbers. Harvest placed these advertisements in various media, including adult magazines. These advertisements induced victims within the Eastern District of New York and elsewhere in the United States to call the various "1-800" telephone numbers by promising free samples of the entertainment services described.

Victims who called the "1-800" telephone numbers advertised in this manner by Harvest heard pre-recorded "front-end programs," which varied over time and across the various "1-800" telephone numbers. Each was designed so that when a victim

called the "1-800" telephone number and expressed a desire to obtain the free sample of the entertainment service advertised, the front-end program triggered a recurring monthly charge on the victim's local telephone bill for a voice-mail service without the knowledge, consent or authorization of the victim. The Bill Phrases for the monthly charges that appeared on the victim's local telephone bills' were designed to appear to be innocuous standard telephone charges and to conceal the fact that the charges were triggered by the calls to the "1-800" adult entertainment telephone lines.

In order to conceal the fraudulent nature of the "1-800" telephone numbers and related front-end programs used in the Cramming Scheme, the defendants RICHARD MARTINO and NORMAN CHANES and others acting at their direction prepared and caused to be prepared two sets of advertisements, front-end programs and related materials. One set was referred to as the "marketing" materials, and consisted of the actual advertisements, front-end programs and related materials offering the free samples of entertainment services that were used to defraud the victims in the manner described above.

The second set was referred to as the "approval" materials, and consisted of advertisements, front-end programs and related materials offering various voice-mail services. Unlike the "marketing" version, the "approval" versions of the front-end programs appeared properly to seek the consumer's authorization to charge a recurring monthly fee for a voice-mail service, whose features were fully described.

The "approval" materials were not actively marketed to the public, but rather were presented to LECs, regulatory and law enforcement agencies and complaining customers in order to conceal the existence and fraudulent nature of the

"marketing" materials actually used to generate the unauthorized charges. The Bill Phrases for the unauthorized charges corresponded to the names of the voice-mail services contained in the "approval" materials. In this manner, when USP&C faced inquiries concerning the business practices of its clients or the nature of the monthly recurring charges from LECs, regulatory or law enforcement agencies or complaining customers, USP&C presented the "approval" materials rather than the "marketing" materials that actually triggered the charge.

Defendants RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO, together with others, caused the formation of Overland Data Center ("Overland"), located in Overland Park, Kansas, and secretly controlled it for the purpose of receiving and processing consumers' calls to the various "1-800" telephone numbers used in the Cramming Scheme. Overland operated telephone lines and voice response units ("VRUs"), which processed the consumers' calls and played the front-end programs. At the direction of RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL, YITZHAK LEVY and KENNETH SCHAEFFER, Overland employees programmed the VRUs to play the front-end programs and thereby trigger the unauthorized charges on the consumers' telephone bills. Overland's finances were managed by DANIEL MARTINO through FSE Consulting, of which DANIEL MARTINO was president. Through this position, DANIEL MARTINO assisted RICHARD MARTINO and CHANES in exercising secret control over Overland and other companies.

Defendants RICHARD MARTINO and NORMAN CHANES, together with employees of Harvest acting under their direction, created scripts for both the

"approval" and "marketing" versions of the front-end programs, and retained voice-professionals to make recordings of the scripts. The recordings were then provided to employees of Mical, where, at the direction of defendants RICHARD MARTINO, LAWRENCE NADELL, YITZHAK LEVY, KENNETH SCHAEFFER and others, they were transmitted to Overland for use in the front-end programs.

Defendants RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO, together with others, caused the formation of USP&C and secretly controlled it for the purpose of placing the unauthorized charges generated by the fraudulent front-end programs onto the victims' local telephone bills.

Defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO and CAMPOS, together with others, caused the formation of various companies, including ASP Communications, Inc. ("ASP"), Benchmark Communications ("Benchmark"), Lunar Tel, Inc. ("Lunar"), Spring Telcom, Inc. ("Spring"), Special Comtel, Ltd. ("Special Comtel"), Enhanced Phone Services ("Enhanced Phone"), Messenger Com ("Messenger") and Voice Delivery Service Inc. ("Voice Delivery") (collectively, the "Campos Companies"). Each of the Campos Companies purported to be an independent company operated by ANDREW CAMPOS that was engaged in the business of offering "1-800" telephone services. In fact, the Campos Companies were shell companies whose purpose was to disguise the fact that the "1-800" telephone services used in the Cramming Scheme were controlled by RICHARD MARTINO, CHANES and DANIEL MARTINO. The Campos Companies had no employees or physical office space other than. rented mailboxes around the country.

Each of the Campos Companies registered multiple "1-800" telephone services under multiple fictitious business names with USP&C and various LECs. Each such business name was referred to as a "sub-CIC," which is an industry term that refers to an entity that is permitted to place charges on local telephone bills through a registered "CIC." USP&C was registered as a "CIC."

Defendants RICHARD MARTINO and NORMAN CHANES caused the Campos Companies to enter into contracts with USP&C to provide billing and collection services for the "1-800" telephone numbers used in the Cramming Scheme, and further caused the Campos Companies to submit the "approval" version of the materials to USP&C and the LECs, rather than the "marketing" versions that were used to defraud the Cramming Scheme's victims. Because the Campos Companies were shell companies devoid of employees or physical office space, all of USP&C's dealings with the Campos Companies were conducted through defendants RICHARD MARTINO and CRANES, and, at their direction, through defendants LAWRENCE NADELL, YITZHAK LEVY, KENNETH SCHAEFFER and other employees of Mical.

The Cramming Scheme Defendants caused unauthorized recurring monthly charges to be included on millions of victims' local telephone bills throughout the Eastern District of New York and elsewhere in the United States, and generated between approximately \$50,000 and \$600,000 in gross revenue per day between 1997 and 2001. In total, the Cramming Scheme generated more than \$500 million in gross revenues.

### 3. Victim Complaints and Refunds

A large portion of the Cramming Scheme's victims complained to the

LECs and to USP&C about the unauthorized charges appearing on their local telephone bills. Defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, together with others, caused a "call center" affiliated with USP&C to be established to handle the large volume of victim complaints internally, to prevent the LECs from learning the actual extent of customers complaining that the charges were unauthorized.

Telephone operators at the call center were directed initially to attempt to persuade victims that the charges were in fact authorized and to induce customers to agree to pay the charges. If a victim was adamant that the charges had not been authorized and refused to pay, the operators were next directed to offer a partial refund, but to offer a full refund only if the victim would not accept a partial refund.

The purpose of offering full refunds to customers who demanded them was to reduce the likelihood that victims would complain directly to the LECs or to regulatory agencies. The call center operators were further instructed that if victims asked them to provide the telephone number that triggered the charge on the USP&C page of their local telephone bill, the operators were to provide a "1-800" number that connected to the "approval" version of the front-end program, instead of the "1-800" telephone number that was connected to the "marketing" front-end program that the customer had actually called.

During the course of the Cramming Scheme, USP&C on average refunded approximately 50% of the unauthorized charges to complaining customers. From time to time, various LECs canceled the billing privileges of the sub-CICs that generated these high refund levels on such occasions, the defendants RICHARD MARTINO and NORMAN CRANES, together-with others, would cause the Campos Companies and

other similar shell companies under their control to begin soliciting victims and billing under new sub-CICs with new "1-800" telephone numbers for the purpose of continuing and perpetuating the Cramming Scheme. In approximately 2001, because of complaints from various LECS and regulatory agencies about the Campos Companies, defendants RICHARD MARTINO, CHANES and PUGLIESE caused new shell companies to replace the Campos Companies as clients of USP&C. PUGLIESE was the nominal owner and president of several of these new shell companies. Like the Campos Companies, these new shell companies were secretly controlled by RICHARD MARTINO, CHANES and DANIEL MARTINO.

In one instance, Southwestern Bell - a LEC - cut off USP&C's rights to insert a USP&C bill page in Southwestern Bell's local telephone bills in response to high levels of customer complaints. In order to continue passing on fraudulent charges to Southwestern Bell's customers, USP&C switched to a "direct" billing format, in which they mailed bills directly to victims instead of inserting charges into a LEC's local telephone bill.

In order to deceive Southwestern Bell's customers into believing that the direct-billed charges were legitimate and were for costs arising from their local phone service, defendants RICHARD MARTINO, NORMAN-CHANES and DANIEL MARTINO caused the design of a bill page and mailing envelope that were intended to resemble Southwestern Bell's telephone bill. These bills were sent out on behalf of an entity called "Southwest Region Bill," which was a fictitious name for Invesco, a company registered to defendant THOMAS PUGLIESE as president. The Southwest Region Bill telephone bills strongly resembled Southwestern Bell's bill formats, in that

(a) the Southwest Region Bill invoice used a nearly identical typeface and font size to the Southwestern Bell invoice; (b) the placement of items on the Southwest Region Bill invoice such as account summaries, current charges, total amounts due and due dates were very similar to those used by Southwestern Bell; and (c) the Southwest Region Bill invoice also copied the light blue stripe down the left margin of the Southwestern Bell invoice in a nearly identical color and size. The Southwest Region Bill invoice also stated that if recipients did not pay the charges assessed on that bill, the company would "begin procedures to cancel all service to you," thereby suggesting that the recipient's telephone service would be shut off.

The "Southwest Region Bill" invoices were mailed out by USP&C at the direction of RICHARD MARTINO, NORMAN CRANES and DANIEL MARTINO, and various Mical employees under their control. Numerous victims were defrauded into paying the invoiced charges. Numerous other recipient of these bills, however, complained to regulators and to Southwestern Bell, these entities rapidly took legal action to induce USP&C to stop mailing the fraudulent invoices.

4. Disposition Of The Cramming Scheme's Proceeds

During the course of its operation, the Cramming Scheme induced millions of victims throughout the United States to place telephone calls to the "1-800" telephone numbers operated by Overland. Overland transmitted the billing information for the unauthorized charges to USP&C for submission to the LECs for inclusion on the victims' local telephone bills. USP&C collected the payments for the unauthorized charges from the LECs, and in turn paid the bulk of the proceeds to the Campos Companies and, after approximately January 2001, to the shell companies that replaced

the Campos Companies, net of expenses and refunds to complaining victims. These companies in turn paid the proceeds to Overland and to Fairfax. Overland in turn paid the vast bulk of the proceeds to Mical, and, after approximately mid-2000, to Telcom.

Overland also paid some of the proceeds to a company called Local Exchange Company L.L.C., also known as "LEC L.L.C." LEC L.L.C. was owned in part, both directly and indirectly through trusts, by defendants SALVATORE LOCASCIO, RICHARD MARTINO, ZEF MUSTAFA, NORMAN CHANES AND DANIEL MARTINO.

Fairfax paid the proceeds to Baseline Telecommunications, Inc. ("Baseline"), Dynamic, Mical and Harvest. Dynamic, in turn, paid a portion of its proceeds to Mical and Harvest.

From approximately 1996 through 2002, inclusive, defendants RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO funneled more than \$40 million in proceeds of the Cramming Scheme and the Internet Scheme from Mical, and later Telcom, to Creative. The proceeds funneled to Creative were transferred in fulfillment of RICHARD MARTINO's obligation as a member of organized crime to share illicit proceeds with persons above him in the Gambino family.

## Attachment 10

### Internet Fraud Scheme Description

# 1. The "Free Tour" Internet Fraud Scheme- The Internet Joint Venture

The Crescent Publishing Group, Inc. ("Crescent"), was a publisher of adult entertainment magazines, including *Playgirl*, *High Society*, *Climax* and *Live Young Girls*. Crescent maintained an office in midtown Manhattan, New York.

In or about September 1996, the defendants RICHARD MARTINO and NORMAN CHANES, together with others, caused Lexitrans and Crescent to enter into an unwritten joint venture agreement (the "Joint Venture"). The purpose of the Joint Venture was to operate adult entertainment websites featuring content from magazines published by Crescent, including *Playgirl* ([playgirl.com](http://playgirl.com)), *High Society* ([highsociety.com](http://highsociety.com)), *Climax* ([climaxmag.com](http://climaxmag.com)) and *Live Young Girls* ([ygal.com](http://ygal.com)) (collectively, the "Websites"). The Joint Venture obtained money by charging the credit and debit cards of victims who had visited the Websites, including victims residing in Brooklyn, New York and in Nassau County, New York.

Using Lexitrans, Harvest, Mical, Dynamic, Westford and Crescent, the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL and YITZHAK LEVY, together with others, performed various functions for the Joint Venture, including the following tasks. RICHARD MARTINO and CHANES, through Mical and Harvest, designed the Websites.

Defendant YITZHAK LEVY assisted in overseeing the technical operations of the Websites from Mical. Crescent provided content for the Websites and implemented art and editorial changes provided by Harvest and Mical to Crescent. Lexitrans hosted the Websites on servers located in Kansas. Employees of Harvest, Dynamic and Westford provided marketing and advertising services for the purpose of directing internet traffic to the Websites. RICHARD MARTINO and CHANES, together with Bruce Chew, the President of Crescent, made all final decisions regarding the design and operation of the Websites.

2. Credit Card Processing

Visa U.S.A., Inc. ("Visa") was a membership corporation composed of more than 12,000 financial institutions. The members of Visa consisted of "issuing banks" and "merchant banks." "Issuing banks" were financial institutions that issued Visa credit and debit cards to consumers. "Merchant banks" were financial institutions that offered agreements permitting merchants to accept and process Visa cards for payment for goods and services. Within this system, Crescent and its affiliated corporations, at the direction of the defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL and others, opened merchant accounts at merchant banks, including Humboldt Bank and First Financial Bank, for the purpose of processing Visa cards as payment for the cost of membership on the Websites. Crescent pooled funds from these merchant bank accounts into the accounts of Multimedia Forum, Inc., ("Multimedia") a Crescent affiliate, at a branch of North Fork Bank located on Long Island, New York and within the Eastern District of New York, and from there sent the funds to other accounts controlled by Crescent, as well as

accounts controlled by Lexitrans, Dynamic and Westford, and others.

3. The Scheme To Defraud

The defendants RICHARD MARTINO, NORMAN CHANES, DANIEL MARTINO, LAWRENCE NADELL and YITZHAK LEVY, also known as "Isaac Levy" (collectively, the "Joint Venture Defendants") and others caused the Websites to present themselves as legitimate adult entertainment sites. In fact, however, the Joint Venture Defendants designed and operated the Websites to defraud the public by fraudulently obtaining visitors' credit and debit card information and then billing the victims' cards without the victims' knowledge or consent (the "Internet Scheme").

The Internet Scheme was centered around purportedly "free tours" of the Websites. While the Joint Venture Defendants and others, through the Websites, represented that visitors to the Websites could take a "free tour" of each Website without being billed, in actuality the Joint Venture Defendants, together with others, designed and operated the Websites so that victims would be billed without their knowledge or consent.

On the first screen of the "free tour," the Joint Venture Defendants and others caused the Websites to obtain credit or debit card information by representing that this information would be used as proof of the visitors' age and that visitors' cards would "NOT BE BILLED". In fact, the Joint Venture Defendants intentionally caused the Websites to bill visitors' cards without the visitors' knowledge, consent or authorization, as a result of visiting the purportedly "free tour."

The Joint Venture Defendants and others also used various means to prevent visitors from leaving the Websites. These means included automatically sending

visitors who attempted to leave the "free tours" directly to another free tour controlled by the defendants, multiple times consecutively; disabling the "go back" button on visitors' browsers and failing to include an "exit" or "home" button within the "free tour" itself. These technological mechanisms were intended to increase the likelihood that visitors would inadvertently trigger charges to their credit cards by proceeding through the "free tour."

Through the Websites, the Joint Venture Defendants, together with others, billed and caused to be billed the credit and debit cards of thousands of victims in the United States, Europe and Asia, without their authorization, at a recurring monthly rate of up to \$90 each, for an approximate total amount of more than \$230 million.

#### 4. Victim Complaints and Refunds

The Joint Venture Defendants, together with tour" even though, as the Joint Venture Defendants knew, Crescent and its affiliated companies received numerous complaints from victims stating that they did not intend to join the Websites and had been billed without prior notice or consent. Despite the large number of such complaints, the Joint Venture Defendants, together with others, refused to alter the design of the Websites because they knew that this would reduce the number of visitors who became enrolled as members of the Websites, and would therefore reduce the defendants' profits.

The Joint Venture Defendants, together with others, knew that Crescent and its affiliated companies incurred extremely high "chargeback" rates virtually from the inception of the Joint Venture. A "chargeback" generally occurs when a consumer disputes a charge and the issuing bank credits the consumer's account and debits the

merchant account in the corresponding amount. During 1999, as the Joint Venture Defendants knew, Crescent's chargeback rate was more than 10%, the third highest rate among the millions of merchants participating in the Visa program within the United States.

The Joint Venture Defendants, together with others, systematically abandoned their "merchant accounts" and opened new ones on a continuous, rolling basis, in order to conceal from Visa that the high level of chargebacks was continuing. The Joint Venture Defendants concealed from Visa and consumers the fact that these corporations and merchant accounts were all controlled by Crescent. This enabled the Joint Venture Defendants to avoid the imposition of fines and penalties and temporarily avoid being excluded from the Visa program.

In an effort to reduce the number of chargebacks and thereby avoid Visa's fees and maintain credit card processing privileges, the Joint Venture Defendants attempted to handle more victim complaints internally at Crescent and its affiliates rather than leaving victims to resolve the dispute with their issuing bank. In addition, the Joint Venture Defendants caused Crescent and its affiliates to provide refunds only when expressly requested by the consumer and otherwise merely canceled the consumer's membership account. In all, based on combined chargebacks and refunds, the Joint Venture Defendants caused Crescent to return an average of one-out of every three dollars in revenue during 1999, which permitted the scheme to continue.

In or about July 1999, for the purpose of continuing the Internet Scheme as chargeback problems mounted, Crescent created Luna, S.A., a new corporation with merchant accounts at South Bank & Trust Co., Ltd., a Montserrat bank doing business in

Guatemala. At this offshore bank, the Joint Venture Defendants, together with others, continued their practice of rolling merchant accounts.

Due to the high level of chargebacks, in or about April 2000, Visa terminated the rights of Crescent, Crescent's President and Crescent's Chief Financial Officer to participate in the Visa program in the United States. Subsequently, the Joint Venture Defendants continued their credit card processing operations offshore. When the excessive chargeback rates continued and Visa discovered the defendants' maneuver, in September 2000, Visa barred Crescent, Crescent's President and Crescent's Chief Financial Officer from participating in the global Visa program. Notwithstanding this ban, Crescent took steps to continue operating the Websites through substitutes.

5. Disposition of the Internet Scheme's Proceeds

Pursuant to the Joint Venture, Crescent deducted certain costs from the Websites' total revenue, including millions of dollars paid to Harvest and other companies, and then provided 50% of the remaining net profits to Lexitrans, Dynamic and Westford through Multimedia's bank account at North Fork Bank, within the Eastern District of New York, as directed by the defendants RICHARD MARTINO, NORMAN CRANES and DANIEL MARTINO. Lexitrans, Dynamic and Westford in turn sent millions of dollars of these illegal proceeds to Mical, both directly and through various companies controlled by RICHARD MARTINO, CRANES and DANIEL MARTINO, including Dynamic and Overland. Multimedia also paid some of the proceeds to a company called Local Exchange Carriers LLC, through a series of intermediate companies controlled by RICHARD MARTINO and CHANES. Local Exchange Carriers, LLC was owned in part, both directly and indirectly through trusts, by

defendants LOCASCIO, RICHARD MARTINO, MUSTAFA, CHANES, DANIEL MARTINO and CAMPOS.

From approximately 1996 through 2002, inclusive, defendants RICHARD MARTINO, NORMAN CHANES and DANIEL MARTINO funneled more than \$40 million in proceeds of the Cramming Scheme and the Internet Scheme from Mical, and later Telcom, to Creative. The proceeds funneled to Creative were transferred in fulfillment of RICHARD MARTINO's obligation as a member of organized crime to share illicit proceeds with persons above him in the Gambino family.

## Attachment 11

Mr. Lovern's March 29, 2004  
Memorandum

# **TRIAL MANAGEMENT ASSOCIATES**

A PRIVATE COMPANY THAT LITIGATES INTERNATIONAL PUBLIC INTEREST CASES

A Division of TMA International Trusts

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March 29, 2004

**All Parties notified by fax March 29, 2004  
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**FCC - Michael Powell, Commissioners' Martin, Abernathy, Copps, & Adelstein**

C/O Ms. Marlene H. Dortch, Office of the Secretary

Federal Communications Commission

445 12th St. S.W., TW A-325

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RE: American TeleDial Corp (ATC) et al v. SBC Communications et al  
William Lovern, Sr. et al v. SBC Communications et al

Dear Defendants & Ms. Dortch:

It has been 12 years to the day since I legally penetrated the Intercompany Settlement System (ICS). At the CompTel Convention in Las Vegas in February 1992, all the Bell Companies sat in my Hotel Suite with their lawyers and denied that the ICS even existed. On March 29, 1992, through Fidelity Telephone, I began legally downloading messages into the ICS for LEC Billing. The messages were formatted in EMR instead of the more expensive EMI format, and they flew through the system as expected, ending up at LECS throughout the country just like AT&T messages did daily, except for one thing, when the LECs began calling Southwestern Bell (SWBT) asking what was going on, SWBT panicked. They knew I had figured out the codes and was in the "Country Club's" secret billing system. It was the beginning of the end of the telecommunication industry...POST DIVESTITURE. It was the beginning of the end of your legacies and discriminatory practices.

On February 28, 1983 Judge Greene's Modification of Final Judgment was affirmed [103 S.Ct. 1240] in the now famous case, U.S. v. American Tel. and Tel. Co., 552 F. Supp. 131 (1982). In his decision the court said;

**"Antitrust consent decree must leave defendant without ability to resume actions which constituted antitrust violation in first place; the decree should not be limited to past violations, but it must also effectively foreclose possibility that antitrust violations will occur or recur."**

Judge Greene went on to say that the way AT&T had maintained monopoly power in telecommunications was through the control of the BOCs and their strategic bottleneck position. Divestiture was intended to require the removal of the two main barriers that previously deterred firms from entering or competing effectively in the interexchange market. Regarding exchange access services, which included B&C services, [bottleneck service] the court said;

Judge Greene 552 F. Supp. at pg. 171

**"AT&T will no longer have the opportunity to provide discriminatory interconnection to competitors. The Operating Companies [BOCs] will own the local exchange facilities. Since these companies will not be providing interexchange services [S-1822], they will lack AT&T's incentive to discriminate.**

**Moreover, they will be required to provide all interexchange carriers with exchange access that is equal in type, quality, and price to that provided to AT&T and its affiliates."**

How badly did the BOCs violate Judge Greene's Order? Below is the speech I gave at the 1994 NARUC Convention in Reno. It's worthy of another read today to bring things into perspective.

**"Speech" – BY: WILLIAM LOVERN, SR.  
given at "National Association of Regulatory Utility Commissioners"  
(NARUC) - National Convention, November 1994, Reno, Nevada**

**"NOTE: 2004"...is information added in 2004, not part of the speech.**

**Today marks the 10th year, 11th month, and 12th day since Divestiture.**

What has changed in the telecommunications industry, as far as reshuffling the wealth since the first day of January, 1984 has been remarkable; however, what has not changed in the telecommunication industry since the first day in January, 1984, is the continuing AT&T dominance through its ability to exclusively offer RAO based *"Special Number Calling Cards"* and to receive preferential premium billing services from all US telephone companies.

The importance of these two issues is this:

AT&T has dominated the calling card market, making billions of dollars over the years, through a special calling card arrangement with Cincinnati Bell and Bell South. This special arrangement has allowed AT&T to receive,

**\* preferential treatment and premium billing services, as if the card had been issued by a Bell Operating Company ("BOC") or Independent Telephone Company ("ITC") and,**

**\* no other competitive interexchange carrier has received such preferential treatment and today 10 years, 11 months and 12 days after Divestiture, no competitive interexchange carrier has been able to market an intraLATA and interLATA calling card that is accepted by virtually the entire telephone industry in the United States.**

What is this arrangement I am referring to?

***SPECIAL BILLING NUMBER (RAO) CALLING CARDS***

Here's what that includes;

1. Exclusive use of Cincinnati Bell's RAOs. AT&T has been able to issue Special Calling Cards (approximately 4 million) using 308 and 077 (077 appears as 677 on the actual calling card - per Bellcore specifications).

2. Exclusive use of Caribbean RAOs. AT&T has been able to issue Special Calling Cards (approximately 8 million) using RAO codes 503, 506, 507, 508. Each of these RAO codes - having been assigned by Bellcore to specific Caribbean countries - were never intended to be used for the issuance of calling cards, let alone calling cards for AT&T.

The use of these RAOs enables AT&T to issue 12 million, fully honored and completely billable calling cards that have generated billions of dollars over the course of the past few years, inclusive of an enormous amount of money for calls transported over other IC networks, charged to one of these cards, yet AT&T was paid for the call instead of the IC who actually transported the call.

Let's examine the preferential treatment that goes along with this arrangement.

### **BILLING & COLLECTION**

AT&T has received premium billing services since day one of Divestiture. AT&T believes they paid too much money for the service, but the rewards have been enormous.

#### **EXAMPLES;**

- \* What competitive interexchange carrier can say that they have 100% market presence in non-equal access as well as equal access telephone companies?
- \* What competitive interexchange carrier can market a calling card that is universally accepted by virtually every US Telephone Company - for intraLATA, interLATA, and international calling?
- \* What competitive interexchange carrier receives the comprehensive detail level Billing & Collection ("B&C") reports TODAY that AT&T has been receiving before, during and after Divestiture?
- \* What competitive interexchange carrier can boast that Bellcore actually changed the Bellcore CIID assignments document, for the entire Bellcore Client Companies [BOCs as you know them] to legitimize AT&T's blatant misuse of Cincinnati Bell and the Caribbean RAOs that have resulted in the issuance of up to 12 million AT&T exclusive calling cards?
- \* And what competitive interexchange carrier has their own unique version of the Exchange Message Interface ("EMI") that is used by the telephone industry to maintain premium billing services for AT&T?

I am referring to the AT&T - EMI or Exchange Standards Reference Document, or AT&T ESRD. [published and put out by AT&T, not Bellcore]

To summarize there are two systems for billing and collection services. A premium system, or Rolls Royce for AT&T and the BOCs, [BCCs, which includes SNET & CBT] then there is the Chevrolet for everyone else. Oddly the Chevrolet costs as much as a 1200% more to use than the Rolls Royce system and guess who pays for it all, the American Consumer, via the rates associated with LEC Billing.

Most people think AT&T divested themselves of their original billing system (System). Not true, they transferred ownership of replicated versions of their billing systems and kept the original for themselves. **Alex Abjornson** [the man who designed, implemented, and wrote the Bellcore Manuals for the System], installed the replicated version at Southwestern Bell in Kansas City. The original CMDS and CATS systems have been alive and well for the last 10 years, 11 months, and 12 days, still controlled by AT&T.

## **HISTORY ON THE BELL COMPANIES AND DIVESTITURE**

It is important to understand the history of billing services, as offered by the Regional Bell Operating Companies or ("RBOCs").

As a result of Divestiture the Access Service Tariff came into existence.

The initial intent of the Tariff was to structure how the RBOCs would be compensated for carrier use of BOC facilities.

Billing and Collection services were not directly a part of local access considerations and were defined as "Ancillary Services."

RBOC analysis determined that under Divested conditions, End User Billing [B&C] could be more than an ancillary requirement of Divestiture.

RBOC awareness as to the revenue potential of Billing & Collection grew, and as a result the RBOCs directed the CSO [later became Bellcore] in September, 1982, to form a Task Force to evaluate billing as a line of business or "LOB."

It should be noted that the development of Billing as a LOB was constrained by the historical regulated rate of return philosophy until April 1983.

In April, 1983, because of the FCC Third Report and Order, Docket 78-72, it became evident that even the short run potentials for Billing as a LOB were theoretically expanded considerably. [HUGE PROFITS]

This resulted in the creation of a new CSO (Bellcore) Task Force to evaluate the potential.

At this time in history, spring of 1983, B&C was no longer subject to regulation.

This meant that if B&C revenues were above or below the FCC allowed rate of return for the other Access Services, whatever B&C earned [more than or less than the normal FCC allowed rate of return] would not impact other Access Service revenues.

In essence, as of April 1983, B&C was allowed to make as much money as it could - **AN IMPORTANT POINT TO REMEMBER.**

[THIS RESULTED IN THE CREATION OF A NEW TASK FORCE TO EVALUATE THE REVENUE POTENTIAL FOR THE BOCS.]

The Task Force met between April 28th through May 29th, 1983. The product of this Task Force was the compilation of over 300 pages of significant data that provided National Parameters from which the RBOCs could utilize for their regional "price driving".. B&C models.

### **TASK FORCE RESULTS & CONCLUSIONS**

A couple of the key recommendations from this Task Force are as follows:

1. Billing & Collection should be considered a LOB by the RBOCs.
2. The mechanism to be used by the RBOCs for determining prices should be based upon the J. Goldberg cost model, generally referred to as the "Top Down Methodology." This process would allow each RBOC to quickly ...calculate revenue maximizing prices. [they artificially inflated costs associated with B&C]

Through the allocation of costs to the various billing elements, each RBOC could assign various costs. What this means is;

1. Billing & Collection rates were manipulated to fully recover the money that RBOCs were receiving from AT&T before Divestiture.
2. There was no consideration by the RBOCs of pricing B&C services competitively - because there were no other competitors.

### **INTERCOMPANY SETTLEMENTS AND THE CMDS I SYSTEM**

At the same time the Task Force was developing AT&T and B&C rates, the RBOCs and CSO [Bellcore] were creating what I refer to as the *Country Club* billing system, the Rolls Royce, the second system, the "circle within the circle."

This secret billing system for the telephone industry was fully functional in every way to the Tariffed billing system being presented to the FCC, except for the COSTS. THE RATES WERE SIGNIFICANTLY LOWER. HOW LOW? Originally the rate per message for billing was set at \$.10 per message.

This rate was immediately lowered by 50% to \$.05 per message including inquiry inclusive of Rolls Royce reporting system. This still exists today as we speak. This is the Intercompany Settlements System ("ICS") which is facilitated through the Centralized Message Distribution System ("CMDS I") and BOC (BCC) CATS, controlled by Bellcore and the BOCs, operated by Southwestern Bell and it has been operating in full swing since Divestiture.

Imagine \$.05 per message [a nickel], inclusive of all services including inquiry and full premium reporting [Rolls Royce] versus \$.20, \$.30, \$.40 per message, even higher, from the Chevrolet which provides inadequate reporting.

#### **QUESTION NO. 1 FOR THE COMMITTEE**

Why, when the RBOCs and Bellcore have a fully functional means of providing B&C services through ICS at \$.05 per message did the FCC approve B&C Tariffs that reflected rates to the interexchange carrier [IXC] market that were as much as 1200% greater than the rates the RBOCs charged themselves?

#### **WHAT WAS SOME OF THE IMPACT OF TWO B&C SYSTEMS**

As a result of AT&T having to pay the Tariffed B&C rates, the RBOCs were able to fully recover pre-Divestiture revenues, in essence - WINDFALL PROFITS.

At the same time the RBOCs have maintained a monopolistic [oligopoly] intercompany settlement billing system for their own use, at a fraction of the cost being charged to the IXC industry. How many of the IXCs in the industry today have B&C rates of \$.05 per message, with inquiry, detail reporting and, **100% ON NET CAPABILITY?**

The artificially inflated costs associated with B&C, which were part of the 1983 tariffs filed at the FCC, pursuant to Divestiture, were essentially the same tariff structures and rates that the BOCs filed in each of your states during this time frame. The ITCs also used the same poison data as the CSO filed the tariffs for the ECA ["NECA" as you know it today], based on the cost information compiled by the infamous Task Force. This affected every consumer in the country as these artificially inflated B&C costs resulted in higher rates.

**[Note: 2004 - As of 2004, estimated overcharges to consumers {wireline only}, inclusive of 6% compound interest, exceeds \$650,000,000,000.00]**

## POST DIVESTITURE RESULTS

The Task Force, via the J. Goldberg costing methodology, had already shifted ALL B&C service costs down into the basic rate elements of the service, so regardless of the rate of return, windfall profits would exist, corrupting the FCC's decision to place a 12.75 maximum rate of return on billing services.

On February 17, 1984, the FCC released Memorandum Opinion and Order, CC Docket No. 83-1145, [FCC 84-51, 34298], Investigation of Access and Divestiture Related Tariffs.

In this document the FCC states that the common line rate elements represent a \$10.8 Billion revenue requirement, of which the BOCs claim \$8.53 Billion or 79%. This is the ... "best estimate of future costs"... represented in the BOCs tariffs, however the FCC stated and I quote,

"The budget view is a list of 59 items relating to unseparated investment, expenses, taxes, and reserves listed in work papers. However, no documentation is presented to explain the source for all the figures which are used to derive interstate amounts, and thus the basis for all the access costs and rates, the discussion of the budget view occupies less than two and a half pages in each BOC filing."

They went on to say;

"...it is not possible from these filings to evaluate or verify the figures in the budget view. First, the sources of the budget view figures are not clearly specified and cannot be checked."

The FCC then predicted the future by stating that if the figures are wrong the whole industry would be affected. [Fruit from the poison tree], I quote again;

"As we pointed out, the budget view is of crucial importance in these filings as the direct basis for the BOC's claimed revenue requirements, is the root for every individual rate. It is additionally important because of the BOC and ECA top - down methodology. Any errors in the budget view would affect essentially every rate under this approach."

To my knowledge, at no time has the FCC or any other Federal agency ever fully investigated or audited the component costs of the RBOC billing services to determine if the costs applied to the billing elements were true, reasonable, and not overstated. The FCC went on to say;

"...that given their inability to understand and evaluate these rates, they were going to determine whether billing and collection should be detariffed."

Billing & Collection Services were subsequently detariffed under CC Docket No. 85-88, effective January 1, 1987. **[NOTE: 2004 - The Bert Halprin Doctrine, which made him a rich man in post FCC service, representing the BOCs].**

**[NOTE: 2004 - Keep in mind that the MFJ required the Bell operating Companies to provide AT&T's competitors the same services as AT&T were receiving in "...like, quality, and price."**

## **QUESTION NO. 2 FOR THE COMMITTEE**

Considering the overwhelming evidence that indicates the costs associated with Billing & Collection were intentionally artificially inflated, costing consumers hundreds of billions of dollars in higher rates, why hasn't anyone audited the BOCs component costs associated with billing services? I hope this committee will also ask why the FCC just walked away, or turned their heads from what they new to be an obvious problem and will you [NARUC] investigate?

AT&T new it was a problem, that's why they were filing emergency petitions in late 1983 and early 1984. AT&T said they would loose roughly 60% of there interstate revenue based on the costs and tariffs filed by the BOCs and ECA.

To calm AT&T the BOCs settled with AT&T outside the FCC and the BOCs gave AT&T a present to sooth the wound. That present was called **"Stargate"**. Cincinnati Bell was AT&T's sponsoring LEC into the CMDS I / BOC CATS billing system. This included access to the ICS system and the \$.05 price.

In 1987, the Department of Justice investigated SNAFA ("Shared Network Access Facilities Agreement"). For some reason DOJ [Philip Sauntry] completely missed ???? the entire calling card scheme. They missed the fact that AT&T still maintained their original billing system CMDS & CATS. Someone was asleep at the wheel, or ????

By 1988, AT&T was now issuing calling cards based on Cincinnati Bell's ("CBT") RAOs and Caribbean LECs RAO numbers. Mass marketing began on these new AT&T joint use calling cards. AT&T's use of the RAOs assigned to CBT and the Caribbean LECs went unchallenged by Bellcore or the BOCs.

In 1989, Card Issuer Identifier ("CIID" Numbers) were being talked about by Bellcore as a solution for universal calling cards.

In 1990, CIID Numbers are assigned to requesting carriers.

In 1991, the FCC finds CBT guilty of discrimination for violating Title Two of the Communications Act, in connection with their refusal to supply validation information about the AT&T Special Number calling cards to other IXCs. CBT's response is they will get out of the Calling card business, yet Bellcore reassigns CIID numbers to AT&T that just happen to match AT&T's RAO based Special Number joint use calling cards, issued in connection with CBT and the Caribbean LECs. This brings us to;

### **QUESTION NO. 3 FOR THE COMMITTEE**

Why is it that no other IXC, other than AT&T and now UNITEL a Canadian Long distance carrier, have a universally accepted calling card based on any Bellcore assigned CIID numbers almost 11 years after Divestiture. This is an important question as I know it's not because no other IXC wants to go to market with one.

In closing, I urge the committee and NARUC to launch an investigation into the anti-competitive barriers put up by the BOCs which have prevented any other IXC from being able to compete head to head with AT&T, the LECs, and now UNITEL in the lucrative calling card business. The monopoly by which the BOCs control Billing & Collection has got to be disassembled. The bottleneck on billing services is worse today than in 1984.

The MFJ not only required divestiture of the Bell System local exchange operations, but also required the dissolution of the partnership arrangements among the Bell System Companies. Preferential partnership arrangements between AT&T and the BOCs have cost consumers Hundreds of billions of dollars in overcharges.

The industry has lost hundreds of billions of dollars because of anti-competitive barriers controlled by the BOCs and something you probably don't know, most states and the federal government, have lost an incredible amount of tax dollars due to the inflated costs associated with billing services which have been used to wrongfully deduct expenses from tax returns. This has happened at every telephone company in America.

I urge this committee and NARUC to begin a thorough investigation into the BOCs and AT&T regarding their preferential partnership agreements that violate the MFJ and prevent the rest of the industry from enjoying the right to compete in a free market, void of antitrust and anti-competitive behavior.

It is important that you look at Billing & Collection as it is the most misunderstood, yet probably the most important aspect of the entire telecommunication industry. B&C services are not even close to being competitive. The BOCs bottleneck controls everyone except AT&T as no one is allowed to use the system as the court originally intended, except the BOCs. Everyone else, except AT&T, is being held hostage, some have been put out of business for challenging the BOCs control, while attempting to compete.

**[Note: 2004 – It was American TeleDial Corp (ATC) & National TeleProcessing, Inc. (NTI) that were illegally put out of business for legally accessing the ICS (InterCompany Settlement System), via Fidelity Telephone, beginning in March 1992. It is the Fidelity court settlement {lawsuit filed by ATC as litigation manager on behalf of Fidelity that has been voided by TMA International Trusts who owned ATC & NTI}. Fidelity assigned, via contract in 1992, all of their legal claims over to ATC].**

If the BOCs had been given approval to go into the interstate long distance business, no one, and I emphasize NO ONE would be able to compete head to head with them except AT&T because each BOC has installed their own version of the billing system locally for their own control region by region. This is why all new deals between AT&T and the BOCs are now locally negotiated whereas before AT&T worked primarily through CBT and Bell South.

**[NOTE: 2004 – VoIP is going to eliminate the cash cow known as ICS, however the SINS for 20 years of abuse are enormous. With the voiding of the Fidelity settlement, and by combining wireline overcharging associated with the ICS with wireless overcharging associated with the ICS, the defendants in the upcoming class actions are looking at over ONE TRILLION DOLLARS in "Joint & Several" liability. Unless a resolution is obtained by Wednesday, March 31, 2004, the industry will be financially destroyed, along with a lot of lawyers, executives, and federal employees.**

When you sell a service to the general public it's important to be able to collect your money in an efficient manner. Billing services are not competitive today, they never have been competitive, and we are 10 years, 11 months, and 12 days after Divestiture and the "Country Clubs" strangle hold on the industry is tighter than ever. The evidence of foul play warrants your attention and the attention of Washington, inclusive of Congress.

I hope you take appropriate steps to protect the consumers and the industry from further erosion. The Supreme Court said it best in the case *International Salt Co. V. United States*;

" it is not necessary that all of the untraveled roads to [anticompetitive conduct] be left open and that only the worn one be closed. The usual ways to the prohibited goals may be blocked against the proven transgressor."

To put it all in perspective, had MCI been given the same billing services and opportunities as AT&T, their roadside billboards claiming how much money they have saved consumers would have to be twice as wide to accommodate the extra zeros.

Ladies and Gentlemen you know who the proven transgressors are, you also know about anti-competitive conduct. I hope you will do something about it.

Now your memories should be refreshed and up to speed as to why it is my intention to legally destroy the telecom industry if that's what it takes to recover my money, stolen by the BOCs, with all the Defendants acting as an accessory in some capacity, either during or after the fact.

**American TeleDial Corp (ATC) et al v. SBC Communications et al**

This is the lawsuit to collect the approximate \$1,700,000,000.00, my partners and I lost as a result of being illegally blocked from using the ICS. As you all know, in 1992, SWBT (SBC) in their capacity as "Contract Administrator for the ICS, along with the other Bellcore Client Companies (BCCs) who acted as "Hosts" to the ICS, intentionally blocked Fidelity's [contractual partner of ATC] access to the system. Fidelity signed over all their legal claims to myself and ATC. As Vice-Chairman of ATC, I filed suit in state court in Missouri and forced SBC to open access to the ICS, via a TRO.

The case was bumped to federal court in Kansas, City MO, where eventually Fidelity [after being threatened by SBC who told Fidelity the BOCs would put Fidelity out of business], through their St. Louis Law Firm, conspired with the BOCs, Bellcore et al, to illegally settle the case without my approval. The settlement was accepted by the court and sealed. Myself, my partners, nor ATC received one penny of compensation for our losses.

We just proved this month that the federal courthouse in Kansas City where the settlement took place, had no legal jurisdiction. The state of Missouri never transferred legal jurisdiction [Missouri Code 12.030 & 12.040 in conjunction with Title 40 U.S.C., Sec. 255, in conjunction with Art. I, Sec. 8, cl. 17 U.S. Constitution - {Also, see Criminal Resource Manual (DOJ Title 9) Sec.'s 664, 665, 668, and, see **Jurisdiction Over Federal Areas Within the States, Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, ordered by President Eisenhower 1958**]. The state has confirmed the lack of jurisdiction; hence, the Judge had no jurisdiction, therefore the settlement is null and void.

This creates an enormous problem for you as the entire industry has been hiding behind this settlement for 11 years. The BCCs and AT&T made Billions of dollars off this illegal scam. Collectively they made **Hundreds of Billions of Dollars**, all in violation of the MFJ. My use of the ICS was completely legal and in accordance with the MFJ. Judge Green gave all LECs the legal right to use the system, he just didn't order the BOCs to educate anyone how to use it.

During the preliminary hearing in federal court BOC / Bellcore experts and lawyers perjured themselves. SBC's lawyers subordinated perjury. The Bellcore BOC lawyers intentionally withheld discovery that was later obtained in 1994, right before my speech to NARUC. Today those lawyers claim discovery had not completed back 1992, therefore they technically did not withhold. The documents obtained in 1994 include confidential instructional bulletins [signed by Bill Micou who testified under oath at the preliminary hearing that no AT&T interstate messages were being billed through ICS by the BCCs] from Bellcore to the BCCs explaining to them how to covertly bill AT&T messages so as to not expose the secret billing system, inclusive of flow charts showing how the money was going to flow to Cincinnati Bell (CBT).

The messages were all collected by the BCCs in their capacity as "Hosts", then sent to CBT who sold the receivables to AT&T on paper, who then in turn sold them back to CBT [decoding CIID messages when applicable], which said messages were then submitted by CBT into the secret billing system [ICS] coded 000 [CBT] in the carrier identification code in the EMR format instead of 288 [AT&T]. By being coded 000 it appeared that the messages had been transported by CBT, therefore the revenue belonged to CBT. The big problem was CBT did not transport interstate messages outside OHIO.

CBT was being credited Millions of Dollars by Bellcore for interstate messages, via their CATS reports, which I have in my possession. I obtained these documents through a subpoena. CBT to this day denies ever billing AT&T interstate messages, even though the physical evidence is undeniable.

ATC and its sister company National Teleprocessing, Inc. (NTI) had signed billing & collection contracts in 1992 with AT&T competitors that would have generated over \$300 Million in profits in just the first year, and this was after cutting the BOCs billing prices by as much as 50%. The industry was flocking to us for B&C services because we could provide a better product [Rolls Royce - ICS] than they were getting from the BOCs/BCCs [Chevrolet, or outer circle as described in my speech]. The Sacred Cash Cow was in jeopardy as ATC / NTI had forced the "Country Club" to open its membership. The way they reacted one would have thought I was an African American trying to join Augusta National in 1960. Their panic was almost humorous it was so animated, however it was outrageous, and incredibly arrogant. When they called meetings with us it was always in a secret location where no one would see us meeting. It was like they were the CIA.

The bottom line, with 6% compound interest on the money that would have been generated by our signed contracts, ATC / NTI lost approximately **\$1.7 Billion**. The BOCs made Hundreds of Billions. I want my money, and I intend to get it, even if I have to take down all the remaining Bell Operating Companies in the process, via multiple lawsuits, inclusive of shareholder litigation for securities fraud already committed. They made their money illegally. They took away my legal opportunity to succeed in the billing industry and now you're going to have to pay back my money, or suffer the legal consequences. I intentionally have not filed any lawsuits prior to now. This was part of our strategy as you all believe I won't file. Everything in life is timing. The BOCs are hurting, fighting off litigation, losing local access lines. Keep thinking I won't file and it'll be like the movie "Trading Places" with Eddie Murphy. My partners and I will be the ones' on the beach at the end of the movie. You'll be Ralph Bellamy and Dom Ameche.

As for the regulators, you are accessories after-the-fact. The FCC and state regulators have been covering-up this fraudulent scam since 1992. The statute of limitations on conspiracy does not begin to run until the last overt act has been committed. Overt acts are committed every day, and have been since March 29, 1992. With the participation of the FCC, and with NECA being a federal corporation having received "fruit from the poison tree" through Independent NECA Services, the Federal Government can be held liable under "joint and several liability" for all damages not only to us, but to all consumers who have been overcharged, with interest, in excess of **ONE TRILLION DOLLARS (\$1,000,000,000,000.00)**.

**I wonder if Congress has that kind of money, the BCCs don't. [This liability is associated with Case Number 2 - William Lovern, Sr. et al v. SBC Communications et al].**

The AT&T monopoly was not finally broken up by Judge Greene's Order until 1994, after AT&T got caught and the BOCs finally kicked them out of the "Country Club." Look at AT&T today, a mere shell of a company they use to be. The BOCs had to sell Bellcore to try and hide their tracks. SAIC intentionally covered up Bellcore's racketeering enterprise, all in the name of GREED. I personally sent all the necessary physical evidence to SAIC shortly after they obtained Bellcore. They simply swept it under the carpet. As recent as two weeks ago SBC lawyers told SAIC lawyers "to sit tight, Don't do anything with Lovern." In other words, don't try and settle. Hold the party line. We'll handle it.

Gentlemen, you can hold the party line, but I'll use RICO to bankrupt individuals, federal employees included. You can sit there and think I won't file suit. The BOCs thought this in 1992. They were wrong! They also thought their illegal settlement would protect them forever. They were wrong! You can trust your entire financial position in life with them, but you will be wrong! "What goes around, comes around."

***"Opportunity exists when reality is different from perception."*** Thinking you're financially safe is a terrible mistake. I will get my money...that you can count on. No one steals from me and gets away with it...NO ONE! The time to make a decision is NOW. Eleven years is long enough. You know the facts, chose your poison. Resolution deadline is 12 Noon, March 31, 2004. Feel free to call me with any questions.

Keep in mind the ICS is the focal point in the ongoing Gambino Crime Family criminal indictment, whereby they used the ICS, via USP&C, to overcharge consumers up to \$800,000 per day.

Yours truly,

William Lovern, Sr.  
President

Cc: Senate Committee on Commerce, Science & Transportation  
Sub-Committee on Communications

House Committee on Energy & Commerce  
Sub-Committee on Telecommunications & Internet

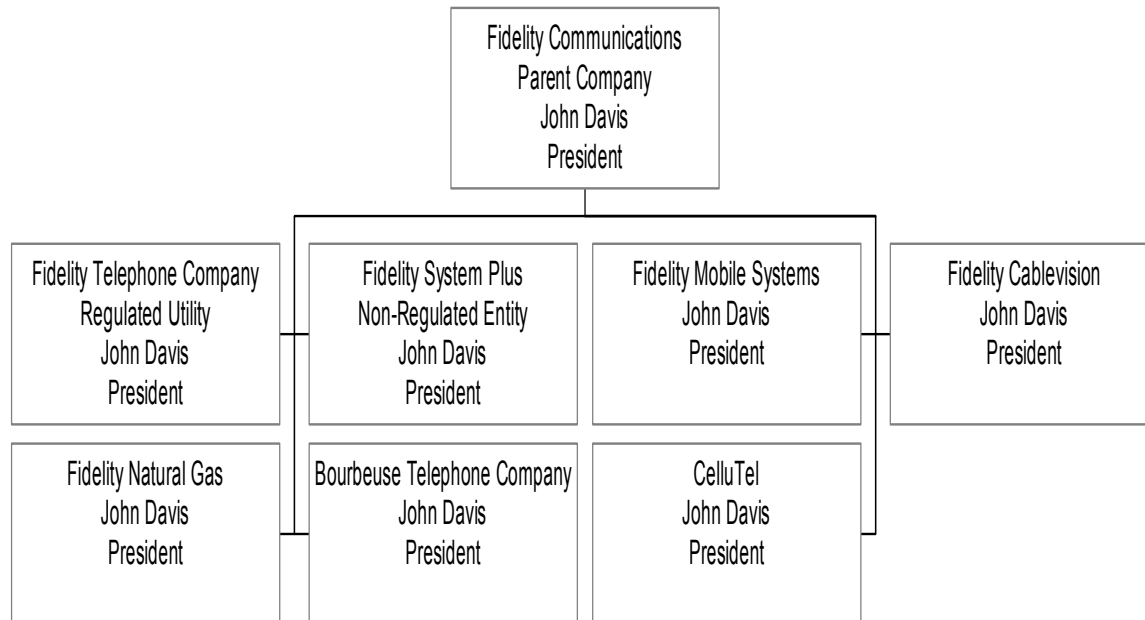
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# Attachment 12

## Fidelity Communications, Inc. Organizational Structure @ July 1992

# Fidelity Corporate Structure

Fidelity Corporate Organization Structure  
@ July 31, 1992



## Attachment 13

Mr. Matzdorff MPSC Testimony on  
April 19, 2004

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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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25  
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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-- CassTel?

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 CassTel 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

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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

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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 CasTel 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 CasTel.  
 12 Q. -- to CasTel?  
 13 A. Well, to the company, the holding company of  
 14 CasTel.  
 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.

BY CHAIR GAW:

Q. In Local Exchange Company?

A. Yes. Local Exchange Company, there's a large number of equity investors.

Q. And were you given any of those -- lists of any owners?

A. Yes. We have a complete list of all the

owners of Local Exchange Company, yes, we do.

Q. All right. In 1995, that would have been when CassTel was formed. How does that relate in time to the Spectra GTE transfer?

A. This is about five years afterwards.

Q. Which -- five years after what?

A. 1995. This was about 1999, 2000 time period.

Q. For purposes of the record --

A. Excuse me.

Q. -- when you're pointing, I'm just trying to get you to describe it.

A. Cass County was established in 1995, 1996. Spectra Communications was 1999, 2000 time period. GTE at the time nationwide was examining a number of their rural exchanges, a number of states of where to stay in business, where to leave.

For instance, they sold the state of Arkansas, they've sold the state of Alabama, Missouri -- they're no longer in the state of Missouri. There's other states also. They've sold some of the rural exchanges they've had. And this is -- the Spectra piece, the 2000 piece was the second phase of that divestiture of those exchanges.

Q. Okay. The purchase though of the -- and the formation of CassTel, how did that come about? How did the -- where did the money come from to purchase the assets?

A. The money at that particular time came from -- I believe it's a CoBank loan. And I do not have that amount in front of me. And then there was a series of investors that put equity money into -- for the difference from the CoBank piece to purchase the GTE exchanges.

Q. What do you mean by a CoBank loan?

A. CoBank is a -- it is a part of I believe agricultural -- they provide credit to telephone companies, rural telephone companies, water companies. And they're kind of a step before you go to RUS for money. And CoBank provided, I believe, the bulk of the dollars to purchase Cass County Telephone through a loan they gave.

JUDGE WOODRUFF: Mr. Winter, if you'd move the microphone in front of your mouth more, they're having a hard time hearing you over the Internet.

BY CHAIR GAW:

Q. Where did you say USP&C was based, if you did?

A. I did not say, but I do believe it's in Overland Park, Kansas also.

Q. And do you know who owns USP&C?

A. No, I do not. The indictment does provide some information as to that, but I do not have that information right now.

Q. Have you been in touch with anyone that's conducting the investigation on the indictments that you

mentioned?

A. No, I have not.

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.

00028

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

00031  
 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.

00033

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  
00035 have similar stockholders. And that's the only thing I'm  
1 aware of.  
2 Q. Okay. At any point in your investigation  
3 subsequent to learning about the indictment, has the subject  
4 company, Casstel or Local Exchange Company, provided all the  
5 information that you have requested?  
6 A. They've been very open with any information.  
7 Any request that we've -- we've asked for, they've given to  
8 us a very quickly.  
9 Q. Is there any other information that you  
10 believe would be helpful in determining whether or not a  
11 regulated utility has been involved in any alleged  
12 wrongdoing at all?  
13 A. Once we found out, we went through there and  
14 had a meeting with the company and followed up with data  
15 requests. And we believe we're satisfied that Local  
16 Exchange Company in our earnings investigation has not been  
17 tainted by this indictment.  
18 Q. In your assessment in the rate case, is it  
19 your opinion that the books, accounting records appear to be  
20 in order and that there is no overt appearance of  
21 impropriety?  
22 A. The books, as far as we can see from our audit  
23 tests and from the audit financial statements we have seen,  
24 are in order. We don't see anything out of line that we  
00036 would -- that would call into question the earnings of the  
1 company.  
2 JUDGE WOODRUFF: If I could interrupt again,  
3 apparently the podium mike is not functioning. Why don't  
4 you come back over to the witness seat. We have a lot of  
5 viewers out there and they keep us sending me e-mails. All  
6 right.  
7 COMMISSIONER CLAYTON: Do you want me to start  
8 over, Judge?  
9 JUDGE WOODRUFF: No. That's not necessary.  
10 BY COMMISSIONER CLAYTON:  
11 Q. Did Staff, when looking at Casstel, determine  
12 whether there were any types of inappropriate telephone or  
13 Internet billing charges that were not authorized by the  
14 customer?  
15 A. What we did, we did a two-prong attack on that  
16 particular area. First, we got our consumer area --  
17 consumer complaint area involved in that and they looked --  
18 went back and looked at the complaints by -- about Casstel.  
19 We found very, low non-existent complaints about Casstel and  
20 their charges on the bill.  
21

22 And the second piece, we went back and looked  
 23 if there was any contracts between any of the indicted  
 24 parties and CassTel 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 CassTel.

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

00038

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 CassTel.

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.

00042

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

00044

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?

00045

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  
 00048

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  
00049 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

00050 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

00051 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 CassTel 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:

00053

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 CassTel.

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 CasTel?

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  
 00057

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 CasTel to Overland Data

00058  
 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 CasTel 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 CassTel 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, CassTel 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  
00063 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 CasTel?

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

00070

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?

00071  
 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  
 00072 record? With that then, we are adjourned.

1 (Exhibit Nos. 1 and 2 were marked for  
 2 identification.)  
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00073  
 1 I N D E X  
 2 DAVID WINTER  
 3 Questions by Chair Gaw  
 3 Questions by Commissioner Clayton

7  
 27

Further Questions by Chair Gaw

39

KENNETH MATZDORFF

Questions by Chair Gaw

53

Questions by Commissioner Clayton

67

00074

## EXHIBITS INDEX

Marked Rec'd

Exhibit No. 1-HC

Data Request No. 9, Highly Confidential

72

Exhibit No.2-HC

Data Request No. 13, Highly Confidential

72

ATTACHMENTS 14 THROUGH 16  
HAVE BEEN DEEMED  
HIGHLY CONFIDENTIAL  
IN THERE  
ENTIRETY

## Attachment 17

Southwestern Bell Telephone Company

Post-Hearing Brief in United States

Western District Court of Missouri;

Civil Action File Number:

92-4326-CV-W-8

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

FIDELITY TELEPHONE COMPANY, a  
Missouri Corporation,

Plaintiff,

vs.

SOUTHWESTERN BELL TELEPHONE  
COMPANY, a Missouri corporation,  
and BELL COMMUNICATIONS RESEARCH,  
INC. a New Jersey Corporation

Defendants.

CIVIL ACTION FILE  
NO. 92-4326-CV-W-8

POST-HEARING BRIEF OF DEFENDANT  
SOUTHWESTERN BELL TELEPHONE COMPANY

September 11, 1992

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**POST-HEARING BRIEF OF DEFENDANT  
SOUTHWESTERN BELL TELEPHONE COMPANY**

**I. SUMMARY OF THE CASE**

Plaintiff Fidelity Telephone Company (Fidelity) filed this case less than three weeks after having a state court deny the same relief requested here based on the same fact situation and many of the same arguments. The instant and earlier state action involved an effort to use the court system to impose upon Defendant Southwestern Bell Telephone Company (Southwestern Bell) an unjustified commercial arrangement -- a billing, collection and settlement contract for operator services and long distance telephone calls -- that is not founded upon any existing contractual obligation, past practice, nor justified on any legal theory. Throughout a series of continually changing arguments and theories, Plaintiff has failed to establish a single legal justification for the extraordinary relief it seeks from this Court.

Southwestern Bell and the other 1200 local exchange companies (LECs) throughout the nation have for many years performed billing, collection and settlements of one another's third number and credit card calls on a reciprocal basis. The system which facilitates this reciprocal arrangement is the Bellcore Client Company Calling Card and Third Number Settlement System (BOC CATS). The consideration for the billing and collection services on these LEC calls has been five cents per message and the performance of reciprocal services by all local exchange companies. Billing and collection services for other types of calls, including

interexchange carrier (IXC) messages, are available to the IXCs from local exchange companies and others on commercial terms mutually agreeable to the contracting parties. In addition, interexchange carriers also do some of their own billing.

In the spring of 1992, Plaintiff attempted to make a unilateral change in the BOC CATS system by using it for IXC messages that Fidelity had purchased from two interexchange carriers. This use of the BOC CATS system was unprecedented and directly contrary to written guidelines. Moreover, it was accomplished only after Plaintiff repeatedly and intentionally submitted falsified information to the Central Message Distribution System (CMDS) which routes message data to individual companies for billing.

Plaintiff's legal theories have ranged from allegations of a contractual right to use the system, to arguments based upon general antitrust concepts, the Communications Act and the Modification of Final Judgment. In the final analysis, despite many days of depositions, extensive discovery and lengthy hearings, Plaintiff has failed to establish facts to support any theory which would serve as a basis for the mandatory injunctive relief requested from this Court.

Even if Fidelity could be found to have stated a claim which is not barred by its failed attempt in the Franklin County proceeding, Fidelity still is not entitled to a permanent injunction because it has not satisfied the elements which are a prerequisite to such extraordinary relief. Dataphase Systems, Inc

v. C. L. Systems, Inc., 640 F.2d 109 (8th Cir. 1981); see also, Current-Jacks Fork Canoe Rental Assoc. v. Clark, 630 F. Supp. 421, 424-425 (E.D. Mo. 1985) (holding that actual success on the merits must be demonstrated to obtain a permanent injunction). For a permanent, as opposed to a preliminary injunction, the elements Fidelity is required to prove are actual success on the merits, irreparable harm, that its harm outweighs any harm to the defendants, and that issuance of an injunction will further the interest of the public. See Dataphase, supra at 114. As this brief will set forth in more detail, Fidelity has not proved actual success on the merits nor a harm that cannot be compensated with money damages in the same way that commercial litigants are normally compensated. Additionally, the harm to the Defendants in the transformation of CATS into an IXC billing system, the damage to Southwestern Bell's billing and collection product, and the serious risk of violations of law caused by Fidelity's misuse of CATS far outweigh any damage to Fidelity. Finally the interests of the public will not be furthered by forcing all 1200 LECs to provide services to Fidelity against their own wishes and in their absence and such action would undermine the policies of the FCC and state regulators.

## II. STATEMENT OF FACTS

### A. PROCEDURAL HISTORY

This case comes before the Court on Plaintiff, Fidelity Telephone Company's Motion for Issuance of Temporary Restraining

Order, Preliminary Injunction and Permanent Injunction filed on July 16, 1992. At a nonevidentiary hearing held on July 17, 1992 Plaintiff's request for a TRO was denied and an evidentiary hearing was scheduled. That hearing began on August 10; it was completed on August 14, 1992. With the consent of all of the parties the scope and impact of the hearing was enlarged by the Court to encompass not only Plaintiff's request for a preliminary injunction, but also its request for permanent injunctive relief.

Plaintiff's initial six count Complaint filed on July 16, 1992 pleaded contractual and discrimination theories.<sup>1</sup> A First Amended Complaint was filed later that same day restating the original six counts and adding antitrust theories. A Second Amended Complaint was filed two weeks later which removed the allegations contained in the First Amended Complaint concerning the involvement of the other Regional Bell Operating Companies (RBOCs)<sup>2</sup> in the alleged antitrust conspiracy.

#### **The Underlying Transaction**

The "transaction" which forms the basis of Plaintiff's suit is the screening by Southwestern Bell of messages transported by interexchange carriers (IXCs) submitted by Fidelity to the local

---

<sup>1</sup> Plaintiff's attorney James Shields signed the Complaint on behalf of "Plaintiffs American Teledial Corporation and Fidelity Telephone Company" even though Fidelity was the only named Plaintiff.

<sup>2</sup> For the convenience of the Court, a list of acronyms used in this brief and at the hearing is attached hereto as Appendix A. Additionally, all cases not readily accessible to the Court, such as FCC opinions, not previously provided to the Court or opposing counsel have been collected into Appendix C.

exchange telephone company (LEC) to local exchange telephone companies' settlement system called the Bellcore Client Company Calling Card and Third Number Settlement System (BCC CATS, BOC CATS or CATS).

The same transaction formed the basis of the Plaintiff's prior state court action alleging contractual theories, and seeking the same injunctive relief Plaintiff has sought in this Court. That suit was filed by Fidelity against Southwestern Bell and Bell Communication Research Inc. (Bellcore), the other defendant herein, in a Missouri state court in Franklin County on June 15, 1992. See Franklin County Circuit Court Legal File. Without an evidentiary hearing, the Franklin County action resulted in the issuance of a TRO which was subsequently dissolved after the evidentiary hearing held on June 25, 1992 before Circuit Court Judge John Brackman. Id. At the close of Plaintiff's case, Judge Brackman also dismissed Plaintiff's cause of action against Southwestern Bell. Id. Plaintiff's Motion to Set Aside the Dismissal which was argued on July 1, 1992 was denied and the dismissal was certified for appeal. Id. Subsequently on July 29, 1992, after voluntarily dismissing out Defendant Bellcore, who had not yet been properly served by the time of the hearing, Fidelity filed a notice of appeal in the Court of Appeals for the Eastern District of Missouri. Id. Plaintiff is actively pursuing its appeal now, having recently filed a Statement of Issues with the Court. Defendant Southwestern Bell filed a Rule 12 Motion in this Court on August 9, 1992 seeking the dismissal of Plaintiff's Complaint on the grounds its suit is barred by the

doctrine of res judicata. The Court deferred a ruling in the Motion until submission of the case.

B. BACKGROUND INFORMATION ON CMDS AND CATS

**The Parties And Non Parties**

Fidelity and Southwestern Bell are but two of approximately 1200 local exchange telephone companies throughout the nation which have their own designated service territory within which each is obligated to provide basic local telephone service pursuant to state franchises. Testimony of R. Taylor; see also, Fidelity Second Amended Complaint. The rates and earnings of local exchange companies, like Southwestern Bell, Fidelity and the 1200 other LECs are closely regulated by the state public utility commissions in the states in which those utilities operate.<sup>3</sup> Testimony of R. Taylor.

Southwestern Bell is one of seven Regional Bell Operating Companies (RBOCs) created by the divestiture of AT&T from its local exchange operating companies.<sup>4</sup> See Plaintiff's Second Amended Complaint; Testimony of W. Micou. The Consent Decree<sup>5</sup> also established certain restrictions on the activities of the RBOCs to

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<sup>3</sup> Southwestern Bell is rate and earnings regulated in the five states in which it operates: Missouri, Arkansas, Kansas, Oklahoma and Texas. Its interstate services are regulated by the Federal Communications Commission.

<sup>4</sup> The other six RBOCs are Bell Atlantic, BellSouth, NYNEX, US WEST, Ameritech and Pacific Telesis.

<sup>5</sup> United States v. American Telephone and Telegraph, 552 F. Supp. 131 (1982), Plaintiff's Exh. 33.

prevent those companies from entering into the long distance business reserved for AT&T and its IXC competitors. See Plaintiff's Exh. 33 (the MFJ). The primary method of insuring compliance with that objective was the creation of Local Access And Transport Areas (LATAs) within which an RBOC is permitted to transport telephone calls (intraLATA), but between which it may not (InterLATA).<sup>6</sup> Testimony of R. Taylor; W. Micou. Although there are numerous exceptions, LATAs in many cases roughly correspond to area codes.

#### **The CMDS and CATS Systems**

At the time of divestiture, certain centralized functions which had previously been performed by Bell Labs were transferred by the Court to a newly created service company called Bellcore. Testimony of W. Micou. Two such systems, the Central Message Distribution System, or CMDS and BOC CATS are at the heart of the dispute between Plaintiff and Defendants in this case, as in the Franklin County case.

CMDS is a computer run, message data routing system operated by Southwestern Bell under contract to the system owner, Bellcore. Testimony of W. Micou; R. Taylor. The CMDS system routes the message detail required to bill individual customers for any telephone call which has touched the network of a LEC and that of at least one other telephone company, LEC or IXC. Testimony of W.

---

<sup>6</sup> Independent Telephone Companies (all LECs which are not RBOCs) may also provide long distance services, but most do not have the facilities. Many of those that do provide such services do so through separate subsidiaries.

Micou. The routing system exists to facilitate the exchange of billing data by telecommunications companies. Testimony of W. Micou. CMDS is not a telephone call transmission system, nor is it a billing system. Id. Messages which go through the CMDS system do not get billed by LECs who receive the messages unless a billing and collections agreement is in place. Testimony of W. Micou; J. Yancey.

BOC CATS, as with CMDS, is also owned by Bellcore and operated by Southwestern Bell pursuant to contract. Testimony of W. Micou. It is not involved in the transmission of telephone calls, nor is it a billing system. Id. Instead, BOC-CATS is an adjunct to CMDS which was designed and is used exclusively for the accumulation of message data on calls transported by local exchange telephone companies.<sup>7</sup> Id. CMDS copies the message data on all qualifying LEC transported calls and sends that information into the CATS system for inclusion on monthly reports which are utilized by all 1200 LECs for settlement purposes amongst themselves. Id. The actual telephone calls are billed by the 1200 LECs using their own individual billing systems. See Testimony of J. Yancey. Because of past practice and the implicit agreement of all of the involved local exchange companies, calls which have been submitted to CATS are placed by the LECs on their own bill pages. Testimony of W. Micou.

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<sup>7</sup> All services provided by a LEC on behalf of a customer of another LEC do not get settled through CATS. The system is instead used only for certain types of LEC transported calls, primarily intraLATA credit card and third number calls.

The LEC which completes telephone calls for the customers of another LEC incurs expenses associated with the transmission of the calls over its network, while the customers' home companies have the pertinent information (name, address etc.) required to bill and collect for the telephone calls. Id. Without the CATS settlement system in place to exchange such services, each LEC would be required to establish a method of billing every person who uses their facilities, or prevent the use of its facilities by persons with whom the LEC does not have a billing relationship in order to avoid incurring unrecoverable expenses. Testimony of R. Taylor; W. Micou. The charge the 1200 LECs assess for billing and collecting each other's messages processed through CATS is a nickel per message plus the promise to provide reciprocal services.

#### **Guidelines For The CMDS System**

Use of both the CMDS and CATS systems are governed by certain procedures and guidelines issued by Bellcore which insure the uniform and proper operations of these systems which handle millions of messages daily. Testimony of W. Micou. In the case of CMDS, the Exchange Message Record (EMR) instructs participants about how to format message detail such that the computer can properly read and route it.<sup>8</sup> Testimony of A. Abjornson; W. Micou. The CMDS Users Guide advises participants concerning which messages are proper for CMDS routing. Testimony of R. Taylor. The CMDS Users Guide which Southwestern Bell provided to Fidelity on three

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<sup>8</sup> The Exchange Message Record is used by LECs for formatting while a separate (but similar) manual, the Exchange Message Interface (EMI) is used by IXCs.

separate occasions in 1991, well before Fidelity made its decision to enter into its IXC billing venture, provides in relevant part:

Currently, for Interexchange Carrier related messages, the billing BCC receives message and billing details via CMDS I. It then bills and collects the associated revenues, dealing directly with the appropriate IC [IXC] under the billing and collection contracts and tariffs for billing and collection services rendered. There is no exchange of revenues for these calls via CATS.

See Defendant's Exhs. 21, 22 & 23, Document at 1-1 (emphasis added). Because all message data submitted to CATS originates in CMDS, the formatting of messages for inclusion in CATS is also determined by reference to the EMR. Testimony of W. Micou. However, it is the BOC CATS Practice which governs the type of messages which are appropriate for inclusion in the CATS settlement system. Id. See Plaintiff's Exh. 39.

#### **The BOC CATS Practice**

The BOC CATS Practice, or Bellcore Practice BR 981-200-110, (Plaintiff's Exh. 39) specifies at ¶2.01 that:

The only messages accepted by BCC CATS, therefore, are for services provided by Local Exchange Companies.... A further qualifier is that a messages must originate in one company (BCC and all Local Exchange Companies within the billing BCC's territory) and bill to a customer in another company.... (emphasis added).

Plaintiff's Exh. 39 ¶2.01. At ¶2.02 the Practice further explains that:

The following types of messages do NOT qualify for inclusion in the monthly CATS reports: ... (d) All interexchange carrier (IC) calling card and third number messages.

See Plaintiff's Exh. 39. Although the term "service" is not defined in the CATS Practice, in the context of ¶2.01 it is modifying the term "messages," which is the data created by the actual delivery of telephone service to the customer, and not the ancillary services which are provided by telephone companies to each other.<sup>9</sup> Id.; Testimony of W. Micou; G. Scheffel.

#### Operation of CATS Under the Practice

Until this dispute with Fidelity arose, no LEC in the eight years since divestiture, and even before, ever claimed a right or attempted to use CATS for messages generated by services provided by IXCs. Testimony of W. Micou. The only time the issue of whether IXC messages could be settled through CATS came up during the tenure of Fidelity's expert, Mr. Abjornson, at Bellcore was with South Central Bell. On that occasion it was determined that

<sup>9</sup> Fidelity's position at the hearing was that the only criteria relevant to determining eligibility for CATS settlements is ownership of the message. This is not the case as is clear from the language of the BOC CATS Practice. In any event, Plaintiff's strained argument does not hold together because it does not appear that Fidelity in fact "owns" the messages in question. Fidelity retained the absolute right to recourse uncollectible and unbillable messages back to CNSI and ATC (apparently Fidelity is only purchasing the good ones). See Defendant's Exhs. 9 at pp. 6 and 10. Additionally, the responsibility to pay taxes on the IXC messages, a common indicia of ownership with the IRS at least, is retained by CNSI in its contract. Id. at p. 11. Finally, perhaps the most important indicia of ownership to customers is whose rates apply to the call and therefore who a customer should call if he has a complaint. Without exception the rates on the IXC calls Fidelity sent through the CATS system were the rates of the underlying IXCs who transported the calls, and not Fidelity's. Testimony of J. Davis. In any event, the term ownership does not appear in the CATS practice and, such a concept is not consistent with the "services provided by" language at ¶2.01 of the CATS practice which clearly looks to the company carrying and rating the call. Testimony of W. Micou.

such messages did not qualify for CATS settlements.<sup>10</sup> See Defendant's Exh. 49.

Although Fidelity continues to suggest in its Brief that AT&T settles its messages through CATS,<sup>11</sup> there was no evidence presented at the hearing to substantiate this claim. Mr. Matzdorff acknowledged that he had no personal knowledge that Cincinnati Bell might be submitting IXC messages to CATS. Cincinnati Bell witness Gary Scheffel specifically denied that his company has ever submitted IXC messages to CATS, and Fidelity did not pursue it on cross examination.<sup>12</sup> Further, contrary to Fidelity's suggestion, the mere fact that Indicator 19 Value 8 is utilized by AT&T in CMDS

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<sup>10</sup> Notwithstanding Mr. Abjornson's testimony to the contrary the trip ticket evidenced a meeting with South Central Bell personnel to specifically discuss whether South Central could host the messages of small IXCs to CATS. Per Defendant's Exh. 49, Mr. Abjornson told them that was not possible because IXC messages could not be settled through CATS, but instead required individual contracts for billing and collection. If the entire problem could have been resolved by a simple purchase of accounts receivables arrangement why would Mr. Abjornson have not explained that to the meeting participants or reported that back to Bellcore in his summary of the meeting?

<sup>11</sup> Mr. Rowland and Mr. McClellan both testified that AT&T has contracts with all LECs. Such contracts would be unnecessary if AT&T had access to CATS..

<sup>12</sup> Mr. Scheffel testified further that submission of AT&T messages to CATS would violate Cincinnati's contract with AT&T and its contract with Bellcore for participation in CATS with the RBOCs.

does not indicate that AT&T messages are settled through CATS.<sup>13</sup> Alex Abjornson testified that Indicator 19 Value 8 has nothing to do with CATS and relates instead to CMDS.

#### Participation in CMDS and CATS

The users of the CMDS and CATS systems are divided into direct and indirect participants. The owners of the systems, the seven RBOCs, Cincinnati Bell and Southern New England Telephone Co.<sup>14</sup> are the direct participants. All remaining LECs are indirect participants. Testimony of A. Abjornson; W. Micou. The direct participants are the ones who incurred the expense to create the systems and who are responsible for all expenses necessary to maintain them, including a pro rata responsibility for the expense associated with all messages submitted by companies' in their respective regions. Id. Mr. Micou testified that Southwestern Bell's pro rata expenses have increased as a result of Fidelity's use of CATS for IXC messages because the message volume for which

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<sup>13</sup> Donald Little explained that Indicator 19 Value 8 is not reserved for AT&T. AT&T is merely the only IXC which currently has a contract with Southwestern Bell under which Southwestern Bell purchases AT&T accounts receivable. Mr. Little testified Southwestern Bell has offered the same terms to other IXCs but none have as yet entered into such an agreement. More importantly, messages with a value of 8 in indicator 19 do not go into BOC CATS. Testimony of Donald Little, Bill Micou and Gary Scheffell. Mr. Scheffell also explained that when he wrote the definition of Indicator 19 Value 8 contained in the EMR, in his role as a member of the Message Technical Review Board, he intentionally made the definition generic so that other IXCs could use that value in the future.

<sup>14</sup> At the time of divestiture, AT&T had less than a 5% ownership interest in Cincinnati Bell and SNET which accounts for their unique status as Bellcore Client Companies which are not also RBOCs subject to the Modification of Final Judgment.

Southwestern Bell is responsible has significantly increased. Id. The indirect participants have equal ability to the use of the systems, but must be hosted by a direct participant who has the responsibility for insuring the proper use of the system by the companies it hosts.<sup>15</sup> Id.; see also, Defendants Exhs. 21, 22 & 23 (CMDS Users Guide) at p. 2-2. Southwestern Bell is Fidelity's host to both CMDS and CATS. See Plaintiff's Second Amended Complaint.

#### **Formatting Messages For Inclusion in CATS**

The status of a company as a direct or indirect participant in CMDS and CATS impacts the manner of submission of its message data to those systems. A direct participant sends its data directly into the CMDS system. An indirect participant will send its data to its host for submission to CMDS. Testimony of W. Micou. The host's responsibilities with regard to submission of data for its subtending LECs differs depending upon the RAO status of the independent company. Id. An independent LEC which has applied to Bellcore and received full Revenue Accounting Office (RAO) status has responsibility for the formatting and packing of its own messages which the host then forwards to CMDS. Id. The host of a non-full RAO status company performs the formatting and packing function for the independent company and then submits the packs to CMDS. Id. Up until January of 1992 Fidelity was a non-full RAO status company and Southwestern Bell formatted, packed and

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<sup>15</sup> IXC's are also permitted to participate in CMDS and they can be directly hosted by a direct participant or indirectly hosted by an indirect participant which is itself hosted by a direct participant.

submitted its messages to CMDS at no charge. Testimony of J. Davis; R. Taylor. During that time period, Fidelity never submitted non-LEC messages. Id. In August 1991 Fidelity applied for full RAO status. See Defendant's Exh. 11. The letter application informed Southwestern Bell that Fidelity wished to become a full status RAO for the nine exchanges Fidelity serves, all within the state of Missouri, but did not reference Fidelity's intent to submit messages which originated in exchanges outside of Fidelity's territory. Id. Bellcore granted Fidelity its RAO in January 1992. In the next full CATS cycle Fidelity began to submit messages which originated well beyond its nine exchanges and well beyond the state of Missouri. Testimony of R. Taylor, J. Davis.

C. BACKGROUND INFORMATION ON FIDELITY'S USE OF CATS  
FOR IXC MESSAGES

Fidelity's "Creative Concept"

Beginning in February 1992, Fidelity began to submit IXC transported messages for settlement through CATS. Testimony of R. Taylor. Fidelity's preparation for its business venture in IXC billing and collections began much earlier in mid-1991. Kenneth Matzdorff, a Vice-President at Fidelity first conceived of the idea to use the LEC-to-LEC settlement system for IXC messages in 1990 when he was still employed at Contel, another independent LEC.<sup>16</sup> Testimony of K. Matzdorff. Mr. Matzdorff developed a familiarity with the CATS system in his work at Contel in the area of LEC

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<sup>16</sup> Mr. Matzdorff testified that Contel has never, to his knowledge, submitted IXC messages to CATS.

billing and collections. Id. During that period of time, he also had occasion to work with Alex Abjornson, Fidelity's contingency fee-consultant in this case, while Mr. Abjornson was still employed at Bellcore in charge of the CATS system. Id. (Just three months after Mr. Matzdorff began his employment at Fidelity he first mentioned his idea about using the CATS system for IXC messages to Fidelity President, John Davis during a staff meeting while they were discussing the feasibility of Fidelity becoming a full status RAO company. Id.

Fidelity consulted with Mr. Abjornson concerning the parameters of CATS and what Fidelity's responsibilities would be as a full status RAO. Testimony of J. Davis. Later, in the fall of 1991, Fidelity began contract negotiations with Capitol Network Systems, Inc. (CNSI), a Texas-based operator services provider which eventually agreed to sell messages to Fidelity in exchange for Fidelity's promise to obtain billing and collections for its messages through CATS. Testimony of R. Rowland; K. Matzdorff; see also, Defendant's Exh. 9. During this preparation stage Mr. Abjornson also brought Fidelity together with Michael Lovern, the President of National Teleprocessing, Inc. (NTI) and its subsidiary, American Teledial Corporation, Inc. (ATC), which later signed a Purchase of Accounts Receivables contract with Fidelity in March 1992 on similar terms and conditions as the CNSI contract. See Defendant's Exh. 10. Fidelity's preparations also included discussions with lending institutions to obtain funds to finance the new business venture. Testimony of J. Davis.

One of Mr. Abjornson's primary roles as consultant to Fidelity<sup>17</sup> was to assist Fidelity in formatting its messages for inclusion in CMDS and CATS because as a full status RAO Fidelity had to assume that responsibility in January 1992. Testimony of J. Davis; A. Abjornson. Mr. Abjornson was seemingly well-equipped for this task as he was a co-author of the EMR while employed at Bellcore. Testimony of A. Abjornson. He testified that he relied solely upon the EMR in assisting Fidelity both in determining the proper use of CATS and in formatting Fidelity's messages, rather than on any discussions with Southwestern Bell, or even reference to the CATS practice which Abjornson admitted governed the parameters of CATS.<sup>18</sup> Id. Fidelity in turn relied upon the advice

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<sup>17</sup> Mr. Abjornson also has separate consulting arrangements with both CNSI and ATC.

<sup>18</sup> Fidelity takes the position that its preparation efforts included meeting with Southwestern Bell personnel to advise them of Fidelity's plans. Testimony of J. Davis; K. Matzdorff. Mr. Matzdorff testified about a January 15, 1992 meeting with Joyce Roberts and Larry Rucker. However, Mr. Matzdorff conceded that he did not specifically mention IXC messages at that meeting, even though the decision to enter into that venture had been made approximately one month earlier. Instead, the discussion centered around Fidelity's plans to purchase messages "from other carriers," a practice which is a common and permissible in the context of the Missouri local exchange company intercompany compensation plan: the Primary Toll Carrier Plan, but which would only involve messages of other LECs using Fidelity as their Primary Toll Carrier. Id. Finally, the January 15, 1992 meeting occurred after Fidelity had already signed a contract with Alex Abjornson wherein Fidelity agreed to compensate Mr. Abjornson for his services based entirely upon the profits, if any, to be earned by Fidelity's unique use of the CATS system to bill, collect and settle for IXC messages. See, Defendant's Exh. 13.

of Mr. Abjornson in coding its IXC messages in such a way as to be accepted by CATS.<sup>19</sup> Id.

#### Fidelity's Coding of its IXC Messages

The record is clear that Fidelity submitted false information regarding its purchased IXC messages before CMDS would recognize and copy the messages for inclusion in CATS. Testimony of W. Micou. Those changes were made by Fidelity personnel without Southwestern Bell's knowledge or assistance. Testimony of R. Taylor. Absent the deliberate falsification of information, the messages would have been automatically rejected by the BOC CATS system.

Fidelity's chief computer operations manager, Dan Kerr testified in deposition testimony, which was made a part of the record at the hearing, that he wrote a program sometime in January 1992 which caused certain key aspects of the purchased messages to be recoded such that the messages appeared as if Fidelity had transported the underlying calls. See Deposition of Dan Kerr at pp. 14, 18-20. The changes made to each message by Mr. Kerr's

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<sup>19</sup> Nevertheless, Fidelity takes the position that Joan Machinsky assisted them in late February to successfully code the first batch of IXC messages submitted that month. Testimony of J. Davis; K. Matzdorff. To put Fidelity's "reliance" claim in proper perspective, Mr. Matzdorff also testified that Fidelity, which had already signed contracts with Mr. Abjornson and CNSI, was certainly not seeking Ms. Machinsky's permission to use the CATS system for its IXC messages and that it had no intention of backing away from its plan had she told Fidelity that use of the CATS system for IXC messages was improper. Testimony of K. Matzdorff. In any event, as Mr. Matzdorff further testified, Ms. Machinsky told him just that in March 1992, when the first CATS report came out reflecting the IXC messages, and Fidelity did not back down at that time. Id.