

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

Staff of the Public Service Commission of the)	
State of Missouri, Complainant v. Cass County)	<u>Case No. TC-2005-0357</u>
Telephone Company Limited Partnership,)	
Respondent and Local Exchange Company LLC,)	
Respondent.)	

**DISSENTING OPINION OF COMMISSIONERS STEVE GAW AND
ROBERT M. CLAYTON III**

These Commissioners respectfully dissent from the majority's Order Denying Application to Intervene, But Inviting the State of Missouri to File as an Amicus Curiae. Denial of the State of Missouri's Application to Intervene blocks critical analysis and input from the Chief Law Enforcement Officer of the State of Missouri in a case more criminal in nature than regulatory. This Commission should order the Missouri Attorney General's Intervention.

This case presents this regulatory agency with issues that are well outside of the norm of regular Commission practice. While Staff has worked very hard at uncovering the pattern of illegal activity at this utility, it does not have investigators familiar with state or federal criminal procedure or experience in seeking significant pecuniary penalties. The majority in its Order states, "The Attorney General certainly has an expertise in such matters and the Commission is interested in hearing more about those concerns." But then, it rejects the State's Application to Intervene for several reasons but, "(m)ost fundamentally," because it filed its Application at such a late date in this case. Intervention should not be denied based solely on procedural grounds in such a case.

The Attorney General is uniquely positioned to review the proposed settlement with an eye toward protecting the citizens of Missouri from any undetected civil or criminal wrong-doing which clearly serves the public interest. The Attorney General in its regular course of business has jurisdiction to prosecute cases involving consumer fraud, unlawful merchandising practices and violations of state law when the local prosecutor requests assistance from the Attorney General because of a complex trial or a conflict of interest. The Commission would benefit from that experience.

These Commissioners do not advocate for opting out of the Commission's responsibilities in seeking penalties and protecting the ratepayers in the Cass County territory. However, the Commission Staff has struggled with the prosecution of penalties in this case, including complications in joining parties, discovery dilemmas and questions of the Commission's jurisdiction. This matter began only after news reports of organized crime's involvement in Cass County Telephone and inquiries made by the Commission at an On-the-Record presentation. The Commission's ultimate decision in this matter would benefit from constructive analysis and advocacy by the Attorney General.

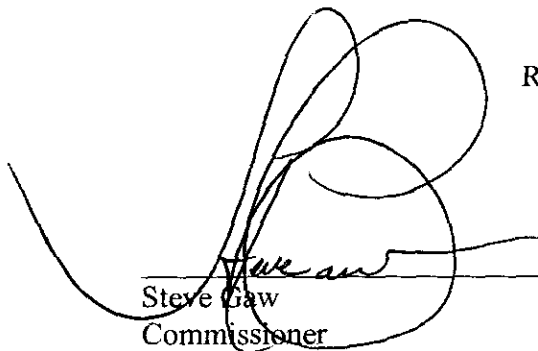
According to its filings in this case, the Office of Public Counsel did not conduct its own investigation of the Complaint and was not active in negotiations between the Company and Staff that resulted in the Stipulation and Agreement. Instead, it relied on law enforcement and prosecutorial agencies and Staff. These Commissioners assume the OPC is referring to federal law enforcement's involvement in the criminal prosecutions. This is yet another example of the OPC relying on others because of lack of staff and adequate resources to do its work.

This case should be reviewed in light of another case filed before the Commission known as Case No. TM-2006-0306, In the matter of the Joint Application of Cass County Telephone

Company, Limited Partnership, LEC Long Distance, Inc. That application requests the Commission's approval of the sale of this utility to a third-party for a significant amount of money. It is apparent that the proceeds of that sale will be used to pay the proposed penalty in this case. It is possible that resolution of this case by a penalty payment of one million dollars will result in far greater benefit to the very criminal elements this penalty seeks to punish. The settlement in which the Attorney General seeks to intervene includes Staff's recommendation for approval of USF payments to Cass County Telephone. These payments can amount to millions of dollars per year which increases the value of Cass County Telephone in the sale. These proceeds appear to be going to LEC, LLC which is still owned in part by those convicted of defrauding consumers in one of the biggest consumer fraud cases in U.S. history.

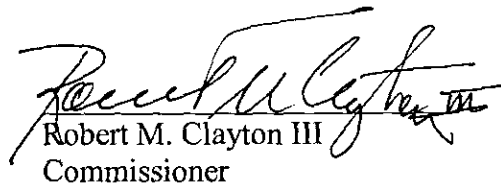
This Commission should not bar the Attorney General from full participation in such a case. These Commissioners believe that the Attorney General could still offer competent and helpful input in evaluating the merits of that case. Therefore, it would be appropriate for his intervention in Case No. TM-2006-0306.

For the foregoing reasons, these Commissioners dissent from the majority Order.



Steve Gaw
Commissioner

Respectfully Submitted



Robert M. Clayton III
Commissioner

Dated at Jefferson City, Missouri,
on this 21st day of Feb., 2006.