

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

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

Case No. TO-2005-0237

Staff's Recommendation to Subpoena Robert Fulton

COMES NOW the Staff of the Public Service Commission and, for its recommendation that the Commission issue a subpoena to Robert Fulton states:

1. As has been indicated in earlier pleadings, the Staff has sought numerous documents in pursuing the investigation the Commission ordered in this case. Although it has encountered hurdles in obtaining documents from Local Exchange Company, LLC ("LEC, LLC"), Cass County Telephone Company, LP ("CassTel") and New Florence Telephone Company ("New Florence"), the Staff is now at a point where it believes it has obtained sufficient information to productively inquire of individuals associated with LEC, LLC, CassTel and New Florence.

2. Unlike Case No. TC-2005-0357, the Staff's complaint case against CassTel and LEC, LLC, this case is not narrowly limited in scope. The Staff's complaint in Case No. TC-2005-0357 is based on the narrow factual allegations that Kenneth Matzdorff included as expenses of CassTel payments made to Overland Data Center on falsified or fictitious invoices which in turn were used to make entries in the accounts, books of account, records or memoranda of CassTel and to qualify for unwarranted disbursements of subsidies from USAC and revenue distributions from NECA, and that he made false statements to the Commission

regarding his knowledge of the foregoing when he testified before the Commission on April 19, 2004 in Case No. IR-2003-0354. In contrast, this case is broad in scope, including but not limited to, investigation of: New Florence; the relationships of New Florence, CassTel and LEC, LLC with their affiliates; the details of the operations of New Florence and CassTel; and the actions taken by employees of LEC, LLC for CassTel and New Florence. Accordingly, subpoenas related to this broader inquiry must issue in this case, not TC-2005-0357.

3. From the inquiry it has already made, the Staff understands that much of the work required for the operations of CassTel is, or was, performed by employees of LEC, LLC, the general partner of the CassTel.

4. The Staff understands that LEC, LLC developed and maintains CassTel's accounting files and records. The Staff also understands that LEC, LLC makes the accounting entries in CassTel's books and records and it prepares CassTel's financial statements and other financial reports provided to this Commission, other governmental agencies and the other partners in the CassTel partnership.

5. Section 386.440.1, RSMo 2000¹ provides that Commission *subpoenas* shall be signed by a commissioner or the secretary of the commission, and shall extend to all parts of the state and may be served by any person authorized to serve process of courts of record or by any person of full age designated for that purpose by the commission or by a commissioner.

6. Section 386.470 provides:

No person shall be excused from testifying or from producing any books or papers in any investigation or inquiry by or upon any hearing before the commission or any commissioner, when ordered to do so by the commission, upon the ground that the testimony or evidence, books or documents required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall

¹ All statutory citations are to RSMo 2000, unless otherwise indicated.

under oath have testified or produced documentary evidence; provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein contained is intended to give, or shall be construed as in any manner giving unto any corporation immunity of any kind.

7. The Staff is informed Robert Fulton is employed by LEC, LLC as an outside plant engineer.

8. Based on what it understands of what Robert Fulton did in the employ of LEC, LLC, the Staff anticipates that it will learn from speaking with Robert Fulton information regarding CassTel, New Florence and LEC, LLC that the Staff has not been able to obtain through document requests. The Staff anticipates that information will include, but not necessarily be limited to, the following: design criteria methods used to forecast outside plant additions needed by CassTel and New Florence.

9. The Staff is informed by his attorney that Robert Fulton will not respond to inquiries by the Staff unless compelled to do so.

10. Attorney Gerald M. Handley, 1100 Main, Suite 2800, Kansas City, Missouri has advised the Staff that he represents Robert Fulton and will accept service by mail of a Commission subpoena on Robert Fulton's behalf. The Staff has coordinated with attorney Handley to arrange a time and place for questioning Robert Fulton pursuant to a Commission subpoena.

11. Attached hereto as Appendix A is the form of the *subpoena* the Staff recommends that the Commission use.

12. As agreed with attorney Handley, the Staff recommends the Commission require Robert Fulton to appear at 9:00 a.m. on July 11, 2005 at Room G8 of the Fletcher Daniels State

Office, 615 East 13th Street, Kansas City, Missouri to answer under oath questions posed to him by the Staff, if necessary, said testimony to continue day-to-day.

WHEREFORE, the Staff recommends that the Commission issue a *subpoena* substantially in the form of Appendix A to obtain the testimony of Robert Fulton.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Nathan Williams

Nathan Williams
Senior Counsel
Missouri Bar No. 35512

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8702 (Telephone)
(573) 751-9285 (Fax)
nathan.williams@psc.mo.gov

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 and the Cass County, Missouri Prosecutor this 6th day of July 2005.

/s/ Nathan Williams

SUBPOENA
Order to Appear and Testify



THE STATE OF MISSOURI.

Case No. TO-2005-0237

To Robert Fulton

You are hereby commanded to appear to testify under oath before The Public Service Commission of the State of Missouri at 9:00 a.m. on the 11th day of July 2005, at the Commission's offices located in Room G8 of the Fletcher Daniels State Office, 615 East 13th Street, Kansas City, Missouri or at such other time, date and place as the Staff of the Public Service may agree. If necessary, said testimony shall continue day-to-day.

Given under my hand, this ____th day of July 2005,

Jeff Davis, Chairman
Public Service Commission

RETURN

I HEREBY CERTIFY that I served this subpoena by:

- () delivering a copy to the person named above.
- () reading a copy to the person named above.

at _____ (time) on the _____ day of _____ 2005 , at the following location: _____, in the State of Missouri.

[Name] [Title]

Subscribed and sworn to before me this _____ day of _____ 2005.

Notary Public