

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

Staff of the Public Service Commission)	
Of the State of Missouri,)	
)	
Complainant,)	
)	
v.)	Case No. TC-2005-0357
)	
Cass County Telephone Company)	
Limited Partnership,)	
)	
Respondent.)	

**OFFICE OF THE PUBLIC COUNSEL’S RESPONSE TO STAFF, CASSTEL,
AND THE ATTORNEY GENERAL**

The Office of the Public Counsel stated to the Public Service Commission in a separate pleading that as a statutory party to this complaint case that it had no objection to the Stipulation and Agreement. Public Counsel’s position has not changed.

OVERVIEW

Public Counsel believes that the Stipulation and Agreement represents a reasonable resolution of the complaint in a timely manner that protects the key interests of the Cass County Telephone Company ratepayers—continuation of quality telecommunications services, the establishment of proper records and books, and the opportunity for a change in the management and ownership of the telephone operations as soon as possible. Resolution of this complaint based upon violation of rules and statutes relating to financial operations and records is part of a three piece remedy: civil penalties for violations and compliance requirements; an earnings review and remedy of overearnings or any negative impact of violations on rates; transfer of management and

ownership of the telephone operations to a sound and viable owner. It is in the public interest to bring the three cases to a conclusion as soon as possible so that the ultimate beneficiaries of all three proceedings---the CassTel ratepayers---can have new owners and management that will conduct the operations and maintain the records in a lawful and proper manner, can quickly obtain the refunds and rate protections arising out of the earnings review, and be assured that the complaint has been quickly and efficiently brought to a final conclusion with corrective action and the payment of a \$1 million civil penalty into the State School Fund.

Public Counsel by statute represents the interests of the ratepayers and the public in general as it relates to utility service, rates, and related and incidental matters. It does not represent all of the interests of the public in all matters. The attorney general has the statutory right under Section 27.026 to appear in cases where the state has a right or interest. Given the nature of this complaint case involving fraud on the Commission and the federal USF, the attorney general appears to have the right to intervene.

Although the attorney general has a right to intervene and appear, Public Counsel believes that it would not be in the public interest for it to delay the remedial action and payment of civil penalties called for in the Stipulation and Agreement. If this is delayed then rate reductions and refunds and rate limits in the resolution of the earnings complaint are delayed. The transfer of ownership is then delayed or otherwise affected.

The concerns raised by the attorney general have been addressed in the responses of the Staff and the Company. Public Counsel finds those explanations consistent with Public Counsel's view of the terms and intent of the Stipulation and Agreement. As in most settlements, the Stipulation and Agreement resulted from extensive negotiations and

drafting revisions with the final document representing an integrated document of the agreement which cannot be readily revised without destroying the basis for agreement. Public Counsel fears that any reopening of the document to attempt to redraft or restate language will unduly delay and perhaps result in a lost opportunity to resolve all three aspects of the cases at the same time on terms favorable to the public.

STIPULATION AND AGREEMENT

The Staff conducted an investigation and filed this complaint originating with allegations of the violation of Commission rules and statutes concerning false sworn testimony made in official Commission proceedings and irregularities in the financial operation and records of CassTel and based upon the federal criminal charges and convictions of certain officers and owners of CassTel in the U.S. District Courts in Kansas City and New York.

Public Counsel's principal concern arising out of these matters was to protect the ratepayers. Public Counsel wanted to ensure that the customers continued to have adequate and quality telecommunications services without disruption of service. Public Counsel also wanted a change in the management and in the ownership of CassTel and its telecommunications assets and business so that it could again qualify for federal USF funds and can provide quality services at just, reasonable and affordable rates. Before a change in the ownership and management could occur, the company's financial records had to conform to state statutes, Commission rules, acceptable accounting principles, and the requirements for the use and accounting of federal USF funds. For continued quality service and to attract a viable and reliable buyer, many of the financial and legal problems arising out of the transactions leading to the complaint needed to be resolved.

Public Counsel did not conduct its own investigation and was not active in the Staff's investigation. Public Counsel also was not active in the discussions and negotiations between the Company and Staff leading to the Stipulation and Agreement although the Staff kept OPC advised of the progress of the investigation and status of negotiations. In addition to limitations on the resources Public Counsel had available to devote to the investigation, Public Counsel viewed these enforcement and penalty actions as best left to law enforcement and prosecutorial agencies and to the Staff. Public Counsel has been active in the earnings review and will be active in the sale and transfer case.

The Stipulation and Agreement is a reasonable resolution of the Complaint that advances the interests of the customers to maintain quality service, bring the financial records back into compliance, and make the business and assets marketable. The Staff's Response to the concerns raised by the Attorney General as well as CassTel's Response is consistent with Public Counsel's view of the terms and intent of the Stipulation and Agreement.

ATTORNEY GENERAL'S INTERVENTION

Public Counsel does not object to the intervention or participation of the Attorney General. This complaint case involves the impact of criminal activities on the telecommunications services of Cass County Telephone Company. It not only relates to the violation of PSC rules, but also to violations of state statutes and federal law. It involves fraudulent entries on the books and records in a scheme to defraud the Federal Universal Support Fund program and to conduct other criminal activities. It also involves false sworn statements made in an official PSC proceeding by one of the officers of the

utility; therefore, the case involves fraud on the administration of justice and the integrity of the state's regulatory system.

Based on the nature of this complaint case, the attorney general appears to have a statutory right to appear in this case. Section 27.060. RSMo 2000 provides:

“The attorney general shall institute, in the name and on the behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary; and he may also appear and interplead, answer or defend, in any proceeding or tribunal in which the state's interests are involved.”

The State of Missouri as the sovereign has duty to see that statutes are enforced and violations are punished either by criminal or civil process or both as prescribed by law. The state has an interest in the administration of justice and activities that use the state's regulated utilities as an instrument of fraud. This investigation and complaint into false testimony given before the PSC and into improper and fraudulent financial operations, records, and books of Cass County Telephone Company, a regulated utility, falls within the scope of Section 27.060, RSMo

Public Counsel has traditionally supported the intervention of interested parties. While the attorney general is a proper participant, Public Counsel hopes that his appearance at this stage does not unduly delay resolution of not only this complaint case, but also the early resolution of the earnings review and the sale and transfer case so the ratepayers can immediately benefit and the public interest can be served.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Michael F. Dandino

BY: _____
Michael F. Dandino (24590)
Deputy Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
(573) 751-4857
(573) 751-5559
Fax (573) 751-5562
email: mike.dandino@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was emailed, mailed or hand delivered this 27 day of January to the following attorneys of record:

Robert Franson,
Senior Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

William R. England, III
BRYDON, SWEARENGEN & ENGLAND, PC
312 East Capitol Avenue
P. O. Box 456
Jefferson City, Missouri 65102-0456

Ronald Molteni
Assistant Attorney General
Supreme Court Building
207 West High Street
P.O. Box 899
Jefferson City, MO 65102
Attorneys for State of Missouri

/s/ Michael F. Dandino
