

**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 Authorize Issuance of Subpoenas

COMES NOW the Staff of the Public Service Commission and, for its recommendation that the Commission authorize the issuance of subpoenas to certain former or current employees of Local Exchange Company, LLC 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

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

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 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 desires to speak with the Local Exchange Company, LLC employees shown in the following table (the tentative deposition dates shown are those discussed with their attorneys and are largely based on their availability):

Name	Position at LEC, LLC	Attorney	Tentative Deposition Date
Robert Fulton	outside plant engineer	Gerald M. Handley	July 11, 2005
Steve Collins	outside plant manager	Gerald M. Handley	
Kathryn Barnett	accounts payable clerk	Gerald M. Handley	July 18, 2005
Dee Cobern	Vice-President Revenue and Regulatory	Gerald M. Handley	July 25, 2005
Patricia Ensor	accountant	Gerald M. Handley	July 18, 2005
Gennie Livingston	Accounting Manager	Gerald M. Handley	July 25, 2005
Sue VanMeter	bookkeeper	Gerald M. Handley	July 18, 2005
Jane Whaley	office manager	Gerald M. Handley	July 19, 2005
Debbie Long	Chief Financial Officer	Bruce C. Houdek	July 26, 2005
Robert Osborn	Former Manager of Budget and Regulatory Affairs	Bruce C. Houdek	July 19, 2005
Rebecca Malcolm	Executive Vice President	Jeffrey D. Morris	August 2005
Kenneth Matzdorff	general manager	Jamie S. Kilberg	

8. The Staff also wishes to speak with Robert Williams, who the Staff is informed is an owner of and is managing New Florence Telephone Company. The Staff is also informed that in the past Robert Williams performed services for CassTel. Mr. Williams is not represented by an attorney, but has informed the Staff that he will not speak with the Staff on a record unless compelled to do so. If subpoenaed, the Staff and Mr. Williams have tentatively agreed to speak formally on July 20, 2005.

9. Based on its understandings of the roles that Robert Williams has had with respect to LEC, LLC, CassTel and New Florence, the Staff anticipates that it will learn from speaking with Robert Williams 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: the extent of the control over the operations of New Florence and CassTel that he exercised at different points in time, information regarding transactions between CassTel, New Florence and LEC, LLC with entities in which Mr. Williams and/or Kenneth Matzdorff had an ownership interest. Such information will include work performed for New Florence by Haug Construction, Inc. and the involvement of Williams Holdings, LLC in New Florence's purchase of a new switch.

10. Based on the Staff's understanding of what Steve Collins did in the employ of LEC, LLC, the Staff anticipates that it will learn from speaking with Steve Collins 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: planning, construction and inspection of outside plant additions made at CassTel and at New Florence; the condition of the plant obtained from GTE that is now part of the networks of CassTel and New Florence; and the methods used to forecast outside plant additions needed by CassTel and New Florence.

11. Based on the Staff's understanding of what Kathryn Barnett did in the employ of LEC, LLC, the Staff anticipates that it will learn from speaking with Kathryn Barnett information regarding CassTel, LP, 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: accounts payable internal controls and accounts payable

processes used by LEC, LLC for transactions between affiliates, including Overland Data Center.

12. Based on the Staff's understanding of what Dee Cobern did in the employ of LEC, LLC, the Staff anticipates that it will learn from speaking with Dee Cobern 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: management oversight controls for construction work performed for CassTel and New Florence by contractors such as Haug Construction, Inc., the process used to select such contractors and regulatory reporting processes.

13. Based on the Staff's understanding of what Patricia Ensor did while employed by LEC, LLC, the Staff anticipates that it will learn from speaking with Patricia Ensor 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: timesheet reporting and payroll processes of LEC, LLC.

14. Based on the Staff's understanding of what Gennie Livingston did while employed by LEC, LLC, the Staff anticipates that it will learn from speaking with Gennie Livingston 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: accounting internal controls of LEC, LLC, internal auditing and information regarding payments to affiliates of LEC, LLC, including Overland Data Center.

15. Based on the Staff's understanding of what Sue VanMeter did while employed by LEC, LLC, the Staff anticipates that it will learn from speaking with Sue VanMeter 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: accounting internal controls of LEC, LLC and information regarding payments to affiliates of LEC, LLC, including Overland Data Center.

16. Based on the Staff's understanding of what Jane Whaley has done in the employ of LEC, LLC, the Staff anticipates that it will learn from speaking with Jane Whaley 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: purchasing procedures employed for obtaining services and materials from outside vendors such as Haug Construction, Inc., Company, Pegasus, LLC and Videonet, LLC.

17. Attorney Gerald M. Handley, 1100 Main, Suite 2800, Kansas City, Missouri has advised the Staff that he represents Steve Collins, Kathryn Barnett, Dee Cobern, Patricia Ensor, Gennie Livingston, Sue VanMeter and Jane Whaley, and that they will not respond to inquiries by the Staff unless compelled to do so. Further, attorney Handley has stated he will accept service by mail of Commission subpoenas on his clients' behalf. The Staff is coordinating with attorney Handley to arrange times and places for questioning the foregoing individuals pursuant to Commission subpoenas.

18. Based on what it understands of what Debbie Long did in the employ of LEC, LLC, the Staff anticipates that it will learn from speaking with Debbie Long 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: internal controls in place at LEC, LLC, including those

for transactions with affiliates; how support costs for LEC, LLC were determined; CassTel cash flows; how allocations of LEC, LLC to CassTel and New Florence were determined; information regarding payments made to affiliates such as Pegasus, LLC, Videonet, LLC, Overland Data Center, Haug Construction, Inc., Local Exchange Carriers, etc.

19. The Staff is informed Robert Osborn was coordinating the production of discovery responses for inquiries directed to CassTel, New Florence and LEC, LLC that were prepared by LEC, LLC immediately before he terminated his employment with LEC, LLC.

20. Based on what it understands of what Robert Osborn did while employed by LEC, LLC, the Staff anticipates that it will learn from speaking with Robert Osborn 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: details regarding NECA and federal USF filings for CassTel and New Florence that included transactions with Overland Data Center and other affiliates.

21. Attorney Bruce C. Houdek, 400 Searritt Bldg., 818 Grand Ave., Kansas City, Missouri has advised the Staff that he represents Debbie Long and Robert Osborn, and that they will not respond to inquiries by the Staff unless compelled to do so. Further, attorney Houdek has stated he will accept service by mail of Commission subpoenas on his clients' behalf. The Staff is coordinating with attorney Houdek to arrange times and places for questioning his clients pursuant to Commission subpoenas.

22. The Staff is informed Rebecca Malcolm is an owner of and a manager of CassTel. It is the Staff's understanding that Rebecca Malcolm presently holds the title of Executive Vice President of LEC, LLC and has in the past managed the daily affairs of the company.

23. Based on its understandings of the roles that Rebecca Malcolm has had with respect to LEC, LLC, CassTel and New Florence, the Staff anticipates that it will learn from speaking with Rebecca Malcolm 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: all aspects of the operations of New Florence, CassTel and LEC, LLC at various points in time and information regarding their transactions with affiliated entities.

24. Attorney Jeffrey D. Morris of Berkowitz, Stanton, Brandt, Williams & Shaw, LLP, 4121 W. 83rd Street, Suite 259, Prairie Village, Kansas, has advised the Staff that he represents Rebecca Malcolm. The Staff is coordinating with attorney Morris to arrange a time and place to formally question Rebecca Malcolm. At this time attorney Morris has not stated that Ms. Malcolm will not speak with the Staff unless compelled to do so; therefore, the Staff is not seeking issuance of a subpoena to Ms. Malcolm at this time.

25. The Staff is informed Kenneth Matzdorff is an owner of and a manager of Local Exchange Company, LLC and CassTel. It is the Staff's understanding that Kenneth Matzdorff presently is a general manager of Local Exchange Company, LLC and that until recently he was the general manager of CassTel.

26. Based on its understandings of the roles that Kenneth Matzdorff has had with respect to LEC, LLC, CassTel and New Florence, the Staff anticipates that it will learn from speaking with Kenneth Matzdorff 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: all aspects of the

operations of New Florence, CassTel and LEC, LLC at various points in time and information regarding their transactions with affiliated entities.

27. Attorney Jamie S. Kilberg of Baker Botts, LLP, The Warner, 1299 Pennsylvania Avenue, N.W., Washington, D.C. 20004-2400, has advised the Staff that he represents Kenneth Matzdorff. The Staff is coordinating with attorney Kilberg to arrange a time and place to formally question Kenneth Matzdorff. At this time attorney Kilberg has not stated that Mr. Matzdorff will not speak with the Staff unless compelled to do so; therefore, the Staff is not seeking issuance of a subpoena to Mr. Matzdorff at this time.

28. Attached hereto as Appendix A is the form of the *subpoena* the Staff recommends that the Commission use. As shown in the form subpoena, while the Staff generally plans to take the depositions at Room G8 of the Fletcher Daniels State Office, 615 East 13th Street, Kansas City, Missouri, the subpoena allows the Staff and the deponent to agree to a time, date and location that differs from that explicitly stated in the subpoena.

WHEREFORE, the Staff recommends that the Commission authorize the issuance of Commission *subpoenas*, substantially in the form of Appendix A, to obtain the testimony of Steve Collins, Kathryn Barnett, Dee Cobern, Patricia Ensor, Gennie Livingston, Sue VanMeter, Jane Whaley, Debbie Long, Robert Osborn and Robert Williams for purposes of this above-captioned investigation.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/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 and the Cass County, Missouri prosecutor this 13th day of July 2005.

/s/ Nathan Williams

Nathan Williams

SUBPOENA
Order to Appear and Testify



THE STATE OF MISSOURI.

Case No. TO-2005-0237

To

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 ____ day of _____ 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