

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

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

Case No. TO-2005-0237

**STAFF’S RESPONSE TO NEW FLORENCE TELEPHONE COMPANY’S  
MOTION FOR CERTIFICATION TO RECEIVE UNIVERSAL SERVICE FUNDS**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”) and for its response to New Florence Telephone Company’s Motion for Certification to Receive Universal Service Funds states:

1. On February 23, 2005, New Florence Telephone Company (“New Florence”) filed a Motion for Certification to Receive Federal Universal Service Funds. In its motion, New Florence requests the Commission certify New Florence as eligible to receive federal Universal Service Funds support for the remaining portion of calendar year 2005 as well as assist New Florence in obtaining a waiver so that it may recover support the first quarter of 2005.

2. In its Motion, New Florence states that it has responded to 48 Staff data requests, provided all the requested information within its possession and control, forwarded its third-party audit for fiscal year 2003 and taken several steps to disassociate itself from indicted parties. These steps include: (a) the voluntary resignations of Mr. Matzdorff from his positions as officer and director of both New Florence and Tiger Telephone (the holding company for New Florence); (b) amendment of the articles of incorporation of both New Florence and Tiger Telephone so that Mr. Robert Williams is the sole officer and director of each company; and (c) replacement of the services that Cass County Telephone Company LP and Local Exchange Company, LLC (LEC, LLC) were providing to New Florence with the services of other entities

obtained through written contracts. New Florence also states that Mr. Matzdorff transferred his interest in Tiger Telephone to his wife, Rebecca Matzdorff, on January 21, 2005 through a Legal Separation Decree entered by the Camden County Circuit Court. The decree also changed his wife's name to Rebecca Malcolm. According to New Florence, LEC, LLC, Mr. Williams and Ms. Malcolm each hold a one-third ownership interest in Tiger Telephone.

3. New Florence asserts its belief that this Commission should have certified New Florence to receive federal USF funds in September on the basis that it submitted evidence of compliance and met the same tests as all other LECs that this Commission certified for federal USF funds. New Florence further asserts that, regardless of whether it was eligible in September 2004, it "has now met the conditions set out by the Commission in its letter to the FCC as the Commission's Staff has conducted further investigation and the third-party audit has been provided." New Florence states the investigation and audit have not uncovered any wrongdoing on the part of New Florence, and the only possible reason for the Commission to continue to decline to certify New Florence is its prior association with Mr. Matzdorff.

4. New Florence states it continues to lose funds needed for the provision of service to its customers in high cost areas. New Florence suggests that instead of conducting further investigation based solely on the Company's prior connection with Mr. Matzdorff, the Commission should certify New Florence as eligible to receive high-cost funds. New Florence states that since the Commission seems to feel it must pursue additional investigation of New Florence, including "any matters pertaining to the Universal Service Fund," there is insufficient basis for the Commission to refuse to certify New Florence for USF support.

5. New Florence submitted its 2002 and 2003 third party audit to the Staff on December 23, 2004.

6. On February 25, 2005, the Staff filed in this case, with sensitive material redacted, its initial report on its investigations regarding New Florence and other entities associated with Mr. Matzdorff. The Staff notes in its report:

Based on federal allegations of criminal conduct, Local Exchange Company, LLC (LEC, LLC) significantly exposes Missouri utilities to the possibility of inappropriate conduct. LEC LLC has significant ownership interests in both Cass County Telephone Company LP and New Florence Telephone Company. It also has had significant transactions with both of these companies. Based on documentation and information uncovered to date, LEC LLC is largely owned, directly or indirectly, by individuals indicted in New York for the telephone and internet fraud schemes.

7. The allegations in the federal indictment limit the actual actions of LEC, LLC to its involvement in movement of the illegal proceeds from the telephone cramming scheme. The focus of the allegations in the indictment are on the owners of LEC, LLC. On January 25, 2005, a Kansas City grand jury indicted Daniel and Richard Martino on USF (Universal Service Fund) and NECA (National Exchange Carriers Association) fraud-related charges. On February 23, 2005 they pled guilty to these charges. A majority of LEC, LLC is owned, directly or indirectly, by individuals facing or convicted of federal charges as shown in the following table:

This table has been deemed highly confidential in its entirety.

[illegible]

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HC \*\*

8. The greatest potential negative impact on Missouri consumers are the questions that have been raised regarding the validity of the cost structures of the Missouri telephone companies that are involved with LEC, LLC. At least until very recently, New Florence, has had business relationships with LEC, LLC. The financial controls that the Staff is aware of at New

Florence Telephone Company were not adequate to permit reliance upon their current books and records. The position of LEC, LLC regarding the disclosure of its previous business dealings and the impacts of those dealings on the charges it imposed on New Florence complicates regulatory monitoring regarding the reasonableness of the charges.

9. LEC, LLC has objected to the Staff's informal requests for information. In its Order establishing Case No. TO-2005-0237, the Commission states at paragraph 7, "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."

10. Staff is directed, through the Commission's order establishing case in Case No. TO-2005-0237, 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. This investigation includes extensive on-site review and inspections and may include the need for a change of management and control of the companies by legal means."

11. Staff is continuing its investigation of New Florence and LEC, LLC, an entity with a one-third ownership interest in New Florence. The Staff is developing work plans and has already requested the Commission to issue subpoenas to LEC, LLC relating to the issues raised in the Report and the Order in Case No. TO-2005-0237.

12. Although New Florence states it has now met the conditions set out by the Commission in its letter to the FCC, namely submitting its third party audit and being responsive to Staff's investigation, it should be noted that the Commission never stated in its letter to the FCC that submission of the third-party audit and cooperation in the Commission ordered Staff investigation would result in certification. Instead, the Commission stated, "The MoPSC is conducting further inquiry of these companies and awaiting the receipt of a third party audit. Should the additional inquiry indicate the companies are using the funds in accordance with Section 254(e) [of the Telecommunications Act of 1996], the MoPSC will submit its certification letter at that time."

13. As the Commission noted in its letter to the FCC, should additional inquiry indicate the companies are using the funds in accordance with Section 254(e) of the Telecommunications Act of 1996, the Commission will submit its certification letter at that time. In light of all of the events that surround New Florence Telephone Company, the Staff believes that the information acquired to date is insufficient to rely upon to certify that New Florence is using federal USF funds in accordance with Section 254(e) of the Telecommunications Act of 1996 and, therefore, the Staff opposes New Florence's motion.

**WHEREFORE**, the Staff recommends that the Commission deny the motion of New Florence Telephone Company requesting both that the Commission certify New Florence as eligible to receive federal USF support for the remaining portion of calendar year 2005 and assist New Florence in obtaining a waiver so that it may recover support the first quarter of 2005.

Respectfully submitted,

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**/s/ Nathan Williams**

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**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 4<sup>th</sup> day of March 2005.

**/s/ Nathan Williams**

Nathan Williams