

Exhibit No.:

*Issue: Violation of Missouri
Statutes and Commission
Rules*

Witness: David G. Winter, CPA, CIA

Sponsoring Party: MoPSC Staff

Type of Exhibit: Direct Testimony

Case No.: TC-2006-0184

Date Testimony Prepared: February 22, 2006

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

DIRECT TESTIMONY

OF

DAVID G. WINTER, CPA, CIA

NEW FLORENCE TELEPHONE COMPANY

CASE NO. TC-2006-0184

**Jefferson City, Missouri
February 2006**

****Denotes Highly Confidential Information****

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BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

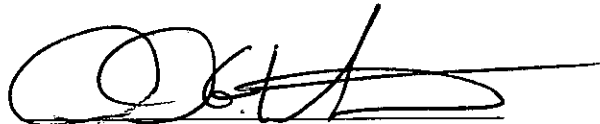
Staff of the Public Service Commission of the State)
of Missouri, Complainant v. New Florence)
Telephone Company, Respondent.)

Case No. TC-2006-0184

AFFIDAVIT OF DAVID WINTER

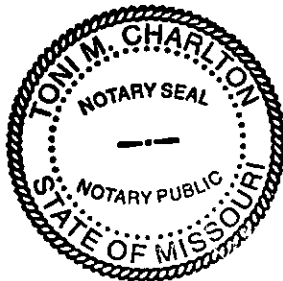
STATE OF MISSOURI)
)
COUNTY OF COLE) ss.

David Winter, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Direct Testimony in question and answer form, consisting of 25 pages to be presented in the above case; that the answers in the foregoing Direct Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.


David Winter

Subscribed and sworn to before me this 21st day of February 2006.





TONI M. CHARLTON
Notary Public - State of Missouri
My Commission Expires December 28, 2008
Cole County
Commission #04474301

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TABLE OF CONTENTS
DIRECT TESTIMONY
OF
DAVID G. WINTER, CPA, CIA
NEW FLORENCE TELEPHONE COMPANY
CASE NO. TC-2006-0184

Affiliated Transactions.....	4
MoPSC Statute.....	6
LEC, LLC Administrative Services (Count I and Count VI)	6
LEC, LLC Management Consulting Services (Count II and Count VII)	12
South Holt Communications, Inc. Management Services (Count III and Count VIII)	16
Matzco, LLC Management Services (Count IV and Count IX)	21

1 **DIRECT TESTIMONY**
2 **OF**
3 **DAVID G. WINTER, CPA, CIA**
4 **NEW FLORENCE TELEPHONE COMPANY**
5 **CASE NO. TC-2006-0184**

6 Q. Please state your name and business address.

7 A. David G. Winter, P.O. Box 360, Jefferson City, Missouri 65102.

8 Q. By whom are you employed and in what capacity?

9 A. I am a Regulatory Auditor for the Missouri Public Service Commission
10 (Commission or MoPSC).

11 Q. Please describe your educational background.

12 A. I graduated from Southwest Missouri State University in 1973 with a
13 Bachelor of Science degree in Accounting. After receiving an Honorable Discharge from the
14 United States Army in 1977, I began my employment with the firm of Williams-Keepers
15 Certified Public Accountants, as a Staff Accountant. I began my employment with the
16 Commission in 1979. I am a licensed Certified Public Accountant (CPA) in Missouri and a
17 Certified Internal Auditor (CIA).

18 Q. Have you previously filed testimony before the Commission?

19 A. Yes. I have listed cases in which I previously filed testimony on Schedule 1
20 attached to this direct testimony.

21 Q. What is the purpose of your direct testimony?

22 A. I will provide testimony that supports the Staff's positions regarding New
23 Florence Telephone Company's (New Florence) multiple violations of Commission rules and

1 Missouri statutes. Specifically, I will address the following rule and statutory violations set
2 forth in the Staff's Complaint filed against New Florence on October 25, 2005:

- 3 1. Local Exchange Company, LLC (LEC, LLC) Administrative Services
4 (Count I and Count VI)
- 5 2. LEC, LLC Management Services (Count II and Count VII)
- 6 3. South Holt Communications, Inc. (South Holt Communications)
7 Management Services (Count III and Count VIII)
- 8 4. Matzco, LLC (Matzco) Management Services (Count IV and
9 Count IX)

10 Q. What is the Staff asking the Commission to do in this case?

11 A. The Staff is asking the Commission to direct the Commission's General
12 Counsel to seek penalties against New Florence.

13 Q. Why?

14 A. New Florence has made entries in its books and records that violate
15 Commission rules and Missouri statutes. Customer rates for companies such as New
16 Florence are based on the costs the company prudently incurs in providing service to those
17 customers. The primary source for determining those costs is the books and records of the
18 company. The Commission has promulgated rules that inform telephone companies it
19 regulates how to record costs it incurs. The violations herein relate to how costs for
20 transactions between New Florence and entities related to it were recorded in the books and
21 records of New Florence.

22 Q. What is the range of penalties for these violations available in Circuit Court?

23 A. For the violations at issue here, the available penalties range from \$100 to
24 \$2,000 per violation, and for continuing violations the penalty may be applied each day the
25 violation continues.

1 Q. What are the specific entries in the books and records of New Florence the
2 Staff believes violate a Commission rule or Missouri statute; what rule or statute does the
3 Staff believe is violated; and, why does the Staff believe the entry violates a rule or statute?

4 A. There are a number of entries and the Staff will address each one in turn.
5 These entries in the books and records of New Florence are as follows:

6 1. LEC, LLC “additive” or “profit margin” applied to all LEC, LLC costs, both
7 expense and capital costs.

8 2. LEC, LLC management consulting charges designed to obtain an overall
9 revenue increase from federal Universal Service Funds (“USF”) support payments and
10 National Exchange Carriers Association (“NECA”) settlements.

11 3. South Holt Communications management consulting charges designed to obtain
12 an overall revenue increase from federal USF support payments and NECA settlements.

13 4. Matzco management consulting charges designed to obtain an overall revenue
14 increase from federal USF support payments and NECA settlements.

15 5. New Florence recorded on its books of account an amount for the switch that
16 exceeds the lower cost of the acquisition of the switch manufacturer and the fair market value
17 of the switch.

18 6. New Florence reduced the amounts of notes receivable due to it from affiliated
19 entities, and made a cash distribution to an affiliated entity, as part of its accounting for the
20 switch noted in point number 5.

21 The reasons the Staff asserts that each of these entries violated Commission rules or
22 Missouri statutes will be explained later in this testimony or in the testimony of Staff witness
23 Janis E. Fischer.

AFFILIATED TRANSACTIONS

Q. What Commission rule or rules apply to affiliate transactions between a telephone company and its affiliate?

A. Included in the general instructions of the uniform system of accounts prescribed by the Federal Communications Commission (FCC) effective January 1, 1988 and incorporated by reference in Commission Rule 4 CSR 240-30.040 for intrastate recordkeeping purposes are, at 47 CFR 32.27, the following requirements for transactions of the regulated entity with affiliates:

(a) Unless otherwise approved by the Chief, Common Carrier Bureau, transactions with affiliates involving asset transfers into or out of the regulated accounts shall be recorded by the carrier in its regulated accounts as provided in paragraphs (b) through (f) of this section.

(b) Charges for assets purchased by or transferred to the regulated telephone activity of a carrier from affiliates shall be recorded in the operating accounts of the regulated activity at the invoice price if that price is determined by a prevailing price held out to the general public in the normal course of business. If a prevailing price for the assets received by the regulated activity is not available, the charges recorded by the regulated activity for such assets shall be the lower of their cost to the originating activity and the affiliated group less all applicable valuation reserves, or their fair market value.

(c) Assets sold or transferred from the regulated accounts to affiliates shall be recorded as operating revenues, incidental revenues or asset retirements according to the nature of the transaction involved. If such sales are reflected in tariffs on file with a regulatory commission or in a prevailing price held out to the general public, the associated revenues shall be recorded at the prices contained therein in the appropriate revenue accounts. If no tariff or prevailing price is applicable, the proceeds from such sales shall be determined at the higher of cost less all applicable valuation reserves, or estimated fair market value of the asset.

(d) Services provided to an affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Services provided by an affiliate to the regulated activity, when the same services are also provided by the affiliate to unaffiliated persons or entities, shall be

1 recorded at the market rate. When a carrier provides substantially all of
2 a service to or receives substantially all of a service from an affiliate
3 which are not also provided to unaffiliated persons or entities, the
4 services shall be recorded at cost which shall be determined in a
5 manner that complies with the standards and procedures for the
6 apportionment of joint and common costs between the regulated and
7 nonregulated operations of the carrier entity.

8 (e) Income taxes shall be allocated among the regulated activities
9 of the carrier, its nonregulated divisions, and members of an affiliated
10 group. Under circumstances in which income taxes are determined on
11 a consolidated basis by the carrier and other members of the affiliated
12 group, the income tax expense to be recorded by the carrier shall be
13 the same as would result if determined for the carrier separately for all
14 time periods, except that the tax effect of carry-back and carry-forward
15 operating losses, investment tax credits, or other tax credits generated
16 by operations of the carrier shall be recorded by the carrier during the
17 period in which applied in settlement of the taxes otherwise
18 attributable to any member, or combination of members, of the
19 affiliated group.

20 (f) Companies that employ average schedules in lieu of actual costs
21 are exempt from the provisions of this section. For other organizations,
22 the principles set forth in this section shall apply equally to
23 corporations, proprietorships, partnerships and other forms of business
24 organizations.

25 Q. Does the uniform system of accounts prescribed by the FCC define the term
26 “affiliated companies?”

27 A. Yes. The uniform system of account prescribed by the FCC, effective
28 January 1, 1988 and incorporated in 4 CSR 240-30.040, includes at 47 CFR 32.9000 the
29 following definitions:

30 *Affiliated companies* means companies that directly or indirectly
31 through one or more intermediaries, control or are controlled by, or are
32 under common control with, the accounting company. See also
33 control. [Emphasis added]

34 *Common carrier or carrier* means any person engaged as a common
35 carrier for hire, in interstate or foreign communications by wire or
36 radio or in interstate or foreign radio transmission of energy, except
37 where reference is made to common carriers not subject to this Act;
38 but a person engaged in radio broadcasting shall not, insofar as such
39 person is so engaged, be deemed a common carrier. [Emphasis added]

Company or the company, when not otherwise indicated in the context, means the accounting entity. It includes such unincorporated entities which may be subject to the Communications Act of 1934, as amended. [Emphasis added]

Control (including the terms “controlling,” “controlled by,” and “under common control with”) means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts affiliated companies, contract, or any other direct or indirect means. [Emphasis added]

MoPSC Statute

Q. What is section 386.560 RSMo?

A. This Missouri statute generally forbids public utilities from making false entries in their books and records. The text of the statute may be found in the direct testimony of Staff witness Fischer in this proceeding.

LEC, LLC Administrative Services (Count I and Count VI)

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LEC, LLC Management Consulting Services (Count II and Count VII)

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South Holt Communications, Inc. Management Services (Count III and Count VIII)

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Matzco, LLC Management Services (Count IV and Count IX)

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Q.

Does this conclude your direct testimony?

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Yes, it does.

**CASE PARTICIPATION
DAVID G. WINTER**

Date Filed	Issue	Case Number	Exhibit	Case Name
1982	Depreciation	TR82199	Direct, Rebuttal	Southwestern Bell Telephone
9/10/1984	Accounting Issues	ER84168 & EO85177	Direct	Union Electric Company
3/22/1985	Accounting Issues	ER85128 & EO85185	Direct	Kansas City Power & Light Company
4/1/1985	Accounting Issues	ER85128 & EO85185	Rebuttal	Kansas City Power & Light Company
4/1/1985	Accounting Issues	ER85128 & EO85185	Surrebuttal	Kansas City Power & Light Company
5/20/1994	Cash Working Capital, Pensions	ER94174	Direct	The Empire District Electric Company
1994	System Wide Margin Rate	GA94127	Rebuttal	Tartan Energy Company, LLC
6/13/1994	Cash Working Capital, Pensions	ER94174	Supplemental Direct	The Empire District Electric Company
9/8/1994	Payroll, Pensions, Amortizations	WR94297	Direct	Capital City Water Company
10/13/1994	Payroll, Pensions, Amortizations	WR94297	Rebuttal	Capital City Water Company
10/27/1994	Payroll, Pensions, Amortizations	WR94297	Surrebuttal	Capital City Water Company
5/19/1995	System Wide Margin Rate	GA95216	Rebuttal	Missouri Public Service
5/19/1995	System Wide Margin Rate	GA95231	Rebuttal	Missouri Gas Company
1996	Effects of Merger	GM9661	Rebuttal	Tartan Energy/Southern Missouri Gas
1/18/1996	Revenues, Policy	TR96123	Direct	Steelville Telephone Company
1997	Accounting Issues	ER9743	Direct	The Empire District Electric Company
11/1/1996	Revenue Requirement	ER9782	Direct	The Empire District Electric Company
2/13/1997	True-up Revenue, Test Year, Municipal Franchise Taxes, Bad Debts	ER9781	Direct	The Empire District Electric Company
5/22/1997	Revenue Requirement, Adjustments to Staff's True-up Audit	ER9781	Supplemental True-up	The Empire District Electric Company
1997	Cost Recovery Mechanism	TO97217	Stipulation	Primary Toll Carrier Plan
2/17/1998	All Accounting Issues, Revenue Requirements	TO98216	Direct	Northeast Missouri Rural Telephone Company
7/20/1998	Revenue Requirements	TR98343	Direct	Mid-Missouri Telephone Company
1998	Accounting Issues, Revenue Requirements	TR98344	Stipulation	Fidelity & Bourbeuse Telephone Company
8/10/1998	All Accounting Issues, Revenue Requirements	TR98345	Direct	Lathrop Telephone Company

Date Filed	Issue	Case Number	Exhibit	Case Name
1998	All Accounting Issues, Revenue Requirements	TR98346	Direct	Citizen's Telephone Company
1998	All Accounting Issues, Revenue Requirements	TR98347	Direct	McDonald County Telephone Company
1998	All Accounting Issues, Revenue Requirements	TR98348	Direct	Oregon Farmers Mutual
1998	All Accounting Issues, Revenue Requirements	TR98349	Direct	Rock Port Telephone Company
8/6/1998	Special Amortization, Revenue Requirements	TC98350	Direct	Miller Telephone Company
1998	All Accounting Issues, Revenue Requirements	TR98372	Direct	Le-Ru Telephone Company
8/10/1998	Revenue Requirement	TR98373	Direct	Seneca Telephone Company
8/10/1998	Revenue Requirements	TR98347	Direct	McDonald County Telephone Company
8/10/1998	Revenue Requirements	TR98345	Direct	Lathrop Telephone Company
8/10/1998	Revenue Requirement	TR98373	Direct	Goodman Telephone Company
1/25/1999	Section 272	TO99227	Rebuttal	Southwestern Bell Telephone Company
5/13/1999	IntraLATA Dialing Parity Plans Costs	TO99254	Surrebuttal	Primary Toll Carrier Plan and IntraLATA Dialing Parity
6/25/1999	Depreciation Expense, Water Treatment Plant Costs, Property and Income Taxes, Depreciation Reserve, Rate Base,	WR99326	Direct	United Water Missouri, Inc.
12/22/1999	Rates Based on Spectra's Cost of Service, Price Cap Regulation, Transactions Costs, Taxes, Accumulated Deferred Income, Acquisition Adjustment	TM2000182	Rebuttal	GTE Midwest Incorporated and Spectra Communications Group LLC
8/15/2002	Membership Fees, Earnings Review, Universal Service Fund, Tax Implications, Accumulated Deferred Income Taxes, Acquisition Premium and Increment Acquisition Costs, Merger Background, Detriment Standard, Summary	TM2002465	Rebuttal	Northeast Missouri Rural Telephone Company & Modern Telecommunications Company
2002	Taxes, USF, Earnings Investments	TM2002232	Stipulation	CenturyTel/Verizon
2004	Jurisdictional Separations, Corporate Allocation, Cost of Removal and Salvage, Current Income Tax, Deferred Income Tax	IR20040272	Stipulation	Fidelity Telephone Company
1/12/06	Pensions	IO-2006-0086	Surrebuttal	Sprint Nextel Corporation

Schedules 2 through 5

Are deemed

Highly Confidential

In Their Entirety