

In the Matter of the Adoption of)
an Interconnection Agreement with) Cause No. LO-2004-0448
Spectra Communications Group, LLC)
by Big River Telephone Company, LLC.)

COMES NOW Big River Telephone Company, LLC ("BIG RIVER"), pursuant to 4 CSR 240-2.080(15) and for its Reply to the Comments in Opposition filed by Spectra Communications Group LLC (SPECTRA) regarding BIG RIVER's Notice of Adoption of Interconnection Agreement states to the Commission:

3. On or about February 6, 2004 SPECTRA provided its proposed document regarding "confirmation" of the adoption of the Agreement. A copy is attached hereto as Exhibit A.

4. As can be readily seen by a comparison of the Notice filed herein by Big River and the attached proposed "confirmation letter" prepared by SPECTRA (Exhibit A), Big River addressed all legitimate requests of SPECTRA in the contents of the Notice, to wit:

- a. Paragraph 5 of the Notice covers the subjects of item 1 of Exhibit A.
- b. Paragraph 6 of the Notice covers the subjects of item 2 of Exhibit A.
- c. Paragraphs 1 and 3 of the Notice covers the subjects of item 3 of Exhibit A.
- d. Paragraph 7 of the Notice covers the subjects of item 4 of Exhibit A.
- e. Paragraph 8 of the Notice covers the legitimate subjects of item 5 of Exhibit A.

SPECTRA's proposal that BIG RIVER make some confirmation regarding waivers or lack thereof by SPECTRA was not legitimate and is not authorized under Section 252(i).

- f. Paragraph 9 of the Notice covers the subjects of item 6 of Exhibit A.
- g. Paragraph 10 of the Notice covers the legitimate subjects of item 7 of Exhibit A.

SPECTRA's proposal to add "change of law" language beyond that contained in the Agreement was not legitimate and is not authorized under Section 252(i).

h. Paragraph 11 of the Notice covers the subjects of item 8(C) of Exhibit A. SPECTRA'S purported reservation of rights set forth in items 8(A) and (B) of Exhibit A was not legitimate and is not authorized under Section 252(i). The proposed reservation of rights was particularly objectionable in that it would purport to allow SPECTRA to terminate the Agreement unilaterally at any time.

i. The Notice does not address item 9 of Exhibit A, as such matters are covered by the Agreement and SPECTRA's attempt to inject additional terms and conditions was not legitimate and is not authorized under Section 252(i).

- j. Paragraph 12 of the Notice covers the subjects of item 10 of Exhibit A.

5. Contrary to SPECTRA's assertions in its comments, BIG RIVER attempted to work out these matters with SPECTRA in advance of filing the Notice, but SPECTRA continued to obstruct what should be a simple adoption process by insisting upon the inclusion of inappropriate language as identified above.

6. The Commission made SPECTRA a party to this proceeding on March 12, 2004. It gave SPECTRA until April 1, 2004 to file a comment. SPECTRA waited the full time to file a comment, and then did not identify any specific issue or basis for any delay in recognition of the adoption of the Agreement. Instead, SPECTRA merely recited that while BIG RIVER did address many of the subjects of SPECTRA's unilaterally created "standard" adoption "confirmation letter" (which SPECTRA failed to supply to the Commission with its comments), BIG RIVER did not accept all of the terms that SPECTRA sought to unilaterally attach to the adoption process. It is irrelevant whether SPECTRA has used its "form" before. The objectionable contents are inconsistent with the requirements of Section 252(i) as noted above.

7. SPECTRA has not identified any basis for imposing any further delay on BIG RIVER's ongoing efforts to establish an interconnection agreement between the two companies. It makes no assertion that the Agreement is not eligible for adoption under Section 252(i). The provisions of Section 252(i) are plain and simple: "A local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved under this section [252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." The FCC's rules are likewise plain and simple. 47 CFR 51.809(a) states that an incumbent LEC must meet the requirements of 252(i) "without unreasonable delay". 51.809(b) places the burden of proof upon the incumbent to demonstrate that it should not have to meet the requirements of the statute and rule subsection (a)

due to the costs of serving the requesting carrier being uniquely greater or due to technical infeasibility. Absent such proof at the time of adoption, the incumbent must make the adopted agreement available. SPECTRA has not even made any allegations that it has grounds under 51.809(b) to avoid its obligations to BIG RIVER and there is no reason to believe that it could legitimately make such allegations or supply the required proof.

8. The Commission should proceed to recognize the adoption of the Agreement by BIG RIVER. The Notice complies with the process envisioned by the rules under consideration by the Commission and the requirements of existing rules and statutes.

WHEREFORE, BIG RIVER respectfully requests that the Commission take notice of its adoption of the Agreement pursuant to its authority to regulate telecommunications carriers in the State of Missouri and 47 USC 252(i).

Respectfully submitted,

CURTIS, OETTING, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

Carl J. Lumley, #32869
Leland B. Curtis, #20550
130 S. Bemiston, Suite 200
St. Louis, Missouri 63105
(314) 725-8788
(314) 725-8789 (FAX)
clumley@cohgs.com
lcurtis@cohgs.com

Attorneys for Big River
Telephone Company, LLC

Certificate of Service

A true and correct copy of the foregoing document was mailed this 5th day of April, 2004, by placing same in the U.S. Mail, postage paid to:

Office of Public Counsel
P.O. Box 2230
Jefferson City, Missouri 65102

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Fischer & Dority
101 Madison, Suite 400
Jefferson City, Missouri 65101

/s/ Carl J. Lumley
