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1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5
6 On-the-Record Presentation
7

January 11, 2006
Jefferson City, Missouri

8 Volume 2
9

10 Staff of the Missouri Public)
11 Service Commission of the State)
12 of Missouri,)
13)
14 Complainant,)
15)
16 vs.) Case No. TC-2005-0357
17)
18 CASS COUNTY TELEPHONE COMPANY)
19 LIMITED PARTNERSHIP)
20)
21 Respondent.)
22

23 MORRIS L. WOODRUFF, Presiding
24 SENIOR REGULATORY LAW JUDGE
25 JEFF DAVIS, Chairman,
CONNIE MURRAY,
STEVE GAW,
ROBERT M. CLAYTON, III,
LINWARD "LIN" APPLING,
COMMISSIONERS

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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Okay. We're ready
3 to begin. Good morning everyone, and welcome
4 to this on-the-record presentation.

5 This is Case No. TC-2005-0357, which is a
6 complaint by the Staff of the Commission
7 against Cass County Telephone Company, Limited
8 Partnership.

9 And we're here today to consider a
10 proposed stipulation and agreement that's been
11 filed by the parties. We'll begin by taking
12 entries of appearance. For Cass Tel?

13 MR. ENGLAND: Thank you, your Honor.
14 let record reflect the appearance of
15 W.R. England of the law firm of Brydon,
16 Swearngen & England, Post Office Box 456,
17 Jefferson City, Missouri, 65102, appearing on
18 behalf of Cass Tel.

19 JUDGE WOODRUFF: Thank you. And for
20 Staff?

21 MR. FRANSON: Robert Franson and
22 William Haas, P.O. Box 360, Jefferson City,
23 Missouri, 65102, representing the Staff of the
24 Public Service Commission.

25 JUDGE WOODRUFF: And for Public

1 Counsel?

2 MR. DANDINO: Mike Dandino, Office of
3 the Public Counsel, Post Office Box 2230,
4 Jefferson City, Missouri, 65102, representing
5 the Office of Public Counsel and the public.

6 JUDGE WOODRUFF: Thank you. Anyone
7 I've missed?

8 MR. MOLTENI: Your Honor, Ronald
9 Molteni, Assistant Attorney General on behalf
10 of the State of Missouri Office of the Attorney
11 General, P.O. Box 899, Jefferson City,
12 Missouri, 65102. And we'll have to ask the
13 Commission for leave to intervene at this time.

14 JUDGE WOODRUFF: All right. What is
15 the purpose of the State's intervention?

16 MR. MOLTENI: Well, the purpose of
17 the intervention is to express a concern about
18 the proposed stipulation.

19 JUDGE WOODRUFF: Okay. Well,
20 certainly, we'll allow you to participate
21 today. If you want to make a formal request to
22 intervene in the case formally, I'll need to
23 have you do that in writing. But --

24 MR. MOLTENI: May -- well, Judge,
25 would you prefer that -- that I make a motion

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1 right now or wait until the Commission gets
2 here to -- asking for leave to intervene and
3 then supplement it with a written --

4 JUDGE WOODRUFF: That would be fine.
5 Yes. I'm certainly not trying to keep you from
6 participating today at all. I just want to
7 make sure that the record is clear as to
8 exactly what's happening.

9 MR. MOLTENI: Thank you.

10 JUDGE WOODRUFF: I sent an e-mail to
11 the commissioners, and I just got a message
12 that apparently they hadn't gotten it yet, so
13 -- letting them know that we're starting.

14 Of course, the purpose of this proceeding
15 today was to allow the commissioners to ask
16 questions. Since I don't have any
17 commissioners -- commissioners right here at
18 the moment, we'll take a short break until they
19 get down here, let's say about three minutes
20 until 9:15.

21 (Break in proceedings.)

22 JUDGE WOODRUFF: Okay. I believe
23 we're ready to get started now. Mr. Molteni,
24 before we took our little break, you indicated
25 that you wanted to intervene on behalf of the

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1 State of Missouri. Do you want to make a
2 formal motion for that?

3 MR. MOLTENI: I would formally ask
4 the Commission to grant leave for the Attorney
5 General on behalf of the State of Missouri to
6 intervene in the proceedings at this time under
7 both the Commission's statutes and regulations
8 and under Section 27.060, which allows the
9 Attorney General to -- to intervene in
10 proceedings where the State has an interest.

11 JUDGE WOODRUFF: All right. That
12 motion will be granted.

13 MR. ENGLAND: Well, may I be heard on
14 that motion?

15 JUDGE WOODRUFF: Yes. Certainly.
16 I'm sorry. Go ahead.

17 MR. ENGLAND: If it pleases the
18 Commission, we could -- would object to the
19 intervention on the grounds it's not in
20 compliance with the Commission rules or law.
21 It's certainly not timely.

22 This complaint has been on file now for
23 many months. I believe it was filed in April
24 or so of 2005, and there's been no notice, no
25 -- no attempt to intervene in the proceedings

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1 or the process until the 11th hour.

2 Secondly, I'm not sure that I understand
3 the Attorney General's standing to this
4 complaint case that was brought by the Staff.

5 JUDGE WOODRUFF: Mr. Molteni, you
6 have a response?

7 MR. MOLTENI: The -- the provisions
8 of Section 27.060 allow the Attorney General to
9 appear in any proceeding or tribunal in which
10 the State has an interest. The State has an
11 interest in this case, not only as a customer
12 of telephone service in Cass County, but also
13 as a matter of public policy, we're talking
14 about a fine of a million dollars that goes
15 into the state's school fund.

16 That fine has to come from somewhere. Who
17 is going to pay it? Who is going finance it?
18 How is it going to get -- how will it get
19 financed? That's the State's interest.

20 I appreciate Mr. -- Mr. England's concern
21 about the late motion to intervene. Frankly,
22 there wasn't a necessity to intervene until the
23 -- the stipulation was filed by the Commission
24 Staff earlier this year with a glaring gap in
25 who is going to -- who's going to pay the fine.

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1 JUDGE WOODRUFF: All right. Well,
2 I'm going to defer making a final ruling on the
3 application to intervene since it is -- there
4 is an objection to it and let the Commission
5 ultimately decide that.

6 Provisionally, I'll certainly allow you to
7 participate today subject to further orders of
8 the Commission.

9 MR. MOLTENI: Thank you, your Honor.

10 JUDGE WOODRUFF: All right. All
11 right. Well, then, we'll move to questions
12 from the Commissioners beginning with
13 Commissioner Murray.

14 COMMISSIONER MURRAY: I pass.

15 JUDGE WOODRUFF: All right.
16 Commissioner Gaw?

17 COMMISSIONER GAW: Is there going to
18 be any presentation made, Judge, from someone
19 on this Stip.? And, if not, I'll just delve
20 right into questions.

21 JUDGE WOODRUFF: Nobody has requested
22 an opportunity to make any sort of opening
23 statement, so we'll just go to questions.

24 COMMISSIONER GAW: All right. I'll
25 just ask Staff, then, first of all, Staff, what

1 do you -- what's this -- what's basically in
2 this Stip. That you're asking the Commission
3 to approve?

4 MR. FRANSON: Well, Commissioner Gaw,
5 essentially, this Stip. contains a lot of
6 provisions, but it's specifically designed to
7 deal exclusively with four counts of a
8 complaint brought against Cass Tel.

9 Essentially, this company was in a rather
10 unique position, never heard of a company,
11 telecommunications or otherwise, in Missouri
12 being a -- essentially a tool for funneling
13 money to the mob, but it was also specifically
14 in addition to that to defraud the NECA and
15 USAC.

16 And our complaint dealt with four areas.
17 No. 1, that there was a violation of another
18 law specifically by Ken Matzdorff, and he was
19 essentially running and he was Cass Tel. And
20 he violated federal law while utilizing that.

21 Counts II and III dealt with false entries
22 made into the books. And Count IV essentially
23 dealt with him lying to this Commission. And
24 he appeared here in 2004 and said other than
25 the newspaper, he knew nothing about any

1 wrongdoing at Cass Tel. Just a few months
2 later under oath in federal court, he admitted
3 the full extent of his criminal actions.

4 And in addition to those complaints, there
5 was a lot of financial concerns about this
6 company. Those have been addressed, and we
7 essentially tried to get LEC out of the
8 day-to-day management of this company. This --
9 it's mentioned in the Stip. And Mr. England
10 would know any more details about the status of
11 the sale of this company.

12 But, partly, this was predicated on
13 representations that LEC is vigorously trying
14 to sell Cass Tel. So this is a comprehensive
15 settlement to get this company back where it
16 should be; that is, providing safe and adequate
17 service at just and reasonable rates.

18 But it also has to deal with the fact that
19 there was wrongdoing. And the million dollar
20 penalty is one of the parts of that that
21 recognizes it.

22 So what we are doing, Commissioner, is
23 presenting to you, to the Commission a document
24 that settles the complaint but also gives us
25 back for the customers and for the State of

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1 Missouri a company that should be properly run.

2 COMMISSIONER GAW: All right. I'm
3 going to go through this, then, with you and --
4 so I can better understand what's -- what's in
5 the Stip.

6 On page 3, there is the -- the designation
7 of the payment to the public school fund. Who
8 is paying that money, the \$1 million?

9 MR. FRANSON: That will be paid by
10 the owners of the company; that is, LEC and --

11 COMMISSIONER GAW: Where does it say
12 that in this Stip.?

13 MR. FRANSON: Well, it says -- I -- I
14 misspoke, Commissioner. It says that Cass Tel
15 is going to make this payment.

16 COMMISSIONER GAW: All right. Now,
17 in this -- in this provision in this Stip.,
18 where does it -- where does it say that -- that
19 money is -- is -- let me rephrase. Is there
20 anything in this Stip. that prevents this money
21 from coming from the ratepayers?

22 MR. FRANSON: Is there anything that
23 says that in as many words? No, there is not.
24 Was that --

25 COMMISSIONER GAW: Can you explain to

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1 me why that is?

2 MR. FRANSON: Well, until today, I
3 don't know that that had been contemplated. It
4 has been discussed from the first moment that
5 this will be paid by the owners of Cass Tel.
6 And for them to try to pass it to ratepayers
7 would take a proceeding before this commission.
8 And so --

9 COMMISSIONER GAW: So there's nothing
10 in the Stip. currently that says that this --
11 that ratepayers are protected from this fine
12 being passed through to them, correct?

13 MR. FRANSON: There is nothing that
14 specifically says that. That is correct.

15 COMMISSIONER GAW: All right. Now,
16 I'm going to ask you to back up just a minute
17 for me. The owner of Cass Tel, or owners, who
18 are they?

19 MR. FRANSON: It is a company called
20 LEC. And the way I believe that they're
21 structured -- and I would need to defer to
22 Mr. England on some of the details, but there
23 -- I don't know if shareholders are the right
24 word, but there is a rather limited number of
25 people that own LEC. And they, in turn, own

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1 Cass Tel. And it --

2 COMMISSIONER GAW: All right. Now,
3 earlier, you suggested that there -- there was
4 a relationship with the mob, quote, unquote.
5 Tell me how that fits together with this --
6 with these companies.

7 MR. FRANSON: There were three
8 people. Ken Matzdorff would be the first one.
9 He was president and essentially ran
10 Cass Tel. But he -- there were also two
11 gentlemen by the name of Daniel and Richard
12 Martino who held various positions with LEC.

13 And they used -- they created a vehicle to
14 create -- I -- I'd rather I defer to
15 Mr. Williams, your Honor.

16 COMMISSIONER GAW: I don't care,
17 Judge. It's up to you.

18 JUDGE WOODRUFF: Go right ahead,
19 Mr. Williams. You could come up to the podium
20 if you'd like. That way, we'd have a
21 microphone.

22 MR. WILLIAMS: Commissioner, LEC,
23 LLC, is a Limited Liability Corporation that
24 owns -- I don't recall exactly if it's 98 or 99
25 percent of the limited partnership that is Cass

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1 Tel. So essentially Cass Tel is LEC.

2 COMMISSIONER GAW: Wait a minute. Cass
3 Tel a limited partnership?

4 MR. WILLIAMS: yes.

5 COMMISSIONER GAW: And LEC is?

6 MR. WILLIAMS: An LLC.

7 COMMISSIONER GAW: An LLC.

8 MR. WILLIAMS: A Limited Liability
9 Corporation.

10 COMMISSIONER GAW: Who owns the other
11 portion of Cass Tel?

12 MR. WILLIAMS: It's two individuals
13 who I believe also have -- are members of LEC.
14 I'm sure Mr. England could confirm that or --
15 or disagree. But I believe they are.

16 COMMISSIONER GAW: Okay. Who -- do
17 we know their names?

18 MR. WILLIAMS: I believe one was a
19 Leo Fiana (ph.).

20 MR. ENGLAND: Excuse me. My
21 recollection is that information was provided
22 in previous -- previous proceedings before the
23 Commission, but it was proprietary that
24 information is not public -- otherwise publicly
25 available.

1 COMMISSIONER GAW: I would think at
2 this point it ought to be public. But that's
3 my opinion.

4 MR. ENGLAND: I understand. But up
5 till now, the owners have requested that their
6 names be maintained proprietary. And that
7 information has been provided under the --
8 under the --

9 COMMISSIONER GAW: Have their names
10 been in the newspaper regarding ownership?

11 MR. ENGLAND: Other than the -- the
12 three that have been mentioned so far, I don't
13 believe so.

14 MR. WILLIAMS: Sorry if I spoke out
15 of turn.

16 MR. ENGLAND: That's all right.

17 COMMISSIONER GAW: So they aren't --
18 they aren't the three that have been provided
19 so far, I would take it?

20 MR. ENGLAND: There are a number of
21 owners of LEC besides the three that --

22 COMMISSIONER GAW: And I'm talking
23 about those that own the small percentage other
24 than LEC owns in Cass Tel.

25 MR. ENGLAND: Correct.

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1 COMMISSIONER GAW: Were their names
2 previously mentioned?

3 MR. ENGLAND: Not that I'm aware of
4 -- not publicly that I'm aware of.

5 MR. MOLTENI: Your Honor, may I
6 address the Commission and ask a question on
7 the Commission's procedures in terms of what's
8 proprietary and not proprietary? If the owners
9 have been in -- identified in federal court in
10 indictments or Grand Jury proceedings or in a
11 plea agreement that's been filed in federal
12 court and it has been published publicly, would
13 that relieve the need or -- or -- or take away
14 the proprietary designation of proceedings in
15 this Commission?

16 JUDGE WOODRUFF: I -- it would not
17 wouldn't automatically, but I believe that
18 would be an appropriate matter to bring to the
19 Commission's attention if that is, in fact, the
20 case.

21 Mr. England, do you know if that's the
22 case?

23 MR. ENGLAND: I wasn't privy to the
24 federal cases, and I have no idea if that
25 information has been made public. Again, it's

1 my understanding that it is not. At least in
2 the newspaper clippings and -- and articles
3 that I have read and what little I've seen, I
4 don't recall the identity of the owners other
5 than Daniel and Richard Martino and Ken
6 Matzdorff being made publicly available.

7 JUDGE WOODRUFF: Okay. Mr. Molteni,
8 do you have any information contrary to that?

9 MR. MOLTENI: I do not have
10 information contrary to that. But if the -- if
11 the owners of the company have been identified
12 publicly in the federal proceedings leading to
13 the -- the plea -- plea bargains for
14 Mr. Matsdorf and the -- the Martinos, then I
15 would submit that it would not be proper for
16 this Commission to maintain a proprietary
17 designation on information that's been
18 published in federal court.

19 COMMISSIONER GAW: Judge, I would say
20 to that you that because of the nature of this
21 case and what's going on with this company that
22 the owners of this company should not be made
23 proprietary -- their names should not be held
24 private. They should be made public.

25 And I -- I hope that we get an opportunity

1 to have a chance to make that decision.

2 JUDGE WOODRUFF: Okay.

3 COMMISSIONER GAW: Let me -- let me
4 ask some further questions. This -- so there
5 is a percentage that's owned by a couple of
6 individuals that's a small percentage. The
7 great majority is owned by LEC, LLC, which is a
8 Limited Liability Corporation, as you stated
9 before.

10 What are the ties that have been made as
11 the -- in regard to the alleged ties to the
12 mob, can you refresh my memory on that?

13 MR. WILLIAMS: There are certain
14 members of LEC who are allegedly in the --
15 connected with the mob.

16 COMMISSIONER GAW: And were some of
17 those members involved in -- in investigations
18 that led to convictions for -- for -- in
19 federal -- federal court recently?

20 MR. WILLIAMS: Yes. Both in New York
21 and in Missouri.

22 COMMISSIONER GAW: And who were those
23 individuals, if you can tell me?

24 MR. WILLIAMS: There's a long list in
25 New York. I can't identify all of those. But

1 the recent ones in Missouri are Richard Martino
2 and Daniel Martino. And then, of course, Ken
3 Matzdorff has pled, but he has not been
4 sentenced.

5 COMMISSIONER GAW: Okay. So those --
6 those individuals that you've named are at
7 least in -- have some ownership interest in
8 LEC, LLC?

9 MR. WILLIAMS: I believe that's
10 correct.

11 COMMISSIONER GAW: Now, as I read
12 through this Stip., there is a statement here
13 on page 4 that, The payment of the stipulated
14 amount represents a full and comprehensive
15 settlement of the complaint in this case and
16 any potential enforcement complaints arising
17 from or related to the investigation against
18 Cass Tel or Local Exchange Carrier, LLC, and,
19 therefore, no additional enforcement complaints
20 by amendment or otherwise against Cass Tel,
21 LLC, will be filed, initiated or otherwise
22 pursued.

23 Without limiting this -- the foregoing,
24 this agreement resolves and settles for all
25 time all pending or unfiled actions for any

1 penalty, forfeiture under or by virtue of the
2 Public Service Commission law, including those
3 which may be brought by third parties for or on
4 account of the transaction matter or thing
5 known or unknown concerning the subject matter
6 of the complaint in the investigation against
7 Cass Tel, its successors, assigns, partners,
8 agents, managers, officers -- I'm sorry, court
9 reporter -- and employees.

10 And to the extent the Commission has
11 jurisdiction with respect thereto, LEC, its
12 successors, assigns, et cetera, and forever
13 release each and all of them from any punitive
14 adverse action associated with matters alleged
15 in the complaint or which have been examined in
16 the context of the investigation involving Cass
17 Tel.

18 That's a pretty broad release. Wouldn't
19 you agree?

20 MR. WILLIAMS: It's broader than just
21 the allegations in the complaint, certainly.
22 It's intended to cover any penalty actions that
23 the Staff could have brought based on
24 information it learned during the investigation
25 other than an over-earnings.

1 COMMISSIONER GAW: All right. Well,
2 I'm going to struggle a little bit with
3 understanding the breadth of this release.
4 First of all, let me ask you this: What does
5 it mean when it says that it also relates to
6 third parties?

7 MR. FRANSON: Mr. Williams, since I
8 signed, let me do that one.

9 Commissioner, it is Staff's view that that
10 doesn't mean anything to third parties from a
11 legal standpoint.

12 COMMISSIONER GAW: Why is there,
13 then?

14 MR. FRANSON: Lack -- well, Mr.
15 England wanted it there. And --

16 COMMISSIONER GAW: I'm sure. He's
17 protecting his client.

18 MR. FRANSON: We didn't think this
19 meant anything. It's there. And, in fact, I
20 discussed this matter with him, and he's going
21 to field the questions.

22 But from Staff's viewpoint, it -- it
23 cannot -- if there is somebody out there that
24 has the interest and the ability to bring some
25 kind of complaint against Cass Tel, this does

1 not bind them. There may be other legal
2 principles that might limit it or some
3 different theory. But this document really, by
4 definition, probably cannot.

5 Also, LEC got out of this case essentially
6 under the theory that the Commission had no
7 jurisdiction over them. The Commission let
8 them out. So --

9 COMMISSIONER GAW: You mean the
10 majority of the Commission voted to let them
11 out.

12 MR. FRANSON: I don't remember the --
13 yes. The majority did. What the vote was, I
14 don't -- don't remember. But the -- the fact
15 is that LEC was out of this case. They were
16 initially put in and --

17 COMMISSIONER GAW: So how in the
18 world are they in this settlement if they
19 weren't in the case?

20 MR. FRANSON: Well, as Mr. Williams
21 explained, they're essentially one in the same.

22 COMMISSIONER GAW: They are. Well,
23 I'm asking, they are? What do you mean they're
24 one in the same if -- it appears to me that
25 it's Cass Tel that is paying the million

1 dollars under the terms of the settlement, not
2 LEC. So -- but LEC is apparently getting
3 release under this agreement.

4 MR. FRANSON: From any further
5 proceedings that we may have known about
6 through our investigation, yes.

7 COMMISSIONER GAW: Okay. Help me out
8 with that part. What does that mean?

9 MR. FRANSON: Okay.

10 COMMISSIONER GAW: I've seen a lot of
11 releases that have come through that have been
12 written by parties before. This one seems to
13 say that anything that -- which -- which has
14 been examined, how does -- is someone looking
15 back on this Stipulation going to determine
16 what that -- what the breadth of that release
17 is, if it's based upon what you all may have
18 examined?

19 MR. FRANSON: Well, it's -- the
20 starting point for this is could -- in a
21 decision on what counts to bring, could we have
22 brought others or different ones or more? Most
23 likely, yes. But we brought what we -- we
24 brought the four. And this document settles
25 those four.

1 But it also encompasses anything else that
2 dealt with the activities of both Cass Tel and
3 LEC, and it doesn't go into any other
4 companies. But it just is limited to what
5 could have come out.

6 And has anybody ever sat down and made a
7 list of other potential complaints that could
8 have been filed? Not that I'm aware of.

9 COMMISSIONER GAW: So in other words,
10 we don't know what this really -- how broad
11 this release may be because we don't know what
12 the breadth of -- of the -- of the release is
13 and we don't really know what the parameters
14 are of what has been examined?

15 MR. FRANSON: Well, Commissioner,
16 that's a hard one to answer. I -- I really
17 don't think I can quite agree with that. Your
18 starting point is the -- the complaint itself.
19 Those four complaints.

20 COMMISSIONER GAW: That part, I can
21 understand.

22 MR. FRANSON: Okay.

23 COMMISSIONER GAW: You have a
24 specific list of those things. We could go
25 into detail of it. And I might -- and I might

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1 have some questions of it. But when you get
2 outside of that, then I have very little idea
3 of what it is that we're saying can no longer
4 be examined.

5 MR. FRANSON: Other than a very
6 general statement that it has to do with these
7 activities, that is correct. However, in any
8 -- in any complaint before the Commission,
9 there may be a virtually unlimited list of
10 things that can be brought.

11 And if we could have brought 25 counts in
12 a complaint, that would not have been efficient
13 to you. So we used a representative sample to
14 encompass them all. That, at least in my
15 experience here, has been very common.

16 COMMISSIONER GAW: I'm still -- I
17 still don't know the answer to my question.
18 But I didn't really expect to find out because
19 of the language that's here.

20 Let me ask -- let me -- let me go a little
21 further with this. Now, there is an exclusion
22 of what is not in the scope of the settlement,
23 and that has to do with matters associated with
24 the Staff's ongoing investigation of and any
25 current or future complaint against New

1 Florence Telephone Company. Correct ?

2 MR. FRANSON: Yes, your Honor. Yes,
3 Commissioner, that is correct.

4 COMMISSIONER GAW: And the other
5 sentence says, under that provision, This
6 settlement does not preclude Staff from
7 pursuing an over-earnings complaint against
8 Cass Tel.

9 Now, is there -- is there some sort of an
10 over-earnings case ongoing in regard to Cass
11 Tel?

12 MR. FRANSON: Not a case. However,
13 there is an ongoing audit of Cass Tel and there
14 are ongoing negotiations. That is a subject
15 that there has been no complaint filed. But
16 that is still an open subject. And I -- I
17 think Mr. Williams is wanting to say something.
18 But I don't know that I can go any further than
19 that.

20 MR. WILLIAMS: I think I can tell the
21 Commission that the parties have an agreement
22 in principle that has not yet been reduced down
23 it writing regarding an over-earnings.

24 COMMISSIONER GAW: I -- I've seen
25 these agreements in principle discussed before.

1 And every time they -- they come up in this --
2 in a context, I have difficulty knowing whether
3 or not there's really an agreement or not. And
4 what it means not to know about it when you're
5 making a decision is saying -- what is it that
6 I should expect in regard to having something
7 -- seeing something in writing on that
8 agreement?

9 MR. WILLIAMS: Within the next week,
10 I would think we're going to have something
11 submitted to the Commission.

12 COMMISSIONER GAW: Was it
13 contemplated that that would not be submitted
14 before we had a chance to -- or after we had a
15 chance to make the decision on this case?

16 MR. WILLIAMS: This case was tied
17 more to the sale than to the over-earnings.
18 That would be the something more independent.
19 So when we were negotiating this agreement, we
20 were not intending to formally tie it to the
21 over-earnings.

22 COMMISSIONER GAW: So if we wanted to
23 -- to see what was in that agreement in
24 evaluating this one, we'd just have to wait
25 until you had that reduced to writing?

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1 MR. WILLIAMS: I don't see another
2 alternative.

3 COMMISSIONER GAW: Yeah. In
4 subsection C(1), it says, The parties agree
5 that Cass Tel has implemented sufficient
6 financial and managerial controls to justify
7 its certification for receipt of federal USF
8 disbursements. Staff agrees to recommend that
9 the Commission certify prospectively to the FCC
10 that funds received by Cass Tel from the high
11 -- federal high cost support funding mechanisms
12 will be used in accordance with Section 254(b)
13 of the Federal Telecommunications Act of 1996,
14 provided that Staff will not be bound to make
15 such a recommendation. If during the time that
16 LEC, LLC, continues to have a majority
17 ownership of the company, the day-to-day
18 management of Cass Tel is no longer -- of Cass
19 Tel is no longer being -- being performed by
20 third party acceptable to Staff.

21 It -- it appears that this provision
22 suggests that the Staff will support
23 certification of federal USF disbursements so
24 long as there -- the current management of Cass
25 Tel continues. Is that accurate?

1 MR. FRANSON: Yes, that is accurate.

2 COMMISSIONER GAW: Now, it's -- at
3 one point in time, there was some suggestion
4 that this company would actually have to leave
5 the ownership of LEC before that certification
6 might occur. Can you tell me whether or not
7 that is required under this settlement?

8 MR. FRANSON: No, it is not required.
9 It is very much anticipated and expected. But
10 under this agreement, the way that it is
11 worded, LEC today and at least for the
12 short-term, will continue to be the owners of
13 Cass Tel.

14 However, if LEC steps back into the
15 day-to-day management of the company, Staff
16 does not have to recommend them for USF funds.

17 COMMISSIONER GAW: And can you tell
18 me approximately how much in USF funding Cass
19 Tel would receive if it were certified to
20 receive those funds?

21 MR. FRANSON: I would either defer to
22 Ms. Dietrich or Mr. Winter to answer that
23 question.

24 JUDGE WOODRUFF: Why don't one of you
25 come up and we'll swear you in?

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1 MR. FRANSON: Or Mr. Schallenberg, as
2 the case may be.

3 COMMISSIONER GAW: I think Mr.
4 Schallenberg is approaching.

5 ROBERT SCHALLENBERG,
6 being first duly sworn to testify the truth, the whole
7 truth, and nothing but the truth, testified as follows:

8 JUDGE WOODRUFF: You may be seated.

9 MR. FRANSON: Before we begin, may I
10 qualify with just a few questions who
11 Mr. Schallenberg is?

12 JUDGE WOODRUFF: Certainly.

13 EXAMINATION OF ROBERT SCHALLENBERG

14 BY MR. FRANSON:

15 Q Sir, please state your name.

16 A Robert E. Schallenberg.

17 Q Sir, how are you employed?

18 A I'm employed by the Missouri Public Service
19 Commission.

20 Q And are you a certified public accountant?

21 A Yes, I am.

22 Q And what are the nature of your duties at the
23 Public Service Commission?

24 A Well, currently, I'm the Director of the
25 Utility Services Division, which is the portion

1 of the Commission Staff that is generally
2 concerned with questions of financial and
3 accounting matters, including auditing.

4 Q And you, in fact, supervise the individuals
5 that have been involved in the investigation in
6 Cass Tel?

7 A Indirectly. Most of those are actually
8 supervised by their first line supervisors or
9 department managers. I supervise the
10 department managers.

11 MR. FRANSON: With that, Judge, I
12 don't have any further questions of
13 Mr. Schallenberg.

14 JUDGE WOODRUFF: All right.
15 Commissioner Gaw, if you want to --

16 EXAMINATION

17 BY COMMISSIONER GAW:

18 Q Good morning, Mr. Schallenberg.

19 A Good morning, Commissioner.

20 Q I was asking about what amount of money might
21 being received by Cass Tel if they were
22 receiving USF funds again. Can you give me an
23 idea about what that is on an annual basis?

24 A Right now, in the -- there's three activities
25 that are going on. This is one. There is an

1 earnings review that is going on. And that is
2 one of the topics in the earnings review.

3 That number has been disputed between the
4 Staff and the company. I would say generally
5 the dispute ranges from a million five to a
6 million eight at this time. But depending on
7 the cost numbers and the -- and cost period you
8 use, it can fluctuate. At the high for this
9 company, as I recall, it was at \$4 million.

10 Q Okay. Do you know when that was approximately?

11 A That was just prior to it being discontinued.

12 Q Okay. So it -- it was the most recent payment
13 that they have received?

14 A That's what -- the -- it had risen to that
15 level at the time when certification was
16 withdrawn.

17 COMMISSIONER GAW: Okay. Thank you.
18 Back to Mr. Franson. Or Mr. Williams either
19 one. So would it be accurate to say that if
20 certification is received, there could be
21 receipt of USF funds on an annual basis going
22 forward anywhere from 1.5 to \$4 million?

23 MR. FRANSON: Based on the testimony
24 of Mr. Schallenberg, I would say that's
25 probably correct.

1 COMMISSIONER GAW: So Cass Tel is
2 paying a fine of \$1 million and, in return,
3 receiving one and a half to four million?

4 MR. FRANSON: No. I don't think I --

5 COMMISSIONER GAW: On an annual
6 basis. That wouldn't actually be accurate,
7 would it, because we'd have to start adding up
8 the number of years and then multiplying them
9 times whatever the amount would be that would
10 be averaging out over the years that they might
11 receive USF funds that they wouldn't have
12 otherwise received.

13 MR. FRANSON: Commissioner Gaw, I --
14 I don't think that in looking at this that we
15 mix them up. They're two different things.
16 There's the operation of a phone company, which
17 is the USF funds. And there's the million
18 dollar penalty to deal with the litigation
19 matter that the company is settling.

20 So it can be stated that way, but I
21 believe Staff would look at it as two separate
22 matters.

23 COMMISSIONER GAW: I understand. But
24 if I put them side by side, it starts looking
25 like they're actually potentially reaping a

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1 benefit out of this settlement in excess of
2 what they're paying for allegedly doing wrong.

3 MR. WILLIAMS: I would point out what
4 they're getting in terms of USF is a
5 recommendation from Staff that the Commission
6 certify them to FCC.

7 COMMISSIONER GAW: Well, wouldn't --
8 wouldn't the Staff and the party -- well, the
9 parties expect that normally the Commission
10 would follow the Staff's recommendation on
11 certification of USF?

12 MR. WILLIAMS: The Commission's been
13 known to do other things other than what the
14 Staff's recommended, yes.

15 COMMISSIONER GAW: A few times. But
16 most -- in the USF funds, wouldn't you say that
17 99.9 percent of the time or something close to
18 that, the Commission has followed the
19 recommendations of Staff?

20 MR. WILLIAMS: I'm sorry.

21 COMMISSIONER GAW: I know.

22 MR. WILLIAMS: I had two people
23 talking.

24 COMMISSIONER GAW: I understand. So
25 wouldn't you say that the great majority of the

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1 time on USF funding certification the
2 Commission has followed the -- the
3 recommendation of Staff?

4 MR. WILLIAMS: I believe that's been
5 the case.

6 COMMISSIONER GAW: And wouldn't there
7 be some expectation from the parties that, as a
8 result of this agreement, if the Commission
9 would approve it that they would expect that
10 certification if they complied with the
11 provisions of the Stip. would indeed occur?

12 MR. WILLIAMS: I think that's
13 contemplated.

14 COMMISSIONER GAW: Yes. Now, in
15 addition to going to the monies that they might
16 receive going forward, there is a subdivision 2
17 that talks about -- let's see. The above
18 commitment to recommend prospective
19 certification to the FCC does not preclude
20 Staff from making a recommendation for
21 certification for prior periods. Such
22 recommendation for prior periods shall be in
23 accordance with the terms of a plan by Cass Tel
24 and approved by Staff to the expenditure of
25 high cost support certified by the Commission,

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1 which plan shall not be applicable to any high
2 cost funding received by Cass Tel as a
3 consequence of certification under
4 Section 3(c) (1) of this agreement. An
5 approved plan for the expenditure of high cost
6 support from prior periods shall include a
7 commitment to provide quarterly updates to
8 Staff as to specific uses of the high cost
9 support in accordance with that plan.

10 Quarterly updates shall continue through
11 two annual October 1st USF certification
12 processes and will continue in compliance with
13 any applicable Commission rule thereafter.

14 And then it says something about further
15 such recommendation will be based upon Cass
16 Tel's filing of corrected data for 2005 with
17 USAC and NECA as contemplated by Section 3(d)
18 Infra.

19 What does that mean?

20 MR. WILLIAMS: Basically, the Staff's
21 wanting assurances that Cass Tel will be
22 expending the funds as they're meant to be
23 expended. And there's no -- there's a -- an
24 agreement by Staff that Cass Tel has been
25 expending funds -- or making expenditures for

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1 which its entitled to receive some USF funds
2 appropriately. There's just the matter of
3 there have been some improper expenditures
4 included in the submissions as well in the
5 past.

6 COMMISSIONER GAW: Does this
7 particular provision provide for at least an
8 opportunity for Cass Tel to actually seek and
9 potentially recover USF funds for years that
10 they have not been receiving them as a result
11 of the lack of -- of previous certification by
12 the Commission?

13 MR. WILLIAMS: If you're asking would
14 it go -- potentially go back to October of
15 2004, I think that was what was contemplated,
16 yes.

17 COMMISSIONER GAW: So in addition to
18 the amount going forward, at 1.5 to \$4 million
19 a year, Cass Tel also seeks -- has the
20 potential of recouping those previous years
21 that you mentioned?

22 MR. WILLIAMS: Potentially. I mean,
23 there's certainly a number of hoops.

24 COMMISSIONER GAW: What do I have in
25 this agreement that assures me that any of that

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1 USF money -- or all of that USF money, let me
2 say it that way, will go to the credit of the
3 ratepayers in Cass Tel?

4 MR. FRANSON: Well, any company is
5 run by the people who have the potential of
6 doing wrongdoing. We have a company that's
7 taken strides, and we've got extra monitoring
8 in place. And I -- I believe, Commissioner,
9 that's the best we have.

10 Do we have something in here that will --
11 that will somehow assure everyone that nobody
12 if the future will do wrongdoing? No, we
13 don't.

14 COMMISSIONER GAW: Not only that, but
15 it appears that you don't have anything in here
16 that actually specifies that all of this money
17 will go to the credit of the ratepayers, both
18 in the future and in the past, since I don't
19 know what's happened with -- with the
20 settlement that is not reduced to writing. And
21 I'm concerned about that.

22 Let me ask the Attorney General's office
23 if they have any insight on that.

24 MR. MOLTENI: Even if there were a
25 provision that would guarantee the appropriate

1 use of the Universal Service Funds, when you at
2 the sentence "no additional enforcement
3 complaints" if they don't comply with that
4 provision, you're going to have any nice
5 argument about whether you have any authority
6 to go after them for not complying with that
7 provision.

8 MR. FRANSON: I'm -- Commissioner, I
9 don't know quite where Mr. Molteni's reading
10 from, but he's reading two different things.

11 Your question presupposes that sometime in
12 the near future or further out there's going to
13 be some wrongdoing. This agreement -- and I
14 would encourage Mr. England to address this
15 issue, also. This agreement does not say that
16 from this moment forward if somebody does
17 something wrong that it's -- that they're
18 exonerated in advance. It doesn't say that.

19 JUDGE WOODRUFF: Mr. Molteni, you
20 wanted to be heard?

21 MR. MOLTENI: Actually, I'll tell you
22 exactly where I'm reading from, Commissioner.
23 I'm reading from paragraph B, subparagraph 2,
24 from the Scope and Enforcement where it says,
25 The payment of the stipulated amount as

1 provided by Section 3(a) represents a full and
2 comprehensive settlement of the complaint in
3 this case. And any potential enforcement
4 complaints arising from or related to the
5 investigation against Cass Tel or Local
6 Exchange Carrier, LLC, and, therefore, no
7 additional enforcement complaints by amendment
8 or otherwise against Cass Tel or LEC will be
9 filed initiated or otherwise pursued.

10 That's a pretty broad statement that there
11 won't be any enforcement. And it suggests, at
12 least arguably, that even if Cass Tel should
13 breach the terms of this agreement, no
14 enforcement will be pursued under this
15 agreement.

16 MR. FRANSON: Your Honor, if I may --

17 MR. MOLTENI: whether it's intended
18 or not.

19 MR. FRANSON: If I may?

20 JUDGE WOODRUFF: Yes.

21 MR. FRANSON: We're talking about two
22 very different things. Commissioner Gaw's
23 question is from this moment forward, what
24 guarantees are there in this agreement there's
25 going to be no wrongdoing on the part of Cass

1 Tel or anyone else and that there's no
2 enforcement provisions. That is very different
3 than what Mr. Molteni is talking about.

4 When -- when the Commission approves this,
5 the time is over. If there's wrongdoing from
6 that moment forward, it's not covered by this.
7 This is not something that says, You can go out
8 and sin all you want. You can commit theft,
9 you can commit fraud, and nothing's going to
10 happen to you. That is not what this agreement
11 says. And that seems to be what Mr. Molteni is
12 suggesting.

13 MR. MOLTENI: I'm suggesting that,
14 Commissioners, because this agreement says
15 there won't be any enforcement. Now, what --
16 what the Staff and -- and Cass Tel are asking
17 this commission to do is -- is to essentially
18 allow and recommending that the Commission go
19 to the Federal Communications Commission and
20 ask that Universal Service Funds be provided to
21 a company that right now is still owned, or at
22 least through the chain of ownership, by
23 convicted felons allegedly with connections to
24 the Gambino crime family. So that's no
25 different.

1 So even if you were to have a provision
2 that says -- in the Stip., which by the way,
3 doesn't exist in the Stip., that says on a
4 going forward basis subject to our
5 recommendation that the FCC grant Universal
6 Service Funds, even if you had that kind of
7 guaranteed provision that the funds would be
8 used appropriately as they hadn't been used
9 appropriately in the past, even if you had that
10 provision in there, you've also got a provision
11 in here that waives any enforcement for matters
12 pertaining or relating to this case.

13 Well, if it's -- if it's as part of this
14 case that they're seeking and recommending the
15 Universal Service Fund, that the FCC grant
16 Universal Service Fund funding to Cass Tel,
17 you've, at least arguably, waived any
18 enforcement for violations.

19 And by the way, that would apply to the
20 fine, too. If you look at that, if they don't
21 pay the fine within 90 day, it suggests that
22 you've waived enforcement on the fine, ignoring
23 all the problems that there no guarantee that
24 ratepayers won't be saddled with financing this
25 even if comes from the proceeds of the sale.

1 Do we know that a premium hasn't been made
2 in the sale price to cover this that's going to
3 be taken out of rates? We don't. There's a
4 lot of problems with this -- with this
5 agreement.

6 MR. FRANSON: Your Honor, if the
7 Commission believes that anything Mr. Molteni
8 just said is actually in this agreement, don't
9 approve it. Because if he's right, then this
10 agreement is an -- is a license for Cass Tel or
11 anyone else to go out and commit crimes, and
12 they can't do it. Or they can commit fraud or
13 they can do any wrongdoing. He's just plain
14 wrong. That's not what it says.

15 This agreement started because we had a
16 complaint, four counts. This agreement
17 addresses those four counts. If this
18 Commission approves it, it deals only with
19 things in the past. It does not say, You have
20 a license to go out and commit crimes.

21 Mr. Molteni is a very experienced
22 litigator. I don't think he'd ever present
23 anything that gave some kind of license to a
24 Court, and I wouldn't expect any court in the
25 state or United States to approve such a thing.

1 That is not what this says. That's just plain
2 wrong.

3 There's a date that this Commission
4 approves it. If there's wrongdoing after that,
5 it's not covered in here. And if this
6 Commission reads it that way, then don't
7 approve it.

8 JUDGE WOODRUFF: All right. Thank
9 you. Go back to questions from Commissioner
10 Gaw.

11 MR. ENGLAND: Excuse me, Judge.
12 Commissioner, if I may, I'd like to address --

13 JUDGE WOODRUFF: Yes. I'm sorry.

14 MR. ENGLAND: I just want to
15 follow-up on Mr. Franson's characterization. I
16 believe Mr. Molteni is reading the agreement in
17 a wrong fashion, if you will. The quote that
18 he read to you talked about potential
19 enforcement complaints related to the
20 investigation. Those are a capitalized terms,
21 and they are defined earlier in the agreement,
22 I believe, under Section III, Roman Numeral III
23 -- or excuse me. Yes. Roman Numeral III,
24 subsection A.

25 And when you read the definition, that

1 refers to complaints that could be brought
2 based on historic activities of the company,
3 activities that were thoroughly investigated by
4 the Staff over roughly an 18-month period of
5 time. Those investigations have produced four
6 specific counts in the complaint case that is
7 before you today.

8 And it was the intent of the company to
9 seek release from any other potential
10 complaints that could have been raised or
11 brought based on their extensive investigation.
12 It does not exonerate the company from any
13 potential wrongdoing from this point forward.

14 I would also point out that Staff is --
15 that that release is further qualified by
16 language in Section Roman Numeral IV(a) that
17 basically says that -- that their entering into
18 this stipulation is based on the company's
19 providing material and correct information.

20 And, for example, there is information
21 that was not provided by the company or
22 information that was misrepresented by the
23 company that the Staff is free to go back and
24 file a complaint on these historic activities.
25 So I don't believe the release is nearly as

1 far-reaching as has been characterized here.

2 And it certainly does not have anything to do
3 with prospective activities in this company.

4 Further, with respect to the USF revenues,
5 or the USF receipts, the -- the concern that
6 this company is going to receive USF monies in
7 the future, first of all, assumes that we get a
8 positive recommendation from Staff, which is
9 part of this stipulation and agreement and that
10 is the extent of the stipulation and agreement.

11 Secondly, it assumes, as Mr. Williams
12 correctly points out, that the Commission
13 actually certifies this company.

14 Third, it assumes that NECA and USAC agree
15 or acquiesce in that certification by this
16 Commission and actually release the company.

17 Fourth, it assumes that Cass Tel is still
18 in existence at the time these monies are
19 actually released and there is an approximate
20 six-month lag, as I understand, from
21 certification until receipt of these monies.

22 And I am allowed to say that -- that at
23 this point in time, the company does have a
24 definitive Asset Purchase Agreement with a
25 purchaser. I'm not at liberty to reveal the

1 name. But an Asset Purchase Agreement for the
2 sale of all of its companies, properties in
3 Missouri, has been entered into, and we are in
4 the process of preparing a joint application
5 with the purchaser for filing with the
6 Commission in the very near future.

7 JUDGE WOODRUFF: So I'll assume that
8 will be --

9 MR. ENGLAND: Well, my hesitation in
10 making predictions comes from a long history of
11 being wrong. But I will -- I'm hopeful that we
12 will have something in the next ten days to two
13 weeks.

14 As I said, the agreement has been signed.
15 The draft of the joint application has been
16 prepared, but there are a number of pieces of
17 information that both Cass Tel and the
18 purchaser have to provide in order to comply
19 with all of the Commission's rules to provide
20 all of the information upfront. So the parties
21 are working on that and hope to have something
22 filed.

23 JUDGE WOODRUFF: Is Cass Tel and the
24 purchaser anticipating that this case will be
25 resolved before the purchase goes forward?

1 MR. ENGLAND: I'm sorry? I didn't
2 hear that question.

3 JUDGE WOODRUFF: Is Cass Tel and the
4 purchaser, with respect to purchaser,
5 anticipating that this case, this stipulation
6 agreement will be approved before the sale
7 would go forward?

8 MR. ENGLAND: Absolutely. The -- the
9 -- as I understand -- I was not privy to the
10 negotiations, so I don't know the specifics,
11 but it's my understanding that, in fact, the
12 purchase is contingent upon the company
13 resolving all of its problems with the Missouri
14 Public Service Commission, part of which are
15 addressed by this complaint case, part of which
16 -- the remainder of which we believe are being
17 addressed in the earnings investigation and --
18 and stipulation and concept that Mr. Williams
19 told you about.

20 So it is the company's desire to clean up
21 all of its past problems, put it on a sound
22 and, I guess, problem-free basis so that the
23 purchaser can take this company on a go forward
24 basis and -- and move forward with providing
25 services to the companies without any of the

1 past problems that have plagued this company.

2 JUDGE WOODRUFF: I'm sorry. I --

3 MR. ENGLAND: One other -- one other
4 thing with respect to the USF revenues. It
5 also assumes that for some reason they wouldn't
6 be taken into consideration in the setting of
7 rates.

8 In every rate case that I've been a part
9 of, at least involving telecommunications
10 carriers who receive USF revenues, that is the
11 first adjustment, if you will, to the cost of
12 service. If, for example, Cass Tel was
13 entitled to receive on a go forward basis \$1.5
14 million -- \$1.5 million on an annualized basis,
15 that is the first adjustment to revenues or
16 cost of service that will be made for purposes
17 of that earnings investigation. It comes right
18 off the top.

19 So, for example, if their cost of revenues
20 is \$3 million, a million five of it is going to
21 be covered first by the Universal Service Fund
22 receipts. The other million five will be the
23 amount of money the Commission has to adjust
24 local rates or intrastate rates to achieve that
25 revenue require.

1 So whatever money that the company gets
2 has -- has historically, traditionally,
3 uniformly, been applied to reducing the
4 intrastate revenue requirement of the
5 telecommunications company.

6 That was the case with this company in its
7 prior earnings investigation. And as I said,
8 that's been the case with any other company
9 that I've been involved in.

10 JUDGE WOODRUFF: Thank you. Back to
11 Commissioner Gaw.

12 COMMISSIONER GAW: That would have
13 also been the case in regard to the last
14 setting of rates, would it not, Mr. England?

15 MR. ENGLAND: Absolutely. And to the
16 extent those Universal Service revenues were
17 overstated because of the -- the improper
18 expenses, that inflated amount would have been
19 used to reduce intrastate revenue requirement.

20 COMMISSIONER GAW: And in that
21 regard, are you suggesting to me that the
22 ratepayers benefited in some way from -- in
23 LEC's members' activities?

24 MR. ENGLAND: I'm not saying that
25 they benefited, but I don't know that they were

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1 detrimented, if you will. It's a
2 complicated --

3 COMMISSIONER GAW: It's Difficult for
4 me to assess that since I don't have the other
5 portion of your discussions in front of me
6 that's the agreement that's reduced to
7 principle.

8 MR. ENGLAND: I under -- well, I
9 understand. There's sort of three pegs to this
10 stool and --

11 COMMISSIONER GAW: It's hard for me
12 to understand what the stool looks like all in
13 one piece without all three legs here.

14 MR. ENGLAND: I -- I understand. And
15 with all due respect, I didn't set this in
16 presentation today. It was our intent --
17 frankly, we thought this -- there would be a
18 couple of weeks before this was brought up for
19 discussion before the Commission, and our hope
20 was to have the other applications on file.

21 COMMISSIONER GAW: So -- so there is
22 no -- you have no problem with us waiting until
23 we see all three of legs of that stool, then?

24 MR. ENGLAND: Not at all. And,
25 frankly, I think the parties, Staff and the

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1 company, will -- well, I can't speak for Staff
2 and Public Counsel, but, certainly, the company
3 was under the impression that all of these
4 things needed to be addressed and resolved.

5 COMMISSIONER GAW: I understand.

6 And it makes a whole lot more sense to me to
7 have all of these things together in front of
8 us. I'm not sure how we got here either.

9 MR. ENGLAND: Well, I think it was a
10 matter of scheduling. I don't think it was
11 anything other than that, availability of the
12 various parties.

13 COMMISSIONER GAW: It may have been
14 -- may have been partially that. It may have
15 been partially some other things. I've been
16 very anxious to see this case out.

17 Let me ask you this, Staff: What is it
18 that -- if -- if this certification
19 recommendation is done, would you believe that
20 the company would have more value in -- in the
21 sale of -- that LEC might contemplate of the
22 company than it didn't have the Staff's
23 recommendation for certification?

24 MR. FRANSON: Yes, Commissioner.

25 COMMISSIONER GAW: And what do I have

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1 as a guarantee that that money's not going to
2 go right in the pockets of the very individuals
3 that you've already told me were convicted
4 felons and affiliated with -- allegedly
5 affiliated with the mob?

6 MR. FRANSON: The fact that there is
7 a purchase agreement, that does not change who
8 still owns that company.

9 COMMISSIONER GAW: It does not, does
10 it? But it does change the amount of money
11 they may put in their pockets, doesn't it?

12 MR. FRANSON: Depending on the
13 purchase price, it very well might. Yes.

14 COMMISSIONER GAW: Do you know how
15 much more money that might be?

16 MR. FRANSON: No, I don't.

17 COMMISSIONER GAW: No. I don't
18 either. Do I have any -- anything in this
19 particular agreement that tells me that what's
20 happening as a result of that agreement
21 actually costs LEC anything?

22 MR. FRANSON: You have that there's a
23 \$1 million penalty to settle a complaint case.

24 COMMISSIONER GAW: But I don't know
25 if LEC's contributing to that, do I?

1 MR. FRANSON: Yes, I think you do.

2 In recent --

3 COMMISSIONER GAW: How -- where in
4 this agreement does it tell me that?

5 MR. FRANSON: It does not go in --
6 the agreement does not say that the money will
7 come from this account and that's a LEC account
8 or anything. It's not in there.

9 COMMISSIONER GAW: And it doesn't
10 tell me that LEC might not actually reap
11 profits from this agreement because of the
12 certification that may occur as a result of
13 what's contemplated in this agreement, does it?

14 MR. FRANSON: It does not address it
15 in that exact way. I think this document is
16 designed to address a complaint settlement.
17 And there are many roads that flow from those,
18 as we have just heard discussed.

19 COMMISSIONER GAW: Well, I have a
20 hard time approving something that seems to
21 have the ability to put money into individuals
22 who have committed crimes in this -- in this
23 country that are directly associated or at
24 least related to the telecommunications
25 business and, in particular, to this -- to Cass

1 Tel.

2 And I guess what I need to see is all of
3 this put together before I can see how we have
4 protected the ratepayers and -- so that I can
5 ensure myself, feel more comfortable that what
6 we are -- are actually doing are punishing
7 wrongdoers with this penalty instead of
8 rewarding them.

9 And I know that Staff intends for the --
10 for this to be a penalty. But I cannot assess
11 whether that is actually result based upon just
12 what I see in this agreement. And I'm very
13 concerned about it. And, as you know, I think,
14 Commissioner Clayton and I insisted on this
15 inquiry whenever it was held when Mr. Matsdorf
16 was here a year and a half ago or whenever it
17 was that caused all of -- I think some of this
18 to be occurring today.

19 And I'm trying to understand that we are
20 actually seeing some resolution that is more
21 than just an appearance of penalty and in
22 reality is actually some affirmative
23 repercussion that occurs to individuals who
24 have pled guilty, been found guilty of
25 wrongdoing in -- in -- in part in regard to

1 activities that have occurred in Missouri and,
2 in particular, with Cass Tel. That's not a
3 question.

4 Judge, my -- I'm just going to say, from
5 my standpoint, I -- I appreciate the work
6 that's gone into this. I know there's a
7 tremendous amount of work that's happened as a
8 result of this. I really need to see what --
9 the rest of what's going on with these other
10 discussions.

11 And, in particular, I am very
12 uncomfortable with this concept of having some
13 of this language in this Stip. that -- that, in
14 part, does not tell me that an organization
15 that's affiliated with convicted felons is
16 going to continue to own a telecommunications
17 company in this state.

18 And I know Mr. England is telling me
19 that's going to cease. But I've got to see all
20 of that. And I can't see it from just what
21 we've got in front of us in this proceeding.
22 So I'm going to stop -- I have a whole lot more
23 questions I could go on. But I hope that we
24 are just going to at some point say we're going
25 to hold this open until we see the rest of that

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1 -- of the agreements. Thank you.

2 JUDGE WOODRUFF: I'd like to ask a
3 question of Mr. England. Is it Cass Tel's
4 anticipation -- will you be filing the
5 application for approval of the sale
6 transaction before the Commission approves this
7 stipulation agreement or rejects the
8 stipulation agreement? I'm -- the question I'm
9 asking is do you need an answer before you file
10 this agreement?

11 MR. ENGLAND: I'm -- do I need an
12 answer on the complaint settlement before I
13 file my joint application for sale?

14 JUDGE WOODRUFF: Yes.

15 MR. ENGLAND: No.

16 JUDGE WOODRUFF: Okay. All right.
17 Commissioner Clayton.

18 COMMISSIONER CLAYTON: I'm going to
19 pass for a second.

20 JUDGE WOODRUFF: Commissioner
21 Appling?

22 COMMISSIONER APPLING: I don't think
23 I have any questions this morning. I think
24 Commissioner Gaw has addressed the questions
25 that I had, and that was to ensure that -- that

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1 the ratepayers doesn't end up being charged for
2 this \$1 million. So I think he's covered the
3 waterfront very well. And if we're going to
4 wait, it will give us a chance to do that.
5 Thank you.

6 JUDGE WOODRUFF: Commissioner Murray,
7 do you have any questions?

8 COMMISSIONER MURRAY: No, I don't.
9 Thank you.

10 JUDGE WOODRUFF: Back to you,
11 Commissioner Clayton.

12 COMMISSIONER CLAYTON: Thank you,
13 Judge. I don't have that many questions. Many
14 of the questions raised by Commissioner Gaw
15 were similar to mine, and I won't repeat those.

16 I do think it -- it is important
17 information that Mr. England offered that --
18 that this -- approving this stipulation or
19 deciding this case does not make a difference
20 on when the joint application for sale of the
21 assets will -- will take place.

22 I wanted to confirm, Mr. England, are --
23 and I don't know if this is an appropriate
24 question or not. Are you representing one of
25 the joint applicants or both in that case, or

1 will that be someone else?

2 MR. ENGLAND: At least the way the
3 current application is drafted, we'd be
4 representing Cass Tel.

5 COMMISSIONER CLAYTON: Okay. Okay.
6 So it is not a problem to your client -- your
7 clients, whoever you would represent, for --
8 for the Commission to have an opportunity to
9 review that application and -- and understand
10 what is going on with the transfer of these
11 assets?

12 MR. ENGLAND: Not at all.

13 COMMISSIONER CLAYTON: Okay.

14 MR. ENGLAND: I would -- you
15 correctly note that whether you say yea or nay
16 on this stipulation will not affect the timing
17 of the joint application. We're just trying to
18 get that finalized and filed as quickly as we
19 can. How you handle the stipulation, though, I
20 don't want to mislead this Commission, may have
21 an effect on whether --

22 COMMISSIONER CLAYTON: Excuse me,
23 Director.

24 MR. ENGLAND: How you -- how you
25 decide the stipulation -- excuse me. This

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1 stipulation that you have before you may affect
2 that case and whether or not that -- that sale
3 gets closed as a current -- as it is currently
4 contemplated in the Asset Purchase Agreement.

5 COMMISSIONER CLAYTON: Okay. And
6 just the way you characterized it, you
7 characterize the sale as a sale of assets, not
8 a sale of stock, not a transfer of stock?

9 MR. ENGLAND: That's correct.

10 COMMISSIONER CLAYTON: Okay. I
11 wanted to ask a few questions of Staff. I'm
12 not sure who as to ask since we've got half the
13 office down here. So I'll let you chime in on
14 who wants a piece of the action.

15 MR. FRANSON: Well, can we all
16 decline?

17 COMMISSIONER CLAYTON: If you -- if
18 you're man enough to do that. Mr. Franson --

19 MR. FRANSON: Yes, sir.

20 COMMISSIONER CLAYTON: -- The amount
21 of this -- the amount of this penalty is
22 significant, especially in looking at PSC
23 history and what has gone on here in the past.
24 Can you give me any indication on whether this
25 amount represents anything in particular in

1 looking at offenses committed by parties or
2 statutory fines or penalties? And I know
3 settlement negotiations are confidential, and I
4 don't want to get into settlement -- you know,
5 confidential and privileged settlement
6 conferences. But can you give me an idea of
7 what this -- this dollar amount represents?

8 MR. FRANSON: Well, I -- I think it
9 represents -- Commissioner, we had some
10 concerns. Besides the complaint, there's also
11 a litigation consideration. There's first the
12 matter here before the Commission, and then
13 there's a matter of going into Circuit Court.

14 And we once did a calculation that -- I
15 think we figured \$2,000 a day times four might
16 get us to up to three million. That's assuming
17 win everything and you get the maximum every
18 point.

19 COMMISSIONER CLAYTON: So the top,
20 according to the complaint that you filed, will
21 be somewhere over \$3 million.

22 MR. FRANSON: It's possible. Again,
23 assuming we win everything at every point and
24 get the maximum penalties. And this is a
25 totally unprecedented area that, quite frankly,

1 these statutes are designed for a totally
2 different situation. They're designed for
3 someone doing something wrong in the operation
4 of a phone company.

5 That was certainly done here. But it was
6 done in a very different context.

7 COMMISSIONER CLAYTON: Are -- are the
8 statutes as they exist equipped, or do they
9 provide you with the equipment to address cases
10 like this?

11 MR. FRANSON: Not at all in the best
12 way, no. They're well-suited for the operation
13 of a phone company and wrongdoing there where
14 this Commission can look at rates and -- and
15 can look at accounting, things like that. But
16 when you have a very unique situation, no, like
17 this, no, they're not really --

18 COMMISSIONER CLAYTON: Would you
19 suggest that the statutes could be improved in
20 -- more effectively addressing concerns?

21 MR. FRANSON: I don't think there's
22 any question they could be improved. But what
23 you might need is a separate section that
24 talked about what we now know additional
25 wrongdoing that would clarify what the

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1 Commission can do.

2 COMMISSIONER CLAYTON: Okay. Mr.
3 Franson, can you tell me whether Staff looked
4 back into the past into recent years and did
5 the Staff contemplate money that had been
6 transferred from Cass Tel to perhaps the -- the
7 people in New York or the people who have pled
8 guilty?

9 Has there been any assessment of the
10 amount of money transferred out of Cass Tel?
11 And did your fine reflect anything associated
12 with those figures?

13 MR. FRANSON: On -- on the question
14 of the audit and what came out or what didn't,
15 I would probably need to defer to
16 Mr. Schallenberg.

17 On the -- how we arrived at this number,
18 we felt that this kind of wrongdoing was
19 completely unprecedented and needed a
20 significant amount. And, of course, that had
21 to be negotiated, and you know the result. But
22 we also had to be realistic that when you are
23 going forward on litigation, there's always a
24 risk. One, you can lose. And, two --

25 COMMISSIONER CLAYTON: I understand

1 that. Mr. Franson, my question is, is there
2 any relationship between the \$1 million and
3 past transfers? As I recall, in a transcript
4 when we had Mr. Matsdorf here probably two
5 years ago is how long ago, there were -- there
6 were actual figures that were used to describe
7 transfers of money between Cass Tel and a
8 contractor in Kansas or monies that had been
9 transferred through another intermediary that
10 were part of the alleged conspiracy at that
11 time.

12 Is there any relationship between this \$1
13 million and those transfers?

14 MR. FRANSON: Not that I'm aware of.
15 Actually, the -- on the negotiations and other
16 parts that I was aware of, those were not
17 considered specifically.

18 COMMISSIONER CLAYTON: So did Staff
19 -- did Staff compile data that would support a
20 total amount of money that was wrongfully or
21 questionably taken out of Cass Tel by -- by the
22 accused? Do we have any idea how much money
23 was taken out inappropriately or illegally?

24 MR. FRANSON: Two parts to that
25 answer. No. 1, yes, we do. The federal part

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1 indicated an \$8.9 million wrong money coming
2 in. Than would have flowed directly to Cass
3 Tel. And I believe Mr. Schallenberg could
4 articulate that better.

5 COMMISSIONER CLAYTON: Well, maybe --
6 Mr. Schallenberg, you've heard my questions.
7 Do you have any comments regarding perhaps a
8 total amount of dollars that were wrongfully or
9 illegally taken out of Cass Tel?

10 MR. SCHALLENBERG: Yes. I mean,
11 there was --

12 COMMISSIONER CLAYTON: Or received by
13 Cass Tel. I can't isolate it.

14 MR. SCHALLENBERG: There has been --
15 in the audit by the Commission Staff, there has
16 been a recasting of removing from its prior
17 costs all of the items that have been found to
18 have been inappropriate. And then the cost
19 studies have been recasted.

20 And, actually, Cass Tel has made refunds
21 back to the federal funds for any
22 over-collections they have received. Now, once
23 you've stopped certification -- and I say --
24 you -- the -- the federal -- the federal
25 agencies went beyond what -- in essence, when

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1 Missouri quit certifying, they went beyond that
2 and cut off even more funds. But up until that
3 point in time, Cass Tel has made refunds by
4 recasting their cost studies to reflect the
5 numbers that have come from -- in conjunction
6 with our audit. They also hired the current
7 term and post Enron as a forensic auditor and
8 they have gone back and cleaned up their books.
9 And so those monies have been refunded.

10 COMMISSIONER CLAYTON: And so -- but
11 those funds relate only to Universal Service
12 Funds?

13 MR. SCHALLENBERG: Right.

14 COMMISSIONER CLAYTON: Okay. As I
15 recall, there was also some discussion about
16 some over-inflation of services by contractors.
17 And I guess the question I would have, were
18 those over-inflated costs paid by Universal
19 Service Funds?

20 MR. SCHALLENBERG: Those would have
21 been in studies that would have been submitted
22 for reimbursement. And then they have now been
23 recasted as those expenses have been identified
24 and pulled out.

25 COMMISSIONER CLAYTON: So those

1 dollars would be accounted for through the
2 Universal Service Fund rather than looking
3 aside to -- to just other costs of service that
4 were perhaps inflated and paid by ratepayers?

5 MR. SCHALLENBERG: That's correct.

6 COMMISSIONER CLAYTON: Okay.

7 MR. SCHALLENBERG: And when I say
8 that, ratepayers paid the rates that were
9 authorized. In Missouri, you paid the tariff
10 rate. We did not have adjustments based on
11 some cost study. So what Missouri ratepayers
12 paid was the tariff rate.

13 COMMISSIONER CLAYTON: But the tariff
14 rate was based on certain costs of service. I
15 guess I wanted to verify that the cost of
16 service wasn't improperly inflated to cause the
17 ratepayer to pay a higher rate. Does that
18 question make sense?

19 MR. SCHALLENBERG: Yes. I mean, the
20 -- when you had the on-the-record presentation,
21 and I think it was in '04, it was before the
22 arrest, which was in July --

23 COMMISSIONER CLAYTON: April 19th,
24 2004.

25 MR. SCHALLENBERG: Okay. And at that

1 time, our earnings review was not sufficient to
2 have detected the items that were -- in fact,
3 the Staff has submitted and you have received
4 the report from our from our investigation
5 which gives the detail.

6 Our earnings review at that time did not
7 detect these items. And so they would have
8 influenced the Staff's position as to what was
9 a reasonable settlement. So to that -- that
10 regard, you could say that it was built in to
11 the -- to that rate settlement.

12 Now, I will also say that in that rate
13 settlement there was a rate moratorium that was
14 not, in essence -- as soon as Mr. Mastdorf was
15 arrested, the earnings review started in
16 consistent with the agreement. And as I
17 mentioned earlier and I think Mr. England and
18 the Staff has noted, we are in discussions
19 regarding settlement agreement of the current
20 rate issue, and that would include all of the
21 numbers that have been found to have been the
22 result of inappropriate actions.

23 COMMISSIONER CLAYTON: There was a
24 figure that was close to the penalty figure
25 paid by Cass Tel to a contractor in Kansas. Is

1 there any connection between that figure and
2 the penalty amount?

3 MR. SCHALLENBERG: No.

4 COMMISSIONER CLAYTON: Okay.

5 Mr. Schallenberg, is it your understanding from
6 the settlement that the penalty amount is based
7 solely on the statutes authorization for a
8 certain amount of dollars per day per violation
9 and it does not reflect any particular transfer
10 or dollar amount from past actions?

11 MR. SCHALLENBERG: That's -- it's not
12 driven to make restitution for quantification
13 of some past wrongdoing. It's an amount over
14 and above that.

15 COMMISSIONER CLAYTON: Okay.

16 Mr. Schallenberg, did -- did Staff evaluate
17 whether or not the owners of Cass Tel
18 improperly withdrew any funds from the company
19 inappropriately?

20 MR. SCHALLENBERG: Yeah. The answer
21 to the question is yes.

22 COMMISSIONER CLAYTON: And -- but --
23 and so that was contemplated. But the -- the
24 penalty is not based on any of those
25 transactions?

1 MR. SCHALLENBERG: No. But the
2 consequences -- and when you say the owners,
3 there are the owners of Local Exchange, LLC.

4 COMMISSIONER CLAYTON: Well, I
5 consider LEC as one of the owners of Cass Tel,
6 correct?

7 MR. SCHALLENBERG: Right. Well, it's
8 the majority owner. It owns 99 percent of the
9 limited partnership. So all but 1 percent flow
10 to their -- to their owners. But a lot of the
11 wrongdoing was done by people who were also in
12 management positions that did self-dealing that
13 didn't necessarily flow to all of the owners of
14 LEC, but flowed to their individual enterprises
15 and to them, which -- so I want to make the
16 distinction that in all of the wrongdoing, not
17 the owners of LEC realized any benefit to that.

18 Some of that benefit was realized by
19 people who had side deals that they made with
20 Cass Tel. And they achieved that benefit. But
21 that's recognized in -- in our deals. I want
22 to make it -- our audit. I want to make sure
23 it's clear that not all the wrongdoing went to
24 LEC's owners, all of LEC's owners. Some of the

25 wrongdoing went to individuals who happen to be

1 LEC owners but were in the position of making
2 management decisions.

3 And I also need to clarify, LEC also owns
4 another telephone company in Missouri. So I
5 think there was a statement -- and that's the
6 New Florence that you mentioned earlier. And
7 that's beyond the scope of everything that's
8 been discussed today.

9 COMMISSIONER CLAYTON: Is there a
10 complaint pending against New Florence?

11 MR. SCHALLENBERG: Yes. There's a
12 complaint pending.

13 COMMISSIONER CLAYTON: Yes. Okay.

14 MR. FRANSON: Commissioner, if I may,
15 that's on page 5 of the stipulation that's
16 TC-2006-0184, the complaint against New
17 Florence.

18 COMMISSIONER CLAYTON: Whoever has
19 the answer to this, feel free to answer. If
20 the Commission were to approve this stipulation
21 and agreement and there's the prospective
22 certification for Universal Service Funds,
23 those funds would then go to presumably whoever
24 owns the company at that time. It would be --
25 it wouldn't be Cass County anymore because the

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1 -- the assets are being sold to a different
2 phone company, correct?

3 MR. FRANSON: Correct.

4 COMMISSIONER CLAYTON: I guess,
5 Mr. England, if I say something incorrect,
6 please correct me. But who would receive the
7 prospective future Universal Service Funds?

8 MR. SCHALLENBERG: At the time that
9 the funds are reinstated, whoever is the owner
10 of Cass Tel would receive those funds.

11 COMMISSIONER CLAYTON: So if the
12 purchaser in the joint application that's been
13 referenced here today is ABC Telephone and that
14 transaction goes through in a couple of months
15 knowing how quickly we process things around
16 here, ABC Telephone, I guess it's reinstated
17 ABC Telephone would receive those prospective
18 USF funds?

19 MR. SCHALLENBERG: They would enjoy
20 -- they would receive the funds for their use.
21 The funds come, in essence, of reimbursements
22 of costs that have already been made. And
23 there is a delay even when you agree to take
24 the Staff's recommendation. The federal
25 agencies then have to agree to reinstate,

1 And then they have their own timing. So there
2 is a delay into when they would get that.

3 COMMISSIONER CLAYTON: But if the --
4 if the funds or -- or if the costs are paid by
5 Cass Tel and in six months, they -- say,
6 they're reinstated, they'll be paid by Cass
7 Tel, but potentially they'll be received by
8 ABC --

9 MR. SCHALLENBERG: That's correct.

10 COMMISSIONER CLAYTON: -- correct?
11 Now, there's another provision in here that
12 makes reference to prior period and that the
13 Staff is withholding its recommendation on
14 certification for those prior periods, correct?

15 MR. SCHALLENBERG: Yes. There's a
16 condition -- there's an additional condition
17 before there would be a recommendation for
18 certification for prior periods would be --
19 that there would be more restrictions, there
20 would be more narrow restrictions on how those
21 funds would be used, which was to find -- I
22 think they used a term by a plan. So --

23 COMMISSIONER CLAYTON: Assume --
24 assume the stipulation agreement is approved.
25 Assume that the transfer -- the joint

1 application is approved and you have a new
2 owner. Who receives the funds from prior
3 certifications, Cass Tel, the shell of Cass Tel
4 and the owners of Cass Tel who spent the money,
5 or is it ABC Telephone?

6 MR. SCHALLENBERG: I'd have to see
7 the purchase agreement to see what the
8 arrangement was between the -- the current
9 owners and the new owners. I don't -- I don't
10 know the answer to that question.

11 COMMISSIONER CLAYTON: Did you
12 testify earlier to the amount of money that
13 would -- if Staff were to approve or give a
14 certification for prior periods, not
15 prospective, but prior periods, what that
16 amount of universal service support would be in
17 total?

18 MR. SCHALLENBERG: The lower number I
19 gave is based on prospective. Right now, the
20 earnings review is looking at prospective
21 certification. And I think I -- I testified to
22 a number as low as a million and a half.

23 COMMISSIONER CLAYTON: That's an
24 annual prospective number, correct?

25 MR. SCHALLENBERG: Right.

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1 COMMISSIONER CLAYTON: So the prior
2 periods, there would be two years of \$1.5
3 million?

4 MR. SCHALLENBERG: There's probably
5 -- I don't know the number. It's possible that
6 it could be higher because they were doing a
7 lot more construction in prior periods than
8 they were -- that -- you know, it's been
9 declining. So I use the number -- it's
10 probably somewhere between a million and a half
11 and \$4 million.

12 COMMISSIONER CLAYTON: And how much
13 time -- how much -- how many months in terms of
14 a prior period has universal service support
15 not been given to Cass Tel? I -- I make
16 reference to the prior periods as contemplated
17 in paragraph C-2, page 5 of the stipulation.

18 MR. SCHALLENBERG: I -- I don't --

19 COMMISSIONER CLAYTON: Mr. Franson,
20 do you know that?

21 MR. FRANSON: I'm sorry. I don't
22 believe I caught the question.

23 COMMISSIONER CLAYTON: How many --
24 how many years are involved, outstanding years,
25 where universal service support is not -- yes,

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1 Mr. England.

2 MR. ENGLAND: I'll give you a
3 ballpark. But I believe the funds stopped in
4 October of '04 and continue to be not flowing,
5 if you will, to today. So roughly 15 months,
6 maybe.

7 MR. FRANSON: And, Commissioner,
8 Natelle Dietrich, who is in the hearing room,
9 would be the one who would know all the details
10 of that for Staff. But I believe Mr. England's
11 time frame is correct.

12 COMMISSIONER CLAYTON: So you'd have
13 15 months looking back and then potentially the
14 period of time where -- prior to where the
15 joint application would be approved. So you
16 may be talking up to two years potentially of
17 back USF funds that are still floating around
18 if there is certification by Staff. Is that
19 accurate, Mr. Franson?

20 MR. FRANSON: If there is a
21 recommendation by Staff and approval by the
22 Commission, yes, I believe that would be about
23 the time frame.

24 COMMISSIONER CLAYTON: Okay.
25 Mr. England, are you in a position to advise

1 who would be the recipient of those funds if
2 they are approved? A lot of ifs between the
3 joint applicants.

4 MR. ENGLAND: Right. I think the
5 other thing that's -- that's missing in the
6 question is -- is that Cass Tel would also have
7 to have a plan for the expenditure of those
8 funds before Staff would recommend, if you
9 will, retroactive certification.

10 COMMISSIONER CLAYTON: But Cass Tel
11 wouldn't own anything at that point.

12 MR. ENGLAND: Right. But still, they
13 would have to -- I mean, you're getting sort of
14 a problem -- a practical problem, if you will.
15 And I will agree with Bob. I think you have to
16 look at the asset purchase agreement. Those
17 funds may be transferred to the new owner. I
18 -- I don't know what the provisions are, quite
19 honestly.

20 COMMISSIONER CLAYTON: So you're not
21 sure what the provision of the --

22 MR. ENGLAND: Exactly. But I guess
23 if your concern is that somehow Cass Tel sticks
24 the money that their pocket, under even under
25 the terms of this stipulation and agreement, I

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1 just don't see how that would happen. They
2 have to an agreement it spend that money on
3 plant. If they're not capable of spending that
4 money on plant because they no longer have a
5 telephone company, then I think Staff's
6 agreement is -- or certification is -- goes
7 away, if you will.

8 COMMISSIONER CLAYTON: If there is
9 pending -- the -- the agreement makes reference
10 to -- page 7, it makes reference to the fact
11 that the agreement will facilitate the sale of
12 Cass Tel's assets and that the agreement is
13 predicated on the understanding that the
14 company is going to be sold and that that joint
15 applicant for sale, the filing of that is
16 eminent or in the next -- within 30 days,
17 something like that.

18 What is meant by the language where Cass
19 Tel must have a plan to spend the -- the former
20 universal service dollars that -- that come
21 from prior periods?

22 MR. ENGLAND: I think that
23 contemplated a period of time when Cass Tel was
24 still owning these properties but had
25 sufficient controls in place to assure the

1 Staff that the monies received for those prior
2 periods would be spent appropriately.

3 And as I said, under the -- under the
4 timing that I -- we're hoping for, I'm not sure
5 that Cass Tel will be the owner of the company
6 when and if USF certification on a prospective
7 basis or on a retroactive basis might -- might
8 actually come to fruition.

9 COMMISSIONER CLAYTON: So I think my
10 original question was are you in a position to
11 advise us whether -- how this issue is treated
12 in the purchase -- sale purchase agreement?

13 MR. ENGLAND: That, I can't tell you.

14 COMMISSIONER CLAYTON: Okay. Does
15 Staff have a concern with regard to prior
16 periods for universal service support and where
17 those funds will be spent, either Mr. Franson
18 or Mr. Schallenberg?

19 MR. SCHALLENBERG: What I would say
20 is we don't because, first of all, they have to
21 come up with a plan and submit it. And I -- I
22 can say that it has been the Staff's position
23 that those monies would have to be directed
24 towards the benefit of the telephone company
25 and distributions was not considered to be one

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1 of those. And we have received no plans --
2 there are no active negotiations going on nor
3 have we even received a proposal as to a plan.
4 So there's nothing going on right now to
5 develop a plan that would activate the prior
6 period reinstatement.

7 COMMISSIONER CLAYTON: But are you --
8 and I apologize for being confused on this
9 issue. Universal Service dollars are based on
10 dollars that have already been spent by the
11 company?

12 MR. SCHALLENBERG: On prior --

13 COMMISSIONER CLAYTON: On prior --

14 MR. SCHALLENBERG: -- periods.

15 COMMISSIONER CLAYTON: -- periods.

16 So does -- does an applicant for Universal
17 Service Funding vest in a right or some sort of
18 property right to those funds if it's
19 established that they have properly used them?

20 MR. SCHALLENBERG: About --

21 COMMISSIONER CLAYTON: Because the
22 agreement -- the agreement talks about there
23 has to be a plan of how the money will be
24 spent. But how the money is spent has nothing
25 to do with how Universal Service Funds comes

1 in. It's based on prior expenditures, correct?

2 MR. SCHALLENBERG: That's correct.

3 There's two pieces. One is in the agreement.

4 There is one to allow them to have prospective

5 USF funds flow. And that's with current

6 management or under a sale.

7 But there also was the option that the

8 company could go back and petition USAC to have

9 monies that it did not receive in the prior

10 periods when it was not certified. And that's

11 the piece -- but that would still be based on

12 historical cost studies to quantify that

13 amount.

14 COMMISSIONER CLAYTON: Are you in a

15 position to advise the Commission of how that

16 prior period USF funding is treated in the --

17 in the Asset Purchase Agreement that's been

18 contemplated here today or discussed here

19 today?

20 MR. SCHALLENBERG: No. The Staff --

21 the Staff has not seen the Asset Purchase -- I

22 mean, we've been interviewed by prospective

23 owners, but we've not seen any of the details

24 as to -- of the distribution of the liabilities

25 and assets who is going to absorb what.

1 MR. FRANSON: Commissioner, I need to
2 add one thing. The Staff yesterday was
3 presented with a copy of this agreement. But
4 because it is not a case before the Commission
5 yet, we have not gone through it. And because
6 it is proprietary, it has not been examined in
7 detail. But some of the questions you've
8 raised today could obviously be answered in the
9 relatively near future, especially when that
10 application is filed.

11 COMMISSIONER CLAYTON: I don't think
12 I have any other questions at this time. Thank
13 you.

14 JUDGE WOODRUFF: Chairman Davis, do
15 you have any questions?

16 CHAIRMAN DAVIS: Okay. I apologize
17 for getting here late. Mr. Molteni, it's my
18 understanding that you expressed concern that
19 you didn't want the ratepayers to pay any of
20 this proposed fine; is that correct?

21 MR. MOLTENI: Yes. We expressed a
22 concern that there's nothing within the
23 stipulation presented that guarantees
24 ratepayers won't be paying the fine.

25 CHAIRMAN DAVIS: If we made our

1 approval of this stipulation and agreement
2 contingent on the fact that the ratepayers
3 would -- could not be assessed for any portion
4 of that fine, not one cent, if we could come up
5 with some language like that, would that --
6 would that satisfy you? Or do you think the
7 fine itself is not enough or --

8 MR. MOLTENI: I -- I can't say I know
9 enough about how the fine was calculated to be
10 able to answer that question well,
11 Commissioner. That is a concern that we have
12 in -- in essence, how the fine will be
13 financed.

14 The -- the other concern -- with -- just
15 with your question, though, this stipulation is
16 contingent upon the Commission's approving it
17 as-is. I think if you make a condition of
18 approval, it's not this stipulation anymore.
19 Maybe Mr. Franson or Mr. England could address
20 that better. But I -- I do believe there's a
21 provision in the stipulation that it says if
22 the Commission doesn't accept it as-is, it's
23 off the table.

24 And there are other problems with this
25 stipulation, Commissioner, that -- that I think

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1 we have discussed prior to your being able
2 to --

3 CHAIRMAN DAVIS: I apologize. Could
4 you briefly summarize what those concerns are
5 again just so --

6 JUDGE WOODRUFF: Mr. Molteni, if
7 you'd turn on your microphone. I'm not sure
8 it's on.

9 MR. MOLTENI: Yes, Commissioner
10 Davis. There's -- there's a problem with the
11 ambiguity of the enforcement language in the --
12 in the stipulation that -- that we went back
13 and forth about.

14 There's an issue that -- that Commissioner
15 Gaw raised about relieving third parties that
16 the Commission Staff says is essentially
17 superfluous language in the Commission -- or in
18 the stipulation because it doesn't mean
19 anything.

20 There is a concern as is the -- because
21 the sale hasn't been effectuated that -- and
22 it's perfectly plausible if the sale of Cass
23 Tel doesn't -- of its assets doesn't go through
24 that the Staff will be asking this Commission
25 to recommend to the Federal Communications

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1 Commission Universal Service Funds for an
2 entity that it owned by convicted felons.
3 So that -- that is another -- that is another
4 concern.

5 And then we also talked about in expending
6 Universal Service Funds in the future, is there
7 any -- any guarantee to -- that they will be
8 properly expended. And, again, we went back
9 and forth a lot about the terms of the
10 enforcement of -- of the stipulation of itself
11 and whether it waives any kind of future
12 enforcement because of the way it's worded.
13 There's at least ambiguity on that.

14 And I think those are the concerns, I'm
15 missing a couple, that we've discussed earlier
16 today, sir.

17 CHAIRMAN DAVIS: Okay. Mr. Franson,
18 I see you wanting to say something.

19 MR. FRANSON: Oh, several --

20 CHAIRMAN DAVIS: Would you care to --
21 care to please --

22 MR. FRANSON: I would. Thank you
23 very much, Chairman Davis.

24 CHAIRMAN DAVIS: Tell me what's on
25 your mind, Mr. Franson.

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1 MR. FRANSON: Well, several things.
2 One, Mr. Molteni has now backed off that --
3 from his apparent assertion that this
4 stipulation and agreement is not limited to the
5 time and place of the agreement.

6 It needs to be remembered, there were four
7 counts in a complaint. This document is
8 designed solely to settle those four
9 complaints.

10 Now, there's no question, there are other
11 pieces that flow right out of this. But right
12 this moment, the only issue before this
13 Commission is whether this stipulation and
14 agreement should be approved. And Staff is a
15 signatory to it and is recommending it. Now --

16 CHAIRMAN DAVIS: Okay. Mr. Franson,
17 can I ask you a question? And then I'll allow
18 you to go on.

19 MR. FRANSON: Yes, sir.

20 CHAIRMAN DAVIS: Cass Tel has roughly
21 8,000 customers.

22 MR. FRANSON: I believe that's about
23 the right number.

24 CHAIRMAN DAVIS: How can we expect
25 them to pay any part of this fine in whole or

1 in part? Because I don't think they should
2 have to pay anything. But, you know, is that
3 some sort of expectation in this agreement?

4 MR. FRANSON: No, it's not.
5 Could I ask Mr. Schallenberg a question about
6 that because I think it -- how that would come
7 up would be in the context of a rate case.

8 CHAIRMAN DAVIS: Right. Okay.

9 MR. FRANSON: Mr. Schallenberg,
10 assume that you have a company, we'll call it
11 Cass Tel, and it's paid a million dollar
12 penalty and we're out a ways and they're in
13 here in a rate case. How would you expect that
14 that -- first of all, how would it be handled
15 in a rate case?

16 And I'm just talking about the procedural
17 aspects. And do you have any opinion at this
18 point what Staff's reaction might be?

19 MR. SCHALLENBERG: Well, first of
20 all, customers pay tariff rates. So the tariff
21 rates would be whatever was approved by this
22 Commission. If you were to see a company that
23 had a penalty, penalties are normally what we
24 use the term cost of service below the line.

25 So that would mean that a company would

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1 have to, first of all, book it above the line,
2 which is the expenses that go into the
3 consideration for rates in order to have them
4 make an active proposal to try to get it in the
5 cost of service.

6 The Staff and the office of Public
7 Counsel, which would be -- they're always
8 parties to all of these cases-- would have to,
9 one, agree it that type of a proposal, which is
10 not likely because, in my tenure, I'm not aware
11 any penalty of this nature that we have ever
12 recommended should be placed in cost of
13 service.

14 Then it would go -- if it was not resolved
15 and the company continued to assert its rights
16 to recover that, it would go before the
17 Commission for a determination.

18 And then, depending on, whoever wins and
19 has appellate rights, it could go through the
20 courts.

21 MR. FRANSON: And, Chairman Davis, I
22 would also add in a future rate case
23 proceeding, certainly, the Attorney General
24 could seek to intervene if they so chose.
25 But --

1 CHAIRMAN DAVIS: Well, I mean, Mr.
2 Franson, I mean, we're Commissioners here. And
3 we have six year terms, and some of our terms
4 are expiring --

5 COMMISSIONER CLAYTON: Sooner than
6 others.

7 CHAIRMAN DAVIS: -- Sooner than
8 others. And, you know, I understand that it's
9 Mr. Schallenberg's intention to work here
10 forever. But we won't be -- we won't all be
11 around. So wouldn't it just be better if we
12 articulated, you know, that premise upfront to
13 provide the ratepayers of -- of Cass Tel some
14 security?

15 MR. FRANSON: Certainly, your Honor
16 -- certainly, it would be. And that is a con
17 -- if the Commission -- if the Commission wants
18 to add conditions, it's not necessarily a death
19 sentence for this stipulation and agreement.

20 The stipulation and agreement allows for
21 the parties to say, yes, that additional
22 condition is okay. We all agree. There's also
23 the chance that that won't happen. But there
24 is the chance that it would.

25 So if the Commission said, We approve

1 everything, but we add this condition and that
2 is -- we want assurance and here's how we want
3 it that ratepayers will not pay this, it won't
4 be sought by the company in the future, it --

5 CHAIRMAN DAVIS: All right.

6 Now, how is -- how is this penalty calculated?
7 Can Mr. Schallenberg speak to that or --

8 MR. FRANSON: It was the result of
9 negotiations. Was it focused on one certain
10 thing? No. And what Mr. Schallenberg would
11 know, I'd like to learn also.

12 CHAIRMAN DAVIS: Mr. Schallenberg?

13 MR. SCHALLENGER: The -- there was
14 no formula that was used. It -- it came out of
15 negotiations. It was a number that was derived
16 by the Staff. I would say probably the two
17 principals be myself and Mr. Anderson.

18 And it was -- you know, at one time, we
19 were higher. But that was the final number we
20 agreed upon.

21 CHAIRMAN DAVIS: Mr. England, what's
22 your expectation about who would pay this fine?

23 MR. ENGLAND: I believe the owners
24 would pay the fine. I think Mr. Schallenberg
25 and/or Mr. Franson correctly noted that, at

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1 least as far as rates today are concerned,
2 there's no elements of this fine in those
3 rates. And any rate that this Commission may
4 set in the future would have to explicitly
5 acknowledge the inclusion of this fine. And
6 it's certainly not our expec -- our expectation
7 to include this fine in future cost of service.

8 CHAIRMAN DAVIS: And when you say the
9 owners, is that LEC?

10 MR. ENGLAND: Correct.

11 CHAIRMAN DAVIS: And is this the same
12 LEC group that was involved in, what was it, a
13 cramming operation in Kansas that I think there
14 were, what was that, 750 million or some -- it
15 was a big number because any -- Mr. Franson and
16 Mr. Schallenberg, can you help me with that?

17 MR. FRANSON: I --

18 MR. SCHALLENBERG: The -- there are
19 owners in LEC that were involved in an Internet
20 scheme.

21 CHAIRMAN DAVIS: Uh-huh.

22 MR. SCHALLENBERG: And there are
23 owners in LEC that were also involved in a
24 cramming scheme that was operated apart from
25 Missouri and then moved to Overland Park.

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1 CHAIRMAN DAVIS: Okay.

2 MR. SCHALLENBERG: But that's not all
3 of -- not all of the owners of LEC were
4 involved in those schemes.

5 CHAIRMAN DAVIS: Right.

6 MR. SCHALLENBERG: Some of the owners
7 of LEC were involved in those schemes.

8 CHAIRMAN DAVIS: Let me ask you this:
9 In the four counts alleged, and I guess the
10 complaint against Cass Tel, I mean, what is the
11 actual amount of -- of damages that has been
12 done to USF funds to the consumers of Cass Tel,
13 the ratepayers as well as -- you know,
14 obviously, there were some alleged
15 misrepresentations by Mr. Matsdorf to this
16 Commission.

17 MR. FRANSON: I -- Chairman Davis, at
18 the federal indictment, the number was 8.9
19 million. The federal system has identified
20 NECA and USF as the recipients. And the amount
21 of money being forfeited by the two Martinos
22 and Mr. Matsdorf is 8.9 million. And that was
23 the amount that was identified in the federal
24 indictment.

25 CHAIRMAN DAVIS: Okay.

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1 MR. MOLTENI: Mr. Chairman, may I --

2 CHAIRMAN DAVIS: Yes, Mr. Molteni.

3 MR. MOLTENI: May I express another
4 concern that's kind of a footnote to this idea
5 that the Commission wouldn't allow the fine to
6 be passed off to the ratepayers?

7 CHAIRMAN DAVIS: Certainly.

8 MR. MOLTENI: That term, of course,
9 isn't in the stipulation. But I'm assuming
10 there's a purchase price for this -- this
11 company. And I don't know how the Commission
12 would deal with the purchase price in the
13 future when it sets rates. But that purchase
14 price will likely have some kind of a premium
15 in it or will likely, whether it says it or it
16 doesn't say it in the transaction, deal with
17 the fact that a million -- that the company has
18 a million dollars in fines.

19 And -- and it's not just a matter of
20 simply saying, Oh, well, if you come into a
21 rate case and you ask that rates be set to help
22 us finance the fine, I mean, I think the level
23 of analysis is a little more sophisticated and
24 difficult to pinpoint than that.

25 CHAIRMAN DAVIS: Right. Right.

1 Right. Right. I know when the -- is it the
2 Senior Care and Protection Act of 2003, there
3 is some language that says fines have to follow
4 the owners at the time of the accident? So --
5 and I -- Mr. Schallenberg, this Commission has
6 never approved an acquisition premium; is that
7 correct? Or maybe it's arguably that we might
8 have in some limited circumstances, I guess.

9 MR. SCHALLENBERG: If -- if the
10 Commission has adopted a positive acquisition
11 adjustment in its history, it's been very, very
12 rare. In most cases, the cost of service is
13 based on the original cost of the assets.

14 CHAIRMAN DAVIS: All right.

15 MR. SCHALLENBERG: Unless it was
16 distressed. And the original owners were
17 taking responsibility. And then you would set
18 rates on the discounted value.

19 CHAIRMAN DAVIS: Right.

20 MR. SCHALLENBERG: But to approve a
21 positive premium, it's rare, if it's ever
22 happened in the history of this agency.

23 CHAIRMAN DAVIS: Okay. So let me ask
24 you this, Mr. Molteni. If we were -- it was at
25 the request to wait until after that

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1 transaction would be consummated before this
2 one would be approved. Did I understand that
3 right? Or does this have to be approved before
4 that transaction can -- can take place?

5 MR. FRANSON: The provisions of this
6 agreement contemplate -- this agreement stands
7 on its own. It is possible that the Commission
8 will do whatever it does on the application.
9 But if -- but they could even deny that, and
10 this -- this case would still be before the
11 Commission.

12 So it's it possible the Commission could
13 approve this, disapprove the cell case or any
14 combination. They're separate and distinct.

15 CHAIRMAN DAVIS: Right. And we have
16 had instances, Mr. Franson, where small
17 utilities have had sales agreements where, you
18 know, they were attempting to put, you know,
19 \$250,000 worth of attorney fees into the
20 acquisition price and some other things.
21 Are you -- are you aware of any of those cases?

22 MR. FRANSON: Not on the \$250,000 in
23 attorneys fees. But I'm aware of several cases
24 where there were interesting things trying to
25 be placed into the acquisition case.

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1 CHAIRMAN DAVIS: Yes. I'm trying to
2 think of how we could be vigilant in this case
3 and maybe provide that there -- you know, may
4 we could put another condition that the
5 acquisition can't include any provision for an
6 acquisition premium related to -- to fines or
7 anything else that would -- would negatively
8 affect the -- the customers of Cass Tel.

9 Mr. England, did you have anything you
10 wanted to pass on to us from Mr. Boudreau or --

11 MR. ENGLAND: Not yet.

12 CHAIRMAN DAVIS: Okay. Relief of the
13 third parties. I mean, are we relieving
14 Mr. Matsdorf? Are we relieving -- let me think
15 of -- are we relieving Bob Williams, New
16 Florence Telephone? Does the settlement
17 agreement relieve anyone else of any
18 obligations?

19 MR. FRANSON: It does not relieve New
20 Florence simply because that's a particular
21 exclusion. There's a complaint case, I believe
22 it was TC-2006-0184, that is not involved in
23 this. This is strictly Cass Tel. It is
24 designed to be a comprehensive settlement with
25 Cass Tel and the things that could have been --

1 complaints that could have been brought in.

2 And the way it's worded is that includes
3 Cass Tel and LEC. And by extension, that would
4 exclude most of the names. I don't know about
5 -- I believe you've mentioned Bob Williams. I
6 don't know the particulars on Mr. Williams.
7 But on the owners of LEC and Cass Tel, it is
8 design to cover things because we're trying to
9 bring it all into one.

10 As far as the third party language, that
11 being other entities that can try and bring a
12 complaint, that is in there. But I'm not sure
13 it has much legal value if there is a third
14 party out there that wanted to bring a
15 complaint. And Mr. England says he would field
16 questions on that. I would invite him to do so
17 because that language was put in there at his
18 insistence.

19 CHAIRMAN DAVIS: Mr. England, would
20 you care to expand on that language?

21 MR. ENGLAND: Yeah. Are you asking
22 me to address your question about Mr. Matsdorf
23 and Williams or Mr. Franson's remark about
24 third parties?

25 CHAIRMAN DAVIS: Both.

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1 MR. ENGLAND: I believe the release
2 in the language is intended to release both
3 Cass Tel, and as you'll see, is successors,
4 assigns, partners, agents, managers, officers
5 and employees and qualified by the phrase to
6 the extent the Commission has jurisdiction with
7 respect to LEC and the same entities that
8 relate to LEC. So in that case, yes,
9 Mr. Matsdorf I think would be released if this
10 were approved relating to matters that were
11 investigated pursuant to Staff's investigation.

12 With respect to Mr. Williams, I don't
13 believe that he qualifies as a --

14 CHAIRMAN DAVIS: He's not a Cass
15 Tel --

16 MR. ENGLAND: -- employee, agent or
17 anything of that nature, nor is he a LEC agent,
18 employee or anything of that nature. And it's
19 -- as Mr. Franson correctly noted, New Florence
20 has been specifically exempted from the -- from
21 the stipulation.

22 With respect to third parties, we believe
23 that while we can't necessarily bind third
24 parties who might want to pursue a complaint
25 under the Public Service Commission law, to the

1 extent this has been resolved to your
2 satisfaction, we think that probably the issue
3 of much double jeopardy and collateral estoppel
4 and what have you would probably apply.

5 So I think it's -- it's important from our
6 perspective to have that language regarding
7 third parties.

8 MR. FRANSON: I -- Chairman Davis, I
9 -- double jeopardy would certainly have no
10 applicability. That's strictly a criminal
11 concept. So that would be the only thing I'd
12 add.

13 CHAIRMAN DAVIS: All right. Because,
14 I mean, you know, there -- there is some
15 concern that Cass Tel ratepayers have overpaid.
16 And, therefore, you know, what do you do if an
17 individual ratepayer comes in and says, you
18 know, I think I've been over-charged? You
19 know, how are -- how is this Commission
20 supposed to deal with that?

21 MR. FRANSON: Well, a couple things
22 on that. No. 1, unfortunately, there is no
23 mechanism that -- if a company's rates have
24 been too high, there is no mechanism to go back
25 and get money from that company. All you can

1 do is go forward.

2 The second thing is if a customer comes in
3 -- and may I ask Mr. Schallenberg to be sure
4 I'm -- didn't miss anything?

5 CHAIRMAN DAVIS: Absolutely.

6 MR. FRANSON: Mr. Schallenberg, did
7 you hear my last comment? Could you --

8 MR. SCHALLENBERG: Yes. And I think
9 the Chairman wasn't here when we mentioned
10 earlier, there are three pieces that are going
11 on. There is the sale. There is this -- the
12 settlement of this complaint. And there's the
13 earnings review.

14 And as was pointed out earlier this
15 morning, those discussions about -- regarding
16 the settlements, regarding the current rates
17 and what will be afforded to Cass Tell's
18 customers that I think it was stated we have an
19 agreement in principle.

20 MR. FRANSON: But, Mr. Schallenberg,
21 in -- if the Staff becomes aware of an
22 over-earnings situation and -- is there any way
23 to go back and get money from the company that
24 you're aware of?

25 MR. SCHALLENBERG: Not unless the

1 rates were interim subject to refund.

2 MR. FRANSON: And Cass Tel's rates
3 were not interim subject to refund, were they?

4 MR. SCHALLENBERG: No, they were not.

5 MR. FRANSON: I believe I've answered
6 your questions, Chairman Dave, unless you tell
7 me otherwise.

8 CHAIRMAN DAVIS: Okay. No further
9 questions at this time, Judge.

10 JUDGE WOODRUFF: All right. Anything
11 else from the Commissioners?

12 COMMISSIONER GAW: Just a few, Judge.
13 I -- I've already stated I have a lot of other
14 questions, but I'm going to hopefully wait
15 until we have all of this in front of us.

16 Mr. Schallenberg, do you -- in the report
17 that you prepared, does it detail the amount of
18 money that has been received from Cass Tel to
19 LEC, first question, over the last year since
20 their ownership?

21 MR. SCHALLENBERG: It does not
22 specifically identify that -- that LEC has made
23 equity in fusions. Now, Cass Tel has earned a
24 healthy profit. So when you say they have a
25 profit and they don't take all of it out in

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1 distributions, that's an equity in fusion as
2 well. So I don't want to mislead you. There
3 has been equity left in Cass Tel in order to
4 fund its construction just as it uses
5 depreciation. But there have been
6 distributions. The report also identifies --

7 COMMISSIONER GAW: Does it -- does it
8 identify those distributions by amount and
9 timing?

10 MR. SCHALLENBERG: I don't believe
11 that we -- we, in essence made it specific in
12 there that you could look at --

13 COMMISSIONER GAW: Do you have that
14 information?

15 MR. SCHALLENBERG: Yes. We would
16 have that information. In fact, I believe it
17 would also be in Cass Tel's annual report.

18 COMMISSIONER GAW: The distributions?

19 MR. SCHALLENBERG: It would show --
20 of distributions to the owner because it
21 affects what equity still remains within the
22 firm.

23 COMMISSIONER GAW: Okay. Could --
24 could you provide that to us in -- in some sort
25 of an exhibit?

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1 MR. SCHALLENBERG: We'll prepare --
2 we'll prepare a schedule that will show you
3 distributions and equity from the company --

4 COMMISSIONER GAW: And the other --
5 I'm sorry. I interrupted you. And the other
6 distributions that you refer to, payments or
7 other things that went to the individual that
8 were affiliated with LEC, do you have -- are
9 those amounts contained in -- in your report?

10 MR. SCHALLENBERG: Yes.

11 COMMISSIONER GAW: Okay. Can you
12 reference me the location in the report to look
13 for it?

14 MR. SCHALLENBERG: Right. I can --
15 what I'll do is -- what can I do is in the
16 exhibit we prepare --

17 COMMISSIONER GAW: Yes.

18 MR. SCHALLENBERG: -- I can put
19 together the distributions that went to LEC and
20 the earnings. And then I can designate where
21 in the report we identified amounts that were
22 taken out --

23 COMMISSIONER GAW: Okay.

24 MR. SCHALLENBERG: -- either by LEC
25 or individuals that were owners or managers of

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1 Cass Tel.

2 COMMISSIONER GAW: Is this report a
3 part of the -- that you're referring to a part
4 of the case file here in this case?

5 MR. SCHALLENBERG: I don't believe
6 so.

7 JUDGE WOODRUFF: No, it's not.

8 MR. FRANSON: I don't believe so.

9 COMMISSIONER GAW: Shouldn't it be if
10 the Stipulation is based upon a release of any
11 further proceedings involving your
12 investigation?

13 MR. FRANSON: I don't think there's
14 any question. If the Commission wants to so
15 order, that can be done.

16 COMMISSIONER GAW: How else would we
17 be able to determine from the record what the
18 Stipulation was referring to? That's all. You
19 don't have to answer that one. I -- I think,
20 Judge, that would be the other thing I would
21 ask. And then --

22 JUDGE WOODRUFF: Let me deal with
23 that. If Staff would please file in the
24 case --

25 MR. FRANSON: That's the report from

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1 the investigation case?

2 JUDGE WOODRUFF: Yes.

3 MR. FRANSON: Okay. I believe that
4 -- that will be filed since I've just been
5 ordered directly to do it. But I will remind
6 the Judge that that is -- the full version is
7 highly confidential, so it will be filed in
8 that way.

9 COMMISSIONER GAW: So is there a
10 public and HC version of that report?

11 MR. FRANSON: I believe -- no. My
12 information is there's only a highly confident
13 recall version.

14 COMMISSIONER GAW: So we should just
15 have a vote to determine whether to declassify
16 all of it then?

17 MR. FRANSON: That's certainly an
18 option. Yes, sir.

19 JUDGE WOODRUFF: Perhaps the parties
20 can get together amongst themselves and discuss
21 what part can be declassified and which part
22 would be highly confidential.

23 Mr. England, do you want to --

24 MR. ENGLAND: Staff has already
25 submitted a draft report to the company and

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1 asked their input on that. And we chose to,
2 under the circumstances, because of the way
3 it's prepared and the confidential information
4 really permeates throughout the report. We
5 couldn't find a -- a -- a good way to just
6 redact it without making it mean no sense. So
7 we asked that the entire report be
8 confidential.

9 There are matters of -- of business
10 matters that are otherwise not publicly
11 available. There are operational issues that
12 are -- that are confidential in there. And
13 perhaps, most importantly, there is discussions
14 of employees, officers and what have you that I
15 believe are based on testimony they gave and
16 depositions that they understood to be
17 confidential. They have certain rights in that
18 material being maintained confidential as well.

19 JUDGE WOODRUFF: All right. Well,
20 I'll ask Staff to file it as highly
21 confidential at this point. As -- if the
22 Commission wishes to do something else with it,
23 I'll -- we'll give the parties a chance to
24 respond to -- before we declassify it.

25 MR. FRANSON: Would this Friday the

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1 13th be -- I will be out of the office tending
2 ten to go another case today. Will Friday the
3 13th be soon enough?

4 JUDGE WOODRUFF: I believe so. Yes.

5 COMMISSIONER GAW: Judge, I'm not --
6 I mean, depending on how quickly the rest of
7 the Commission is desiring to deal with the
8 Stip., if we're going to wait until that other
9 information comes in, I'm not trying to push to
10 get it done immediately.

11 JUDGE WOODRUFF: Certainly.

12 COMMISSIONER GAW: The other question
13 I have, Mr. Schallenberg, do you have a list of
14 all of the individuals who are owners of LEC
15 and the other individuals who are partners in
16 Cass Tel?

17 MR. SCHALLENBERG: Yes. The Staff
18 has the list of owners.

19 COMMISSIONER GAW: Is that contained
20 in this -- in the report you referred to
21 earlier?

22 MR. SCHALLENBERG: The report
23 identifies -- it identifies the owners and
24 their relative percentage of LEC that have been
25 indicted, either in New York or in Kansas City.

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1 COMMISSIONER GAW: All right.

2 MR. SCHALLENBERG: But I don't -- I
3 don't recall that we, in essence, identified
4 all of the other non-indicted owners. But we
5 do have that information.

6 COMMISSIONER GAW: Could that be
7 filed as well?

8 MR. SCHALLENBERG: I mean, yes. It
9 was highly -- it was given to us as highly
10 confidential.

11 COMMISSIONER GAW: So far, it looks
12 like everything's HC in here that's been
13 referred to, so I don't know what the
14 difference is at this point.

15 MR. SCHALLENBERG: We have that
16 response.

17 COMMISSIONER GAW: Okay. And the
18 other two owners -- I think there were two own
19 partners of Cass Tel besides LEC.

20 MR. SCHALLENBERG: There have been
21 more owners of LEC that have pled guilty to the
22 charges than the Martinos and Mr. Matsdorf.

23 COMMISSIONER GAW: Yes.

24 MR. SCHALLENBERG: The report
25 identify and tracks the owners that were

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1 indicted. I'm not sure it's current as to all
2 of New York. But it identifies those owners.

3 COMMISSIONER GAW: And, actually, I'm
4 -- I'm not getting my point across. The
5 partners with LEC of Cass Tel, are they
6 identified?

7 MR. SCHALLENBERG: I don't -- I don't
8 believe they're -- well, I'll put it this way:
9 Yes. They're in the report.

10 COMMISSIONER GAW: Okay.

11 MR. SCHALLENBERG: But they were not
12 -- those two partners were not indicted.

13 COMMISSIONER GAW: Yes. But their
14 names are in the report?

15 MR. SCHALLENBERG: Either that or the
16 firm. Now, and part of when you say the
17 owners, a lot of the owners are trusts or
18 companies --

19 COMMISSIONER GAW: Yes.

20 MR. SCHALLENBERG: -- that we, in
21 essence, had to do searches to identify the
22 relationship.

23 COMMISSIONER GAW: Yes.

24 MR. SCHALLENBERG: And I'm not sure
25 that one of the owners -- one of the minority

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1 owners isn't identified by the firm that he
2 controls versus that it has his name. Well, I
3 -- when I look at the report to respond, if it
4 gives a firm's name and if there's a name
5 behind it, we can provide that with our
6 response to your questions.

7 COMMISSIONER GAW: If it's a name
8 behind it -- particularly, on that issue alone,
9 if the name behind it is something that ties
10 into any of the criminal indictments, I would
11 be more interested in it.

12 MR. SCHALLENBERG: I can tell you
13 that the two minority owners have not been
14 indicted.

15 COMMISSIONER GAW: Well, I want to
16 know --

17 MR. SCHALLENBERG: But we can provide
18 it.

19 COMMISSIONER GAW: I would like to
20 know their names since they are owners of Cass
21 Tel.

22 MR. SCHALLENBERG: We will provide
23 that.

24 MR. FRANSON: Commissioner Gaw and
25 Judge, there is two reports, actually. One is

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1 in January of 2005. It's my understanding that
2 was a highly confidential and public version.
3 The August 2005 is highly confidential in its
4 entirety. It is Staff's intent to file all of
5 those in this case.

6 COMMISSIONER GAW: Would it be true,
7 Mr. Franson, that the language in this
8 stipulation that talks about Staff's
9 investigation would refer to things that were
10 contained in both documents?

11 MR. FRANSON: It -- there are
12 certainly some things that came out of that.
13 Yes. However, when Staff was initially
14 pursuing this, these came much more out of the
15 audit. But, yes, in preparing for trial of
16 this, we would have been taking things out of
17 there and presenting those through witnesses,
18 yes.

19 COMMISSIONER GAW: Okay. And in
20 regard to Mr. Matsdorf individually, does Staff
21 agree with Mr. England that Mr. Matsdorf is off
22 the hook as far as this Commission is concerned
23 if this Stipulation is approved?

24 MR. FRANSON: As far as anything
25 further beyond what he's already gone through,

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1 as far as this Commission being able to do
2 anything to him? Yes.

3 COMMISSIONER GAW: Well, this
4 Stipulation doesn't do anything to him, does
5 it?

6 MR. FRANSON: Him directly, no, sir,
7 it does not.

8 COMMISSIONER GAW: You know, one of
9 the reasons supposedly for this fine has to do
10 with his misrepresentations to this Commission.

11 MR. FRANSON: That is correct.
12 However, Count IV is that exact matter. So it
13 is certainly included.

14 COMMISSIONER GAW: Are there
15 potential criminal penalties that could have
16 resulted from violations of Public Service
17 Commission law that are no longer available if
18 the Stipulation is approved?

19 MR. FRANSON: Well, we're going to
20 have to go out on that one. Each of these may
21 have been subject to some kind of state
22 criminal violation. And the one that first
23 comes to mind is perjury.

24 However, as a former prosecutor, I can
25 tell you that is extremely difficult to prove.

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1 COMMISSIONER GAW: I'm not asking
2 your opinion about whether it's difficult,
3 Mr. Franson.

4 MR. FRANSON: Yes, sir.

5 COMMISSIONER GAW: I'm asking you
6 whether or not there are criminal penalties
7 that would be waived potentially as far as the
8 ability of -- of any appropriate authority to
9 pursue them if this Commission approves this
10 stipulation.

11 MR. FRANSON: Could a prosecutor
12 still prosecute something? Since the
13 prosecutor would not be a party to this case, I
14 guess it's theoretically possible, whether it's
15 perjury or anything else that the prosecutor
16 wanted to bring against individuals.

17 As far as any direct violations that this
18 Commission has jurisdiction over, in a civil
19 context, which is really what we're talking
20 about or --

21 COMMISSIONER GAW: That's not my
22 question.

23 MR. FRANSON: Okay.

24 COMMISSIONER GAW: My question has to
25 do with criminal provisions in the Public

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1 Service Commission law. Are -- does this
2 Stipulation contemplate the waiver of the
3 pursuit of those criminal provisions in the
4 Public Service Commission law?

5 MR. FRANSON: I think that Staff has
6 not contemplated that. I would also believe
7 that if --

8 COMMISSIONER GAW: Well, it doesn't
9 -- there's nothing in the stipulation saying --
10 saying that that's -- that that's the case, is
11 there?

12 MR. FRANSON: No, there's not.

13 COMMISSIONER GAW: In fact, the
14 Stipulation doesn't seem to say anything that
15 can follow from this is no longer available.

16 MR. FRANSON: It does seem to say
17 that. However, I think that there would have
18 to be a caveat on that as far as what the
19 parties could actually control and what this
20 Commission can control.

21 If a prosecutor wanted to bring charges,
22 that -- I don't know that this would be a bar
23 to that. It would certainly be something that
24 individuals could raise. But how that would
25 play out in a criminal case, I really wouldn't

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1 know.

2 COMMISSIONER GAW: Well, that's part
3 of my problem. I don't know either.

4 MR. ENGLAND: Your Honor, may I
5 address that question?

6 JUDGE WOODRUFF: Mr. England.

7 MR. ENGLAND: I think, to some
8 degree, if I understood your question,
9 Commissioner Gaw, you're correct. It would
10 foreclose -- it's in paragraph B-2 on page 4,
11 pending or unfiled actions for any penalty or
12 forfeiture under or by virtual of the Public
13 Service Commission law.

14 Now, with respect to Mr. Matsdorf, I
15 believe Staff has acknowledged in their
16 complaint that he testified pursuant to statute
17 back in the 386.470. So I believe as a result,
18 he has some transactional, if not complete
19 transactional, immunity. So I'm not sure that
20 your -- that there's -- that Staff is -- is
21 giving anything, if you will, in that regard.

22 I mean, it -- that -- that the release we
23 have in here is -- it's releasing Mr. Matsdorf
24 for something he doesn't already have immunity
25 from.

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1 COMMISSIONER GAW: And he has
2 immunity because of what again?

3 MR. ENGLAND: 386.470.

4 COMMISSIONER GAW: Which says what?

5 MR. ENGLAND: That has to do with
6 transactional immunity when he testifies or any
7 person testifies under the direction of the
8 Commission.

9 MR. FRANSON: If I may, Staff does
10 not agree with that representation. The
11 reference to the statute may very well be
12 correct. However, there's a specific
13 exemption. No one can come to this Commission
14 and lie.

15 If someone's compelled to come here and it
16 -- and they're truthful testimony implicate
17 them elsewhere, that is the transactional
18 immunity. But if someone comes here and lies
19 to this Commission, as Mr. Matsdorf did, it
20 does not apply.

21 Now, I know that the Cass Tel pleadings
22 would suggest otherwise, but Staff emphatically
23 does not agree with that.

24 COMMISSIONER GAW: Well, that would
25 be a very interesting situation for this

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1 Commission to know that anyone who comes in
2 here at the Commission's request does not have
3 any -- any worry about -- about perjuring
4 themselves.

5 MR. ENGLAND: Your Honor, let me jump
6 in here and clarify something. I agree with
7 Mr. -- there is an exception of perjury.
8 I was talking transactions, matters that he
9 testified about, payments to -- to Overland
10 Data, things of that nature.

11 JUDGE WOODRUFF: I'm going to jump in
12 now. We're due to take a break. Let's take
13 about a five-minute break and come back at
14 about 11:25.

15 (Break in proceedings.)

16 JUDGE WOODRUFF: All right. Let's
17 come back to order, please. Let's come to
18 order please. Right before we took our break,
19 Commissioner Gaw was asking questions, and he
20 may continue.

21 COMMISSIONER GAW: I think I'm about
22 finished. I wanted to see if Mr. Molteni had
23 any comments in regard to the issue of the
24 criminal matters.

25 MR. MOLTENI: I -- I don't know how

1 to interpret the -- the proposed Stipulation in
2 that context. And I wonder whether it means
3 that if the Commission were to file a perjury
4 complaint, for example, with the Cole County
5 prosecutor for Mr. Matsdorf's perjuring himself
6 in testimony before the Commission about
7 whether this complaint precludes the Commission
8 from doing that regardless of whether the Cole
9 County prosecutor is -- is estopped or whatever
10 term you would like to use from prosecuting a
11 perjury complaint.

12 COMMISSIONER GAW: Okay.
13 Anyone else? Mr. Franson?

14 MR. FRANSON: Well, I -- I am aware
15 that Staff certainly consulted with the
16 prosecutor and perhaps the Attorney General's
17 office. I don't know the particulars of it.
18 But the complaint was certainly the result.
19 And what impact that would have in front of a
20 -- a judge saying, Well, I'm -- I can't be
21 prosecuted because of a civil agreement over at
22 the Public Service Commission, I'm not sure
23 anybody here knows today.

24 COMMISSIONER GAW: Are there any
25 forfeiture provisions in the Public Service

1 Commission law?

2 MR. FRANSON: You mean forfeiture of
3 ownership in a company? Is that what you mean?

4 COMMISSIONER GAW: Of any kind.

5 MR. FRANSON: Other than the --

6 COMMISSIONER GAW: I asked that
7 because you think the word forfeiture might
8 have been used in the Stip. I may be mistaken.

9 MR. FRANSON: The -- as far as --
10 certainly, we have the criminal forfeiture law,
11 but that deals with instruments of criminality
12 used. As far as anything in the Public Service
13 Commission law, I'm not aware of anything. And
14 -- and these owners out there, whatever their
15 criminal or civil statutes, they're still the
16 owners of the company and certainly --

17 COMMISSIONER GAW: Wasn't Cass Tel,
18 under some interpretation, used to -- to
19 defraud the USF funds?

20 MR. FRANSON: Certainly. And if the
21 federal prosecutor had wanted to try and
22 forfeit more, they might have been able to do
23 that. But that would -- and then under State
24 law, I don't know that the particular crimes
25 that they -- that the state forfeiture law is

1 particular on what it covers. Not all crimes
2 can you --

3 COMMISSIONER GAW: I understand.

4 MR. FRANSON: -- forfeit things.

5 COMMISSIONER GAW: And I don't know
6 either. But that's what concerns me. So
7 knowing that with more definite -- being more
8 definite about it would be helpful to me.

9 MR. FRANSON: I will be prepared on
10 that the next time we -- we meet because I will
11 be looking at the forfeiture law.

12 COMMISSIONER GAW: I just want to
13 know what is being conceded and the parameters
14 of that. That's been a good portion of the
15 reason for my inquiry because I -- I'm not
16 certain about that from the language of the
17 Stip.

18 And anyway, in any event, I'm going to
19 stop at this point, Judge. And hopefully we
20 will be able to assess this in light of the
21 other matters that -- that we don't have in
22 front of us before we make a final decision.
23 Thank you very much for your time.

24 JUDGE WOODRUFF: Thank you.

25 MR. FRANSON: Judge, if I may, I'm

1 just going to suggest -- and if you need a
2 motion, I'll certainly make it that we adjourn
3 so -- when we're done here that we adjourn
4 until a time that at least the other two cases
5 are before the Commission whenever that might
6 be, whether that's two weeks or longer.

7 JUDGE WOODRUFF: All right. Well,
8 certainly, the Commission can schedule a
9 further proceeding if they wish to do so.

10 Commissioner Murray, did you have anything
11 else?

12 COMMISSIONER MURRAY: I don't.

13 JUDGE WOODRUFF: Any of the parties
14 want to make any other statements at this time?

15 MR. ENGLAND: Your Honor, I would.

16 JUDGE WOODRUFF: Go ahead, Mr.

17 England.

18 MR. ENGLAND: In light of the fact
19 that this is going to be put on hold for a
20 while, I would ask that the Attorney General to
21 clarify and file a written motion for
22 permission to intervene in the case and we be
23 given an opportunity to respond.

24 JUDGE WOODRUFF: All right. And I
25 had a discussion with Mr. Molteni during the

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1 break that he intended to file the motion.

2 Mr. Molteni, anything you want to add?

3 MR. MOLTENI: No, sir.

4 JUDGE WOODRUFF: Mr. Dandino?

5 MR. DANDINO: No, sir.

6 JUDGE WOODRUFF: Mr. Franson?

7 MR. FRANSON: Not at this time, your

8 Honor. No.

9 JUDGE WOODRUFF: Well, with that,

10 then, this proceeding is adjourned. Thank you.

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