

**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

COMES NOW the Staff of the Public Service Commission and suggestions to the Commission that this case should not be closed as follows:

1. The Staff stated in the background section of its suggestions not to quash the Commission subpoenas duces tecum served on Local Exchange Company, LLC, the breadth of the investigation ordered by the Commission in this case. That background is restated in the paragraphs following:

BACKGROUND

2. 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.”

3. 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.”

4. 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.”

5. 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."

6. 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.

COMPLAINT CASE

7. In the case that the Commission has docketed as Case No. TC-2005-0357, the Staff's complaint is limited to Cass County Telephone Company Limited Partnership and Local

Exchange Company, LLC; further, the counts of that complaint are narrow in scope, as opposed to the breadth of the investigation ordered by the Commission in this case.

8. The first count of the complaint seeks penalties against Cass County Telephone Company for Kenneth M. Matzdorff having admitted that he violated “other law” within the meaning of that term in section 386.570 by his guilty pleas to federal charges of conspiracy to commit mail and wire fraud brought under sections 1341 and 1343 of title 18 of the United States Code.

9. The second count of the complaint seeks penalties against Cass County Telephone Company for Kenneth M. Matzdorff having willfully made false, or willfully falsified entries on the books, books of account, records or memoranda of Cass County Telephone Company Limited Partnership.

10. The third count of the complaint seeks penalties against Cass County Telephone Company for Cass County having violated Commission Rule 4 CSR 240-30.040 by failing to keep its accounts in accordance with the Uniform System of Accounts prescribed by the FCC.

11. The fourth count of the complaint seeks penalties against Cass County Telephone Company for Kenneth M. Matzdorff having lied to the Commission.

ISSUES NOT ENCOMPASSED BY THE COMPLAINT

12. While not exhaustive of the matters the Commission directed the Staff to investigate that are not encompassed within the complaint filed in Case No. TC-2005-0357, among those issues are “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”; “investigate any matters pertaining to the Universal Service Fund and report any irregularities to the Commission”;

“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.” (Emphasis added).

13. The complaint filed in Case No. TC-2005-0357 makes no allegations against, or regarding, New Florence.

14. That the complaint does not encompass the foregoing matters is not because the Staff has completed its investigation of them and found no basis for a complaint. In such case the Staff would have filed a report in this case so stating. While the Staff is proceeding with the investigation ordered by the Commission, as indicated by the suggestions to the Commission that it issue *subpoenas* made the by Staff and the motions to quash filed in response, the Staff has encountered difficulties in obtaining information needed for the investigation. Further, in addition to those matters the Commission has seen directly in pleadings, some of the information the Staff is receiving is not being received as quickly as the Commission’s discovery rules anticipate.

15. The Staff does not have sufficient information at this time upon which to make a recommendation to the Commission regarding federal Universal Service Funds support to Cass County and New Florence. The Staff is pursuing that information from Cass County, New Florence and LEC, LLC in this case.

16. If the Commission closes this case, in the Staff’s view the Commission will have effectively, if not expressly, quashed the *subpoenas* that it issued to Cass County, New Florence and LEC, LLC.

17. The Staff is still researching and preparing suggestions regarding the *subpoenas* issued to Cass County and New Florence for external auditor workpapers—the issue of the accountant-client privilege protecting a utility from being required to disclose them to the Commission in an investigation being significant, but unsettled. The Staff hopes to file those suggestions with the Commission before April 22, 2005.

WHEREFORE, the Staff suggests to the Commission that it leave this case open until the Staff has completed its investigation and filed its report with the Commission or, if the Commission closes this case, that it direct its Staff how to proceed concerning the matters noted in the Commission’s order establishing this case.

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 18th day of April 2005.

/s/ Nathan Williams

Nathan Williams