

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

Staff of the Public Service Commission	)	
of the State of Missouri,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. TC-2005-0357
	)	
Cass County Telephone Company	)	
Limited Partnership and Local	)	
Exchange Company, LLC	)	
	)	
Respondents.	)	

**ENTRY OF APPEARANCE ON BEHALF OF LOCAL EXCHANGE COMPANY,  
L.L.C., AND ITS STATEMENT OF POSITION REGARDING MEDIATION**

**ENTRY OF APPEARANCE**

1. The undersigned counsel hereby enter their appearance as counsel for Local Exchange Company, LLC ("LEC") in the above-captioned matter and request that all correspondence, pleadings and orders be served upon them.

**STATEMENT OF POSITION REGARDING MEDIATION**

2. On April 8, 2005, the Staff of the Commission filed its Complaint against Cass County Telephone Company Limited Partnership ("CassTel") and Local Exchange Company, LLC ("LEC"), in which the Staff seeks authority from the Commission to pursue a penalty action against Respondents in Circuit Court (the "Complaint").

3. On April 12, 2005, the Commission issued a Notice of Complaint in which the Commission advised that Respondents "have 30 days from the date of this notice to file an answer." The Notice of Complaint also advised Respondents that, in the alternative, they could "file a written request that the complaint be referred to a neutral third-party mediator for voluntary mediation."

4. On April 25, 2005, CassTel filed its written request for voluntary mediation.

5. On April 26, 2005, the Staff filed its Response to CassTel's request for mediation, noting that it "does not agree to voluntary mediation" and, pursuant to Rule 4 CSR 240-2.080(16), seeking an expedited order from the Commission "denying mediation in this case."

6. Also on that same day, April 26, 2005, LEC's manager authorized the undersigned to file a written request on behalf of LEC requesting that the Complaint be referred to mediation.

7. While the undersigned was preparing to file LEC's written request for mediation but before it could actually file that written request, the Commission issued its Notice of Revised Date for Filing Answer on April 27, 2005. In that Notice of Revised Date for Filing Answer, the Commission ruled on an expedited basis, as requested by Staff, that it would "not refer this matter to mediation" and thus "ended the tolling" of the answer deadline for Respondents.

8. LEC files this pleading not to request the Commission to compel mediation but instead to address certain of the statements made by the Staff in its Response and to note LEC's objection to the procedures employed by the Staff.

9. LEC acknowledges that **voluntary** mediation is impossible in this case because the Staff refuses to participate voluntarily. While LEC believes the Commission could compel mediation, LEC does not seek compulsory mediation herein because it would not likely advance this case toward resolution given the Staff's apparent unwillingness to participate in such mediation.

LEC nevertheless feels compelled to address certain of the points raised by the Staff in its Response.

10. In particular, the Staff's statement that "there is no logical reason" for Respondents to request mediation herein "other than delay" is simply untrue and an unwarranted attack on Respondents' counsel.

11. In order to narrow the issues in dispute and to work toward a complete settlement of the case, if possible, Respondents genuinely wanted to mediate at an early stage in the case – a case that promises to be a protracted battle.

12. LEC does not believe it has been properly joined herein as a party. Because a mediated settlement is apparently now impossible, LEC intends to vigorously defend itself and will raise the legal grounds upon which it believes it is beyond the scope of the Commission's jurisdiction and should thus be dismissed from the case.

13. Furthermore, LEC notes its strenuous objection to the Staff's improper use of Rule 4 CSR 240-2.080(16) to seek an expedited order denying LEC's request for mediation before LEC was even able to file its written request for that relief.

14. Contrary to the requirements of Rule 4 CSR 240-2.080(16)(B), the Staff's request for an expedited order denying mediation did not identify an imminent “harm that will be avoided” nor a “benefit that will accrue” by the issuance of that expedited order.

15. Stated more directly, there was no emergency that justified the Staff's invocation of a rule in a manner that resulted in LEC's request for mediation being denied before it could even file that request. Instead of denying LEC's right to be heard altogether, the Staff could have simply requested that the Commission shorten the time within which LEC must file its written request for mediation or asked that the Respondents' time to answer run without tolling. In that manner, LEC at least could have been heard on the issue of mediation before the Commission denied CassTel's request.

16. In order to avoid acquiescing in the Staff's use of the procedural rules in this improper manner, LEC hereby notes its objection to the Staff's misuse of those rules and implores the Commission to enforce the express requirements of its rules in the future.

Respectfully submitted,

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ATTORNEYS FOR LEC, LLC

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of May, 2005 a copy of the foregoing was served via e-mail on the following:

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