

**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,	)	

**OPPOSITION OF CASS COUNTY TELEPHONE COMPANY TO STATE OF  
MISSOURI'S APPLICATION TO INTERVENE**

COMES NOW Respondent Cass County Telephone Company ("CassTel") and opposes the State of Missouri's Application to Intervene. In that regard, CassTel states as follows:

1. The Attorney General's Office (the "AGO") filed a written Application to Intervene in the captioned proceeding on January 11, 2006, on behalf of the State of Missouri. As explained in more detail below, the AGO does not represent any state agency that is a customer of CassTel and the AGO has no authority to participate as a public advocate because that responsibility is reserved by statute to the Office of the Public Counsel ("OPC"). Additionally, the AGO's request to intervene is untimely and the proper parties to this case would be prejudiced by authorizing the AGO to intervene at this late date. The AGO would not be prejudiced by a denial of its request because the Commission already has allowed it to voice its reservations. As such, AGO's Application to Intervene should be denied for lack of standing and/or as untimely.

**The AGO has no Standing under the Commission's  
Rule Governing Intervention, 4 CSR 240-2.075**

2. Contrary to its assertion in paragraph 4, the AGO's Application to Intervene does not comply with the requirements of the Commission's intervention rule 4 CSR 240-2.075. This rule requires an applicant to make a specific showing of a sufficient interest in the proceeding to establish standing to intervene. The AGO has failed to state a threshold interest in the case.

3. In paragraph 3, the AGO states "the State is a consumer of telephone service," but does not state that it is a customer of CassTel. That the State subscribes to telephone service somewhere in the State of Missouri, from somebody, falls far short of showing any direct interest in this case. CassTel's records show that the only telephone account of a state agency that it serves is that of the Missouri Department of Conservation, a constitutional agency that is not represented by the AGO but, rather, by its own General Counsel. As such, the AGO has no factual grounds whatsoever to assert that it represents any customer of CassTel.

4. The AGO has provided no explanation about how its interest in this case is different from that of the general public. To the contrary, the AGO's stated interest is to address "public policy concerns." (App'n, ¶6) The AGO, however, has no authority to assume the role of a public advocate. Representing the interests of the public in proceedings before the Commission is the responsibility of the OPC which is an active party to the case as evidenced by its entry of appearance and statement of no opposition to the proposed Stipulation

and Agreement.<sup>1</sup> The AGO has no standing to intervene as a general public advocate. *State ex rel. McKittrick v. Public Service Commission*, 175 S.W.2d 857 (Mo. banc 1943). The Court in that case said the Public Service Commission Act “shows the legislative intention was that the state, through its Commission, should hear and decide **both** sides of the controversy, not that the Attorney General should appear and champion **one** side.” *Id.*, at 863.

5. The bottom line is that the AGO represents no state agency that has a pecuniary interest in the outcome of this case and has no power to act independently as a gratuitous and duplicative public advocate presuming to exercise those rights expressly delegated and reserved to the OPC by the Missouri General Assembly.

#### **The Intervention of the AGO is Untimely**

6. Commission rule 4 CSR 240-2.075 requires that an application to intervene be filed “within thirty (30) days after the Commission issues its order giving notice of the case” unless otherwise ordered. The Commission’s Notice of Complaint in this case was issued on April 12, 2005, so the AGO’s filing is out of time.

7. The Complaint in this case was filed on April 8, 2005. CassTel’s Answer was filed on May 13, 2005. Several procedural orders were then issued, culminating in an Order Adopting Procedural Scheduled issued August 4, 2005. Shortly thereafter, serious discussions were commenced to explore the possibility of settling the case as a means of avoiding the commitment of

---

<sup>1</sup> See, §386.710 RSMo 2000; *State ex rel. Missouri Power & Light Company v. Riley*, 546 S.W.2d 792 (Mo.App. 1977). The MP&L opinion expressly confirmed the correctness of the earlier *McKittrick* decision, *infra. Id.* at 794.

substantial resources to a hard fought, contested proceeding and to address the concerns that had been expressed by the Commission in a serious and responsible fashion. Those efforts, which have consumed the considerable efforts of the signatories, have culminated in a settlement proposal that Staff and CassTel believe is in the public interest. Only now in the eleventh hour has the AGO shown up at the hearing on the presentation of a unanimous Stipulation and Agreement to request that it be allowed to intervene and have input to the Commission's deliberations. The AGO's intervention should be denied for having been untimely filed.

8. The AGO has not been without actual knowledge of the general circumstances which led to the filing of the Complaint by Staff. The undersigned was contacted by Mr. Molteni about CassTel and spoke with him on two separate occasions in late March and early April of this year. At his request, Mr. Molteni was provided with a copy of the management agreement between LEC LLC and GVNW, the independent third-party, manager of CassTel. At that time, the AGO was aware of the Commission's investigation case and the possibility that a complaint would be filed. Simply put, this is a matter that was on the AGO's radar. It is notable that the AGO provides no explanation for its failure to file its application to intervene before now even though the fact of the Complaint has been covered in the print media, including The Kansas City Star. No good cause having been shown for a late filed intervention, it should be denied.

**The Intervention of the AGO will Prejudice the Proper Parties to this Case and Delay its Resolution**

9. Currently pending before the Commission is a unanimous Stipulation and Agreement. Although the Stipulation and Agreement is only signed by counsel for Staff and CassTel, the OPC has filed its notice of non-opposition to the Stipulation and Agreement which permits the Commission to treat it as if it were a unanimous Stipulation and Agreement. See, Commission rule 4 CSR 240-2.115.

10. For the Commission to allow the AGO to intervene in this case and to lodge objections to the Stipulation and Agreement at this late date will have the practical effect of transforming a unanimous Stipulation and Agreement into a non-unanimous Stipulation and Agreement and would have significant procedural implications. This would allow the objecting party (the AGO) to demand a full blown evidentiary hearing as to all matters pertaining to the Stipulation and Agreement and/or all matters alleged in Staff's Complaint. More importantly, this would be prejudicial to the parties who have labored so long in the reasonable belief that all parties with a proper interest in the case had participated in the settlement discussions.

11. If the AGO is allowed to intervene and participate in this case as a party, presumably it also will have the right to appeal the Commission's order and to significantly delay the implementation of its terms, including the payment of the agreed-to \$1 million penalty to the Public School Fund. Such delays will clearly frustrate the considerable effort on the proper parties to this case not only to resolve the pending Complaint in good faith but also the companion earnings

investigation and asset sale agreement, all of which are essential to paving a way for an imminent change of ownership. In other words, the intervention of the AGO at this time will jeopardize that change.

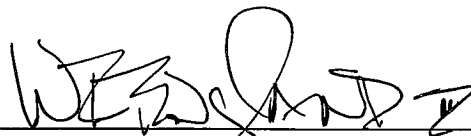
**The AGO will not be Prejudiced by a Denial of its Application to Intervene**

12. As noted above, the OPC is a party to this case and it is charged with representing the interests of the general public in cases before the Commission. The AGO has no authority in this regard and, consequently, denial of its intervention will not impair the public interest.

13. The OPC represents the public interest and it is for the Commission to weigh the public policy questions, including those raised by the AGO. The AGO was able to voice its reservations about the terms of the Stipulation and Agreement at the on-the-record presentation on January 11, 2006. The Commission gave the AGO the opportunity to state its position and those concerns are now known to the Commission, a fact the AGO concedes in paragraph 5 of its Application to Intervene. Nothing more need be done in this regard.

WHEREFORE, the application of the State of Missouri to intervene should be denied for the reasons aforesaid.

Respectfully submitted,



W. R. England, III MO Bar #23975  
Brydon, Swearngen & England, P.C.  
312 E. Capitol Avenue  
P. O. Box 456  
Jefferson City, MO 65102-0456

**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record on this 17th day of January, 2006.

Robert Franson  
Missouri Public Service Commission  
Governor Office Building  
200 Madison Street  
Jefferson City, MO 65101

Michael Dandino  
Office of Public Counsel  
Governor Office Building  
200 Madison Street  
Jefferson City, MO 65101

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

