

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

Staff of the Missouri Public Service)
Commission,)
)
Complainant,)
)
v.)
)
Cass County Telephone Company Limited)
Partnership,)
)
Respondent,)
)
and)
)
Local Exchange Company LLC,)
)
Respondent.)

Case No. TC-2005-0357

ANSWER OF RESPONDENT
CASS COUNTY TELEPHONE COMPANY LIMITED PARTNERSHIP

COMES NOW Respondent Cass County Telephone Company Limited Partnership ("CassTel"), pursuant to Commission Rule 4 CSR 240-2.070, and for its Answer to the Complaint of the Staff of the Missouri Public Service Commission ("Complainant"), states as follows:

Count I

1. With respect to the averments contained in paragraph one (1) of the Complaint, CassTel states that Section 386.390.1 RSMo. 2000 speaks for itself and, consequently, no admission or denial is required.

2. With respect to the averments contained in paragraph two (2) of the Complaint, CassTel states that Commission Rule 4 CSR 240-2.070(1) speaks for itself and, consequently, no admission or denial is required.

3. With respect to the averments contained in paragraph three (3) of the Complaint, CassTel states that the Commission's "Order Establishing Investigation Case" entered in Case No. TO-2005-0237 speaks for itself and, consequently, no admission or denial is required.

4. With respect to the averments contained in paragraph four (4) of the Complaint, CassTel states that the case law quoted by Complainant speaks for itself and, therefore, no admission or denial is required.¹ The rest of paragraph four (4) contains legal assertions and conclusions, and, as such, no answer is required.

5. With respect to the averments contained in paragraph five (5) of the Complaint, CassTel states that Section 386.600 RSMo. 2000 speaks for itself and, consequently, no admission or denial is required.

6. CassTel admits the averments contained in paragraph six (6) of the Complaint.

7. With respect to the averments contained in paragraph seven (7) of the Complaint, CassTel states the records on file with the Missouri Secretary of State speak for themselves and, thus, no admission or denial is required.

¹ Complainant cites *State ex rel Sure-way Transp., Inc. v. Division of Transp., Dept. of Economic Development, State of Mo.*, 836 S.W.2d 23 (Mo.App. W.D. 1992).

8. CassTel admits the averments contained in paragraph eight (8) of the Complaint.

9. With respect to the averments contained in paragraph nine (9) of the Complaint, CassTel admits it is a "telecommunications company" and a "public utility" as those terms are defined in §386.020 RSMo to the extent it provides telecommunications services to the public in the State of Missouri in accordance with rates, terms and conditions of service on file with and approved by the Commission.

10. The averments contained in paragraph ten (10) of the Complaint are not directed to CassTel and, thus, no response is required of CassTel.

11. CassTel states that the FCC's rules speak for themselves and, thus, no admission or denial is required.

12. CassTel states that the FCC's rules speak for themselves and, thus, no admission or denial is required.

13. CassTel admits the averments contained in paragraph thirteen (13) of the Complaint.

14. With respect to the averments in paragraph fourteen (14) of the Complaint, CassTel is without specific information or belief upon the subject sufficient to enable CassTel to answer. Consequently, CassTel denies the averments contained in paragraph fourteen (14) of the Complaint pursuant to 4 CSR 240-2.070.

15. With respect to the averments in paragraph fifteen (15) of the Complaint, CassTel is without specific information or belief upon the subject sufficient to enable CassTel to answer. Consequently, CassTel denies the averments contained in paragraph fifteen (15) of the Complaint pursuant to 4 CSR 240-2.070.

16. With respect to paragraph sixteen (16) of the Complaint, CassTel admits that Kenneth M. Matzdorff was an officer of CassTel. CassTel is without knowledge of Mr. Matzdorff's employment with LEC or any of the other averments contained in paragraph sixteen (16) of the Complaint related to LEC and, consequently, CassTel denies each and every one of the other averments contained in paragraph sixteen (16) of the Complaint pursuant to 4 CSR 240-2.070(8).

17. With respect to paragraph seventeen (17) of the Complaint, CassTel admits that Mr. Matzdorff was an officer of CassTel. The averment contained in paragraph seventeen (17) of the Complaint that Mr. Matzdorff was "an agent" of CassTel "at all times relevant" is a legal conclusion and, as such, no admission or denial is required. To the extent an answer is required, CassTel is without specific information or belief upon the subject sufficient to enable CassTel to answer. Consequently, CassTel denies said averment.

18. With respect to the averments contained in paragraph eighteen (18) of the Complaint, CassTel states that Section 386.570 RSMo. 2000 speaks for itself and, consequently, no admission or denial is required.

19. CassTel denies the averments and legal assertions and conclusions contained in paragraph nineteen (19) of the Complaint.

20. With respect to paragraph twenty (20) of the Complaint, CassTel admits that Mr. Matzdorff was an officer of CassTel. With respect to the other averments and legal assertions and conclusions, CassTel states that it is without information or belief upon the subject sufficient to enable CassTel to answer. Consequently, CassTel denies said averments pursuant to 4 CSR 240-2.070(8).

21. With respect to paragraph twenty-one (21) of the Complaint, CassTel admits that Mr. Matzdorff was an officer of CassTel during the period between 1998 and July, 2004. CassTel denies the other averments and legal assertions and conclusions contained in paragraph twenty-one (21) of the Complaint.

22. CassTel denies each and every one of the averments and legal assertions and conclusions contained in paragraph twenty-two (22) of the Complaint.

23. CassTel denies each and every one of the averments and legal assertions and conclusions contained in paragraph twenty-three (23) of the Complaint.

24. With respect to paragraph twenty-four (24) of the Complaint, CassTel is without information or belief upon the subject sufficient to enable CassTel to answer. Consequently, CassTel denies those averments pursuant to 4 CSR 240-2.070(8).

25. With respect to paragraph twenty-five (25) of the Complaint, CassTel is without information or belief upon the subject sufficient to enable CassTel to answer. Consequently, CassTel denies those averments pursuant to 4 CSR 240-2.070(8).

CassTel denies all allegations in "Count I" of the Complaint not specifically admitted herein.

CassTel further denies that Complainant is entitled to the relief prayed for in the WHEREFORE clause of the Complaint or is entitled to any relief whatsoever in the premises.

Count II

26. With respect to paragraph twenty-six (26) of the Complaint, CassTel incorporates by reference its responses to paragraphs 1-25 above.

27. With respect to the averments contained in paragraph twenty-seven (27) of the Complaint, CassTel states that Section 386.560 RSMo. 2000 speaks for itself and, consequently, no admission or denial is required.

28. CassTel denies the averments and legal conclusions contained in paragraph twenty-eight (28) of the Complaint.

29. CassTel denies the averments and legal conclusions contained in paragraph twenty-nine (29) of the Complaint.

30. With respect to the averments contained in paragraph thirty (30) of the Complaint, CassTel states that Section 386.590 RSMo. 2000 speaks for itself and, consequently, no admission or denial is required.

31. CassTel denies the averments and legal conclusions contained in paragraph thirty-one (31) of the Complaint.

CassTel denies all allegations in "Count II" of the Complaint not specifically admitted herein.

CassTel further denies that Complainant is entitled to the relief prayed for in the WHEREFORE clause of the Complaint or is entitled to any relief whatsoever in the premises.

Count III

32. With respect to paragraph thirty-two (32) of the Complaint, CassTel incorporates by reference its responses to paragraphs 1-31 above.

33. With respect to the averments in paragraph thirty-three (33) of the Complaint, CassTel is without knowledge of what Complainant relied upon with respect

to Complainant's review of CassTel's accounts, books of account and records in Case No. IR-2004-0354 and, consequently, the averments are denied pursuant to 4 CSR 240-2.070(8).

34. The averments contained in paragraph thirty-four (34) of the Complaint are legal assertions and conclusions and, as such, no admission or denial is required.

35. With respect to the averments contained in paragraph thirty-five (35) of the Complaint, CassTel states that Commission Rule 4 CSR 240-30.040 speaks for itself and, consequently, no admission or denial is required

36. With respect to the averments contained in paragraph thirty-six (36) of the Complaint, CassTel states that Commission Rule 4 CSR 240-30.040 speaks for itself and, consequently, no admission or denial is required.

37. With respect to the averments contained in paragraph thirty-seven (37) of the Complaint, CassTel states that FCC Rule 47 CFR 32.4 speaks for itself and, consequently, no admission or denial is required. CassTel denies all other averments and legal conclusions contained in paragraph thirty-seven (37) of the Complaint.

38. With respect to the averments contained in paragraph thirty-eight (38) of the Complaint, CassTel states that Section 392.360 RSMo. 2000 speaks for itself and, consequently, no admission or denial is required. CassTel denies all other averments and legal conclusions contained in paragraph thirty-eight (38) of the Complaint.

CassTel denies all allegations in "Count III" of the Complaint not specifically admitted herein.

CassTel further denies that Complainant is entitled to the relief prayed for in the WHEREFORE clause of the Complaint or is entitled to any relief whatsoever in the premises.

Count IV

39. With respect to paragraph thirty-nine (39) of the Complaint, CassTel incorporates by reference its responses to paragraphs 1-38 above.

40. With respect to the averments contained in paragraph forty (40) of the Complaint, CassTel states that the transcript of the testimony of Mr. Matzdorff in Case No. IR-2004-0345 speaks for itself and, therefore, no admission or denial is required.

41. With respect to the averments contained in paragraph forty-one (41) of the Complaint, CassTel states that Section 386.560 RSMo. 2000 speaks for itself and, consequently, no admission or denial is required.

42(A). With respect to Mr. Matzdorff's testimony before the Commission in Case No. IR-2004-0354 and before the United States District Court, Western District of Missouri, on January 18, 2005, CassTel states that the transcripts of those proceedings speak for themselves and, therefore, no admission or denial is required. CassTel denies all other averments and legal assertions and conclusions contained in the "first" paragraph forty-two (42) beginning on page 17 of the Complaint.

42(B). With respect to the averments contained in paragraph forty-two (B) (42(B)) of the Complaint, CassTel admits that the statements made before the Commission on April 19, 2004 were required to be made to the Commission by Section 386.470 RSMo. 2000. CassTel denies all other averments and legal assertions and conclusions

contained in the "second" paragraph forty-two (42) beginning on page 21 of the Complaint.

43. CassTel admits that Mr. Matzdorff was President of CassTel on April 29, 2004. CassTel denies all other averments and legal assertions contained in paragraph forty-three (43) of the Complaint.

44. CassTel denies the averments and legal conclusions contained in paragraph forty-four (44) of the Complaint.

45. CassTel denies the averments and legal conclusions contained in paragraph forty-five (45) of the Complaint.

CassTel denies all allegations in "Count IV" of the Complaint not specifically admitted herein.

CassTel further denies that Complainant is entitled to the relief prayed for in the WHEREFORE clause of the Complaint or is entitled to any relief whatsoever in the premises.

46. For further answer and defense, pursuant to Commission Rule 4 CSR 240-2.070(8), Respondent CassTel provides the following additional grounds of defense, both of law and of fact, in further answer and response to the Complaint:

A. The Complaint fails to set forth facts showing that Complainant is entitled to relief prayed for or any relief whatsoever in the premises, and fails to state a claim upon which relief can be granted against CassTel.

(1) Section 386.570 RSMo is unconstitutionally vague and overbroad in that the phrase "any other law" as used in subsection 1 thereof is unlimited in scope. It does not reasonably identify the nature of the conduct proscribed by the

statute such that a corporation, person or public utility is reasonably put on notice as to what actions are punishable thereunder. The practical scope of this clause absent some meaningful boundaries is quite literally limitless. In this case, Complainant points to alleged violations of federal law to justify the claim of a violation of state law.

(2) The penalty provided in Section 386.470 RSMo 2000 is not available for some or all of the violations of law alleged against CassTel in the Complaint because the laws purportedly violated by CassTel are not within the scope of the statute's phrase "any other law" as properly construed based on the statutory and constitutional limitations on the Commission's jurisdiction and powers.

(3) The penalty provided in Section 386.570 RSMo 2000 is not applicable to the conduct alleged against CassTel in Counts II and IV to the extent that a penalty under Section 386.560 RSMo is assessed, as Staff seeks herein, because the relief under Section 386.570 RSMo is only available "in a case in which a penalty has not herein been provided for such corporation, person or public utility." Complainant cannot recover penalties under both statutes based on the express terms of Section 386.570 RSMo.

B. The construction and interpretation of Chapters 386 and 392 RSMo. 2000 that Complainant seeks to apply in this action:

(1) constitutes an unreasonable, inconsistent, and arbitrary construction and interpretation of the statute;

(2) constitutes an unreasonable, inconsistent, and arbitrary application of the statute;

(3) exceeds the statutory authority, powers, and jurisdiction of the Commission.

(4) constitutes the making of law or an adjudication in violation of the authority, powers, and jurisdiction of the Commission as limited by the Constitution of Missouri, Article III, §§1 and 49, and by Chapters 386 and 392, RSMo. 2000.

C. CassTel is immune under Section 386.470 RSMo 2000 in that the Complaint purports to impose a penalty for alleged transactions or conduct with respect to which CassTel has provided documentary evidence or with respect to which the Complainant claims that CassTel has testified under oath through Kenneth Matzdorff. CassTel is also immune under that statute in that CassTel's alleged liability is based solely upon the alleged transactions or conduct of Kenneth Matzdorff who himself is immune from penalties under the same immunity statute based upon his testimony under oath and/or his providing documentary evidence, and his immunity also exonerates CassTel from liability for penalties for that conduct.

D. The Complaint is barred by limitations on actions provided by law and equitable principle of laches.

E. Respondent CassTel reserves the right to raise additional affirmative defenses which may become apparent through the course of discovery.

WHEREFORE, having fully answered the Complaint, Respondent CassTel requests that the Complaint be dismissed for failure to state a claim with respect to

which relief can be granted and for lack of statutory authority for the Commission to authorize the General Counsel to seek statutory penalties against CassTel under these circumstances and for such other relief as may be appropriate in the circumstances. In the alternative, CassTel requests the Commission convene a hearing for the presentation of evidence with respect to the allegations set forth in each count of the Complaint because there are genuine issues of material fact. Pursuant to Commission rule 4 CSR 240-2.140, CassTel further requests an opportunity to present oral argument and to file briefs at an appropriate time after the close of the record.

Respectfully submitted,



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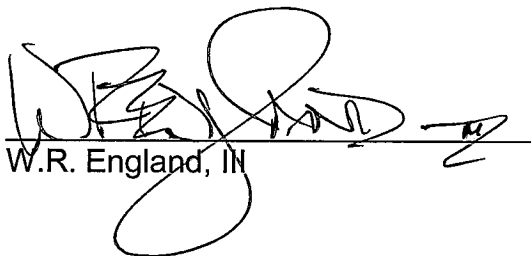
CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of May, 2005, a true and correct copy of the above and foregoing Answer of Respondent Cass County Telephone Company Limited Partnership was sent by electronic transmission, hand-delivered or sent U.S. Mail, postage prepaid to the following parties:

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