

Exhibit No.:
Issue: Expansion of Authority
Witness: Gerard J. Howe
Sponsoring Party: Big River Telephone
Company, LLC

Type of Exhibit: Surrebuttal Testimony
Case No.: TA-2007-0093

BIG RIVER TELEPHONE COMPANY, LLC

SURREBUTTAL TESTIMONY

OF

FILED²

GERARD J. HOWE

MAR 07 2007

TA-2007-0093

Missouri Public
Service Commission

January 31, 2007

Exhibit No. 4
Case No(s) TA-2007-0093
Date 2/13/07 Rptr MV

STATE OF Missouri)
) SS.
COUNTY OF St. Louis Co)

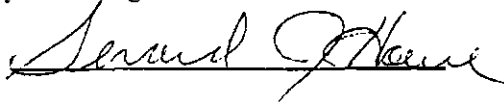
BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Big)
River Telephone Company, LLC to)
Expand its Certificate of Basic Local)
Service Authority to include provision) Case No. TA-2007-0093
of Basic Local Exchange)
Telecommunications Services in the)
Exchanges of BPS Telephone Company)
and to Continue to Classify the)
Company and its Services as)
Competitive.)

AFFIDAVIT OF GERARD J. HOWE


COMES NOW Gerard J. Howe, of lawful age, sound of mind and being first duly sworn, deposes and states:

1. My name is Gerard J. Howe. I am the CEO for Big River Telephone Company, LLC.
2. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony in the above-referenced case.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.



Gerard J. Howe

SUBSCRIBED AND SWORN to before me, a Notary Public, this 30th day of January, 2007.


Notary Public

My Commission Expires: 5/31/2010
(SEAL)

ANDREW THOMAS SCHWANTNER
Notary Public - Notary Seal
STATE OF MISSOURI
Jefferson County
Commission #06893876
My Commission Expires 5 / 31 / 2010

**PRE-FILED SURREBUTTAL TESTIMONY
OF
GERARD J. HOWE**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A. My name is Gerard J. Howe. My business address is 24 So. Minnesota Ave., Cape**
3 **Girardeau, Missouri, 63703.**

4 **Q. DID YOU PREVIOUSLY SUBMIT DIRECT TESTIMONY IN THIS CASE?**

5 **A. Yes.**

6 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

7 **A. The purpose of my surrebuttal testimony is to respond to the rebuttal testimony**
8 **submitted by staff witness John Van Eschen and BPS witness Schoonmaker.**

9 **Q. IN HIS REBUTTAL TESTIMONY, STAFF WITNESS JOHN VAN ESCHEN**

10 **INDICATES THAT STAFF ONLY HAS ONE CONCERN WITH BIG RIVER'S**

11 **APPLICATION, INVOLVING SUBMISSION OF QUARTERLY QUALITY OF**

12 **SERVICE REPORTS. HOW DO YOU RESPOND TO THAT CONCERN?**

13

1 A. While Staff otherwise supports our application, Mr. Van Eschen appropriately brings to
2 the Commission's attention that Big River had not submitted some required quarterly
3 quality of service reports.

4
5 Once Staff informed Big River of this oversight, we immediately commenced efforts to
6 generate the required reports. We have now submitted the reports, which show that we
7 are currently meeting all the applicable standards. Unfortunately, with a change in
8 personnel we had a breakdown in our submittal process, but that has now been
9 corrected. We regret the oversight and are committed to prevent any recurrence. We
10 have met with Staff and discussed our reports and plan to immediately address their
11 remaining concerns about the manner in which we track and compile the data.

12
13 **Q. ON PAGE 3 OF HIS REBUTTAL TESTIMONY, BPS WITNESS**
14 **SCHOONMAKER TESTIFIES THAT BIG RIVER'S APPLICATION IS**
15 **UNIQUE; DO YOU AGREE?**

16
17 A. No. For example, the Commission previously granted authority to Missouri State
18 Discount Telephone to provide basic local telecommunications service in all exchanges
19 in the state, including those served by BPS. (Case No. TA-2001-0334, see Schedule 2).
20 The authority granted was not limited, so I believe that Mr. Schoonmaker is incorrect
21 when he states that our application is the first for facilities-based authority. I recognize
22 and accept Mr. Van Eschen's testimony (page 9) that there are few examples of prior

1 authorizations of basic local competition in small ILEC exchanges, but Mr.

2 Schoonmaker's assertion that we are the first is incorrect.

3

4 **Q. BPS WITNESS SCHOONMAKER ASSERTS THAT BIG RIVER HAS NOT**
5 **MET THE APPLICABLE STANDARDS REGARDING ITS APPLICATION TO**
6 **EXPAND ITS SERVICE AREA SO THAT IT CAN COMPETE IN THE BPS**
7 **EXCHANGES. DO YOU AGREE?**

8

9 **A.** No. I believe through our Application and my Direct Testimony, Big River has satisfied
10 the requirements of the statutes and rules that govern issuance of the requested
11 expansion of our certificate of authority to include the exchanges served by BPS,
12 continuing to classify Big River and its services as competitive, and continuing to grant
13 the requested waivers. Staff witness Van Eschen agrees. (Van Eschen Rebuttal).

14

15 BPS witness Schoonmaker inaccurately disputes the point, but only as to compliance
16 with Section 392.451.2(4). (Schoonmaker Rebuttal p. 5).

17

18 I re-read Section 392.451.2(4) and I believe it states the Commission should establish
19 rules that at a minimum require a CLEC to comply with all of the same **rules and**
20 **regulations** as the commission may impose upon the incumbent. It seems significant
21 to me that this provision does not reference statutes, just 'rules and regulations as the
22 commission may impose'. The rate of return regime imposed by statute (392.240.1) on

1 incumbents should not apply to competitors and the Commission should waive that
2 statute as to Big River as it always has done for CLECs pursuant to Section 392.361.5.
3 It is my understanding that once a statute is waived, the Commission's authority to
4 apply the underlying regulations to the CLEC is removed, making waiver of such rules
5 seem completely appropriate.

6
7 After certification and upon Big River providing service in BPS's service area, it would
8 appear that under section 392.245 BPS will be eligible to elect price cap regulation, so
9 even BPS would not be subject to rate of return regulation. But whether BPS takes
10 advantage of that option, Big River should not be subject to rate of return regulation.
11 Section 392.451.2(4) should be interpreted in light of that reality, so as not to require
12 Big River to meet regulations which only pertain to the exercise of rate of return
13 regulation.

14
15 In addition, it appears to me that no purpose would be served if the Commission were
16 to suddenly refuse to continue to waive rule 4 CSR 240-10.020 (income on depreciation
17 fund investments) and rule 4 CSR 240-30.040 (uniform system of accounts). The only
18 other rule for which Big River has applied for waiver as to the BPS service area is 4
19 CSR 240-3.550(5)(C) which concerns exchange boundary maps. Given that Big River
20 must follow BPS's exchange boundaries, submission of an additional map would seem
21 superfluous.

1
2 From my perspective, there does not seem to be a legitimate issue underlying Mr.
3 Schoonmaker's concern with the limited waivers sought by Big River. BPS has
4 attempted to create an issue where none exists presumably because it seeks to forestall
5 competition, to the public's detriment.

6
7 Based on my review of Commission records, I understand that when the Commission
8 certificated Missouri Discount Telephone (MSDT) to offer basic local service in the
9 BPS exchanges, it waived these same statutes and rules with BPS's stipulated consent.
10 So BPS has not consistently opposed granting standard waivers of statutes and rules to
11 CLECs seeking authority to compete in its exchanges and BPS has offered no reasons
12 why it opposes granting of the waivers for Big River, yet consented to the same waivers
13 for another CLEC, MSDT.

14
15 I understand, in Case No. TO-2001-334, BPS joined in a stipulation submitted on or
16 about February 28, 2001 that called for the Commission to grant a certificate of
17 authority to MSDT to provide basic local service throughout the state including in the
18 BPS exchanges. BPS and the other parties stipulated that the Commission should grant
19 to MSDT the same standard waivers that Big River now requests. A copy of the
20 stipulation is attached hereto as Schedule 1. In March 2001, in reliance on the
21 stipulation, the Commission issued its Order granting the requested certificate of

1 authority to MSDT, and granted the requested waivers. A copy of the order is attached
2 hereto as well as Schedule 2.

3
4 The background of BPS's support for MSDT's application for authority and waivers is
5 illuminating. In May 2002 the Commission commenced proceedings regarding Staff's
6 complaint that BPS was over-earning by \$852,419 annually (Case No. TC-2002-1076).
7 It appears that BPS twice tried to fend off that complaint by electing price cap
8 regulation under Section 392.245; both times in reliance upon the existence of MSDT
9 as an authorized competitor. Both times the Commission denied BPS's election. (Case
10 Nos. IO-2003-0012 and IO-2004-0597, copies of orders attached as Schedules 3 and 4
11 respectively). Ultimately, I understand that the over-earnings complaint was resolved in
12 April 2005 when BPS stipulated to a reduction of \$460,000. (A copy of the final order
13 in the complaint proceeding is attached as Schedule 5).

14
15 While the over-earnings complaint proceeding was pending, and as it found that the
16 Commission was not going to accept competition from MSDT as a sufficient basis for a
17 price cap election, BPS repeatedly urged Big River to become its competitor as well.
18 At the time, it was not a high priority expansion for Big River. But now that the over-
19 earnings complaint has been resolved, and with the amendment of the price cap election
20 standards by the Missouri Legislature in 2005 (SB 237) to allow wireless competitors
21 to provide a basis for an election by a small ILEC in lieu of CLEC competition, it

1 appears BPS no longer needs Big River as a competitor. And now BPS asserts that the
2 standard waivers which it stipulated were appropriate for MSDT are not legally
3 permissible for Big River. Obviously, Big River disagrees.

4
5 The Commission should take notice of the foregoing orders and pleadings regarding
6 MSDT and BPS.

7
8 **Q. ON PAGES 6 AND 7 OF HIS TESTIMONY, BPS WITNESS SCHOONMAKER**
9 **LISTS VARIOUS REPORTS AND STATES THAT BIG RIVER MUST FILE**
10 **THEM WITH THE COMMISSION. DO YOU HAVE ANY COMMENTS**
11 **ABOUT THIS LIST OF REPORTS?**

12
13 **A.** While I generally agree with his list of required reports, BPS witness Schoonmaker
14 incorrectly asserts that annual reports for a CLEC must be in the same format as ILEC
15 reports. (Schoonmaker Rebuttal p. 6-7).

16
17 After reviewing Mr. Schoonmaker's testimony, I re-read Section 392.451.2(3) which
18 states that the Commission should establish rules that at a minimum require a
19 competing provider of basic local telecommunications service in an area served by a
20 small incumbent (less than 100,000 access lines in the state per 386.020(30)) to make
21 reports and other informational filings with the Commission as required of the
22 incumbent. The statute does not state that the Commission must direct both incumbent

1 and competitor to use exactly the same reporting format. Hence, it remains appropriate
2 for the Commission to require BPS to use the prescribed Incumbent Local Exchange
3 Carrier annual report form, and to require Big River to use the prescribed Competitive
4 Local Exchange Carrier annual report form. As already indicated, the Commission
5 should not impose rate of return regulation upon a CLEC. Likewise, no purpose would
6 be served to require Big River to incur the cost of submitting information that would
7 only be pertinent to a company subject to rate of return regulation, such as is found in
8 the ILEC annual report form.

9
10 Further, I believe that the aforementioned Section 392.451.2(3) should be interpreted in
11 conjunction with Section 392.361.5, which I believe served as the basis upon which the
12 Commission originally granted Big River waivers with respect to certain Commission
13 rules. I understand 392.361.5 continues to authorize the waivers requested. Again from
14 reading 392.361.5, I also understand that the only exceptions to the Commission's
15 waiver authority are set forth in Section 392.390. Again, just a simple reading of
16 392.390(1) reveals that it expressly allows for different forms of annual reports for
17 different companies.

18
19 **Q. ON PAGES 7 TO 9 OF HIS REBUTTAL TESTIMONY BPS WITNESS**
20 **SCHOONMAKER EXPRESSES CONCERN ABOUT WHETHER BIG RIVER**

1 WILL OFFER SERVICE TO END USERS IN AREAS NOT SERVED BY
2 CABLE TELEVISION FACILITIES. HOW DO YOU RESPOND?

3
4 A. Mr. Schoonmaker raises unfounded concerns about how Big River will provide service.
5 (Schoonmaker Rebuttal p. 7). As stated in the Application and in my Direct
6 Testimony, Big River will directly offer services throughout the three exchanges.
7

8 Mr. Schoonmaker apparently misunderstood my direct testimony, where in the course
9 of discussing Big River's use of cable television facilities I indicated that we served
10 about 4,500 customers using such facilities. Big River also serves over 14,000 access
11 lines by means of resale of ILEC services and use of ILEC UNE facilities. There
12 simply is no factual basis for Mr. Schoonmaker's "concern" about the number of
13 customers that Big River serves using "telephone company lease or resold facilities".
14

15 Q. AT PAGE 9 OF HIS REBUTTAL TESTIMONY BPS WITNESS
16 SCHOONMAKER STATES THAT BIG RIVER CURRENTLY DOES NOT
17 HAVE AN INTERCONNECTION AGREEMENT WITH BPS. HOW DO YOU
18 RESPOND?

19 A. BPS witness Schoonmaker is correct that Big River does not yet have an
20 interconnection agreement with BPS. As I stated in my direct testimony at pages 6-7,
21 Big River will seek an interconnection agreement with BPS. We will pursue such an

1 agreement both for the general purpose of interconnection and for the purpose of
2 providing services to customers that cannot be served by cable television facilities. Of
3 course, we also have the option of installing our own facilities if that makes sense to us
4 and the customer.

5
6 Based on my previous negotiations with other small incumbent telephone companies, I
7 understand that as an incumbent local exchange carrier, BPS is obligated under Section
8 251(a) of the Telecommunications Act of 1996 to interconnect directly or indirectly
9 with Big River's facilities and equipment. I understand that it is also obligated under
10 Section 251(b) of the Act to allow Big River to resell its telecommunications services,
11 provide number portability, provide dialing parity and permit nondiscriminatory access
12 to telephone numbers, operator services, directory assistance, and directory listings,
13 afford access to poles, ducts, conduits and rights-of-way, and establish reciprocal
14 compensation arrangements for the transport and termination of telecommunications.
15 Further, it is my understanding that under Section 251(c), BPS must also negotiate
16 interconnection agreements, provide interconnection, unbundled network elements,
17 resale, notice of changes, and collocation.

18
19 I do also understand that Section 251(f) provides for an exemption from Section 251(c)
20 for rural carriers until this Commission reviews a bona fide request, and allows this
21 Commission to grant certain suspensions and modifications to obligations under

1 Sections 251(b) and (c) based on specific standards. However, I do not see how such
2 provisions could provide a basis for denying Big River's Application in this case. To
3 the contrary, it is customary and appropriate for Big River to obtain its certificate first
4 and then pursue an interconnection agreement with BPS. This is what Big River has
5 done in other states. Whatever obstacles BPS may try to raise at that point to delay our
6 entry into BPS' markets should be separately addressed by the Commission.
7

8 **Q. AT PAGES 9 TO 11 OF HIS REBUTTAL TESTIMONY BPS WITNESS**
9 **SCHOONMAKER EXPRESSES CONCERN ABOUT WHETHER BIG RIVER**
10 **WILL OFFER DIFFERENT SERVICES TO CUSTOMERS SERVED**
11 **THROUGH CABLE TELEVISION FACILITIES VERSUS THROUGH**
12 **TELEPHONE COMPANY FACILITIES. HOW DO YOU RESPOND?**

13 **A.** When required by law, the services will be the same throughout these exchanges, at the
14 same prices. When the law allows different services and/or pricing, Big River will
15 certainly utilize available flexibility to better address customer needs. I am aware of
16 recent changes in Missouri statutes that were strongly promoted by ILECs which
17 include the flexibility to offer packages of services under section 392.200.12 without
18 the constraints that have applied to individual services concerning price differentiation
19 and exchange-wide offerings. Big River is entitled to offer such packages of services
20 just as the ILECs who sought this flexibility. I believe Mr. Schoonmaker's implication

1 that Big River must in all instances make identical offerings without regard to the
2 underlying facilities is simply incorrect.

3
4 The Poplar Bluff "example" mentioned by Mr. Schoonmaker at pages 9-10 of his
5 Rebuttal testimony is illustrative, for the package of services in question obviously is
6 not basic local service or the set of "essential services", but rather is a package
7 including broadband internet access. Big River provides various other services and
8 packages in Poplar Bluff using both cable television facilities and large incumbent
9 AT&T Missouri facilities.

10
11 It is worth noting that Big River currently is not authorized to provide service in a small
12 ILEC's service area in Missouri, so its current operations cannot be examined for
13 compliance with Missouri requirements regarding service in small ILEC exchanges that
14 do not yet apply to it.

15
16 **Q. AT PAGES 10-11 BPS WITNESS SCHOONMAKER EXPRESSES CONCERNS**
17 **ABOUT CONSISTENCY BETWEEN BIG RIVER'S SERVICE OFFERINGS**
18 **AND ITS TARIFFS. HOW DO YOU RESPOND?**

19 **A.** Big River's service offerings include voice-over-internet-protocol (VOIP) services.
20 Until recently, Big River understood from FCC decisions that such services were not
21 subject to regulation by the Commission. However, Big River now understands from

1 proceedings involving other companies that the Commission is asserting jurisdiction
2 over such services. Big River does not intend to dispute the matter with the
3 Commission and will revise its tariffs accordingly to include its VOIP offerings.
4

5 **Q. MR. SCHOONMAKER ALSO TESTIFIES THAT HE COULD NOT FIND**
6 **INFORMATION ABOUT ALL OF BIG RIVER'S SERVICES ON ITS**
7 **WEBSITE. HOW DO YOU RESPOND?**

8 **A.** We provide information about our services in various ways. We do not provide
9 information about each and every service in all media. Further, such information
10 changes frequently.
11

12 **Q. AT PAGES 11-14 OF HIS REBUTTAL TESTIMONY BPS WITNESS**
13 **SCHOONMAKER EXPRESSES CONCERN THAT BIG RIVER DOES NOT**
14 **DIRECTLY PROVIDE SERVICES TO ITS CUSTOMERS. HOW DO YOU**
15 **RESPOND?**

16 **A.** Mr. Schoonmaker is incorrect. Big River directly provides service to its customers.
17 When a cable television provider is also involved, that company frequently markets Big
18 River's services in conjunction with its own cable television offerings, but the customer
19 signs an agreement with Big River for the telephone service and Big River is
20 responsible for providing it. Our cable partners are promoting our service and are not
21 offering their own services in competition with ours. Big River is normally identified as

1 the provider on the bill to the customer, even when the cable company is responsible
2 for the billing process. A sample of the customer agreement is attached hereto as
3 Schedule 6. As indicated, with the Commission now asserting jurisdiction over VOIP
4 services, Big River is re-examining how such services are being offered to the public
5 and will revise its tariffs accordingly.

6
7 **Q. DO YOU HAVE ANY FURTHER RESPONSE TO MR. SCHOONMAKER?**

8 **A.** Only that I would hope that the Commission recognizes that BPS has become involved
9 in this case in a fairly transparent effort to obstruct competition from Big River, and its
10 opposition is not in the public interest. As Mr. Van Eschen and I have both testified,
11 granting Big River's Application will promote the public interest by providing
12 customers with a meaningful choice.

13 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

14 **A.** Yes.



Commissioners

SHEILA LUMPE
Chair

M. DIANNE DRAINER
Vice Chair

CONNIE MURRAY

ROBERT G. SCHEMENAUER

KELVIN L. SIMMONS

Missouri Public Service Commission

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February 28, 2001

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FILED³

FEB 28 2001

RE: Case No. TA-2001-334

Missouri Public
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **UNANIMOUS STIPULATION AND AGREEMENT**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Eric William Anderson
Assistant General Counsel
(573) 751-7485
(573) 751-9285 (Fax)
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EWA:ccl
Enclosure
cc: Counsel of Record

Schedule 1

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED³

FEB 28 2001

Missouri Public
Service Commission

In the Matter of the Application)
of Missouri State Discount Telephone)
for a Certificate of Authority to)
Provide Basic Local)
Telecommunications Service and)
Long Distance Service in the State)
of Missouri and to Classify Said)
Services and Missouri State Discount)
Telephone as Competitive.)

Case No. TA-2001-334

UNANIMOUS STIPULATION AND AGREEMENT

Missouri State Discount Telephone (Applicant) initiated this proceeding on November 29, 2000, by filing an Application requesting a certificate of service authority to provide basic local exchange and interexchange telecommunications services in all of Missouri.

The Missouri Public Service Commission (Commission) granted the Missouri Independent Telephone Company Group (MITG) and the Small Telephone Company Group (STCG) timely applications to intervene.

A. Standards and Criteria

1. Applicant is requesting to enter into all small LEC and large LEC areas of the state of Missouri. Applicant is requesting certification to provide basic local and interexchange telephone service. As to the small LEC areas Applicant agrees to comply with section 392.451 and provide the "essential local telecommunications services" listed in 4 CSR 240-31.010(5). As to the large LEC areas, for purposes of this Unanimous Stipulation and Agreement, the Parties agree that applications for basic local exchange

service authority in exchanges served by "large" local exchange companies (LECs)¹ should be processed in a manner similar to that in which applications for interexchange and local exchange authority currently are handled.

2. In determining whether Applicant's application for certificate of service authority should be granted, the Commission should consider Applicant's technical, financial, and managerial resources and abilities to provide basic local telecommunications service. Applicant must demonstrate that the basic local services it proposes to offer satisfy the minimum standards established by the Commission, including but not limited to filing and maintaining basic local service tariffs with the Commission in the same manner and form as the Commission requires of incumbent local exchange carriers ("ILECs") with which Applicant seeks to compete. Further, Applicant agrees to meet the minimum basic local service standards, including quality of service and billing standards, as the Commission requires of the ILECs with which Applicants seeks to compete. Notwithstanding the provisions of §392.500 R.S.Mo. 2000², as a condition of certification and competitive classification, Applicant agrees that, unless otherwise ordered by the Commission, Applicant's originating and terminating access rates will be capped at the levels authorized by the Commission in In the Matter of Access Rates to be Charged By Competitive Local Exchange Telephone Companies in the State of Missouri, Case No. TO-99-596. Accordingly, the parties acknowledge and agree that Applicant may submit tariffs providing for originating and/or terminating exchange access rates equal to or less than those of the directly competing ILEC in each exchange in which Applicant is authorized to provide basic local telecommunications

¹Large LECs are defined as LECs that serve 100,000 or more access lines, § 386.020 R.S.Mo. 2000. In Missouri, the current large LECs are SWBT, Sprint, and GTE and Spectra.

services. Additionally, Applicant agrees that if the directly competing ILEC, in whose service area Applicant is operating, decreases its originating and/or terminating access service rates, Applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates within thirty (30) days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.³ Further, Applicant agrees to offer basic local telecommunications service as a separate and distinct service and has sufficiently identified the geographic area in which it proposes to offer basic local service. Such area follows exchange boundaries of the ILECs in the same area and is no smaller than an exchange. Finally, Applicant agrees to provide equitable access to affordable telecommunications services, as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of residence or income. See §392.455.

3. Applicant has submitted its Application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(6)(C). Applicant agrees to file its initial tariffs within 30 days of an approved interconnection agreement and serve all parties thereto with written notice at the time the initial tariffs are submitted to afford them an opportunity to participate in the tariff approval process. Applicant will provide copies of the tariff immediately to a requesting Party. Any service authority shall be regarded as conditional and shall not be exercised until such time as tariffs for services have become effective. When filing its initial basic local tariff, Applicant also shall file and serve a

² All RSMo citations are to RSMo 2000 unless otherwise indicated.

³ This provision shall not be construed to require Applicant to file a tariff amendment if: (1) Applicant has concurred in the directly competing ILEC's access tariff, or (2) Applicant's

written disclosure of all resale and/or interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have a resale and/or interconnection agreement with the ILEC; and an explanation of why such a resale and/or interconnection agreement is unnecessary for such areas.

4. Pursuant to § 392.420, Applicant has requested that the Commission waive the application of the following statutory provisions and rules to its basic local telecommunications services and interexchange service, and the Parties agree that the Commission should grant such request provided that § 392.200 should continue to apply to all of Applicant's services. In its application MSDT requested some statutory terms that are different than those listed below. MSDT agrees to amend its application to request the following waivers:

For MSDT's basic local service offerings:

Statutory Provisions

§ 392.210.2
§ 392.240(1)
§ 392.270
§ 392.280
§ 392.290
§ 392.300.2
§ 392.310
§ 392.320
§ 392.330
§ 392.340

Commission Rules

4 CSR 240-10.020
4 CSR 240-30.010(2)(C)
4 CSR 240-30.040
4 CSR 240-32.030(4)(C)
4 CSR 240-33.030
4 CSR 240-35

For MSDT's Interexchange and non-switched service offerings:

Statutory Provisions

§ 392.210.2
§ 392.240(1)
§ 392.270
§ 392.280
§ 392.290
§ 392.300.2
§ 392.310
§ 392.320
§ 392.330
§ 392.340

Commission Rules

4 CSR 240-10.020
4 CSR 240-30.010(2)(C)
4 CSR 240-30.040
4 CSR 240-33.030
4 CSR 240-35

corresponding originating and/or terminating access rates are not higher than the ILEC's originating and/or terminating access rates following the ILEC's reduction of rates.

5. In negotiating the remaining provisions of this Unanimous Stipulation and Agreement, the Parties employed the foregoing standards and criteria, which are intended to meet the requirements of existing law and §§392.440, 392.450, 392.451 and 392.455 R.S.Mo. 2000 regarding applications for certificates of local exchange service authority to provide or resell basic local telecommunications service.

B. Applicant Certification

6. Applicant hereby agrees that its Application should be deemed amended to include by reference the terms and provisions described in paragraphs 2-4 above.

7. Based upon its verified Application, as amended by this Unanimous Stipulation and Agreement, Applicant asserts, and no party makes a contrary assertion, that there is sufficient evidence from which the Commission can find and conclude that Applicant:

- a. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service and local exchange telecommunications service, including exchange access service and interexchange service;
- b. proposes and agrees to offer basic local services that satisfy the minimum standards established by the Commission;
- c. has sufficiently identified the geographic area in which it proposes to offer basic local telecommunications service, and such area follows exchange boundaries of the ILECs in the same areas, and such area is no smaller than an exchange;

- d. will offer basic local telecommunications service as a separate and distinct service;
 - e. has agreed to provide equitable access to affordable basic local telecommunications services, as determined by the Commission, for all Missourians within the geographic area in which Applicant proposes to offer basic local service, regardless of where they live or their income;
 - f. in small LEC areas will offer telecommunications service which the commission has determined are essential for purposes of qualifying for state universal service fund support found in 4 CSR 240-31.010(5)⁴ and will advertise the availability of such essential services and the charges therefor using media of general distribution in compliance with §392.451;
 - h. has sought authority which will serve the public interest.
8. Applicant asserts, and no Party opposes, that Applicant's Application and

⁴ 4 CSR 240-31.010 provides the definition of "essential local telecommunications services" as follows: (5) Essential local telecommunications services--Two (2)-way switched voice residential service within a local calling scope as determined by the commission, comprised of the following services and their recurring charges: (A) Single line residential service, including Touch-Tone dialing, and any applicable mileage or zone charges; (B) Access to local emergency services including, but not limited to, 911 service established by local authorities; (C) Access to basic local operator services; (D) Access to basic local directory assistance; (E) Standard intercept service; (F) Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission (FCC); (G) One (1) standard white pages directory listing; and (H) Toll blocking or toll control for qualifying low-income customers.

request for authority to provide basic local telecommunications services and local exchange telecommunications services (including exchange access service) should be granted. All services authorized herein should be classified as competitive telecommunications services provided that the requirements of § 392.200 continue to apply, and Applicant shall remain classified as a competitive telecommunications company. Applicant asserts, and no Party opposes, that such services will be subject to sufficient competition by the services of the ILECs to justify a lesser degree of regulation of Applicant's services consistent with the protection of ratepayers and the promotion of the public interest. Such classification should become effective upon the tariffs for the services becoming effective. Such authority should be conditional, not to be exercised until such time as tariffs for those services have been filed (together with the written disclosure as stipulated above) and have become effective. The Commission's Order should state the foregoing conditions substantially as follows:

The service authority and service classification herein granted are subject to the requirements of §392.200 R.S.Mo. 2000 and are conditional and shall not be exercised until such time as tariffs for services have become effective.

The Parties agree that Applicant's switched access services may be classified as competitive services. The Parties further agree that Applicant's intrastate switched exchange access services are subject to §392.200. Any increases in intrastate switched access service rates above the maximum switched access service rates as set forth in paragraph 2 herein shall be made pursuant to §§392.220 and 392.230 and not §§392.500 and 392.510. Applicant agrees that if the directly competing ILEC, in whose service area Applicant is operating, decreases its originating and/or terminating access rates, Applicant shall file an appropriate tariff amendment to reduce its originating and/or

terminating access rates in the directly competing ILEC's service area within thirty (30) days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.⁵ The Commission's Order should state the foregoing conditions substantially as follows:

The service authority and service classification for switched exchange access granted herein is expressly conditioned on the continued applicability of §392.200 R.S.Mo. and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be made pursuant to §§392.220 and 392.230 R.S.Mo. and not §§392.500 and 392.510 R.S.Mo. Applicant agrees that if the directly competing ILEC, in whose service area Applicant is operating, decreases its originating and/or terminating access service rates, Applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within thirty (30) days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap. Applicant will not be required to file a tariff amendment if: (1) Applicant has concurred in the directly competing ILEC's access tariff; or (2) Applicant's existing originating and/or terminating access rates are not higher than the directly competing ILEC's originating and/or terminating access rates following the ILEC's reduction of rates.

9. Applicant's request for a temporary waiver of 4 CSR 240-2.060(6)(C)⁶, which requires applications to include a proposed tariff with a 45-day effective date, is not opposed by the Parties and should be granted, because at the time of filing its Application, Applicant does not yet have approved a resale or interconnection agreement with any ILEC. Applicant agrees that at such time as all facts necessary for the development of tariffs become known, it will submit the tariff(s) within 30 days of an approved interconnection agreement, with a minimum 45-day proposed effective date, to the Commission for its approval, together with the written disclosure as stipulated above.

⁵ See Footnote 3.

Applicant shall serve notice to all parties and participants in this docket of the filing of its tariff(s) at the time filed with the Commission and serve the tariff(s) with the aforesaid written disclosure and shall upon request immediately provide any Party with a copy of Applicant's proposed tariff(s). The Commission's order should state these obligations as conditions to the temporary waiver of 4 CSR 240-2.060(6)(C), substantially as follows:

Applicant's request for temporary waiver of 4 CSR 240-2.060(6)(C) is hereby granted. Within thirty (30) days of the effective date of an Order approving an interconnection agreement with any underlying carrier, applicant shall submit its tariff for Commission approval. Such tariff(s) shall have a minimum 45-day effective date and the Applicant shall serve written notice upon the Parties hereto of such submittal and shall provide copies of such tariff(s) to such Parties immediately upon request. When filing its initial basic local service tariff in this docket, the Applicant also shall file and serve upon the Parties hereto a written disclosure of all resale or interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have a resale or interconnection agreement with the ILEC; and its explanation of why such resale or interconnection agreement is unnecessary for any such areas.

10. Applicant's request for waiver of the application of the following rules and statutory provisions as they relate to the regulation of Applicant's basic local and interexchange telecommunications services should be granted:

For MSDT's basic local service offerings:

Statutory Provisions

§ 392.210.2
§ 392.240(1)
§ 392.270
§ 392.280
§ 392.290
§ 392.300.2
§ 392.310
§ 392.320
§ 392.330
§ 392.340

Commission Rules

4 CSR 240-10.020
4 CSR 240-30.010(2)(C)
4 CSR 240-30.040
4 CSR 240-32.030(4)(C)
4 CSR 240-33.030
4 CSR 240-35

⁶ MSDT actually requested temporary waiver of "4 SCR 240.060(4)(H)" and described the 45 day effective date. As this section does not exist it is the parties understanding that the section meant to be cited is 4 CSR 240-2.060(6)(c).

For MSDT's Interexchange and non-switched service offerings:

Statutory Provisions

§ 392.210.2
§ 392.240(1)
§ 392.270
§ 392.280
§ 392.290
§ 392.300.2
§ 392.310
§ 392.320
§ 392.330
§ 392.340

Commission Rules

4 CSR 240-10.020
4 CSR 240-30.010(2)(C)
4 CSR 240-30.040
4 CSR 240-33.030
4 CSR 240-35

11. This Unanimous Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms thereof are interdependent. In the event the Commission does not adopt this Stipulation in total, this Stipulation and Agreement shall be void, and no signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding and are made without prejudice to the rights of the signatories to take other positions in other proceedings.

12. In the event the Commission accepts the specific terms of this Unanimous Stipulation and Agreement, the Parties and participants waive with respect to the issues resolved herein their respective rights pursuant to §536.080.1 to present testimony, to cross-examine witnesses, to present oral argument or written briefs, their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, and their respective rights to seek rehearing pursuant to §386.500 and their respective rights to seek judicial review pursuant to §386.510. The Parties agree to cooperate with Applicant

and with each other in presenting this Unanimous Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of the Applicant's Application made herein.

13. The Staff shall file suggestions or a memorandum in support of this Unanimous Stipulation and Agreement and the other parties shall have the right to file responsive suggestions or prepared testimony. All responsive suggestions, prepared testimony, or memorandum shall be subject to the terms of any Protective Order that may be entered in this case.

14. The Staff also shall have the right to provide, at any agenda meeting at which this Unanimous Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests; provided that Staff shall provide, to the extent reasonably practicable, the other Parties and participants with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent that it refers to matters that are privileged or protected by disclosure pursuant to any protective order that may be issued in this case.

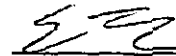
15. The Office of the Public Counsel is a signatory to this Unanimous Stipulation and Agreement for the sole purpose of stating that it has no objection to this Unanimous Stipulation and Agreement.

16. Finally, Applicant will comply with all applicable Commission rules and regulations, except those which specifically are waived by the Commission.


WHEREFORE, the signatories respectfully request the Commission to issue its Order approving the terms of this Unanimous Stipulation and Agreement and issue its Order granting applicant a certificate of service authority to provide basic local exchange service, a certificate of service authority to provide interexchange telecommunications service, and classification as requested by Applicant subject to the conditions described above, at its earliest convenience.

Respectfully submitted,

DANA K. JOYCE
General Counsel


Eric William Anderson
Assistant General Counsel
Missouri Bar No. 47253

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Attorney for STCG

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 28th day of February, 2001.

EW

Service List for
Case No. TA-2001-334
February 28, 2001 (ccl)

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri)	
State Discount Telephone (M-SDT) for a)	
Certificate of Service Authority to Provide)	
Basic Local Telecommunications Service and)	Case No. TA-
2001-334		
Long Distance Service in the State of)	
Missouri and to Classify Said Services and))	
Missouri State Discount Telephone as)	
Competitive)	

ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL EXCHANGE AND INTEREXCHANGE TELECOMMUNICATIONS SERVICE

Procedural History

Missouri State Discount Telephone (M-SDT) applied to the Public Service Commission on November 29, 2000, for a certificate of service authority to provide basic local exchange and interexchange telecommunications services in Missouri under Sections 392.410 - .450, RSMo 2000.^[1] M-SDT supplemented its Application on December 18. M-SDT asked the Commission to classify it as a competitive company and to waive certain statutes and rules as authorized by Sections 392.361 and 392.420. M-SDT is a sole proprietorship owned by Mr. Harry L. Thielepape, Jr., with principal offices located at 804 Elkins Lake, Huntsville, Texas 77340.

The Commission issued a notice and schedule of applicants on December 5. That notice directed that interested parties wishing to intervene with regard to M-SDT's application to provide interexchange service should do so by December 20. The same notice directed that parties wishing to intervene with regard to M-SDT's application to

provide basic local service should do so by January 4, 2001. On December 20, the Missouri Independent Telephone Company Group (MITG) [2] filed an application to intervene. The Small Telephone Company Group (STCG) [3] filed an application to intervene on December 22. Both Applications to Intervene were granted on January 5, 2001. On February 28, the parties filed a Unanimous Stipulation and Agreement (Agreement), which is included with this order as Attachment 1. The Staff of the Commission filed Suggestions in Support of the Unanimous Stipulation and Agreement on March 9.

In the Agreement, the parties waive their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. [4] Since no one has requested a hearing in this case, the Commission may grant the relief requested based on M-SDT's application and the Agreement.

Discussion

M-SDT seeks certification to provide basic local exchange telecommunications service throughout Missouri, including exchanges served by both large and small incumbent local exchange carriers. M-SDT also seeks certification to provide interexchange telecommunications service. M-SDT is requesting that its basic local and interexchange services be classified as competitive and that the application of certain statutes and regulations be waived.

A. Requirements of 4 CSR 240-2.060(6)(C)

Commission Rule 4 CSR 240-2.060(6)(C) requires an applicant for certification to include in its application a proposed tariff with a 45-day effective date. M-SDT requested a temporary waiver of 4 CSR

240-2.060(6)(C) until it has entered into an interconnection agreement with an underlying local exchange carrier and that agreement has been approved by the Commission. M-SDT agreed to file its initial tariffs within 30 days after it is party to an approved interconnection agreement. The Agreement provides that M-SDT will give written notice of the tariff filing to all the parties to allow them the opportunity to participate in the tariff approval process. When filing its initial basic local tariff, M-SDT has agreed to provide a written disclosure of all resale or interconnection agreements that affect its Missouri service areas; all portions of its Missouri service areas for which it does not have a resale or interconnection agreement with the ILEC; and an explanation of why such a resale or interconnection agreement is unnecessary for such areas.

The Commission has found that holding open the certificate case until a tariff is filed may result in the case being left open without activity for an extended period. Therefore, this case will be closed and, when M-SDT files the required tariff, it will be assigned a new case number. M-SDT will be directed to provide the notice and disclosures required by the Agreement when it files its proposed tariff.

B. Basic Local Service Certification

Section 392.455 sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants. A new entrant must: (1) possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service; (2) demonstrate that the services it proposes to offer satisfy the minimum standards established by the Commission; (3) set forth the geographic area in which it proposes to

offer service and demonstrate that such area follows exchange boundaries of the ILEC and is no smaller than an exchange; and (4) offer basic local telecommunications service as a separate and distinct service. In addition, the Commission must give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

In the Agreement, the parties agree that there is sufficient evidence from which the Commission can find and conclude that:

a. M-SDT possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service and local exchange telecommunications service, including exchange access service and interexchange service;

b. M-SDT proposes and agrees to offer basic local services that satisfy the minimum standards established by the Commission;

c. M-SDT has sufficiently identified the geographic area in which it proposes to offer basic local telecommunications service and such area follows exchange boundaries of the ILECs in the same area, and such area is no smaller than an exchange;

d. M-SDT will offer basic local telecommunications service as a separate and distinct service;

e. M-SDT has agreed to provide equitable access to affordable basic local telecommunications services, as determined by the Commission, for all Missourians within the geographic area in which M-SDT will offer basic local services, regardless of where they live or their income;

f. In areas served by small LECs, M-SDT will offer telecommunications services that the Commission has determined are essential for purposes of qualifying for state universal service fund

support found in 4 CSR 240-31.010(5) ^[5] and will advertise the availability of such essential services and the charges therefor using media of general distribution in compliance with Section 392.451, RSMo; and

g. M-SDT has sought authority that will serve the public interest.

C. Competitive Classification

Section 392.361.2 provides that the Commission may classify a telecommunications provider as a competitive company if the Commission determines that the provider is subject to sufficient competition to justify a lesser degree of regulation. In making that determination, the Commission may consider such factors as market share, financial resources and name recognition, among others. ^[6] Section 392.361.3 provides that the Commission may classify a telecommunications company as a competitive telecommunications company only upon a finding that all telecommunications services offered by such company are competitive telecommunications services. The Commission has found that whether a service is competitive is a subject for case-by-case examination and that different criteria may be given greater weight depending upon the service being considered. ^[7]

The parties have agreed that M-SDT should be classified as a competitive telecommunications company. The parties further agree that M-SDT's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on M-SDT's ability to charge for its access services. The agreed upon limitations are that, unless otherwise ordered by the Commission, M-SDT's originating and terminating access rates will be capped at the levels authorized by the Commission in *In the Matter of Access Rates to be Charged by Competitive Local Exchange Telephone Companies in the*

State of Missouri, Case No. TO-99-596. Accordingly, the parties acknowledge and agree that M-SDT may submit tariffs providing for originating and terminating exchange access rates equal to or less than those of the directly competing ILEC in each exchange in which M-SDT is authorized to provide basic local telecommunications services. Additionally, M-SDT agrees that if the directly competing ILEC, in whose service area M-SDT is operating, decreases its originating or terminating access service rates, M-SDT shall file an appropriate tariff amendment to reduce its originating or terminating access rates in order to maintain the cap. The parties further agree that the grant of service authority and competitive classification to M-SDT should be expressly conditioned on the continued applicability of Section 392.200, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement shall be made pursuant to Sections 392.220 and 392.230, and not Sections 392.500 and 392.510.

The parties agree that waiver of the following statutes is appropriate with regard to M-SDT's basic local service offerings: Sections 392.210.2; 392.240.1; 392.270; 392.280; 392.290; 392.300.2; 392.310; 392.320; 392.330; and 392.340. The parties also agree that application of these Commission rules should be waived with regard to M-SDT's basic local service offerings: 4 CSR 240-10.020; 4 CSR 240-30.010(2)(C); 4 CSR 240-30.040; 4 CSR 240-32.030(4)(C); 4 CSR 240-33.030; and 4 CSR 240-35.

The parties agree that waiver of the following statutes is appropriate with regard to M-SDT's interexchange and non-switched service offerings: Sections 392.210.2; 392.240(1); 392.270; 392.280; 392.290; 392.300.2; 392.310; 392.320; 392.330; and 392.340. The parties also agree that application of these Commission rules should

be waived with regard to M-SDT's interexchange and non-switched service offerings: 4 CSR 240-10.020; 4 CSR 240-30.010(2)(C); 4 CSR 240-30.040; 4 CSR 240-33.030; and 4 CSR 240-35.

Findings of Fact

The Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

- A. The Commission finds that competition in the basic local exchange telecommunications market is in the public interest.
- B. The Commission finds that M-SDT has met the requirements of 4 CSR 240-2.060 for applicants for certificates of service authority to provide telecommunications services with the exception of the filing of a tariff with a 45-day effective date.
- C. The Commission finds that M-SDT has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
- D. The Commission finds that M-SDT meets the statutory requirements for provision of basic local telecommunications services and has agreed to abide by those requirements in the future. The Commission determines that granting M-SDT a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. M-SDT's certificate shall become effective when its tariff becomes effective.
- E. The Commission finds that M-SDT is a competitive company and should be granted waiver of the statutes and rules set

out in the ordered paragraph below.

F. The Commission finds that M-SDT's certification and competitive status should be expressly conditioned upon the continued applicability of Section 392.200, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement shall be made pursuant to Sections 392.220 and 392.230, rather than Sections 392.500 and 392.510.

Conclusions of Law

The Public Service Commission has reached the following conclusions of law:

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. M-SDT has requested certification under Sections 392.410 - .450, which permit the Commission to grant a certificate of service authority where it is in the public interest. Sections 392.361 and .420 authorize the Commission to modify or suspend the application of its rules and certain statutory provisions for companies classified as competitive or transitionally competitive.

The federal Telecommunications Act of 1996 and Section 392.455 were designed to institute competition in the basic local exchange and interexchange telecommunications markets in order to benefit all telecommunications consumers. See Section 392.185.

The Commission has the legal authority to accept a Stipulation and Agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to Section 536.060. Based upon the Commission's review of the applicable law, the Agreement of the parties, and upon its findings of fact, the Commission concludes that

the Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties, filed on February 28, 2001, is approved.

2. That Missouri State Discount Telephone is granted a certificate of service authority to provide basic local telecommunications services in the state of Missouri, subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when the company's tariff becomes effective.

3. That Missouri State Discount Telephone is granted a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to all applicable statutes and Commission rules except as specified in this order.

4. That Missouri State Discount Telephone is classified as a competitive telecommunications company. Application of the following statutes and rules shall be waived with regard to Missouri State Discount Telephone's basic local service offerings:

Statutes

- 392.210.2 - uniform system of accounts
- 392.240(1) - rates-rentals-service & physical connections
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.300.2 - acquisition of stock
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

Commission Rules

- 4 CSR 240-10.020 - depreciation fund income

- 4 CSR 240-30.010(2)(C) - posting of tariffs
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-32.030(4)(C) - exchange boundary maps
- 4 CSR 240-33.030 - minimum charges
- 4 CSR 240-35 - reporting of bypass and
customer-specific arrangements

5. That application of the following statutes and rules shall be waived with regard to Missouri State Discount Telephone's interexchange and non-switched service offerings:

Statutes

- 392.210.2 - uniform system of accounts
- 392.240.1 - rates-rentals-service & physical connections
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.300.2 - acquisition of stock
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

Commission Rules

- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.010(2)(C) - posting of tariffs
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-33.030 - minimum charges
- 4 CSR 240-35 - reporting of bypass and
customer-specific arrangements

6. That the service authority and service classification for switched exchange access granted herein is expressly conditioned on the continued applicability of Section 392.200, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the Unanimous Stipulation and Agreement shall be made pursuant to Sections 392.220 and 392.230, and not Sections 392.500 and 392.510. If the directly competing ILEC, in whose service area Missouri State Discount Telephone is operating, decreases its originating or terminating

access service rates, Missouri State Discount Telephone shall file an appropriate tariff amendment to reduce its originating or terminating access rates in the directly competing ILEC's service area within thirty days of the directly competing ILEC's reduction of its originating or terminating access rates in order to maintain the cap. Missouri State Discount Telephone is not required to file a tariff amendment if it has concurred in the directly competing ILEC's access tariff or its existing originating or terminating access rates are not higher than the directly competing ILEC's originating or terminating access rates following the ILEC's reduction of rates.

7. That the request for waiver of 4 CSR 240-2.060(6)(C), which requires the filing of a 45-day tariff, is granted.

8. That Missouri State Discount Telephone shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date of a Commission order approving a resale or interconnection agreement that will allow it to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

9. That Missouri State Discount Telephone shall give notice of the filing of the tariffs described above to all parties or participants in this case. In addition, Missouri State Discount telephone shall file a written disclosure of all resale or interconnection agreements that affect its Missouri service areas, all portions of Missouri service areas for which it does not have a resale or interconnection agreement, and an explanation of why no resale or interconnection agreement is necessary for those areas.

10. That the service authority and service classification granted in this order are subject to the requirements of Section

392.200, RSMo 2000 and are conditional and shall not be exercised until such time as tariffs for services have become effective.

11. That this order shall become effective on March 26, 2001.

12. That this case may be closed on March 27, 2001.

BY THE COMMISSION

(S E A L)

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Morris L. Woodruff, Senior Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 16th day of March, 2001.

[1] All statutory references are to Revised Statutes of Missouri 2000 unless otherwise indicated.

[2] The MITG includes the following members: Alma Telephone Company; Chariton Valley Telephone Corporation; Choctaw Telephone Company; Mid-Missouri Telephone Company; Modern Telecommunications, Inc.; MoKan Dial Inc.; and Northeast Missouri Rural Telephone Company.

[3] The STCG includes the following members: BPS Telephone Company; Cass County Telephone Company; Citizens Telephone Company of Higginsville, Missouri, Inc.; Craw-Kan Telephone Cooperative, Inc.; Ellington Telephone Company; Farber Telephone Company; Goodman Telephone Company, Inc.; Granby Telephone Company; Grand River Mutual Telephone Corporation; Green Hills Telephone Corporation; Holway Telephone Company; Kingdom Telephone Company; KLM Telephone Company; Lathrop Telephone Company; Le-Ru Telephone Company; McDonald County Telephone Company; Mark Twain Rural Telephone Company; Miller Telephone Company; New Florence Telephone Company; New London Telephone Company; Orchard Farm Telephone Company; Oregon Farmers Mutual Telephone Company; Ozark Telephone Company; Peace Valley Telephone Company; Rock Port Telephone Company; Seneca Telephone Company; Spectra Communications Group, LLC; Steelville Telephone Exchange, Inc.; and Stoutland Telephone Company.

[4] *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989)

[5] 4 CSR 240-31.010(5) defines essential telecommunications services as follows:

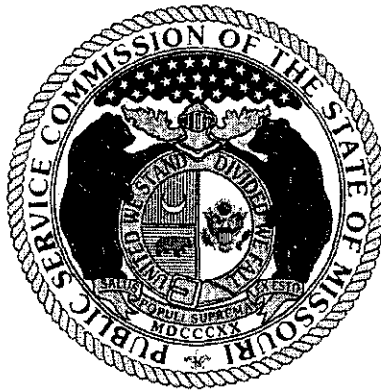
Essential local telecommunications services - Two (2)-way switched voice residential service within a local calling scope as determined by the commission, comprised of the following services and their recurring charges:

- (A) Single line residential service, including Touch-Tone dialing, and any applicable mileage or zone charges;
- (B) Access to local emergency services including, but not limited to, 911 service established by local authorities;
- (C) Access to basic local operator services;
- (D) Access to basic local directory assistance;
- (E) Standard intercept service;
- (F) Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission (FCC);
- (G) One (1) standard white pages directory listing; and
- (H) Toll blocking or toll control for qualifying low-income customers.

[6] *In the Matter of the Investigation for the Purpose of Determining the Classification of the Services Provided by Interexchange Telecommunications Companies Within the State of Missouri*, 30 Mo. P.S.C. (N.S.) 16 (1989); *In the Matter of Southwestern Bell Telephone Company's Application for Classification of Certain Services as Transitionally Competitive*, 1 Mo. P.S.C. 3d 479, 484 (1992).

[7] *Id.* at 487.

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



In the Matter of BPS Telephone Company's Election to
be Regulated under Price Cap Regulation as Provided
in Section 392.245, RSMo 2000.

)
) **Case No. IO-2003-0012**
)

REPORT AND ORDER

Issue Date: November 13, 2003

Effective Date: November 24, 2003

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

In the Matter of BPS Telephone Company's Election to)
be Regulated under Price Cap Regulation as Provided) **Case No. IO-2003-0012**
in Section 392.245, RSMo 2000.)

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APPEARANCES

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Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Cliff E. Snodgrass, Senior Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: **Nancy Dippell, Senior Regulatory Law Judge.**

REPORT AND ORDER

Syllabus

This order finds that BPS Telephone Company's notice of election to become a price cap carrier under Section 392.245.2, RSMo 2000¹ is invalid.

Procedural History

By letter to the Commission on March 13, 2002, BPS Telephone Company notified the Commission that it was electing to be regulated under the "price cap" provisions of Section 392.245.2. BPS provided a second written notice of its intent to be regulated under the price cap statute on July 17, 2002. The Commission issued a Notice of Price Cap Election on July 22, 2002, and set a time for responses to the price cap election.

The Staff of the Missouri Public Service Commission filed a motion requesting that the Commission reject BPS's price cap election. The Office of Public Counsel also objected to BPS's election and requested that the Commission hold an evidentiary hearing.

Prior to BPS's price cap election notice, the Staff had informally been conducting an overearnings investigation. Staff also filed a formal request to conduct an overearnings investigation and to file a complaint.²

On January 24, 2003, the parties filed a joint issues list describing the issues to be resolved to by the Commission. On that same date, each of the parties filed a statement describing their position on each issue. An evidentiary hearing, with all the parties present, was held on February 7, 2003.

¹ All statutory references are to the Revised Statutes of Missouri 2000, unless otherwise noted.

² *Staff of the Missouri Public Service Commission, Complainant, v. BPS Telephone Company, Respondent*, Case No. TC-2002-1076.

Initial briefs of the parties were filed on April 4, 2003, and reply briefs were submitted on April 24, 2003. Also on April 4, 2003, ALLTEL Missouri, Inc., filed a petition for leave to file its brief as *amicus curiae*. ALLTEL simultaneously filed its brief. The Commission granted the petition on April 15, 2003.

Discussion

The parties presented the Commission with the following issues for determination and stated the following positions³ on each issue:

1. Is Missouri State Discount Telephone providing basic local telecommunications service in BPS's service area?

BPS: Yes. MSDT provides basic local telecommunications service in BPS's service area in accordance with the definition of basic local telecommunications service found in Section 386.020(4), RSMo 2000.

Staff: No. MSDT is not providing the minimum standards for basic local telecommunications service established in Commission Rule 4 CSR 240-32.100. Section 386.020(4) only provides a general outline of what constitutes basic local telecommunications service. The statute defers to the Commission to determine such things as local calling scope, and whether or not touch tone, access to operator services, as well as other features are included as part of basic local telecommunications service.

Public Counsel: No. MSDT, as a prepaid provider, does not provide many of the services that are defined as basic local service.

2. Would the type or level of competition that MSDT provides BPS be a relevant consideration in determining whether BPS is subject to price cap regulation?

BPS: No. Section 392.245.2, sets out the requirements to be met by a small incumbent local exchange telecommunications company before it can elect to be regulated under price cap regulation. This statute does not reference any type or level of competition that must be met before the incumbent LEC is eligible to elect price cap regulation. The Commission previously rejected the "effective competition" argument in the

³ Each of the parties' positions was taken from their Statements of Position filed on January 24, 2003. ALLTEL in its Amicus Curiae Brief agrees with the position of BPS.

Southwestern Bell Telephone Company price cap case.⁴ Thus, competition, no matter what the level or type, is not a consideration.

Staff Position: Yes. The type of competition required for a valid election to price cap status is that an alternative local exchange carrier is certificated to provide basic local telecommunications service, and is, in fact, providing basic local telecommunications service in the service area of BPS.

Public Counsel: Yes. It would be absurd for the General Assembly to use the presence of an alternative local exchange telecommunications company certified and providing services in the ILECs exchanges as a price cap election trigger if the ALEC does not compete with the ILEC for customers. Competition is the essential reason for permitting price cap regulation as an alternative form of regulation from rate of return regulation. The provisions of the interconnection agreement amount to a pact not to compete and therefore MSDT cannot reasonably be said to be offering competitive services to BPS. MSDT as a prepaid company does not provide basic local service to compete with BPS even absent the interconnection agreement.

3. Does BPS qualify for price cap regulation under Section 392.245 RSMo 2000?

BPS: Yes. BPS has shown that it meets all of the statutory criteria for election of price cap regulation. BPS is a small incumbent local exchange company; it filed a written notice to the Commission of its election to be regulated under the price cap statute; MSDT is an alternative local exchange telecommunications company; MSDT holds a certificate of service authority to provide basic local telecommunications service in BPS's service area; and MSDT is providing basic local telecommunications service in BPS's service area.

Staff: No. BPS does not qualify for price cap regulatory status because MSDT is not providing basic local telecommunications service as required by Commission Rule 4 CSR 240-32.100 and as is required by the election provisions of this statute.

Public Counsel: No. Allowing BPS to elect price cap regulation under the facts here would be inconsistent and contrary to the clear intent and purpose of Section 392.245, RSMo and Chapter 392. MSDT does not offer many of the basic local telecommunications services defined by Section 386.020(4). Also, MSDT and BPS have entered into a non-compete pact as part of their interconnection agreement. To allow price cap

⁴ *In the Matter of the Petition of Southwestern Bell Telephone Company for a Determination that It is Subject to Price Cap Regulation Under Section 392.245 RSMo (1996), Case No. TO-97-397.*

regulation election under these circumstances is contrary to the intent and purpose of the law to have competition as a substitute for regulation and to provide just and reasonable prices for services.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

BPS is a small incumbent local exchange company serving approximately 3900 access lines in Missouri.⁵ BPS first provided written notice to the Commission of its intent to be regulated under the price cap statute⁶ on March 13, 2002.⁷ BPS provided a second written notice of its intent to be regulated under the price cap statute on July 17, 2002.⁸

MSDT was certified to provide basic local telecommunications service by the Commission in Case No. TA-2001-334, effective March 26, 2001.⁹ MSDT's tariff for the provision of basic local telecommunications service was approved by the Commission on June 26, 2001, and became effective on July 2, 2001.¹⁰ MSDT's original tariff did not specifically list that it would be providing service in any of BPS's exchanges. MSDT

⁵ Exh. 1, pp. 3-4; Exh. 2, p. 4; Exh. 3, p.2 ; Tr. 118; 241.

⁶ Section 392.245, RSMo.

⁷ Exh. 1, p. 4 ; Sched. DC I ; Tr. 118; 242.

⁸ Exh. 1, p.4; Sched. DC 2.

⁹ Exh. 1, p. 4; Exh. 2, p. 12; Exh. 3, p. 7 ; Tr. 118; 241.

¹⁰ Exh. 1, p. 4.

amended its tariff effective June 21, 2002, to include the service territory of several small company exchanges including BPS.

MSDT resells the telecommunications service of BPS. BPS and MSDT entered into a Resale Agreement that was approved by the Commission in Case No. TO-2002-62, effective October 26, 2001.¹¹ That agreement included the following restriction on service to be provided by MSDT:

6.1 Restrictions.

6.1.1 The resale of services under this Agreement shall be limited to users and uses conforming to class of service restrictions. All services provided under this Agreement shall be toll restricted, so that the services cannot be used to incur direct dial toll charges. . . . Missouri State Discount shall not target Telephone Company's current customers or new customers to Telephone Company's service area, for services to be resold by Missouri State Discount. Missouri State Discount's target market shall be individuals and entities which are not current customers of Telephone Company and have been disconnected for nonpayment of Telephone Company's telecommunication charges. . . .¹²

MSDT provides telecommunications service to a few customers within the BPS service area.¹³ MSDT provides service by reselling through its interconnection agreement, the services of BPS. The type of service offered by MSDT is often referred to as "prepaid" service. This term is derived from the fact that in order to receive service, the customer must pay in full for the month of service. In addition, consumers of "prepaid" service usually are limited to basic local services and have no access to toll or fee services. MSDT's customers are restricted in this manner.

¹¹ Exh. 1, p. 4-5 ; Exh. 6.

¹² Exh. 6, p. 6.

¹³ Exh. 1, p. 6; Exh. 3, p. 3; Tr. p. 51, ln. 4-9.

MSDT provides "two-way switched voice service within a local calling scope"¹⁴ comprised of the following services:¹⁵

- (a) Multiparty, single line, including installation, touchtone dialing and any applicable mileage or zone charges;
- (b) Access to local emergency services including 911 service, if available;
- (c) Standard intercept service; and
- (d) Standard white pages directory listings.

MSDT does not provide the other services as listed in Section 386.020(4) including assistance programs such as lifeline, link-up, and dual-party relay services; access to basic local operator services; access to basic local directory assistance; and equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission.¹⁶ The current price for service from MSDT is \$50 per month and for similar services from BPS the charge is approximately \$20.¹⁷

The current agreement between BPS and MSDT limits MSDT's ability to compete with BPS. The testimony of David Carson corroborated this fact. Mr. Carson testified that even though a BPS customer could request service from MSDT, under the terms of the agreement, MSDT could do very little to try to gain those customers until they have their service disconnected from BPS.¹⁸ It is at that point that the agreement allows MSDT to seek BPS's customers. Based on its review of the agreement, Mr. Carson's testimony cited above, and Mr. Carson's confidential testimony during the *in camera* session of the

¹⁴ Section 386.020(4), RSMo.

¹⁵ Exh. 5, pp. 12-13 ; Tr. pp. 119-21.

¹⁶ Exh. 5, pp. 12-13.

¹⁷ Tr. p. 67, ln. 1-9.

¹⁸ Tr. p.62-65; Tr. p. 69, ln. 10-14.

hearing,¹⁹ the Commission finds that the agreement is designed to prohibit competition between the companies. The Commission also finds that BPS is not subject to any competition from MSDT.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

BPS is a telecommunications company and public utility as defined in Sections 386.020(51) and 386.020(42). The Commission has jurisdiction over the services, activities, and rates of BPS under Chapters 386 and 392. BPS is also an incumbent local exchange telecommunications company as defined in Section 386.020(22), and a small local exchange telecommunications company as defined in Section 386.020(30).

Section 392.245 authorizes the Commission to "ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation." Section 392.245.2 sets out the procedure for small incumbent local exchange companies to elect to be regulated pursuant to the price cap statute and states, in pertinent part, that:

A small incumbent local exchange telecommunications company may elect to be regulated under this section upon providing written notice to the commission if an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the small incumbent company's service area

An "alternative local exchange telecommunications company" is defined as "a local exchange telecommunications company certified by the commission to provide basic

¹⁹ Tr. p. 51.

or nonbasic local telecommunications service. . .in a specific geographic area."²⁰ MSDT was certificated to provide basic local telecommunications service in Case No. TA-2001-334, effective March 26, 2001. A telecommunications company is required to specify in which exchanges it will provide service.²¹ As of June 21, 2002, MSDT's tariff specified that it would provide service in BPS's service area. BPS also has provided written notice of its election to be regulated pursuant to the price cap statute on March 13, 2002, and again on July 17, 2002.

Thus, BPS has shown all the required elements of Section 392.245.2 except that MSDT is providing basic local telecommunications service in competition with BPS. Even though MSDT provides two-way switched voice service within a local calling scope and provides four of the services listed in Section 386.020(4), it is not providing basic local service in a manner as intended by the legislature that would allow BPS to elect price cap regulation.

"It is a basic rule of statutory construction that words should be given their plain and ordinary meaning whenever possible. Courts look elsewhere for interpretation only when the meaning is ambiguous or would lead to an illogical result defeating the purpose of the legislature."²² Section 392.245 contains no reference to competition; however, the legislature has mandated that every provision in Chapter 392, whether ambiguous or not, be construed with certain principles in mind.²³ Section 392.185 states:

²⁰ Section 386.020(1), RSMo.

²¹ Section 392.220.1, RSMo. *See also*, 4 CSR 240-3.545(12)(C) (this rule was formerly 4 CSR 240-30.010(12)(C) but was relocated within the Code of State Regulations effective April 30, 2003).

²² *State ex rel. Maryland Heights Fire Protection Dist. v. Campbell*, 736 S.W.2d 383, 386 -387 (Mo. banc 1987). (citations omitted)

²³ Section 392.185, RSMo.

The provisions of this chapter shall be construed to:

- (1) Promote universally available and widely affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;
- (4) Ensure that customers pay only reasonable charges for telecommunications service;
- (5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;
- (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;
- (7) Promote parity of urban and rural telecommunications services;
- (8) Promote economic, educational, health care and cultural enhancements; and
- (9) Protect consumer privacy.

The nine provisions of Section 392.185 are mandatory and necessarily must guide the Commission in the construction and application of the Price Cap Statute. Section 392.185(6) states that one public policy to be implemented through the construction of Chapter 392 is to "[a]llow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest." Another is "flexible regulation of competitive telecommunications companies and competitive telecommunications services."²⁴ Price cap regulation, a transitional status between traditional rate-of-return regulation and deregulated competition,

²⁴ Section 392.185(5).

permits ratemaking without the traditional oversight and regulation of the Commission. This is the principal benefit that the legislature intended to confer on qualifying carriers through the Price Cap Statute.

The Commission has examined the Price Cap Statute in the context of the principles set out by the legislature and the entire deregulation scheme put forth in Chapter 392 to implement the federal Telecommunications Act of 1996. It is clear from the statutes that the legislature intended to promote competition while maintaining protection for the ratepayers by allowing competition to substitute for regulation. BPS and MSDT have agreed that MSDT will not compete for BPS's customers. Therefore, to find that MSDT is providing competitive pressure on BPS that will substitute for regulation, would be to leave the ratepayers with inadequate protections to ensure that the rates they pay are reasonable. Neither competition nor the Commission would regulate the prices charged by BPS. The Commission agrees with the Office of the Public Counsel that allowing BPS to elect price cap status under this completely noncompetitive circumstance would be an absurd result that the legislature did not intend and would not be "consistent with the public interest."²⁵

The Commission concludes that MSDT is not providing basic local telecommunications services in a manner that would allow BPS to elect price cap status. The Commission further concludes that BPS's price cap election is invalid, and that BPS maintains its status as a traditional rate-of-return regulated company.

The Commission need not address the issue of what level of competition is necessary for price cap election because BPS is not subject to *any* competition from

²⁵ Section 392.185(6), RSMo.

MSDT. The Commission also does not reach the issue of whether a prepaid service provider can be considered to be providing basic local telecommunications service under Section 386.020(4). It is not necessary to decide this issue because BPS does not qualify for price cap status for the reasons stated above.

Conclusion

The legislature stated that Chapter 392 "shall be construed" so that "full and fair competition . . . [may] substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest."²⁶ MSDT and BPS have entered into a contract by which MSDT agrees not to compete with BPS and BPS is not subject to any competition from MSDT. The legislature could not have intended such a noncompetitive situation to qualify as "providing . . . [basic local telecommunications] service" under Chapter 392 and thereby allow the small incumbent local exchange carrier to reap the benefits of a competitive environment and a lesser degree of regulation. For these reasons, the Commission determines that BPS is not eligible for price cap status and that its price cap election is invalid.

IT IS THEREFORE ORDERED:

1. That BPS Telephone Company is ineligible to elect price cap status.
2. That any motion not ruled on is denied and that any objection not ruled on is overruled.

²⁶ *Id.*

3. That this Report and Order shall become effective on November 24, 2003.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Gaw, Ch., Murray, Simmons,
Forbis, and Clayton, CC., concur
and certify compliance with the
provisions of Section 536.080,
RSMo 2000.

Dated at Jefferson City, Missouri,
on this 13th day of November, 2003.

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



In the Matter of BPS Telephone Company's Election to
be Regulated under Price Cap Regulation as Provided
in Section 392.245, RSMo 2000.

)
) **Case No. IO-2004-0597**
)

REPORT AND ORDER

Issue Date: November 9, 2004

Effective Date: November 19, 2004

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of BPS Telephone Company's Election to)
be Regulated under Price Cap Regulation as Provided) **Case No. IO-2004-0597**
in Section 392.245, RSMo 2000.)

APPEARANCES

Sondra B. Morgan, BRYDON, SWEARENGEN & ENGLAND P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, for BPS Telephone Company.

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Cliff Snodgrass, Senior Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Nancy Dippell, Senior Regulatory Law Judge.

REPORT AND ORDER

Syllabus: This order finds that BPS Telephone Company's notice of election to become a price cap carrier under Section 392.245.2, RSMo 2000,¹ is invalid.

Procedural History

BPS previously notified the Commission of its election to be regulated as a price cap company in Commission Case No. IO-2003-0012. An evidentiary hearing was held

¹ All statutory references are to the Revised Statutes of Missouri 2000, unless otherwise noted.

before the Commission on February 7, 2003. The Commission issued its Report and Order denying BPS's price cap election on November 14, 2003.

On January 20, 2004, BPS and Missouri State Discount Telephone filed an Application for Approval of Amendment to Resale Agreement Between BPS Telephone and Missouri State Discount Telephone Company. This amendment to the Resale Agreement removed the language found in Paragraph 6.1.1 which the Commission found to be noncompetitive.

On May 28, 2004, BPS notified the Commission that it was again electing to be regulated under the price cap provisions of Section 392.245.2. The Commission issued a Notice of Price Cap Election on June 4, 2004, and set a time for responses to the price cap election.

The Staff of the Missouri Public Service Commission filed a motion requesting that the Commission reject BPS's price cap election. The Office of the Public Counsel also objected to BPS's election.

Prior to BPS's price cap election notice, the Staff filed a Complaint² alleging BPS had been overearning.

On September 2, 2004, the parties filed a Stipulation of Facts in which they adopt the complete record and transcript of Case No. IO-2003-0012. The parties also stipulated that "the Commission may take official notice of its rules, tariffs, orders and any other information contained in a document on file as a public record"³ so long as it is relevant.

² *Staff of the Missouri Public Service Commission, Complainant, v. BPS Telephone Company, Respondent*, Case No. TC-2002-1076.

³ Stipulation of Facts, para. 6.

Initial briefs of the parties were filed on October 8, 2004, and reply briefs were submitted on October 22, 2004.

Discussion

Because the parties stipulated to the facts of this case and adopted the record of the original BPS price cap case, the only issue for determination is whether BPS meets the qualifications for price cap election as set out in Section 392.245.2, RSMo.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

The Commission takes official notice of its official case files, tariffs and other orders cited herein. The Commission also adopts the record in Case No. IO-2003-0012. The Commission finds that the facts have not materially changed since the evidentiary hearing in Case No. IO-2003-0012 except as noted in this order.⁴

BPS is a small incumbent local exchange company serving approximately 3900 access lines in Missouri.⁵ BPS provides two-way switched voice service within a local calling scope as determined by the Commission including all the basic local services set out

⁴ Stipulation, para. 5.

⁵ Exh. 1, pp. 3-4; Exh. 2, p. 4; Exh. 3, p.2 ; Tr. 118; 241. (Cites to Exhibits and Transcripts are to those found in Case No. IO-2003-0012 unless otherwise noted.)

in Section 386.020(4).⁶ BPS provided written notice to the Commission of its intent to be regulated under the price cap statute⁷ on May 28, 2004.⁸

On November 29, 2000, MSDT filed an application for a certificate of service authority to provide basic local telecommunications service. MSDT stated that it would "provide all forms of basic local telecommunications service, including all options and features provided by all incumbent providers"⁹ In the same case, the parties¹⁰ filed a Unanimous Stipulation and Agreement in which MSDT committed to "comply with section 392.451 and provide the 'essential local telecommunications services' listed in 4 CSR 240-31.010(5)."¹¹ In its order granting MSDT a certificate, the Commission approved the Stipulation and Agreement, noted that MSDT agreed to provide all the essential services in 4 CSR 240-31.010(5), and found that MSDT met "the statutory requirements for [the] provision of basic local telecommunications services and has agreed to abide by those requirements in the future."¹² Also, in the order granting MSDT a certificate, the Commission specifically made MSDT's certificate subject to "the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order."¹³

⁶ BPS Telephone Company, PSC MO. NO. 1.

⁷ Section 392.245, RSMo.

⁸ Stipulation, para. 4.

⁹ Application for Certificate of Service Authority for Competitive Classification, Case No. TA-2001-334, filed Nov. 29, 2000, para. 4.

¹⁰ MSDT, the Office of the Public Counsel, the Staff of the Commission, the Missouri Independent Telephone Group, and the Small Telephone Company Group. The last two parties consist of substantially all of the small telephone companies in Missouri.

¹¹ Unanimous Stipulation and Agreement, Case No. TA-2001-334, filed Feb. 28 2001, para. 1.

¹² Order Granting Certificate, Case No. TA-2001-334, para. D.

¹³ Id., Ordered para. 2.

MSDT's tariff for the provision of basic local telecommunications service was approved by the Commission on June 26, 2001, and became effective on July 2, 2001.¹⁴ MSDT's original tariff did not specifically list that it would be providing service in any of BPS's exchanges. MSDT amended its tariff effective June 21, 2002, to include the service territory of several small company exchanges including BPS.

MSDT resells the telecommunications service of BPS. BPS and MSDT entered into a Resale Agreement that was approved by the Commission in Case No. TO-2002-62, effective October 26, 2001.¹⁵ BPS and MSDT have since amended their interconnection agreement to remove the language restricting MSDT from targeting BPS's customers.¹⁶ The Commission refers to Section 6.1.1 of the Resale Agreement as the "noncompete clause."

MSDT provides telecommunications service to a few customers within the BPS service area.¹⁷ MSDT provides service by reselling through its interconnection agreement, the services of BPS. The type of service offered by MSDT is often referred to as "prepaid" service. This term is derived from the fact that in order to receive service, the customer must pay in full for the month of service. In addition, consumers of "prepaid" service usually are limited to basic local services and have no access to toll or fee services. MSDT's customers are restricted in this manner.¹⁸ None of BPS's "customers, other than those disconnected for nonpayment, have migrated to MSDT since the removal of the

¹⁴ Exh. 1, p. 4.

¹⁵ Exh. 1, p. 4-5 ; Exh. 6.

¹⁶ See, Tariff File No. VT-2004-0-034.

¹⁷ Exh. 1, p. 6; Exh. 3, p. 3; Tr. p. 51, ln. 4-9.

¹⁸ Missouri State Discount Telephone; P.S.C. No. 1, Original Sheet No. 17.

[noncompete clause]."¹⁹ There has also "been no material change in MSDT's advertising,"²⁰ marketing, or business methods since the Commission heard the original BPS price cap case.

MSDT provides "two-way switched voice service within a local calling scope"²¹ comprised of the following services:²²

- (a) Multiparty, single line, including installation, touchtone dialing and any applicable mileage or zone charges;
- (b) Access to local emergency services including 911 service, if available;
- (c) Standard intercept service; and
- (d) Standard white pages directory listings.

MSDT does not provide the following services:²³

- (a) Assistance programs for installation of, or access to, basic local telecommunications services for qualifying economically disadvantaged or disabled customers or both, including, but not limited to, lifeline services and link-up Missouri services for low-income customers or dual-party relay service for the hearing impaired or speech impaired.
- (b) Access to basic local operator services.
- (c) Access to basic local directory assistance.
- (d) Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission.
- (e) Equal access in the sense of dialing parity and presubscription among interexchange telecommunications companies for calling within and between local access and transport areas (a.k.a. intraLATA and interLATA presubscription).

¹⁹ Stipulation, para. 5.

²⁰ Stipulation, para. 5.

²¹ Section 386.020(4), RSMo.

²² Exh. 5, pp. 12-13 ; Tr. pp. 119-21.

²³ *Id.*

MSDT requires a one-time activation fee of \$30 and a monthly recurring charge of \$50 per month.²⁴ For similar services from BPS the local service charge is \$7.00.²⁵ A customer subscribing to BPS basic local service, however, will also receive additional services (such as access to interexchange and operator services) and the total cost of those services is approximately \$20.²⁶

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

BPS is a telecommunications company²⁷ and a public utility.²⁸ BPS is also an incumbent local exchange telecommunications company²⁹ and a small local exchange telecommunications company.³⁰ The Commission has jurisdiction over the services, activities, and rates of BPS under Chapters 386 and 392.

The Commission is authorized to "ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation."³¹ Section 392.245.2 sets out the procedure for small incumbent local exchange companies to elect to be regulated pursuant to the price cap statute and states, in pertinent part, that:

²⁴ Missouri State Discount Telephone, P.S.C. No. 1, Original Sheet 18.

²⁵ Tr. p. 42, In. 2-5.; BPS Telephone Company, PSC No. 1, Section 4, 1st Revised Sheet 17.

²⁶ Tr. p. 67, In. 1-9.

²⁷ Section 386.020(51).

²⁸ Section 386.020(42).

²⁹ Section 386.020(22).

³⁰ Section 386.020(30).

³¹ Section 392.245.1.

A small incumbent local exchange telecommunications company may elect to be regulated under this section upon providing written notice to the commission if an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the small incumbent company's service area

An "alternative local exchange telecommunications company" is defined as "a local exchange telecommunications company certified by the commission to provide basic or nonbasic local telecommunications service . . . in a specific geographic area."³² MSDT was certificated to provide basic local telecommunications service in Case No. TA-2001-334, effective March 26, 2001.

A telecommunications company is required to specify in which exchanges it will provide service.³³ As of June 21, 2002, MSDT's tariff specified that it would provide service in BPS's service area. BPS also has provided written notice of its election to be regulated pursuant to the price cap statute on May 28, 2004

BPS has shown all the required elements of Section 392.245.2 except that MSDT is providing basic local telecommunications service. Even though MSDT provides two-way switched voice service within a local calling scope and provides four of the services listed in Section 386.020(4), it is not providing basic local service in a manner that would allow BPS to elect price cap regulation.

Although the Commission has granted MSDT a certificate of service to provide basic local service in BPS's geographic service area, MSDT is not providing that service in BPS's area in accordance with its certificate. In its application seeking certification, MSDT

³² Section 386.020(1), RSMo.

³³ Section 392.220.1, RSMo. See also, 4 CSR 240-3.545(12)(C) (this rule was formerly 4 CSR 240-30.010(12)(C) but was relocated within the Code of State Regulations effective April 30, 2003).

committed to provide those services required to qualify for state universal service fund support. The orders granting the certificate to MSDT noted those commitments, and thus MSDT is required by the terms of its certificate to provide all the essential services as set out in the Commission's rules.³⁴

(6) Essential local telecommunications services. – Two (2)-way switched voice residential service within a local calling scope as determined by the commission, comprised of the following services and their recurring charges:

- (A) Single line residential service, including Touch-Tone dialing, and any applicable mileage or zone charges;
- (B) Access to local emergency services including, but not limited to, 911 service established by local authorities;
- (C) Access to basic local operator services;
- (D) Access to basic local directory assistance;
- (E) Standard intercept service;
- (F) Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission (FCC);
- (G) One (1) standard white pages directory listing; and
- (H) Toll blocking or toll control for qualifying low-income customers.

When it granted a certificate to MSDT, the Commission was aware that this grant might allow the small ILECs to invoke the price cap statute election. It is for that reason that the Commission demanded that the alternative local exchange carrier offer *all* of the "essential telecommunications services" as defined by the rule. Therefore, the Commission expressly made its grant of service authority to MSDT in the small ILEC territories subject to the condition that it would offer all the essential telecommunications services for universal service purposes. Because MSDT is not providing all of those services, it is not providing basic local services in accordance with the certificates granted by the Commission. Therefore, MSDT does not meet the requirements set out in Section 392.245 as

³⁴ 4 CSR 240-31.010.

being "certificated to provide basic local telecommunications service and . . . providing such service."³⁵

In addition to MSDT failing to provide basic local service in accordance with its certificate, the Commission also concludes MSDT is not "providing such service" for the following reasons.

"It is a basic rule of statutory construction that words should be given their plain and ordinary meaning whenever possible. Courts look elsewhere for interpretation only when the meaning is ambiguous or would lead to an illogical result defeating the purpose of the legislature."³⁶ Section 392.245.2 contains no reference to competition; however, the legislature has mandated that every provision in Chapter 392, whether ambiguous or not, be construed with certain principles in mind.³⁷ Section 392.185 states:

The provisions of this chapter shall be construed to:

- (1) Promote universally available and widely affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;
- (4) Ensure that customers pay only reasonable charges for telecommunications service;
- (5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;

³⁵ In Case No. IO-2002-1083, the Commission ordered its Staff to investigate whether MSDT is complying with the terms of the order granting it a certificate. Case No. TO-2005-0128 has been opened for the purpose of receiving Staff's recommendation.

³⁶ *State ex rel. Maryland Heights Fire Protection Dist. v. Campbell*, 736 S.W.2d 383, 386 -387 (Mo. banc 1987). (citations omitted)

³⁷ Section 392.185, RSMo.

(6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;

(7) Promote parity of urban and rural telecommunications services;

(8) Promote economic, educational, health care and cultural enhancements; and

(9) Protect consumer privacy.

The nine provisions of Section 392.185 are mandatory and necessarily must guide the Commission in the construction and application of the price cap statute. Section 392.185(6) states that one public policy to be implemented through the construction of Chapter 392 is to "[a]llow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest." Another is "flexible regulation of competitive telecommunications companies and competitive telecommunications services."³⁸ Price cap regulation, a transitional status between traditional rate-of-return regulation and deregulated competition, permits ratemaking without the traditional oversight and regulation of the Commission. This is the principal benefit that the legislature intended to confer on qualifying carriers through the price cap statute.

The Commission has examined the price cap statute in the context of the principles set out by the legislature and the entire deregulation scheme put forth in Chapter 392 to implement the federal Telecommunications Act of 1996. It is clear from the statutes that the legislature intended to promote competition while maintaining protection for the ratepayers by allowing competition to substitute for regulation. The Commission

³⁸ Section 392.185(5).

concludes that MSDT is not providing basic local telecommunications services in a manner that would allow BPS to elect price cap status. The Commission further concludes that BPS's price cap election is invalid, and that BPS maintains its status as a traditional rate-of-return regulated company.

The legislature did not intend the presence of a provider of only a few basic local services to trigger price cap regulation. When taken in the context of the entire Chapter 392, competition is a necessary element for the change in regulation to a lesser degree of oversight. For instance, in order to receive a certificate to provide basic local services, Section 392.451.1 requires a competitive company to show that it will "offer *all* telecommunications services which the commission has determined are essential for purposes of qualifying for state universal service fund support."³⁹ The Commission has defined these essential services in its rules.⁴⁰

The Commission is also supported in this interpretation by the statutory distinction between "providing basic local" and "the resale of basic local" found in the certification statutes.⁴¹ Those statutes provide the standards for granting a "certificate of local exchange service authority to *provide* basic local telecommunications service or for *the resale* of basic local telecommunications service."⁴²

The Commission previously rejected this second argument in the *Southwestern Bell* price cap case.⁴³ Southwestern Bell was the first large incumbent local exchange

³⁹ (emphasis added).

⁴⁰ 4 CSR 240-30.010(6), CSR 240-31.010(6) and 4 CSR 240-32.100.

⁴¹ Section 392.450 and 392.451.

⁴² Section 392.450. (emphasis added).

⁴³ *In the Matter of the Petition of Southwestern Bell Telephone Company for a Determination that it is Subject to Price-cap regulation Under Section 392.245 RSMo (1996)*, Case No. TO-97-397.

carrier to request price cap status. The *Southwestern Bell* case was appealed to the Circuit Court of Cole County. The Circuit Court affirmed the Commission's decision to grant price cap status but agreed that "it is a possible interpretation" that resellers can be distinguished from facilities-based providers.⁴⁴

Furthermore, a distinction on the facts can be made between the current case and the large ILEC cases. The facts of the *Southwestern Bell* case may be distinguished because the alternative carrier in that case was providing different basic local services including equal access to interexchange services. Also, the focus of the findings in that order is on whether effective competition must exist. In this case, the Commission is not finding that "effective competition" must exist before a company becomes price cap regulated. Instead, the Commission is finding that MSDT does not "provide basic local service" as the statute intends and, therefore, BPS does not meet the statutory requirements to be price cap regulated.

The other large ILEC cases that the Commission has determined can also be distinguished. In the Sprint price cap case,⁴⁵ the alternative carrier was a facilities-based provider. In the only other large ILEC price cap case,⁴⁶ no party alleged that the alternative carrier was not providing service.

MSDT provides only a few basic local services. MSDT is not providing all the essential services and minimum service features required in the Commission rules. They

⁴⁴ *State of Missouri ex rel. Public Counsel v. Public Service Commission, et al.*, Case No. CV197-1795CC, Revised Findings of Fact and Conclusions of Law and Judgment (issued August 6, 1998).

⁴⁵ *In the Matter of the Petition of Sprint Missouri, Inc. Regarding Price-cap regulation Under RSMo Section 392.245 (1996)*, Case No. TO-99-359.

⁴⁶ *In the Matter of the Petition of GTE Midwest Incorporated Regarding Price-cap regulation Under RSMo Section 392.245 (1996)*, Case No. TO-99-294.

do not provide such basic services as access to local operator services, directory assistance, equal access to interexchange carriers, or assistance programs for economically disadvantaged or disabled customers. At rates that are more than two-and-a-half times the cost of similar residential service from BPS and much more restricted, the services offered by MSDT are in no way a substitute or competitive service to BPS's customers. The Commission previously found that BPS was "not subject to any competition from MSDT"⁴⁷ and BPS has stipulated that the facts have not materially changed since that decision.

The Commission concludes that to allow BPS to elect price cap status under these circumstances, where prepaid providers offer such minimal services at such a high cost, "would lead to an illogical result defeating the purpose of the legislature"⁴⁸ and would not be "consistent with the public interest."⁴⁹ The Commission concludes that MSDT is not providing basic local telecommunications services in a manner that would allow BPS to elect price cap status. The Commission further concludes that BPS's price cap election is invalid, and that BPS maintains its status as a traditional rate-of-return regulated company.

Conclusion

The parties have stipulated to the facts and the only issue for Commission decision is whether the alternative local exchange carrier is providing basic local telecommunication service. The legislature stated that Chapter 392 "shall be construed" so that "full and fair competition . . . [may] substitute for regulation when consistent with the

⁴⁷ Case No. IO-2003-0012, Report and Order (issued Nov. 13, 2003), p.8.

⁴⁸ *State ex rel. Maryland Heights Fire Protection Dist.*, supra.

⁴⁹ Section 392.185(6), RSMo.

protection of ratepayers and otherwise consistent with the public interest.”⁵⁰ The types of services that MSDT provides are not what the legislature intended as basic local services necessary to invoke a lesser degree of regulation for small incumbent local exchange carriers. Furthermore, MSDT is not providing all the services it committed to provide in its application seeking certificates, nor is it complying with the conditions placed on the grant of service authority by the Commission. Therefore, it is not providing the service for which it was granted a basic local certificate. For these reasons, the Commission determines that BPS is not eligible for price cap status and that its price cap election is invalid.

IT IS THEREFORE ORDERED:

1. That BPS Telephone Company is ineligible to elect price cap status.
2. That any motion not ruled on is denied and that any objection not ruled on is overruled.
3. That this Report and Order shall become effective on November 19, 2004.

BY THE COMMISSION

(S E A L)

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Gaw, Ch., and Appling, C., concur;
Clayton, C., concurs, with separate
concurring opinion to follow;
Murray and Davis, CC., dissent.

Dated at Jefferson City, Missouri,
on this 9th day of November, 2004.

⁵⁰ *Id.*

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 12th day
of April, 2005.

Staff of the Missouri Public Service)	
Commission,)	
)	
Complainant,)	
)	
v.)	
)	
BPS Telephone Company,)	
)	
Respondent.)	

Case No. TC-2002-1076

ORDER APPROVING STIPULATION AND AGREEMENT

Syllabus: This order approves the Stipulation and Agreement resolving the Staff of the Commission's over-earnings complaint against BPS Telephone Company.

Background

The Staff of the Commission filed a complaint against BPS Telephone Company alleging that the company had annual over-earnings of \$852,419. BPS proposed a revenue reduction of \$376,204. On March 11, 2005, Staff, BPS and the Office of the Public Counsel filed a Stipulation and Agreement, agreeing to an earnings reduction of \$460,000. Having been granted intervention by the Commission, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, filed a letter stating that it does not oppose the agreement.

The Stipulation and Agreement

Based on a revenue reduction of \$460,000, the parties agreed that BPS would provide expanded one-way calling for its customers in Bernie, Parma and Steele, Missouri.

Customers in Bernie would be able to call numbers in Parma and Malden, Missouri at no extra charge. Customers in Parma would likewise be able to call numbers in Bernie, Risco, New Madrid, Lilbourn and Essex. Customers in Steele would be able to call numbers in Caruthersville, Hornersville and Deering. The expanded local calling will cost BPS approximately \$379,993 in lost revenue. Additionally, the parties agreed that BPS would reduce its intrastate access rates, resulting in an \$80,000 reduction of the company's revenues. The parties also agreed that BPS would implement certain depreciation rates filed with the agreement as Attachment C. Although SBC did not join in the Stipulation and Agreement, it does not oppose the agreement.

Discussion

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case.¹ The Commission notes that every decision and order in a contested case shall be in writing and, except in default cases or cases disposed of by stipulation, consent order or agreed settlement, shall include findings of fact and conclusions of law.² Consequently, the Commission need not make findings of fact or conclusions of law in this order.

Commission rule 4 CSR 240-2.115 (2)(C) states that if no party objects to the Stipulation and Agreement, the Commission may treat the agreement as unanimous. Because SBC has indicated that it does not oppose the agreement, the Commission will treat the agreement as unanimous.

The Commission has reviewed the facts of this case and the Stipulation and Agreement and finds that the agreement is reasonable. The Commission will therefore

¹ Section 536.060, RSMo 2000.

² Section 536.090, RSMo 2000.

approve the agreement, direct that the parties to the agreement comply with its terms and direct BPS to file tariff sheets, in a separate case, reflecting the terms of the agreement.

IT IS THEREFORE ORDERED:

1. That the unanimous Stipulation and Agreement, filed on March 11, 2005, and entered into by the Staff of the Commission, BPS Telephone Company, and the Office of the Public Counsel is approved. A copy of the agreement is attached as Attachment A.

1. That all parties to the Stipulation and Agreement are ordered to comply with its terms.

2. That BPS Telephone Company shall file with the Commission tariff sheets, in a separate case, reflecting the terms of the agreement.

3. That this order shall become effective on April 22, 2005.

4. That this case may be closed on April 23, 2005.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Davis, Chm., Murray, Gaw,
Clayton, and Appling, CC., concur.

Jones, Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
v.)	Case No. TC-2002-1076
)	
BPS Telephone Company,)	
)	
Respondent.)	

STIPULATION AND AGREEMENT

Comes now the Staff of the Missouri Public Service Commission (Staff), the Office of Public Counsel (Public Counsel), BPS Telephone Company (BPS) and Southwestern Bell Telephone, L.P., d/b/a SBC Missouri (SBC Missouri) and respectfully state to the Missouri Public Service Commission (Commission) that, as a result of extensive negotiations, the undersigned Parties (Parties), with the exception of SBC Missouri (who does not oppose this Stipulation and Agreement, as more fully described herein), have reached the following Stipulation and Agreement in order to resolve all issues in this case:

1. Revenue Requirement. BPS's present annual revenues exceed its revenue requirement as determined under a traditional rate base/rate of return analysis in accordance with §392.240 RSMo 2000 by \$460,000 annually.¹

2. Rate Design. The reduction in annual revenues of \$460,000 shall be accomplished by the following: 1) implementation of a mandatory, one-way expanded local

¹ BPS states that it does not believe it is subject to rate base rate of return regulation pursuant to §392.240 RSMo 2000 because it has elected to be regulated under "price cap" regulation as provided in §392.245 RSMo 2000. Accordingly, BPS filed a Motion to Dismiss in this case but the Commission denied same. BPS is also pursuing appeals before the Circuit Court of Cole County as well as the Missouri Court of Appeals of prior Commission decisions rejecting its price cap election. By entering into this Stipulation, BPS states that it does not waive its Motion to Dismiss or its pending appeals, but simply agrees that if it is subject to traditional rate base/rate of return regulation, its existing revenues should be reduced by \$460,000 on an annual basis.

calling plan for BPS customers (with an estimated cost of \$379,993) as more specifically described on Attachment A, attached hereto and incorporated herein by reference; and 2) reduction in intrastate access rates (of approximately \$80,000) as more specifically set forth on Attachment B, attached hereto and incorporated herein by reference.

BPS will prepare draft tariff sheets incorporating the changes identified in Attachments A and B and provide such drafts to the Staff no later than twenty (20) days after this Stipulation and Agreement is signed by the Parties. Permanent tariff sheets will not be filed with the Commission until after the Commission approves the Stipulation and Agreement.

3. Depreciation Rates. Beginning on the first day of the month following the effective date of an Order approving this Stipulation and Agreement, BPS shall accrue depreciation expense based on the depreciation rates set forth in Attachment C, which is attached hereto and incorporated herein by reference.

4. Unless called by the Commissioners or the Regulatory Law Judge (RLJ) to respond to questions from the Commissioners or the RLJ, all of the testimony filed in this case by Staff and BPS shall be received into evidence without the necessity of the sponsoring witness taking the stand.

5. While SBC Missouri does not join in this Stipulation and Agreement, it nevertheless has indicated that it does not oppose the Stipulation and Agreement and does not request a hearing concerning the issues addressed by this Stipulation and Agreement.

6. This Stipulation and Agreement is being entered into for the purpose of settling all issues raised by the Staff Complaint which initiated this proceeding. The approval of this Stipulation and Agreement in its entirety will conclude Staff's earnings investigation of BPS. None of the Parties to this Stipulation and Agreement shall be deemed to have approved or

acquiesced in any ratemaking or procedural principal, including, without limitation, any method of cost determination or cost allocation or revenue related methodology, and none of the Parties shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in this or any other proceeding, whether this Stipulation and Agreement is approved or not.

7. This Stipulation and Agreement has resulted from extensive negotiations among the Parties and the terms hereof are interdependent. If the Commission does not approve this Stipulation and Agreement unconditionally and without modification, the Stipulation and Agreement shall be void and no Party shall be bound by any of the agreements or provisions hereof, except as explicitly stated herein.

8. If the Commission does not unconditionally approve this Stipulation and Agreement without modification, and notwithstanding its provision that it shall become void therein, neither this Stipulation and Agreement, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Party has for a decision in accordance with §536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the Parties shall retain all procedural and due process rights as fully as though this Stipulation and Agreement had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Stipulation and Agreement shall become privileged as reflecting the substantive content of settlement discussions, and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

9. In the event the Commission unconditionally accepts the specific terms of this Stipulation and Agreement without modification, the Parties waive their respective rights to present oral argument and written briefs pursuant to §536.080.1 RSMo 2000; their respective


rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo 2000; their respective rights to seek rehearing, pursuant to §386.500 RSMo 2000; and their respective rights to judicial review pursuant to §386.510 RSMo 2000. This waiver applies only to a Commission Order respecting this Stipulation and Agreement issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this Stipulation and Agreement including, but not limited to, whether BPS is subject to regulation under §392.240 or §392.245 RSMo 2000.

10. The Staff shall file suggestions or a memorandum in support of this Stipulation and Agreement. Each of the Parties shall be served with a copy of any such suggestions or memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's suggestions or memorandum, responsive suggestions or a responsive memorandum which shall also be served on all Parties. The contents of any suggestions or memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted by the other Parties to this Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

11. The Staff also shall have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to

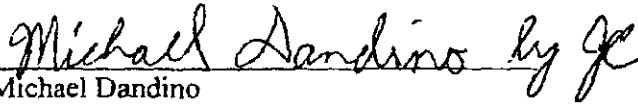
matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

Respectfully submitted,




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Missouri Public Service Commission

ATTACHMENT A

Expanded Local Calling Plan

End-user customers of BPS will be able to call end-user customers located in the following exchanges as part of their local exchange rate (i.e., without incurring a toll charge).

Originating Exchange	Terminating Exchange	Terminating Carrier
Bernie	Parma	BPS
	Malden	SBC
Parma	Bernie	BPS
	Risco	SBC
	New Madrid	SBC
	Lilbourn	SBC
	Essex	SBC
Steele	Caruthersville	SBC
	Hornersville	SBC
	Deering	SBC

- Calls will be dialed on a local (i.e., seven digit) basis.
- The plan is limited to voice traffic and not available for internet and data calling.
- Estimated cost of the plan is \$379,993.

ATTACHMENT B

Switched Access Rate Element	Rates	New Rates	Difference From Current
Originating CCL	\$ 0.02990131	\$ 0.02622335	(0.00367796)
Terminating CCL	\$ 0.07141421	\$ 0.06263003	(0.00878418)
Local Switching	\$ 0.02815218	\$ 0.02823765	0.00008547
Switched Transport Termination	\$ 0.00491350	\$ 0.00491350	-
Switched Transport Facility (per minute/mile)	\$ 0.0053186	\$ 0.0053186	-
Information Surcharge	\$ 0.00008547	\$ -	(0.00008547)

**BPS TELEPHONE COMPANY
DEPRECIATION RATES
CASE NO. TC-2002-1076**

ACCOUNT	DESCRIPTION	Balance 6/30/2004	AVERAGE SERVICE LIFE A	NET SALVAGE B	SALVAGE RATE C = B/A	ASL RATE D = 1/A	DEPR RATE D - C
2112.0	Motor Vehicles	228,168	7.5	12%	1.60%	13.33%	11.73%
2118.0	Other Work Equipment	69,533	14.0	6%	0.43%	7.14%	6.71%
2121.0	Buildings	529,230	35.0	2%	0.06%	2.86%	2.80%
2122.0	Furniture	27,184	14.0	6%	0.43%	7.14%	6.71%
2123.1	Office Equipment	38,369	10.0	3%	0.30%	10.00%	9.70%
2124.0	General Purpose Computers	168,798	8.4	0%	0.00%	15.63%	15.63%
2212.0	Digital Electronic Switching	1,430,446	12.0	0%	0.00%	8.33%	8.33%
2232.1	Circuit Equipment - Digital	939,888	10.0	-3%	-0.30%	10.00%	10.30%
2232.2	Circuit Equipment - Analog	203,005	10.0	-3%	-0.30%	10.00%	10.30%
2411.0	Poles	257,738	21.0	-30%	-1.43%	4.76%	6.19%
2421.2	Aerial Cable - Metallic	764,354	21.0	-16%	-0.76%	4.76%	5.52%
2423.1	Buried Cable - Metallic	3,484,253	20.0	0%	0.00%	5.00%	5.00%
2423.2	Buried Cable - Nonmetallic	341,219	25.0	0%	0.00%	4.00%	4.00%
2431.0	Aerial Wire	557		0%			

Attachment C



SERVICE CONTRACT

CUSTOMER NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

CONTACT PERSON: _____

LOCAL LONG DISTANCE 800 SERVICE INTERNET
☐ ☐ ☐ ☐

QUANTITY AND TYPE OF SERVICE: _____

MONTHLY RECURRING CHARGES: _____

INSTALLATION/CONVERSION CHARGES: _____

LONG DISTANCE OUTBOUND RATE PER MINUTE: _____

800 INBOUND RATE PER MINUTE: _____

Big River Telephone Company ("Provider") shall provide the above described services to the customer in accordance with the applicable tariffs and regulations for the initial monthly recurring charge as set forth above as may be modified from time to time in accordance with the terms of the applicable tariffs and regulations. In addition, subscriber shall pay to provider the non-recurring, conversion or installation fees prior to the institution of service.

The parties agree this contract shall be for a term of _____ (Months / Years). In exchange for the commitment by customer for said term, provider will waive the (Conversion / Installation) fee of _____. In the event, however, this service agreement is terminated prior to the full term as set forth above, customer shall pay to provider all charges so waived and charged back to per minute price of \$_____ on outbound services and \$_____ on inbound services at the time of disconnection of said service and all discounts received during the term of this agreement. All fees and services effective on the date of installation.

Customer Signature

Date

Big River Representative

Date

Customer # _____
Cycle _____
Sales Person _____