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February 6, 2006

FILED⁴

FEB 06 2006

The Honorable Cully Dale
Secretary/Chief Regulatory Law Judge
Public Service Commission
Governor's Office Building
Madison & E. Capitol
Jefferson City, MO 65101

Missouri Public
Service Commission

RE: *Public Service Commission Staff, Complainant v. Cass County Telephone Company,
Limited Partnership, Case No. TC-2005-0357*

Dear Judge Dale:

Enclosed for filing in the above-referenced case are the original and 8 copies of the State of Missouri's Response to the Commission's Order Dated February 2, 2006. Thank you for your attention to this matter.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

Ronald Molteni
Assistant Attorney General

Enclosures

cc: All Parties on the Service List

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED⁴

FEB 06 2006

Staff of the Public Service Commission

Complainant,

v.

Cass County Telephone Company,
Limited Partnership,

Respondent,

Missouri Public
Service Commission

Case No. TC-2005-0357

STATE OF MISSOURI'S
RESPONSE TO THE COMMISSION'S
ORDER DATED FEBRUARY 2, 2006

On February 2, 2006, the Commission issued an order to the State of Missouri mandating that the State explain "when and how the State, including the Office of the Attorney General, first became aware of the complaint brought by the Staff of the Commission against Cass County Telephone Company Limited Partnership." In complying with that order, the State of Missouri states the following:

1. From the case docket, it appears the case was filed April 8, 2005. No service was had upon the State at that time or at any other time. The State would have learned of the filed complaint after that date, but how or when, the undersigned has no recollection. The State does not keep track of when or how it first learns of a case pending before the Commission. That is because the timing of when and the means how the State of

Missouri learns of the filing of any case, and this one in particular, is not the analysis this Commission should apply to determine if the State's application for intervention should be granted. The merely filing of a case does not, in and of itself, trigger the State to intervene. Rather, the State looks substantively to whether something about a case warrants its intervention, and procedurally, whether the Commission has established an intervention deadline.¹

3. As the Commission knows, the State of Missouri intervenes in an infinitesimally small number of the Commission's cases, though the State has standing to intervene in most of them. In the absence of an order setting an intervention deadline, it has been the State's practice to defer intervening in the Commission's cases until the point where intervention makes sense -- the point where something occurs that is a concern to the State of Missouri.

4. If the standard to grant intervention is "when did the State first learn of the case filing," then the State would have to intervene in nearly every case before this Commission. That would not be a good use of the State's resources, and it would also impose unnecessary costs on the Commission and all of the parties to all of its cases.

¹ The State is unable to locate any order in this case that sets an intervention deadline.

5. The real question is: at what point in the proceedings did something occur that would warrant an expenditure of the State's resources? In this case, that point came on December 29, 2005, when the PSC Staff filed the proposed stipulation. This fact becomes evident when examining the docket history of this case.

6. On August 4, 2005, the Commission issued an order adopting a procedural schedule. That order indicated that all the testimony would be heard live, so there would be no pre-filed testimony. It set a hearing schedule starting October 31, 2005. That order did not set a date for intervention.

7. On September 26, 2005, the Commission issued another order, this one suspending the procedural schedule until January 1, 2006, and cancelling the hearing schedule. Like its predecessor, that order did not set a date for intervention.

8. Before the end of that suspension, on December 29, 2005, the PSC Staff filed the proposed stipulation and agreement.

9. On January 9, 2005, the Commission issued an order setting a date for an on-the-record presentation of the proposed stipulation. Then, it issued an another order on January 10, 2005, moving the on-the-record presentation up a day, to January 11, 2006. Neither of those orders contained an intervention deadline, established a new procedural schedule, or set the case for evidentiary hearing. And the State was not provided notice in any capacity, official or unofficial, of any of those events.

10. As a consequence, with no set intervention deadline, a suspended procedural schedule, no pre-filed testimony, a cancelled hearing date, and no rescheduled hearing date, the first event that gave essence to time was the December 29, 2005 filing. The State has acted promptly in response to that event.

11. The State has standing. How and when the State learned of the case does not alter that in any fashion.

12. Since (a) the proposed stipulation has not yet been approved; and (b) not a scintilla of evidence has been offered in the case, the parties are not prejudiced by the State's intervention.

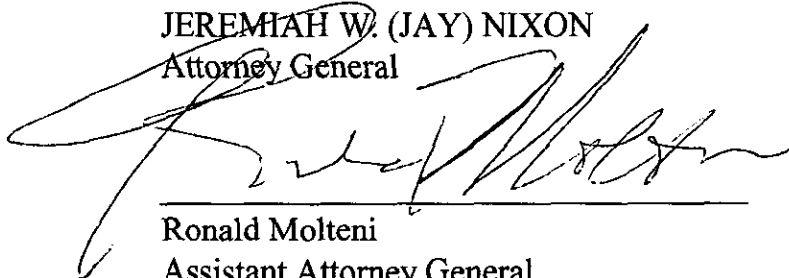
13. Moreover, it is not the State's intervention that irks the other parties to this case – it is the substantive concerns the State has identified that appears to have drawn the parties' ire. If the State had intervened to endorse the proposed stipulation, no one would have objected to its intervention, and the Commission would not have had to suffer through what now approaches the twentieth page of the State's plea to have the Commission issue an order consistent with its jurisprudence for the last decade and more. The proper response to the State's substantive concerns is not to argue for this Commission to deny intervention to a party that has standing, in essence, to entice the Commission to an abuse of discretion. Rather, the proper response would be to convince the Commission to reject the State's substantive concerns. The parties certainly had that

opportunity at the on-the-record presentation. The purpose of an on-the-record presentation is to assist the Commission to make a prudent decision. It is not to proverbially rubber-stamp whatever parties to a case put before it. If the Commission is persuaded that its approval of the stipulation presented is warranted, then it has the authority to approve that stipulation regardless of the State's expressed concerns or its intervention. That is not a standing issue.

WHEREFORE, the State of Missouri respectfully reiterates its request that the Commission grant its application to intervene.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

A handwritten signature in black ink, appearing to read 'Ronald Molteni', is written over a horizontal line.

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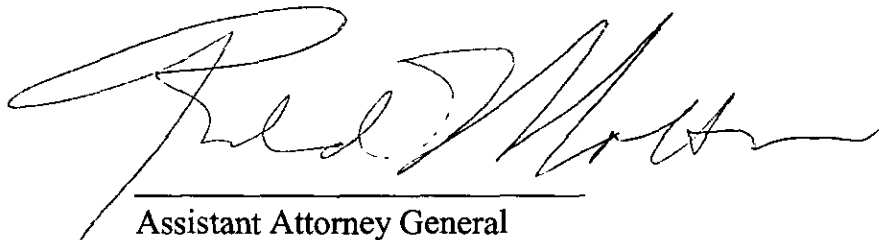
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, or hand-delivered, this 6th day of February, 2006, to the parties listed below and those on the attached list:

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