

**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 Suggestions to the Commission Regarding
Local Exchange Company, LLC's Motion to Quash *Subpoenas***

COMES NOW the Staff of the Public Service Commission and, for its suggestions to the Commission regarding Local Exchange Company, LLC's motion to quash *subpoenas*, states:

BACKGROUND

1. The Commission stated in the ordering clauses of its Order Establishing Investigation Case that it established this Case No. TO-2005-0237 for the purpose of investigating 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. In the ordering clauses of that same order the Commission directs its Staff to "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," and to "investigate any matters pertaining to the Universal Service Fund and report any irregularities to the Commission."

3. In the synopsis section near the beginning of its order the Commission stated, “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”)” and “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.”

4. The Commission also made several statements in the body of its order. Commencing on page 4, the Commission stated, “. . . [T]he Staff of the Commission is hereby directed to investigate all matters pertaining to the 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.” On page 5 the Commission stated, “Staff is hereby directed to complete a financial review concerning the receipt and disbursement of Universal Service Funds.” Commencing on page 5 and continuing to page 6, the Commission referenced section 386.570 RSMo 2000 regarding violations of law and failure to comply with Commission orders and stated, “Staff shall pursue evidence of any circumstances discovered during the course of its investigation.” On page 6 the Commission stated, “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.” The Commission also stated, on page 7, “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.”

5. In addition to the statements made by the Commission in its order that established this case, on February 25, 2005, the Staff filed in this Case No. TO-2005-0237 its initial report regarding the impact of the allegations of criminal conduct by Kenneth Matzdorff on Missouri utility consumers. In that initial report the Staff made the following sixteen recommendations:

1. Kenneth M. Matzdorff relinquish all managerial and financial authority for Cass County Telephone Company LP.
2. Rebecca Matzdorff be suspended by the Company from all managerial and financial authority for Cass County Telephone Company LP pending the completion of the Staff's investigation as directed by the Commission in Case No. TO-2005-0237.
3. Controller Debi Long relinquish all authority regarding any receipts and disbursements of Cass County Telephone Company LP funds pending the completion of the Staff's investigation as directed by the Commission in Case No. TO-2005-0237.
4. The Staff explore all options to eliminate the role of LEC LLC regarding the ownership, financing, operation and financial affairs of Cass County Telephone Company LP and New Florence Telephone Company.
5. The Staff initiate an earnings review and audit of New Florence Telephone Company.
6. The Staff initiate an earnings review and audit of Cass County Telephone Company.
7. The Staff initiate management audits of both Cass County Telephone Company and New Florence Telephone Company, to include but not be limited to: 1) quality of service, 2) the operations of the business office, and 3) related party transactions safeguards and controls.
8. The Staff monitor the operation of the Oregon Farmers under its new ownership arrangement and examine the reasonableness of internal controls relative to prior related party transactions.
9. The Staff ensure that Century Tel and Spectra have in place an audit program and overall internal controls sufficient to detect possible wrongdoing and report the results of these efforts.
10. The Staff explore Joint Audit option(s) with NECA, Federal Communications Commission, Universal Service Administrator Company, and other interested entities to minimize duplication of effort and improve overall knowledge of the audits and investigations of these matters.

11. The Staff depose Kenneth Matzdorff, Rebecca Matzdorff and Controller Debi Long regarding the scope of their non-Missouri regulated telephone company activities, current Cass County operations, relationship and operation of LEC LLC, relationship and operation of Haug Construction, relationship and operation of Local Exchange Carriers, LLC, relationship and operation of the other firms identified in Section 5, 11 and identification of other firms related to Mr. Matzdorff that have not yet been identified.

12. The Staff initiate discussions with Missouri LECs and Missouri Telephone Industry Association (MTIA) regarding development of a whistleblower program for Missouri telecommunications activities.

13. The Staff initiate discussions with interested parties to develop an affiliate transaction rule for small Missouri telephone companies.

14. The Staff modify the Missouri telephone company annual report format to include identification of related party transactions above a specified threshold and the amount of the transaction.

15. The Staff continue to work with federal agencies involved in the investigation of these matters.

16. The Staff investigate as part of Case No. TO-2005-0237 other employees of Cass County Telephone Company LP, New Florence Telephone Company and LEC LLC for possible removal.

While the Commission has not formally adopted these recommendations, it has not rejected them either. The Staff is taking steps to implement its recommendations.

6. Local Exchange Company, LLC (LEC, LLC), a Maryland limited liability corporation, is the general partner of the Cass County Telephone Limited Partnership, a Maryland limited partnership. As the Staff has previously stated to the Commission, much of the work required for the operations of Cass County is, or was, performed by employees of LEC, LLC. The Staff understands LEC, LLC has about 46 employees.

7. As part of its efforts to obtain information required to carry out the Commission's directives and implement the Staff's recommendations, the Staff recommended to the Commission that it issue *subpoenas duces tecum* to LEC, LLC to produce documents that would

contain information relevant to Cass County and/or New Florence. The Commission issued the *subpoenas* and in response LEC, LLC moved the Commission to quash them.

GENERAL OBJECTIONS

8. Local Exchange Company, LLC (“LEC, LLC”) makes four general objections directed to all of the requests in each of the *subpoenas*, and then raises specific objections. The general objections are: “(A) the *subpoenas* are overly broad and request the production of information that is not relevant to this investigative proceeding; (B) the *subpoenas* do not allow sufficient time for compliance; (C) the *subpoenas* do not allow LEC the option of making responsive documents available for staff review at LEC’s premises; and (D) the *subpoenas* request that LEC produce documents previously produced to the Commission.”

9. In paragraphs 1-5 above, the Staff has demonstrated the breadth of the investigation ordered by the Commission. In the paragraphs following the Staff explains how the *subpoenas* are directed to obtaining information that is needed to carry out that investigation.

10. In paragraphs 2 and 3 of its motion, LEC, LLC raises two bases for asserting the subpoenas are overbroad and overly burdensome. The first is that numerous requests require the production of each document, every document or all documents regarding a matter. It was not the Staff’s general intent that LEC, LLC provide multiple documents containing the same information. The breadth of the requests was directed at access, not production. In particular, to the extent it may not be clear in Attachment A to the *subpoena* identified by LEC, LLC as *subpoena* 2 (and attached hereto as Attachment A), the Staff did not intend to suggest that multiple documents that contain the same information be produced in response to 1a, 1b, 1c, 1g, 1gi, 1gia, 2a, 2e, 2f, 2g, 2h, 2i, 2j, 2k, 3a, 3b, 3bi, 3c, 3d, 3di, 3e, 3ei, 3eii., 3eiii, 3eiiia, 3f, 3fi, 3fii, 3fiii, 3g (except that meeting minutes are in addition to other documents provided), 3h

(accounting manual(s) should suffice), 3i (purchasing procedures manual(s) should suffice), 3j (policy/procedures documentation should suffice), 3k, 3l, 3m and 3n. Generally, one document containing the information will satisfy the Staff's needs and, as stated below in paragraph 12, when there are voluminous documents and if LEC, LLC provides to the Staff copies of specific documents identified by the Staff among those produced, the Staff is not opposed to reviewing the documents at LEC, LLC's premises in Peculiar, Missouri.

LEC, LLC's second basis for asserting the requests are overbroad and overly burdensome is based on some requests being directed to information from prior to January 1, 2002 and LEC, LLC states that such information "could not assist the Commission in any ratemaking proceeding." LEC, LLC is wrong. A utility's investment in plant has a significant impact in the rates that utility obtains in the cost-based ratemaking this Commission uses in setting customer rates. Plant investment for ratemaking is not limited to charges made in years since 2002 and would include even charges made in years preceding the creation of Cass County. Where the information sought in the documents should contain information that pertains to plant (physical facilities) used by Cass County or New Florence to provide service to customers, the Staff recommended obtaining documents back to January 1, 1996.

11. In response to the assertion that the *subpoenas* do not allow sufficient time for compliance, the Staff states that it selected a response time of thirty days in an effort to balance the Commission's desire for the Staff's investigation to proceed expeditiously with the burdens production imposes on LEC, LLC. As set out in the following paragraphs, it is the Staff's intent in many cases to sample selected documents from those to be produced in response to the *subpoenas*; therefore, in many instances the Staff's purposes can be served by requiring LEC, LLC to produce within a reasonable time after they are identified to LEC, LLC by the Staff,

those documents the Staff identifies. Such a modification of the *subpoenas* would reduce the burden on LEC, LLC. In the paragraphs following the Staff identifies the types of documents it plans to sample.

12. In response to LEC, LLC's general objection "that the *subpoenas* do not allow LEC the option of making responsive documents available for staff review at LEC's premises," when there are voluminous documents and if LEC, LLC provides to the Staff copies of specific documents identified by the Staff among those produced, the Staff is not opposed to reviewing the documents at LEC, LLC's premises in Peculiar, Missouri.

13. In response to LEC, LLC's general objection that "the *subpoenas* request that LEC produce documents previously produced to the Commission," the Staff states that it is the Staff's understanding that LEC, LLC employees are providing responses to the Staff's requests for documents and information directed to Cass County; therefore, if LEC, LLC identifies the Staff request to Cass County where Cass County's response includes production of the documents requested of LEC, LLC in the *subpoenas*, the Staff's purposes in requesting production of the documents from LEC, LLC would be served. Further, in the *subpoena* identified in LEC, LLC's motion to quash *subpoenas* as *subpoena* 1, the Commission ordered production of the documents following:

- a. All written procedures and other documentation supporting the process used to bill Cass County Telephone Company, LP subscribers, including those pertaining to implementation of a rate change.
- b. All documentation of the billing cycle for Cass County Telephone Company, LP, including flow charts and collection cycle flow charts with descriptions.
- c. All documentation of the current bill print and mailing costs for billings of Cass County Telephone Company, LP subscribers.
- d. Each document regarding a policy or procedure for credit or collection activities by Cass County Telephone Company, LP.

- e. Each document reflecting the payment options of a subscriber to services of Cass County Telephone Company, LP, including fee charges and paid commissions for the period January 1, 2003 to present.
- f. Each document showing a policy or procedure of Cass County Telephone Company, LP for disconnects/reconnects of delinquent subscriber accounts.
- g. Each document showing, scheduled disconnect activity and completed disconnect activity from January 1, 2003 to the present.
- h. Each document showing a policy or procedure for all Call Center activities for Cass County Telephone Company, LP.
- i. Each document showing performance of the Call Center for Cass County Telephone Company, LP for the period January 1, 2003 to present.
- j. Each bank deposit record generated by customer payments made from January 1, 2003 to present.

Because the Staff has made these same requests of Cass County and Cass County has not denied the Staff access to them, there currently is no need for LEC, LLC to produce those documents as well and, therefore, the Commission *subpoena* that orders production of the foregoing documents should be withdrawn.

SPECIFIC OBJECTIONS

14. The *subpoena* identified by LEC, LLC in its motion to quash *subpoenas* as *subpoena 2* requires production of a number of documents described in a series of paragraphs. Attachment A of that *subpoena* is attached hereto as Attachment A. The Staff will address each below.

15. External auditors have reviewed the financial statements of Cass County and New Florence and issued auditor's reports for 2003, and the Staff is informed they are in the process of conducting similar reviews for 2004. When it recommended to the Commission that the Commission issue the *subpoenas* challenged by LEC, LLC in an effort to expedite the process,

the Staff anticipated using the external auditor's reports as the starting point for the Staff's review. Therefore, the Staff recommended obtaining documents from January 1, 2003 to present where the information sought pertains to operations of Cass County and New Florence.

16. For purposes of understanding, for each employee of LEC, LLC who was performing services for Cass County or New Florence at any time during the period January 1, 2003 to present, the duties, qualifications, job performance, accuracy of work records and potential conflicts of interest with respect to Cass County or New Florence of those employees, the Staff recommended that the Commission require production by LEC, LLC of the documents listed in 1 of Attachment A (including all subparts).

17. In paragraph 11 of its motion, LEC, LLC objects to the identification of LEC, LLC employees "that performed any work, directly or indirectly, for Cass County Telephone Company, LP or New Florence Telephone Company" in 1 of Attachment A on the ground that "indirectly" is vague. The characterization of indirectly performing work for Cass County or New Florence was designed to encompass each LEC, LLC employee that does work for an entity other than Cass County or New Florence where the cost of that LEC, LLC employee's services to that entity are included in charges ultimately made to Cass County and/or New Florence. In the event the Commission agrees with LEC, LLC that the word "indirectly" is vague, the Staff suggests that the request be modified as set forth in the foregoing sentence or, alternatively, the request be limited to those employees whose time, in whole or in part, has been charged to Cass Tel and/or New Florence Telephone.

18. In response to LEC, LLC's assertion the requests are overbroad made in paragraph 12 of its motion, the Staff responds that Kenneth Matzdorff has entered guilty pleas for charges based on inflated charges on invoices to Cass County and representatives of Cass County have

stated that the duties employees perform are not necessarily those that one would anticipate would be performed by a person with the job title of the employee. Under the circumstances, and the broad scope of the Commission's directives regarding this investigation, the Staff's requests related to LEC, LLC job duties, qualifications and performance evaluations made in 1a, 1b, 1c and 1e of Attachment A are not overbroad.

19. In response to LEC, LLC's assertion in paragraph no. 13 of its motion to quash that confidential information of LEC, LLC employees should not be disclosed to the Commission, the Staff responds that in addition to section 386.480 RSMo 2000 which limits the disclosure of information obtained by the Commission as follows:

No information furnished to the commission by a corporation, person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, RSMo, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. The public counsel shall have full and complete access to public service commission files and records. Any officer or employee of the commission or the public counsel or any employee of the public counsel who, in violation of the provisions of this section, divulges any such information shall be guilty of a misdemeanor.

this information is also subject to protection under the protective order the Commission issued in this case February 25, 2005. Further, because LEC, LLC employees perform Cass County's office work and maintain its records, and provided similar services to New Florence, LEC, LLC's employees are a subject of this investigation.

20. In response to the objections regarding timesheets found in paragraph 14 of LEC, LLC's motion, the Staff states, as it did above, LEC, LLC has about 46 employees. The Staff does not know how many of these employees had time that was charged to Cass County and/or New Florence for the employee's services. The documents requested in the *subpoenas* are limited to include only those pertaining to employees whose time has been charged to Cass

County and/or New Florence. It appears that the number of employees within the request will not exceed 46, but could be less. As stated in paragraph 12 above, when there are voluminous documents and if LEC, LLC provides to the Staff copies of specific documents identified by the Staff among those produced, the Staff is not opposed to reviewing the timesheets at LEC, LLC's premises in Peculiar, Missouri. Staff will review these timesheets in conjunction with information provided from selected invoices and information identifying the employees and their job duties, Staff anticipates sampling the timesheets for correlation with invoices and employees' duties.

21. In response to the objections regarding documents supporting charges for services found in paragraph 14 of LEC, LLC's motion, the Staff states that, while the Staff suggested that each document supporting a LEC, LLC employee charge for services be produced (1f of Attachment A), the Staff anticipates that it would, based on entries in timesheets the Staff selects, sample the documents supporting charges for services. Therefore, as stated in paragraph 12 above, when there are voluminous documents and if LEC, LLC provides to the Staff copies of specific documents identified by the Staff among those produced, the Staff is not opposed to reviewing the documents supporting LEC, LLC employee charges for services at LEC, LLC's premises in Peculiar, Missouri. Further, the Staff suggests that, if the Commission believes this request too onerous on LEC, LLC, then it modify its *subpoena* to allow LEC, LLC to produce a listing, for each LEC, LLC employee, of the amounts of the charges attributable to that LEC, LLC employee reflected on the bills ultimately submitted to Cass County and/or New Florence.

22. In paragraph 15 LEC, LLC objects to providing information of employment of its employees by other entities on the grounds that the requests are vague and irrelevant. LEC, LLC does not specify why it believes the requests are vague or irrelevant. In response the Staff notes

that Kenneth Matzdorff has pleaded guilty to charges based on inflated charges on invoices to Cass County made by another entity in which he had an ownership interest and the Staff is aware of a number of other entities, some of which the Staff knows conducted business with Cass County and/or New Florence, in which Kenneth Matzdorff had an ownership interest. Inquiry directed to learning of entities that might cause an employee of LEC, LLC to have a conflict of interest with respect to Cass County or New Florence is relevant. The request is not vague.

23. In paragraph 16 LEC, LLC objects to providing “each document” prepared by a LEC employee using Cass County or New Florence letterhead and documents created by LEC employees for “business conducted on behalf of” Cass County or New Florence. The documents the Staff intended to capture in this request fall within the scope of 1f of Attachment A and to the extent the documents in 2b, 2c and 2d would extend beyond 1f, the requests are beyond that which the Staff intended. Therefore, the Staff suggests that the Commission consider the Staff’s suggestions in paragraph 21 above pertaining to 1f of Attachment A and reach the same result on this objection as it does on the objections to 1f of Attachment A.

24. In paragraph 17, LEC, LLC objects to 2f of Attachment A which requests production of each document created to comply with any policy or procedure related to the conduct of business with related parties and/or affiliated entities on the grounds that it is vague and overbroad. The intent of the Staff’s request was to obtain a single copy of: (1) each internal audit report of employee pecuniary interests in entities doing business with LEC, LLC or its affiliates, (2) employee certifications or disclosures of their pecuniary interest in entities doing business with LEC, LLC or its affiliates, and (3) management approval for an employee to have a pecuniary interest in an entity doing business with LEC, LLC or its affiliates.

25. LEC, LLC's objects in paragraph 18 of its motion that the request for production of bid solicitations for external auditors, responses and evaluations of the responses and communications received terminating accounting services to LEC, LLC are vague, overbroad and privileged. LEC, LLC articulates no basis for any of these asserted grounds for objecting to 2j and 2k of Attachment A. These unsupported objections are without merit. For those documents it asserts that Cass County has provided to the Staff, the Staff does not oppose LEC, LLC identifying when and how Cass County provided the documents, instead of providing another copy of documents the Staff has already received.

26. In paragraph 19 of its motion, LEC, LLC objects to the request for documents that show any company, partnership or any other entity that, at any time from 1996 to present, has had a direct or indirect business relationship with Kenneth Matzdorff, Rebecca Matzdorff and/or Robert Williams and that has done business with, or for, Local Exchange Company, LLC on the grounds that the phrase "direct or indirect business relationship" is vague, would include documents not relevant to the investigation and that the request is beyond the Commission's authority. In the event the Commission finds the request to be vague, the Staff proposes that the following language for 3b is not vague and requires production of the information the request was designed to obtain: Document(s), from January 1, 1996 to present, that identify Kenneth Matzdorff, Rebecca Matzdorff and/or Robert Williams as a person, or persons, with a pecuniary interest(s) in an entity that received payment(s) or remuneration from Local Exchange Company, LLC directly, or through a contractor or other indirect means. Further, 3bi could be modified to: Documents that show the work performed, the amount(s) paid by Local Exchange Company, LLC for the work, the request(s) for proposals, bids, response(s) to bid(s), evaluation(s) of bid(s), contract(s) and any other documentation associated with the work performed for Local Exchange

Company, LLC by the following entities: Each entity identified above that received payment(s) or remuneration from Local Exchange Company, LLC directly or through a contractor or other indirect means, New Florence Telephone Company, Overland Data Center, Haug Construction Company, LEC Long Distance, Inc., Pegasus Communications, Inc., Videonet, LLC, USP&C, Inc., Telecom Operator Services, Inc., and Outreach Construction, L.L.C.

Despite LEC, LLC's bald assertion to the contrary, this request is within the scope of the investigation established by the Commission and is within the Commission's authority.

27. In response to paragraph 20 of LEC, LLC's motion objecting to production of documents relating to LEC, LLC's contracts with Overland Data Center and USP&C on the grounds that the requests are overbroad, seek irrelevant information and are beyond the Commission's authority, the Staff states that these requests are designed to obtain documents where charges from Overland Data Center were made to LEC, LLC then passed on to Cass County and similarly, where charges from USP&C were made to LEC, LLC then passed on to Cass County. Despite LEC, LLC's bald assertions to the contrary, these requests are not overbroad, do not seek information irrelevant to the investigation ordered by the Commission and are not beyond the Commission's authority.

28. In response to paragraph 21 of LEC, LLC's motion objecting to production of LEC, LLC's business plans, the Staff states that LEC, LLC is the general partner of Cass County owning some 99% of the partnership and LEC, LLC employees provide vital office support for the operations of Cass County. LEC, LLC's business plans are relevant to the operations of Cass County, are within the scope of the investigation directed by the Commission and production of them is within the Commission's authority.

29. In response to paragraph 22 of LEC, LLC's motion objecting to production of documents regarding Qualitel, Inc. and Cohen Partnership, L.P., the Staff states that Qualitel, Inc. and Cohen Partnership, L.P. are owners of LEC, LLC. Numerous of the owners of LEC, LLC have been identified as having ties to individuals alleged to have ties to organized crime and have plead guilty to federal charges involving fraud. LEC, LLC owns some 99% of the Cass County partnership. The information sought by the requests for production of documents showing the address of and individual(s) associated with Qualitel, Inc. and Cohen Partnership, L.P. is within the scope of the investigation ordered by the Commission and the Commission has authority to order the production of such documents.

30. As stated above, the Staff does not object to LEC, LLC responding to *subpoenas* by making the representation that the material was provided to the Commission previously as long as LEC, LLC references the data request response where the information in question was provided.

31. As stated above, the Staff does not object to LEC, LLC making voluminous material available at its Peculiar, Missouri premises for review as long as LEC, LLC agrees to copies of reasonable portions of the material upon request.

32. As stated above, the Staff has not received any date from LEC, LLC regarding the time period needed to comply with the subpoenas. Consequently, the Staff is in no position to suggest an appropriate time by which LEC, LLC should comply with the *subpoenas*. The Staff needs the requested information to complete its investigation as soon as possible and to produce its report to the Commission. The Staff will work with LEC, LLC to accommodate any reasonable request for an extension of time to comply with the *subpoenas*.

WHEREFORE, the Staff makes the foregoing suggestions to the Commission in response to LEC, LLC's motion to quash *subpoenas*.

Respectfully submitted,

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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 12th day of April 2005.

/s/ Nathan Williams
Nathan Williams