

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

Case No. TO-2005-0237

ORDER ESTABLISHING INVESTIGATION CASE

SYNOPSIS:

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

FACTS:

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

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

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

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

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

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

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

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

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

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

LEGAL AUTHORITY TO INTERVENE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁶ Section 386.360 RSMo 2000. Forfeiture - - penalties

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

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

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

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

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

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

IT IS THEREFORE ORDERED:

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

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

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

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

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

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

BY THE COMMISSION

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

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

(S E A L)

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

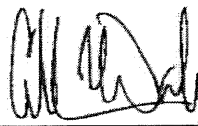
Dated at Jefferson City, Missouri
on this 14th day of January, 2005.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

**I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 23rd day of August 2005 .**



**Colleen M. Dale
Secretary**

STATE OF MISSOURI



Robin Carnahan
Secretary of State

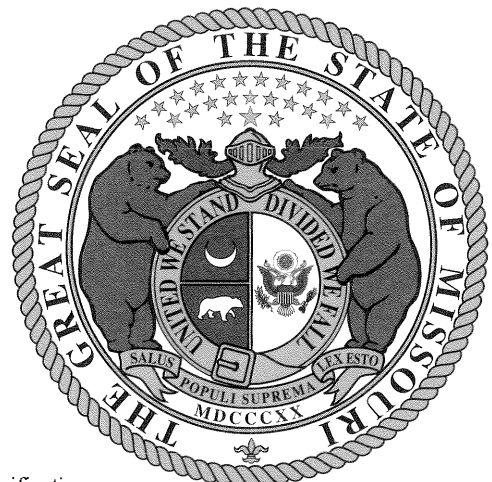
LF0006167

CERTIFICATE OF CORPORATE RECORDS

CASS COUNTY TELEPHONE COMPANY LIMITED PARTNERSHIP

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

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 3rd day of August, 2005



Robin Carnahan
Secretary of State

Certification Number: 7914851
Verify this certificate online at <http://www.sos.mo.gov/businessentity/verification>



State of Missouri

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

Application for Registration or Amendment of a Foreign Limited Partnership in Missouri (Submit in duplicate with filing fee of \$100.00)

FILED

NOV 03 1994

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

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

In affirmation thereof, the facts stated above are true.

LOCAL EXCHANGE COMPANY LLC

By: Kenneth Matzdoff President

A General Partner

STATE OF MISSOURI



Richard A. Hanson
SECRETARY OF STATE

CERTIFICATE OF FOREIGN LIMITED PARTNERSHIP
WHEREAS,
CASS COUNTY TELEPHONE COMPANY LIMITED PARTNERSHIP

USING IN MISSOURI THE NAME
CASS COUNTY TELEPHONE COMPANY LIMITED PARTNERSHIP

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

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

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



Richard A. Hanson
Secretary of State

\$105.00

STATE OF MISSOURI



Robin Carnahan
Secretary of State

FL0006949

CERTIFICATE OF CORPORATE RECORDS

LOCAL EXCHANGE COMPANY L.L.C.

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

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 3rd day of August, 2005



Certification Number: 791704
Verify this certificate online at <http://www.sos.mo.gov/businessentity/verification>

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



Application for Registration of a Foreign
Limited Liability Company
(Submit in duplicate with registration fee of \$105)

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

Local Exchange Company LLC

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

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

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

Local Exchange Company LLC

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

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

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

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

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

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

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

In affirmation thereof, the facts stated above are true:

Kenneth Matzdorff Authorized signature

Authorized signature
Authorized signature

FILED AND CERTIFICATE
ISSUED

MAR 28 1996

Rebecca McDowell Cook
SECRETARY OF STATE

STATE OF MISSOURI



Rebecca McDowell Cook
Secretary of State

CERTIFICATE OF REGISTRATION
FOREIGN LIMITED LIABILITY COMPANY

WHEREAS,
LOCAL EXCHANGE COMPANY LLC

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

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

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

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

Rebecca McDowell Cook
Secretary of State



\$105.00

STATE OF MISSOURI



Robin Carnahan
Secretary of State

FL0011950

CERTIFICATE OF CORPORATE RECORDS

LEC L.L.C.

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

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 3rd day of August, 2005

A handwritten signature in cursive script that reads "Robin Carnahan".



Certification Number: 7917967
Verify this certificate online at <http://www.sos.mo.gov/businessentity/verification>



State of Missouri

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

Application for Registration of a Foreign Limited Liability Company

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

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

LOCAL EXCHANGE COMPANY LLC

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

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

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

LEC L.L.C.

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

- 1) ENGAGE IN OWNERSHIP AND OPERATION OF LOCAL TELEPHONE COMPANIES
- 2) TO DO AND PERFORM ALL ACTS NECESSARY TO CARRY OUT FOREGOING PURPOSES
- 3) ENGAGE IN ANY OTHER LAWFUL ACT OR ACTIVITY AUTHORIZED BY THE MEMBERS

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

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

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

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

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

In affirmation thereof, the facts stated above are true:

x Kenneth Matloff Authorized signature
 _____ Authorized signature
 _____ Authorized signature

FILED AND CERTIFICATE
ISSUED

MAR 20 1997

Rebecca McDowell Cook
SECRETARY OF STATE

STATE OF MISSOURI



Rebecca McDowell Cook
Secretary of State

CERTIFICATE OF REGISTRATION
FOREIGN LIMITED LIABILITY COMPANY

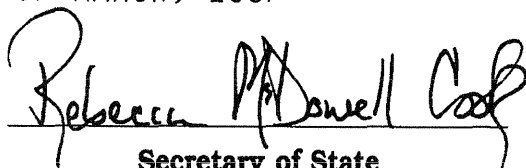
WHEREAS,
LOCAL EXCHANGE COMPANY LLC

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

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

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

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


Secretary of State



\$105.00

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)

v.)

KENNETH M. MATZDORFF,)
[DOB: XX/XX/XX],)
Defendant.)

No. 05-00020-01-CR-W-SOW
Count One
18 U.S.C. § 371
[NMT: Five Years Imprisonment,
\$250,000 Fine, Three Years
Supervised Release, Plus \$100
Special Assessment]

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

I N F O R M A T I O N

THE UNITED STATES ATTORNEY CHARGES THAT:

COUNT ONE

1. At all times relevant to this Information:

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

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

**ECF
DOCUMENT**

I hereby attest and certify this is a printed copy of a document which was electronically filed with the United States District Court for the Western District of Missouri.

Date Filed: 1-18-05

PL BRUNE, CLERK

By: Walter Cooper Deputy Clerk

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

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

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

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

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

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

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

MANNER AND MEANS

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

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

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

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

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

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

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

OVERT ACTS

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

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

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

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

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

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

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

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

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

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

COUNT TWO

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

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

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

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

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

Todd P. Graves
United States Attorney

January 18, 2005
DATE

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

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

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

psb:sgs

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

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

TRANSCRIPT OF CHANGE OF PLEA PROCEEDINGS

BEFORE THE HONORABLE DEAN WHIPPLE
UNITED STATES CHIEF DISTRICT JUDGE

PROCEEDINGS RECORDED BY ELECTRONIC STENOGRAPHY
TRANSCRIPT PRODUCED BY COMPUTER

APPEARANCES

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

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

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

CHANGE OF PLEA

Exhibit 5

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TUESDAY, JANUARY 18, 2005

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

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

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

IS IT MATZDORFF?

THE DEFENDANT: IT'S MATZDORFF.

THE COURT: MATZDORFF. THANK YOU.

THE COURT WILL CALL THE CASE UNITED STATES OF AMERICA VS. KENNETH M. MATZDORFF.

YOU'RE KENNETH M. MATZDORFF?

THE DEFENDANT: YES, I AM, YOUR HONOR.

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

THE DEFENDANT: THAT'S CORRECT.

THE COURT: MR. MATZDORFF, I HAVE SOME PAPERS ON MY BENCH THAT INDICATE TO ME THAT YOU'VE BEEN ADVISED OF THE CHARGES THAT THE GOVERNMENT PROPOSES TO FILE AGAINST YOU BY WAY OF INFORMATION. TO DO THAT, YOU HAVE TO CONSENT AND AGREE AND WAIVE YOUR RIGHT TO LET THOSE CRIMINAL CHARGES BE PRESENTED TO A GRAND JURY AND LET THEM RETURN AN INDICTMENT.

DO YOU UNDERSTAND THAT?

THE DEFENDANT: I DO, YOUR HONOR.

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

CHANGE OF PLEA

3

1 AFTERNOON?

2 THE DEFENDANT: YES, IT IS.

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

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

7 THE COURT: ALL RIGHT. THANK YOU.

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

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

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

18 AGAIN, YOU'RE KENNETH M. MATZDORFF?

19 THE DEFENDANT: YES.

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

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

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

CHANGE OF PLEA

4

1 MY PROCEDURE, OF COURSE, IS TO HAVE THE U.S.
2 ATTORNEY READ THE INFORMATION TO YOU. THIS IS A RATHER LONG
3 INFORMATION. HAVE YOU READ IT WITH YOUR ATTORNEY AND HAVE YOU
4 CONSULTED WITH YOUR ATTORNEY ABOUT IT?

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

6 THE COURT: HAVE YOU READ IT?

7 THE DEFENDANT: YES, I HAVE.

8 THE COURT: HAVE YOU DISCUSSED IT WITH YOUR
9 ATTORNEY?

10 THE DEFENDANT: YES, I HAVE.

11 THE COURT: HAS HE EXPLAINED ANY PART OF IT TO YOU
12 THAT YOU DON'T UNDERSTAND?

13 THE DEFENDANT: NO, YOUR HONOR.

14 THE COURT: NOW, DO YOU WISH TO HAVE THE ENTIRE
15 INFORMATION READ TO YOU?

16 THE DEFENDANT: NO, YOUR HONOR.

17 THE COURT: ALL RIGHT. MR. BECKER?

18 MR. BECKER: JUDGE, THE INFORMATION WAS THE SUBJECT
19 OF SOME NEGOTIATED ITEMS BETWEEN THE PARTIES.

20 THE COURT: I'M GETTING THAT.

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

23 THE COURT: ALL RIGHT. MR. MATZDORFF, DO YOU
24 UNDERSTAND WHAT YOU'RE CHARGED WITH IN COUNT I OF THIS
25 INFORMATION?

CHANGE OF PLEA

5

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

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

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

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

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

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

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

13 THE DEFENDANT: I DO, YOUR HONOR.

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

16 THE DEFENDANT: I DO, YOUR HONOR.

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

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

CHANGE OF PLEA

6

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

4 THE DEFENDANT: I DO, YOUR HONOR.

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

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

11 THE DEFENDANT: GUILTY, YOUR HONOR.

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

15 THE DEFENDANT: I DO, YOUR HONOR.

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

18 THE DEFENDANT: YES, I DO.

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

21 THE DEFENDANT: NO, YOUR HONOR.

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

24 THE DEFENDANT: I DO, YOUR HONOR.

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

CHANGE OF PLEA

7

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

2 MR. BECKER: NO, SIR.

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

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

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

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

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

16 **KENNETH M. MATZDORFF,**
17 BEING FIRST DULY SWORN BY THE COURTROOM DEPUTY, TESTIFIED AS
18 FOLLOWS:

19 **EXAMINATION**

20 BY THE COURT:

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

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

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

CHANGE OF PLEA

8

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

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

10 A. I DO, YOUR HONOR.

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

12 A. MY FULL NAME IS KENNETH MICHAEL MATZDORFF.

13 Q. HOW OLD ARE YOU?

14 A. I'M 48 YEARS OLD.

15 Q. WHERE DO YOU LIVE?

16 A. I LIVE IN BELTON, MISSOURI.

17 Q. ARE YOU MARRIED OR SINGLE?

18 A. I AM MARRIED.

19 Q. HOW MUCH FORMAL EDUCATION DO YOU HAVE?

20 A. I HAVE A MASTER'S DEGREE.

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

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

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

CHANGE OF PLEA

9

- 1 A. GENERALLY SOUND.
- 2 Q. WHAT IS THE CONDITION OF YOUR MENTAL HEALTH?
- 3 A. SOUND.
- 4 Q. ARE YOU UNDER THE INFLUENCE OF ANY DRUGS OR ALCOHOL NOW,
- 5 RIGHT NOW?
- 6 A. NO, I'M NOT.
- 7 Q. NOW, THIS OFFENSE IS ALLEGED TO HAVE TAKEN PLACE DURING A
- 8 PERIOD OF TIME, I BELIEVE, FROM '98 TO --
- 9 THE COURT: -- IS THAT CORRECT, MR. BECKER?
- 10 MR. BECKER: YES, SIR.
- 11 THE COURT: '98 THROUGH 04?
- 12 MR. BECKER: YES.
- 13 BY THE COURT:
- 14 Q. -- THROUGH '04. DURING THAT PERIOD OF TIME WHEN YOU DID
- 15 ANY OF THE ACTS, THE OVERT ACTS, IN THE MANNER AND MEANS THAT
- 16 ARE SPELLED OUT IN THIS INFORMATION, WHEN YOU DID ANYTHING
- 17 THAT WAS PART OF THIS CRIMINAL CONDUCT, WHAT WAS THE CONDITION
- 18 OF YOUR PHYSICAL HEALTH, GOOD OR BAD?
- 19 A. IT WAS GOOD.
- 20 Q. WHAT WAS THE CONDITION OF YOUR MENTAL HEALTH?
- 21 A. IT WAS SOUND.
- 22 Q. WERE YOU UNDER THE INFLUENCE OF ANY DRUGS OR ALCOHOL WHEN
- 23 YOU COMMITTED ANY OF THE ACTS THAT COMPRISE YOUR CRIMINAL
- 24 CONDUCT IN THIS INFORMATION?
- 25 A. NO, I WAS NOT.

CHANGE OF PLEA

10

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

4 THE COURT: MR. BECKER.

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

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

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

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

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

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

CHANGE OF PLEA

11

1 RELATED PROGRAMS.

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

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

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

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

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

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

CHANGE OF PLEA

12

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

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

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

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

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

18 MR. MORTENSON: NO, YOUR HONOR.

19 THE COURT: ANYTHING YOU WANT TO CORRECT?

20 MR. MORTENSON: NO.

21 THE COURT: ALL RIGHT.

22 BY THE COURT:

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

24 A. YES, IT DOES, YOUR HONOR.

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

CHANGE OF PLEA

13

1 BECKER SAID?

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

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

8 A. THAT'S CORRECT, YOUR HONOR.

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

11 BY THE COURT:

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

16 A. YES, IT IS, YOUR HONOR.

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

23 A. APPROXIMATELY, THAT'S RIGHT.

24 Q. AND, OF COURSE --

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

CHANGE OF PLEA

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

2 THE COURT: WHAT?

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

5 THE COURT: OKAY. IT IS ESTIMATED?

6 MR. BECKER: THAT'S RIGHT.

7 THE COURT: WHAT PARAGRAPH?

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

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

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

12 THE COURT: ESTIMATED.

13 MR. BECKER: THE ONE YOU JUST READ.

14 THE COURT: THANK YOU.

15 BY THE COURT:

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

17 A. THAT'S CORRECT, YOUR HONOR.

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

21 A. THAT'S CORRECT.

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

23 UNDERSTAND, THE CHARGE AND THE INFORMATION?

24 A. NO. I UNDERSTAND IT, YOUR HONOR.

25 Q. AND YOU'RE TELLING ME YOU ARE GUILTY OF THAT OFFENSE?

CHANGE OF PLEA

15

1 A. YES, I AM.

2 Q. NOW, COUNT II IS THE FORFEITURE COUNT WHERE IT SAYS YOU
3 CONSENTED AND AGREED THAT YOU SHALL FORFEIT \$2,500,000 IN U.S.
4 CURRENCY WHICH CONSTITUTES OR IS DERIVED FROM THE PROCEEDS
5 TRACEABLE TO THE VIOLATION INCORPORATED BY REFERENCE IN THIS
6 COUNT. DO YOU CONSENT AND AGREE TO THAT FORFEITURE?

7 A. YES, I DO, YOUR HONOR.

8 Q. IS THERE ANYTHING ABOUT COUNT II THAT YOU DON'T
9 UNDERSTAND?

10 A. NO. I UNDERSTAND IT.

11 Q. THAT'S ALL I'M GOING TO ASK YOU ABOUT THE OFFENSE UNTIL
12 WE GET TO THE COOPERATION AGREEMENT THAT TOUCHES A LITTLE MORE
13 ABOUT IT.

14 WHEN YOU, OR ANYBODY, PLEADS GUILTY, MR. MATZDORFF,
15 BY THE MERE ACT OF PLEADING GUILTY YOU WAIVE VARIOUS
16 CONSTITUTIONAL RIGHTS. I'M SURE THAT JUDGE IN SOME WAY
17 EXPLAINED IT TO YOU, DIDN'T HE?

18 A. YES. YES, SHE DID.

19 Q. ALL RIGHT. I'M GOING TO ALSO. I MAY GO A LITTLE FASTER,
20 ASSUMING YOU'VE ALREADY HEARD THIS RECENTLY FROM ANOTHER
21 JUDGE. OKAY?

22 A. THAT'S FINE.

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

CHANGE OF PLEA

1 A. I WILL.

16

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

7 A. YES, I DO.

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

12 A. I DO, YOUR HONOR.

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

17 A. I DO, YOUR HONOR.

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

21 A. YES, I DO.

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

CHANGE OF PLEA

17

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

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

CHANGE OF PLEA

18

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

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

CHANGE OF PLEA

19

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

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

23 A. I DO, YOUR HONOR.

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

CHANGE OF PLEA

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

6 A. I DO, YOUR HONOR.

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

10 A. I DO, YOUR HONOR.

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

15 A. I DO, YOUR HONOR.

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

20

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

CHANGE OF PLEA

21

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

20 THAT, BUT I'LL TOUCH ON THAT.

21 BY THE COURT:

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

CHANGE OF PLEA

22

1 A. I DO, YOUR HONOR.

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

3 A. I DO.

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

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

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

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

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

16 BY THE COURT:

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

19 I UNDERSTAND THAT THERE IS A PARALLEL CASE GOING OR IN
20 PROCESS, I THINK, IN BROOKLYN?

21 A. THAT'S CORRECT.

22 Q. IN BROOKLYN, NEW YORK, AND YOU TOLD ME YOU ALREADY HAVE
23 BEEN THERE AND ENTERED A PLEA ON THAT PART OF THE CASE. IS
24 THAT CORRECT?

25 A. THAT'S CORRECT.

CHANGE OF PLEA

1 Q. AND THIS SAME COOPERATIVE AGREEMENT COVERS THAT CASE AND
2 THIS CASE, IS THAT CORRECT?

3 A. THAT'S CORRECT, YOUR HONOR.

4 Q. OKAY. NOW, ONCE AGAIN, I'M GOING TO HAVE MR. BECKER GIVE
5 US A SUMMARY OF WHAT'S IN HERE AND THEN I'LL ASK YOU IF YOU
6 UNDERSTAND IT AND IF THAT'S WHAT YOU AGREE TO. ALL RIGHT?

7 A. YES.

8 THE COURT: MR. BECKER?

9 MR. BECKER: YOUR HONOR, THE AGREEMENT IS BETWEEN
10 THE DEFENDANT AND HIS ATTORNEYS AND THE OFFICES OF THE UNITED
11 STATES ATTORNEY FOR THE EASTERN DISTRICT OF NEW YORK AND
12 WESTERN DISTRICT OF MISSOURI.

13 THE DEFENDANT AGREES TO WAIVE INDICTMENT AND PLEAD
14 GUILTY TO A TWO-COUNT INFORMATION IN THE EASTERN DISTRICT OF
15 NEW YORK CHARGING HIM WITH CONSPIRACY, TWO COUNTS OF
16 CONSPIRACY. HE HAS DONE SO.

17 THE AGREEMENT PROVIDES THAT HE WILL WAIVE INDICTMENT
18 AND PLEAD GUILTY IN THIS COURT AS WELL. IT SETS FORTH THE

23

19 MAXIMUM POSSIBLE PENALTIES FOR EACH OF THOSE INFORMATIONS.

20 THE PLEA AGREEMENT STATES THAT THE DEFENDANT'S
21 SENTENCE IS GOVERNED BY THE UNITED STATES SENTENCING
22 GUIDELINES. I'M NOT SURE THAT APPLIES ANY MORE, BUT THE
23 PARTIES HAVE AGREED TO THAT.

24 THE PARAGRAPH 4 IS, AS A RESULT OF HIS GUILTY PLEAS
25 IN BOTH DISTRICTS, THE DEFENDANT HAS CONSENTED TO THE ENTRY OF

CHANGE OF PLEA

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

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

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

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

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

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

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

CHANGE OF PLEA

25

1 MATZDORFF FOR THE SCHEME TO DEFRAUD USAC AND NECA.

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

7 DEFENDANT WAIVES HIS RIGHTS UNDER THE HYDE
8 AMENDMENT.

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

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

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

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

21 THE COURT: THANK YOU, MR. BECKER.

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

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

CHANGE OF PLEA

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

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

5 MR. BECKER: I DO NOW, JUDGE.

6 THE COURT: YOU SAY YOU DO NOW?

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

9 THE COURT: OKAY.

10 BY THE COURT:

11 Q. IS THAT HOW YOU UNDERSTAND IT?

12 A. THAT IS MY UNDERSTANDING, YOUR HONOR.

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

17 A. NO, YOUR HONOR.

18 Q. ALL RIGHT. NOW, TWO THINGS -- WELL, MORE THAN TWO

19 THINGS, BUT SOME THINGS I WANT TO TALK TO YOU ABOUT, THERE'S

20 PUNISHMENT TO BE ASSESSED ON THAT CASE IN NEW YORK, AND

21 THERE'S PUNISHMENT TO BE ASSESSED HERE. DO YOU UNDERSTAND

22 THAT?

23 A. I DO, YOUR HONOR.

24 Q. IN THIS COOPERATION AGREEMENT, IN PARAGRAPH 1, YOU

25 UNDERSTAND AND AGREE THAT THE SENTENCE IMPOSED THERE, THEY CAN

CHANGE OF PLEA

27

1 EACH BE RUN CONSECUTIVE OR ONE TO THE OTHER; IN OTHER WORDS,

2 ONE COURT COULD GIVE YOU THE MAXIMUM OF 5 YEARS AND THE OTHER

3 COURT COULD GIVE YOU A MAXIMUM OF 5 YEARS AND ORDER THEY BE

4 SERVED ONE AFTER THE OTHER. DO YOU UNDERSTAND THAT?

5 A. I DO, YOUR HONOR.

6 Q. KNOWING THAT, DO YOU STILL WISH TO MAINTAIN THESE PLEAS

7 OF GUILTY?

8 A. I DO, YOUR HONOR.

9 Q. NOW, MR. BECKER REFERRED IN A COUPLE OF PLACES THAT YOU

10 HAD ENTERED INTO THIS AGREEMENT WHEN THE FEDERAL SENTENCING

11 GUIDELINES WERE MANDATORY, IN FULL FORCE AND EFFECT, AND YOU

12 AGREED THAT ANY SENTENCE WOULD BE CONTROLLED BY THAT, AND I'M

13 SURE YOUR ATTORNEY HAS TOLD YOU, THAT'S NOT THE CASE. THEY

14 ARE NOT MANDATORY, BUT THEY'RE STILL USABLE BY A COURT AS AN

15 INSTRUMENT TO GIVE US MORE INFORMATION TO DETERMINE AN

16 APPROPRIATE SENTENCE. DO YOU UNDERSTAND THAT?

17 A. I DO, YOUR HONOR.

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

CHANGE OF PLEA

28

1 A. I DO, YOUR HONOR.

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

9 A. I DO.

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

15 A. I DO, YOUR HONOR.

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

19 A. I DO.

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

21 A. I DO.

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

CHANGE OF PLEA

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

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

6 MR. MORTENSON: YES, SIR.

7 BY THE COURT:

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

10 A. THAT'S MY UNDERSTANDING.

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

14 A. I'M FINE, YOUR HONOR.

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

16 IN THERE, IN THE COOPERATION AGREEMENT? I'M ASKING YOU, DO
17 YOU KNOW AND UNDERSTAND WHAT'S IN THERE?

18 A. YES, I DO, YOUR HONOR.

19 Q. AND YOU'RE COMFORTABLE WITH WHAT'S IN THERE?

20 A. YES, I AM.

21 Q. AND DO YOU AT THIS TIME CONSENT AND AGREE AND OBLIGATE
22 YOURSELF TO THE TERMS OF THIS AGREEMENT AND TO THE PERFORMANCE
23 OF THE TERMS OF THIS AGREEMENT?

24 A. I DO, YOUR HONOR.

25 Q. ALL RIGHT. YOU'RE REPRESENTED BY MR. STAN MORTENSON.

CHANGE OF PLEA

30

1 ARE YOU SATISFIED WITH HIS REPRESENTATION OF YOU IN THIS CASE?

2 A. YES, I AM.

3 Q. HAS HE DONE FOR YOU EVERYTHING YOU'VE ASKED HIM TO DO IN
4 REGARD TO REPRESENTING YOU IN THIS CASE?

5 A. YES, HE HAS.

6 Q. HAS HE FAILED TO DO FOR YOU ANYTHING YOU'VE ASKED HIM TO
7 DO IN REPRESENTING YOU IN THIS CASE?

8 A. NO, HE HAS NOT.

9 THE COURT: MR. MORTENSON, DO YOU HAVE ANY QUESTIONS
10 YOU WISH TO ASK YOUR CLIENT?

11 MR. MORTENSON: NO, YOUR HONOR.

12 THE COURT: MR. BECKER, DO YOU KNOW OF ANYTHING ELSE
13 I NEED TO COVER IN TAKING THIS PLEA OF GUILTY?

14 MR. BECKER: NOT THAT I CAN THINK OF.

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

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

20 THE COURT: OKAY.

21 BY THE COURT:

22 Q. DO YOU UNDERSTAND THAT?

23 A. I DO, YOUR HONOR.

24 Q. DO YOU HAVE ANY DISPUTE?

25 A. NO.

CHANGE OF PLEA

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

5 A. NO. I UNDERSTAND, YOUR HONOR.

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

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

14 THE COURT: YES.

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

17 THE COURT: YES.

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

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

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

CHANGE OF PLEA

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

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

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

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

21 THE DEFENDANT: I DO, YOUR HONOR.

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

24 MR. BECKER: NO, YOUR HONOR.

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

CHANGE OF PLEA

33

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

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

6 THE COURT: ALL RIGHT. THANK YOU.

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

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

14 RIGHT?

15 THE DEFENDANT: YES.

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

18 MR. MORTENSON: NOTHING, YOUR HONOR.

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

22 THE DEFENDANT: NO, YOUR HONOR.

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

CHANGE OF PLEA

34

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

3 MR. BECKER: YES, SIR.

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

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

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

12 MR. BECKER: THANK YOU, JUDGE.

1 presentence will take, probably a couple of months or more,
2 don't you imagine, Mr. Becker?

3 MR. BECKER: Yes, sir.

4 THE COURT: What do they do in New York, will they
5 set a sentencing date of the plea or not?

6 MR. MORTENSON: They set a date, but the assistant
7 to the U.S. attorney has advised me that that will inevitably
8 be pushed over.

9 THE COURT: Okay. Well, we don't set a day here.
10 We wait until we get the report and then we'll try to find a
11 date. Thank you. You may step aside.

12 MR. BECKER: Thank you, Judge.

13 THE COURT: Be in recess.

14 * * * * *

15

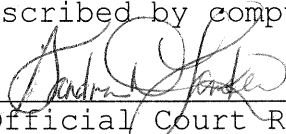
16

17

CERTIFICATE

18 I, Sandra D. Lamken, Registered Professional Reporter,
19 do hereby certify that I am a duly appointed, qualified and
20 acting official court reporter for the Western District of
21 Missouri; that the foregoing is a correct transcript from the
22 record of proceedings in the above-entitled matter. The
23 proceedings were reported in mechanical and computer
24 stenography and transcribed by computer.

22



Official Court Reporter RPR

23

Date: March 1, 2005

24

25

13 THE COURT: BE IN RECESS.

14 * * * * *

15

16

17 CERTIFICATE

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

22 _____ RPR
OFFICIAL COURT REPORTER

23

DATE: _____

24

25

CHANGE OF PLEA

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
RICHARD T. MARTINO,)
[DOB: XX/XX/59],)
)
DANIEL D. MARTINO,)
[DOB: XX/XX/50],)
)
Defendants.)

No. _____

Count One (Both Defendants)
18 U.S.C. § 371
[NMT: Five Years Imprisonment,
\$250,000 Fine, Three Years
Supervised Release, Plus \$100
Special Assessment]

Counts Two and Three
(Both Defendants)
18 U.S.C. §§ 1341 & 2
[NMT: Five Years Imprisonment,
\$250,000 Fine, Three Years
Supervised Release, Plus \$100
Special Assessment]

Counts Four and Five
(Both Defendants)
18 U.S.C. §§ 1341 & 2
[NMT: Twenty Years Imprisonment,
\$250,000 Fine, Five Years
Supervised Release, Plus \$100
Special Assessment]

Counts Six, Seven and Eight
(Both Defendants)
18 U.S.C. §§ 1343 & 2
[NMT: Five Years Imprisonment,
\$250,000 Fine, Three Years
Supervised Release, Plus \$100
Special Assessment]

Counts Nine and Ten
(Both Defendants)
18 U.S.C. §§ 1343 & 2
[NMT: Twenty Years Imprisonment,
\$250,000 Fine, Five Years
Supervised Release, Plus \$100
Special Assessment]

**ECF
DOCUMENT**

I hereby attest and certify this is a printed copy of a
document which was electronically filed with the United States
District Court for the Western District of Missouri.

Date Filed: 1-25-05

By: RL BRUNE, CLERK
[Signature] Deputy Clerk

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

INDICTMENT

THE GRAND JURY CHARGES THAT:

COUNT ONE

1. At all times relevant to this Indictment:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MANNER AND MEANS

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

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

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

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

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

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

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

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

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

OVERT ACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNTS TWO THROUGH FIVE

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

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

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

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

COUNTS SIX THROUGH TEN

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

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

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

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

COUNT ELEVEN

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

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

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

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

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

/s/January 25, 2005
DATE

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

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

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

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