

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Investigation)	
into the Earnings of Cass County)	Case No. IR-2004-0354
Telephone Company.)	

**RESPONSE OF CASS COUNTY TELEPHONE LIMITED PARTNERSHIP
TO REQUEST OF KANSAS CITY BUSINESS JOURNAL FOR
THE RELEASE OF HIGHLY CONFIDENTIAL DOCUMENTS**

Comes now Cass County Telephone Limited Partnership ("Cass County") and for its Response to the Request of the Kansas City Business Journal for the Release of Highly Confidential Documents states the following to the Missouri Public Service Commission ("Commission").

Facts Relevant to this Dispute

1. The Staff of the Commission conducted an investigation into the earnings of Cass County based upon the twelve (12) months ended December 31, 2002. Cass County provided the Staff full and complete access to its financial records and responded to data requests from the Staff. Some of the responses to the Staff data requests were marked "Confidential" with the understanding that the information provided would be protected from public scrutiny by the provisions of § 386.480, RSMo 2000, prohibiting any officer or employee of the Commission from divulging any such information to the public.

2. Upon completion of its audit, the Staff began discussions with Cass County, and as a result of negotiations between Staff, Cass County, and the Office of Public Counsel ("Public Counsel") the parties reached a Stipulation and Agreement calling for a reduction in revenue of

\$319,998. This reduction was to be effected by a reduction in Intrastate IntraLATA and interLATA terminating access rates, a reduction in Metropolitan Calling Area ("MCA") rates, and an elimination of, or reduction in, the existing 911 rate elements.

3. Cass County, Staff and Public Counsel filed the Stipulation and Agreement with the Commission on February 5, 2004. Staff filed Suggestions in Support of the Stipulation on March 12, 2004, and Public Counsel filed a pleading in support of the Stipulation on March 19, 2004.

4. After the Stipulation was filed, Staff and Public Counsel became aware, through newspaper articles, of a federal criminal indictment against USP&C, a company with alleged ties to Cass County. After these newspaper articles, Cass County scheduled a meeting with Staff and Public Counsel in order to answer any questions they might have regarding these allegations. After this meeting, the Staff submitted additional data requests to the company which Cass County promptly answered. Again, most of these responses were marked "confidential" and submitted to Staff with the understanding they would be protected from public scrutiny by the provisions of § 386.480, RSMo.

5. The Commission scheduled an on-the-record presentation to further question the parties regarding the Stipulation on April 19, 2004. Mr. Dave Winter of the Commission Staff and Mr. Kenneth Matzdorff answered Commission questions. During the course of the questioning, reference was made to two data request responses previously provided to Staff. At the close of the hearing, Commissioner Gaw requested that the responses to these data requests be made a part of the record. They were marked as Exhibits Nos. 1 and 2. Counsel for Cass County pointed out that there had not been a Protective Order entered in this Stipulation case, so

he would object to the responses being entered into the record. The regulatory law judge entered a Protective Order from the bench, and the exhibits were then designated as "Highly Confidential" pursuant to the terms of the Commission's standard protective order.

6. Exhibit 1 was Cass County's response to Staff Data Request No. 9 requesting information regarding the financial transactions between Cass County and Overland Data Center. The response to this data request was marked "confidential" by the company when provided to Staff with the understanding that the information provided would be treated in accordance with the provisions of § 386.480, RSMo.

7. Exhibit 2 was Cass County's response to Staff Data Request No. 13 which asked the company to provide information regarding ownership compositions, investment shares and official responsibilities of Cass County Telephone and LEC, LLC. The data request also asked that the company provide a copy of any stockholders/partnership agreements for Cass County and LEC, LLC. The response to this data request was stamped "confidential" and provided to Staff with the understanding that the information provided would be treated in accordance with the provisions of § 386.480, RSMo.

8. On April 26, 2004, a reporter for the *Kansas City Business Journal* sent a "Freedom of Information Act" request to the Commission asking that he be provided a copy of Highly Confidential exhibits No. 1 and No. 2. (A copy of that letter is marked Appendix A and attached.) A copy of this letter was provided to counsel for Cass County and on April 28, 2004 counsel for Cass County sent a letter to Mr. Marc Poston stating Cass County's objection to the release of the Highly Confidential exhibits and listing its reasons why this information should not be released. (A copy of that letter is marked Appendix B and attached.)

9. The Commission considered this request at its April 29 Agenda Meeting and directed its General Counsel to respond. On April 29, 2004 Mr. Bill Haas sent a letter to the *Kansas City Business Journal* stating that "the requested documents are classified as "highly confidential" under the Protective Order issued in the referenced case and are therefore closed records." Mr. Haas also stated that if the Business Journal wished to challenge the classification of these exhibits, its attorney could file a pleading in the referenced case. (A copy of that letter is marked Appendix C and attached.)

Response of Cass County

Cass County assumes that if the *Kansas City Business Journal* wishes to challenge the current classification of these exhibits, it will do so by filing a formal request with the Commission as suggested by Mr. Haas in his correspondence. Cass County also assumes that if such a challenge is filed by the *Business Journal*, Cass County will be given an opportunity to respond to the challenge. If, however, the Commission intends to consider the status of these exhibits *sua sponte* without a formal request by the *Business Journal*, Cass County requests that the Commission consider the following.

As was stated above, Cass County filed full and complete responses to all Staff data requests in this proceeding. The information was provided to Staff in good faith with the understanding that the responses were protected from public scrutiny by statute. Some of these responses were marked "confidential," and Cass County requested that the Staff treat the information as protected under § 386.480, RSMo. Both the Commission and the Cole County Circuit Court have held that the Commission has the "right and obligation to honor the constitutionally protected property interests that persons coming before it have in their

confidential business data, and that the ‘Sunshine Law’ does not allow or require the Commission to abrogate such property interests.”¹

At the on-the-record presentation, after reference was made to the responses to two of the data requests, the Commission requested that the responses be made exhibits to the record. Counsel for Cass County reminded the Commission that there was as yet no protective order in this case and that the information in the requested exhibits was confidential. At that point, Judge Woodruff issued a protective order from the bench, and Cass County agreed to the submission of the exhibits as "Highly Confidential." Paragraph W of the Protective Order states, however, that the provisions of C, D, J and L of the Protective Order do not apply to Staff or Public Counsel as "Staff and Public Counsel are subject to the nondisclosure provisions of Section 386.480, RSMo 2000." Thus, the protection for confidential business data submitted to Staff still apply to prevent the release of the information.

Although the request of the *Business Journal* for the release of the documents is not clear, if the request is considered a request for information under the Missouri Open Records Act, § 610.021(14), RSMo authorizes an agency to close "records which are protected from disclosure by law." The Cole County Court has specifically said that "Section 610.021(14), RSMo . . . specifically exempts information ‘otherwise protected by the law’ from public disclosure.”² Cass

¹*Southwestern Bell Telephone v. McClure*, Case No. CV193-502cc, Findings of Fact and Conclusions of Law (June 21, 1993) cited with approval by the Commission in *In the Matter of Southwestern Bell Telephone Company for a Determination that it is Subject to Price Cap Regulation Under Section 392.245, RSMo Supp. 1996*, 6 Mo. P.S.C. 3d 493 (September 16, 1997).

²*Southwestern Bell*, CV193-502cc at page 9.

County believes that the exhibits are "records which are protected from disclosure by law" because of the provisions of § 386.480 prohibiting the release of the information by Staff as well as the protection from disclosure afforded by the Protective Order issued in this case. The Protective Order prohibits the dissemination of "highly confidential" or "proprietary" information except as provided in the order. Any challenge to the designations must be made in accordance with the provisions of the order. This the *Business Journal* has not done.

Exhibit No. 1 contains sensitive and proprietary business information regarding a company Cass County used to provide data support services for its operations. Staff witness Winter and Cass County president, Ken Matzdorff, explained one particular transaction with this company at the hearing, but Cass County considers its complete response to Staff's data request to contain at least "proprietary" information, if not "highly confidential."

Exhibit No. 2 contains information regarding the ownership and investors in both the regulated company, Cass County Telephone, and the non-regulated company Local Exchange Company, LLC (or "LEC, LLC"). At the hearing, Mr. Matzdorff named the partners in Cass County Telephone Limited Partnership on the stand. Thus, the portion of the response regarding Cass County Telephone has already been made public and is available to the *Business Journal*. Cass County Telephone is the company certificated by the Commission to provide service in the state. The identity of the investors in Local Exchange Company is, however, highly confidential or proprietary confidential, financial and business information. Local Exchange Company is a holding company. It is not regulated by the Commission. The Commission routinely finds that

it has no jurisdiction over non-regulated holding companies.³ Thus, not only is the information regarding the Local Exchange Company investors protected from disclosure by statute and the Protective Order issued in this case, it is also not relevant to the approval of the stipulation regarding earnings of Cass County Telephone.

Under both § 386.490, RSMo and the Protective Order the Commission is given discretion to rule on the designation of the protected information.⁴ In exercising this discretion, the Commission must, however, use a balancing test between the privacy right of the company seeking protection of its information and the reasons for the release of the information put forth by the party requesting the change in designation. The Commission must consider these requests on a case-by-case approach when deciding whether to release information⁵ The Commission must always consider the possibility of a constitutional right to privacy of the company whose information is sought. This right to privacy must be balanced with the public's right to know.⁶

There is an additional reason why the list of investors for Local Exchange Company should not be made available to the public in this proceeding. As the Commission is fully aware,

³ In fact, the Commission found it had no jurisdiction to consider an application for authority to sell assets of a holding company in the same Agenda meeting where the request of the *Business Journal* was discussed. *In the Matter of Time Warner Cable Information Services (Missouri), LLC's Request for Authority to Sell, Assign or Transfer Assets*. MoPSC Case No. LO-2004-0457 (April 29, 2004).

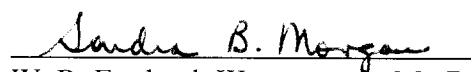
⁴Section 386.480 states that information shall not be made public "except on order of the commission" while the Commission's standard protective order states that, "The Commission or Regulatory Law Judge may rule on the challenge to designations prior to the hearing, or at the hearings. (Paragraph O)

⁵*Southwestern Bell*, 6 Mo. P.S.C. 3d at 499; *The Staff of the Missouri Public Service Commission v. Laclede Gas Co.*, 28 Mo. P.S.C. (N.S.) 129 (1986).

⁶*Laclede Gas Co.*, 28 Mo. P.S.C. (N.S.) at 131 and cases cited therein.

a federal indictment has been issued in New York that references, (but does not name as a defendant) Local Exchange Company. Because of this indictment, there is an extra layer of sensitivity regarding the release of this information. Obviously, Federal prosecutors have not seen fit to make this information public or the *Business Journal* would have gained access to the names of the investors from that source. One assumes there is a reason why this information has not been revealed in the federal investigation. The release of this information outside of the indictment proceeding could have unseen and unknown repercussions in that case. The Commission should not allow itself to be used as a source of this information, particularly when the information is not relevant to the proceeding before the Commission and was only provided to the Commission Staff in order to allay concerns relating to Cass County Telephone's possible connection to the parties named in the indictment. Cass County, the company regulated by this Commission, has not been shown to have any connection with the illegal activities listed in the indictment. The Commission should not allow the *Business Journal* to obtain the confidential information contained in Exhibits 1 and 2 as it is protected by law from disclosure.

Respectfully submitted,



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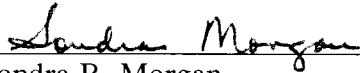
Attorneys for
Cass County Telephone Company

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was hand-delivered or mailed, United States Mail, postage prepaid, this 5th day of May, 2004 to:

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