

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

In the Matter of)	
Request for Review by New Florence)	
Telephone Company (SAC 421927) of)	
Decision of Universal Service Administrator)	
Regarding Suspension of High Cost Universal)	CC Docket No. 96-45
Service Support Payments and Request for)	
Preemption of the Missouri Public Service)	
Commission)	

**Comments of the Public Service
Commission of the State of Missouri**

The Public Service Commission of the State of Missouri ("MoPSC") offers the following comments in response to the Federal Communication Commission's ("Commission") Public Notice released in the above docketed case on December 17, 2004. Through the Public Notice, the Wireline Competition Bureau seeks comment on an appeal filed by New Florence Telephone Company (New Florence) of a November 5, 2004 decision issued by the Universal Service Administrative Company (USAC) that suspends and withholds high-cost support payments to New Florence.

New Florence Appeal

In its appeal, New Florence respectfully submits that the MoPSC erred in declining to certify that New Florence would use high cost support in accordance with section 254(e) of the Telecommunications Act of 1996 (47 USC §254(e)), a certification required by Commission rule to receive universal service funds for calendar year 2005. Further, New Florence asserts that the MoPSC's decision was made without due process. According to New Florence, the MoPSC lacked any basis upon which to decline to make

the certification; therefore, it should have issued the certification for funding year 2005. New Florence argues that it would have been more appropriate for the MoPSC to withdraw its certification later if, upon completion of its inquiry, it determined New Florence had not used the high cost support in accordance with section 254(e) of the Telecommunications Act of 1996 (47 USC §254(e)).

New Florence, in Footnote Six of its appeal, states that since the MoPSC letter declining to certify use of high cost support is directed toward New Florence and Cass County Telephone Company alone, New Florence assumes that it is being investigated because of the degree of common ownership of these two companies. New Florence states that it has never been formally advised by the MoPSC of this assertion, and members of the MoPSC have refused to meet with New Florence to discuss this matter. Finally, New Florence claims that the MoPSC's withholding of certification was unjustified and unlawful and asserts that the MoPSC has not provided "even a scintilla of justification for its denial of universal service certification."

The MoPSC takes issue with these assertions. The Commission's rules only require that a state commission provide an affirmative statement that the state commission certifies that a company will use the high cost support it receives from the Federal Universal Service Fund in accordance with section 254(e) of the Telecommunications Act of 1996 (47 USC §254(e)). The Commission's rules do not require a state commission to justify its decision or support its decision with evidence. In fact, the Commission's rules do not require notice that a state commission declines to provide the certification. The MoPSC submitted its letter as a courtesy to inform the Commission that it was conducting further inquiry and that the MoPSC was anticipating

the receipt of a third party audit.

As will be explained in these comments, the MoPSC's withholding of its certification was neither unjustified nor unlawful, but based on careful review of information provided by New Florence in a like manner to every other Missouri incumbent local exchange carrier, as well as a careful review of information received through contacts with New Florence personnel and through responses to discovery requests in light of federal allegations and/or indictments and complaint against New Florence owners.

State certification

Section 54.314 of the Commission's rules sets forth the requirements for state certification of rural carriers and eligible telecommunications carriers in rural areas for receipt of federal universal service funds. These requirements follow:

States that desire rural incumbent local exchange carriers and/or eligible telecommunications carriers serving lines in the service area of a rural incumbent local exchange carrier within their jurisdiction to receive support pursuant to §54.301, 54.305, and/or 54.307 and/or part 36, subpart F of this chapter must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Support provided pursuant to §54.301, 54.305, and/or 54.307 and/or part 36, subpart F of this chapter shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.

c) *Certification format.* A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and shall be filed with both the Office of the Secretary of the Commission clearly referencing CC Docket No. 96-45, and with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth in paragraph (d) of this section. If provided by the appropriate regulatory authority for the state, the annual certification must identify which carriers in the State are eligible to receive federal support during the applicable 12-month period, and must certify that those carriers will only use support for the provision, maintenance,

and upgrading of facilities and services for which support is intended. A State may file a supplemental certification for carriers not subject to the State's annual certification. All certificates filed by a State pursuant to this section shall become part of the public record maintained by the Commission.

Rural incumbent local exchange carriers not subject to the jurisdiction of a state or eligible telecommunications carriers not subject to the jurisdiction of a state serving lines in the service area of a rural incumbent local exchange carrier are required to file, with the Commission and USAC, a sworn affidavit executed by a corporate officer attesting to the use of the support for the provision, maintenance, and upgrading of facilities and services for which support is intended.

MoPSC Certification Process

In response to the Commission's rule, the MoPSC developed and continues to modify its process for certifying rural incumbent local exchange carriers and eligible telecommunications carriers. Consistent with the Commission's rules for carriers not subject to state jurisdiction, in 2001, the MoPSC required Missouri rural incumbent local exchange carriers and eligible telecommunications carriers to submit sworn affidavits executed by a corporate officer attesting to the proper use of federal USF high cost support.

In an effort to gain more support for its certifications, the MoPSC directed its Staff to work with the industry to develop a process whereby carriers receiving high cost support would submit documentation of the use of the high cost support for the provision, maintenance and upgrade of facilities and services for which that support is intended.

Staff's recommended process was approved by the MoPSC on July 9, 2002.¹ A copy of the MoPSC's order is attached as Exhibit 1 for the Commission's reference. The MoPSC used this process for the next two years. Identifying a need for further justification from Missouri companies prior to certification, the MoPSC directed its Staff to once again work with the industry and make recommendations on an appropriate process to provide assurance to the MoPSC that Missouri companies were using the federal high cost support for the purposes intended. In April 2004, the MoPSC approved a new process, which was implemented for the October 2004 certification process. A copy of documentation on the 2004 process is attached as Exhibit 2.

As the New Florence appeal indicates, New Florence submitted its documentation pursuant to the MoPSC certification procedure, with its verified affidavit signed by Mr. Robert Williams, Secretary/Treasurer, on August 17, 2004. However, as will be discussed in more detail, allegations made in a federal investigation including Cass County Telephone Company implicated owners of New Florence, causing the MoPSC to request additional information from New Florence, which ultimately resulted in the MoPSC's decision to decline certification for funding year 2005, pending further inquiry and anticipated receipt of a third party audit.

Additional Certification Documentation

First and foremost, it should be noted, that New Florence was not the only company from which the MoPSC required additional information prior to determining what action to take with regard to certifying that the company would use federal high cost support in accordance with section 254(e) of the Telecommunications Act of 1996. On

¹ *In the Matter of the Investigation into Certification for Federal Universal Service Funds*. Case No. TO-2002-347. Order Establishing Certification Procedure.

February 14, 2004, an article in the Kansas City Star noted the implication of Kenneth M. Matzdorff in a nationwide phone and Internet scheme linked to organized crime. Mr. Matzdorff, who held officer positions with several Missouri telephone companies, was cited as holding or having held positions “with a web of little-known Missouri and Kansas companies” including firms “that figure prominently in a criminal indictment returned earlier [that] week in new York.”² The article noted that the firms USP&C, Inc. and Local Exchange Company, LLC (LEC, LLC) “were at the heart of the scheme according to the indictment and other court documents.” Mr. Matzdorff and LEC, LLC both have ownership interests in New Florence.

On July 29, 2004, after months of related activities, the MoPSC directed its Staff to investigate issues surrounding the allegations raised by the criminal indictments and the complaint and arrest warrant against Mr. Matzdorff. Subsequently, the complaint against Mr. Matzdorff was dismissed without prejudice.

As part of its investigation, Staff sent several discovery requests seeking responses on issues related to the allegations in the federal indictments, complaint and arrest warrant. Through responses to the discovery requests, Staff identified five Missouri telephone companies with either ownership or business relationships that involved Mr. Matzdorff and/or LEC, LLC. Staff issued additional discovery requests to these five companies seeking information on inter-company transactions and use of federal high cost support. On or about August 27, 2004, Staff contacted each company directly or through local counsel inquiring as to the impact on the company and its customers if the MoPSC did not certify the company for federal universal service fund

² “Belton exec linked to phone scan. Kenneth Matzdorff has ties to firms listed in indictment.” Kansas City Star, Page C1. February 14, 2004.

high cost support by October 1, 2004. New Florence responded with its estimated impact on September 3, 2004.

Audited financial statements for three of the five companies, in addition to information provided in response to discovery requests, provided Staff with support for a positive recommendation to the MoPSC for certification of three of the companies in question. The lack of audited financial statements, in addition to concerns raised through discovery request responses, resulted in Staff's recommendation to the MoPSC and ultimately the MoPSC's decision to decline to certify that Cass County Telephone Company and New Florence would use federal high cost support in accordance with section 254(e) of the Telecommunications Act of 1996; however, the MoPSC stated, "it is conducting further inquiry of these companies and awaiting the receipt of a third party audit." Representatives of Cass County Telephone Company and New Florence advised the MoPSC Staff that they anticipated the third party audits would be available by Thanksgiving. MoPSC Staff received the New Florence third party audit December 23, 2004.

New Florence Further Inquiry

Following is a summary of relevant information the MoPSC and its Staff have obtained and reviewed related to the inquiry into the operations of New Florence.

On July 31, 1998, Tiger Telephone, LLC purchased New Florence Telephone Company from the individual stockholders. Tiger Telephone, LLC was formed in order to purchase New Florence and to provide management and support services. On November 19, 1998, Tiger Telephone, LLC merged with Bengal Communications, Inc. The surviving entity was Bengal Communications, Inc., whose ownership prior to the

merger was the same as that of Tiger Telephone, LLC. On December 16, 1998, Bengal Communications, Inc. changed its name to Tiger Telephone, Inc.

LEC, LLC, Ken Matzdorff and Robert Williams each own one-third of the outstanding common stock of Tiger Telephone, LLC, placing two-thirds of the ownership of New Florence with entities involved in the allegations made in the federal indictments and arrest warrant against alleged members of the “Gambino crime family.” Mr. Matzdorff was president and director of New Florence Telephone Company, while Mr. Williams was secretary and treasurer. On August 12, 2004, Mr. Williams replaced Mr. Matzdorff as president of New Florence Telephone Company.

New Florence has two employees; however, LEC, LLC employees provide the majority of the services required by New Florence. New Florence does not have a written Service Agreement with LEC, LLC. Likewise, there is no written Service Agreement between Tiger Telephone, Inc. and LEC, LLC.

Staff’s investigation has revealed that the level of New Florence’s costs may influence the amounts that it receives from the National Exchange Carrier Association (NECA) revenue pool and the Federal Universal Service Fund. The following section from New Florence’s 2002 annual report describes the relationship of its costs to the amount of NECA pool revenues that it receives:

Network Access Service Revenue

Revenues from the provision of interstate long distance network service are based on amounts received under agreements with the National Exchange Carrier Association (NECA). These amounts are based on access charges filed by NECA on the Company's and other local exchange carriers' behalf with the Federal Communications Commission. These access charges are pooled and, for periods through June 30, 2001, the Company received its settlements based on the average costs and return on investment for providing interstate access for all NECA member companies. **Effective July 1, 2001, the Company began receiving its**

settlements based on its actual cost of providing interstate long distance service, plus a return on the investment dedicated to providing that service.

Final determination of the revenues received under the pooling arrangements with NECA is not made until review and approval of data submitted by the Company. It is the Company's policy to record those adjustments (if any) in the period in which they become known. Management does not expect final income amounts to differ significantly from those reflected in the financial statements.

Revenues from Intrastate/Intralata and Intrastate/Interlata network access services are received through tariffed access charges filed with the Missouri Public Service Commission. These access charges are billed to the appropriate long distance carrier and retained by the Company.” (emphasis added)

The above indicates that New Florence Telephone’s revenues from the NECA pool are influenced by the amount of costs and investment New Florence incurs to provide interstate access service. It is believed at this time that cost levels would influence the amount of Universal Service Funds received by the Company. The validity of the company’s costs incurred are suspect to the extent these costs include a significant amount of dollars from transactions with affiliated entities or firms in which New Florence’s employees have a business interest. Transactions with affiliated or related parties are high risk in regard to cost minimization because of the absence of the normal safeguards inherent in arms-length transactions between unrelated parties; each acting in its own self interests.

New Florence has two officers with authority to approve purchases or fund disbursements that also have separate business relationships with third-party vendors that have had transactions totaling more than \$10,000 annually with New Florence. One of these officers is Mr. Matzdorff. Responses to discovery requests reveal that a significant portion of New Florence’s cost of service is derived through affiliated or related-party

business. The largest affiliate expenditures were made to LEC, LLC. LEC, LLC provides billing and collection services to New Florence. Much like for management and support services, a Service Agreement has not been produced for billing and collection services provided by LEC, LLC.

The MoPSC Staff asked New Florence to describe the safeguards in place for affiliate transactions. LEC, LLC objected to the request as vague, overbroad and seeking information not in the possession and control of New Florence. The safeguards employed by LEC, LLC were described as irrelevant to New Florence's regulated operations despite the fact that New Florence is making significant annual payments to LEC, LLC.

New Florence entered into a note receivable with an entity affiliated with it by common ownership. Interest is payable monthly at 7.25% per year. On December 31, 2001 and December 31, 2002, New Florence also had notes receivable with two stockholders of Tiger Telephone, LLC. Companies controlled by stockholders of Tiger Telephone provided administrative and support services to New Florence for payments in excess of five figures for each year. During 2001, an entity controlled by stockholders of Tiger Telephone sold equipment to New Florence totaling dollar amounts well into six figures. MoPSC Staff continues to seek information regarding affiliate or related-party transactions involving New Florence.

Summary

As these comments demonstrate, the MoPSC had sufficient basis upon which to decline to certify by October 1, 2004, that New Florence would use its Federal Universal Service Fund high cost support in accordance with section 254(e) of the

Telecommunications Act of 1996 (47 USC §254(e)). New Florence was not singled out and subjected to a level of scrutiny not applied to other similarly situated companies. MoPSC investigations, based on the allegations in federal indictments and complaint, identified five companies with business or ownership relationships with entities named in the indictments and complaint. Further investigation resulted in the MoPSC certifying that three of the five companies would use their high cost support in accordance with section 254(e) of the Telecommunications Act of 1996 (47 USC §254(e) after concerns had been minimized. As previously indicated, the MoPSC continues its inquiry into New Florence based on subsequent discovery. Should additional inquiry show that New Florence will use the Federal Universal Service Fund high cost support in accordance with section 254(e) of the Telecommunications Act of 1996 (47 USC §254(e), the MoPSC will submit its certification letter at that time.

Respectfully submitted,

/s/ Natelle Dietrich

Natelle Dietrich
Regulatory Economist

/s/ Nathan Williams

Nathan Williams
Senior Counsel
MoBar No. 35512
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8702 (Telephone)
(573) 751-9285 (Fax)
e-mail: nathan.williams@psc.mo.gov



Commissioners

STEVE GAW
Chair

CONNIE MURRAY

ROBERT M. CLAYTON III

JEFF DAVIS

LINWARD "LIN" APPLING

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

ROBERT J. QUINN, JR.
Executive Director

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

September 30, 2004

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445-12th Street, SW
Washington, DC 20554

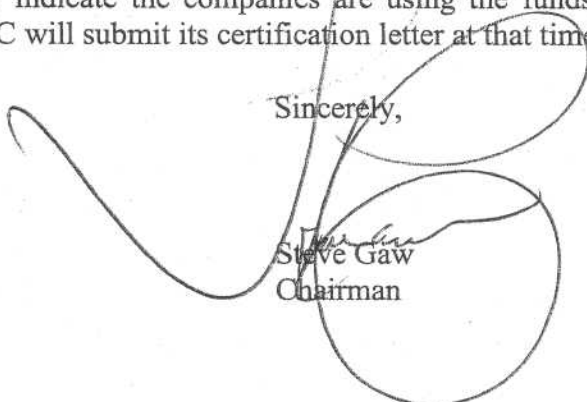
RE: USF Certification Pursuant to 47 USC 254(e)

CC Docket No. 96-45

Dear Ms. Dortch:

At this time, the Missouri Public Service Commission (MoPSC) hereby declines to certify that rural carriers, Cass County Telephone Company and New Florence Telephone Company, are using their high cost support in accordance with Section 254(e) of the Telecommunications Act of 1996 (47 USC § 254(e) 1996). The MoPSC is conducting further inquiry of these companies and awaiting the receipt of a third party audit. Should the additional inquiry indicate the companies are using the funds in accordance with Section 254(e), the MoPSC will submit its certification letter at that time.

Sincerely,


Steve Gaw
Chairman

SG/nd

c: Irene Flannery
Universal Service Administrative Company
2120 L Street, NW-Suite 600
Washington, DC 20037