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Issues: Telephone Specific

Witness: John Van Eschen

Sponsoring Party: MO PSC Staff

Type of Exhibit: Rebuttal Testimony

Case No.: TA-2007-0093

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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

REBUTTAL TESTIMONY

OF

JOHN VAN ESCHEN

BIG RIVER TELEPHONE COMPANY

CASE NO. TA-2007-0093

FILED²

MAR 07 2007

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Service Commission

Jefferson City, Missouri
January 2007

Staff Exhibit No. 1
Case No(s). TA-2007-0093
Date 2/13/07 Rptr MV

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

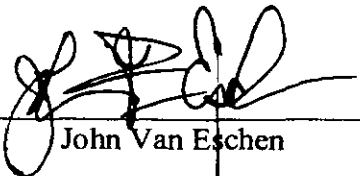
In the Matter of the Application of Big)
River Telephone Company, LLC to)
Expand its Certificate of Basic Local)
Service Authority to include provision of)
Basic Local Exchange)
Telecommunications Service in the)
Exchanges of BPS Telephone Company)
and to Continue to Classify the Company)
and its Services as Competitive)

Case No. TA-2007-0093

AFFIDAVIT OF JOHN VAN ESCHEN

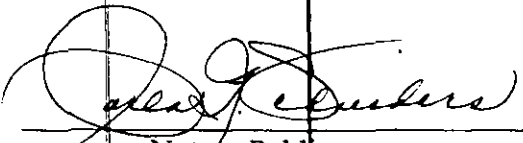
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

John Van Eschen, of lawful age, on his oath states: that he has participated in the preparation of the following Rebuttal Testimony in question and answer form, consisting of 12 pages of Rebuttal Testimony to be presented in the above case, that the answers in the following Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.



John Van Eschen

Subscribed and sworn to before me this 16th day of January 2007.



Notary Public

CARLA K. SCHNIEDERS
Notary Public - Notary Seal
State of Missouri
County of Cole
My Commission Exp. 06/07/2008

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8
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12
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TABLE OF CONTENTS

REBUTTAL TESTIMONY

OF

JOHN VAN ESCHEN

BIG RIVER TELEPHONE COMPANY

CASE NO. TA-2007-0093

EXECUTIVE SUMMARY 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REBUTTAL TESTIMONY

OF

JOHN VAN ESCHEN

BIG RIVER TELEPHONE COMPANY

CASE NO. TA-2007-0093

Q. Please state your name and give your business address.

A. My name is John Van Eschen and my business address is P.O. Box 360, 200 Madison Street, Jefferson City, Missouri 65102.

Q. By whom are you employed and in what capacity?

A. I am employed by the Missouri Public Service Commission (Commission) as Manager of the Telecommunications Department.

Q. What are your duties and responsibilities?

A. I direct and coordinate activities and work within the Telecommunications Department. More specifically, I assist in the development of Commission Staff recommendations in response to tariff filings, certificate applications, interconnection agreements, formal complaints, telecommunications company transactions, and other matters pending before the Commission. I also assist in the development of rulemakings, comments before the Federal Communications Commission, and the analysis of proposed legislation pertaining to telecommunications regulation. My duties also involve overseeing the monitoring of quality of service provided by basic local telecommunications companies. I have led roundtable meetings, groups and workshops intended to study and discuss various issues related to the telecommunications industry.

Q. What is your educational background?

Rebuttal Testimony of
John Van Eschen

1 A. I have a Bachelor of Arts degree in Psychology from the University of Iowa
2 and have a Master of Arts degree in Economics from Kansas State University.

3 **Q. Have you previously testified before this Commission?**

4 A. Yes. I have been employed by the Commission since 1984 and have filed
5 testimony in a variety of cases before the Commission.

6 **EXECUTIVE SUMMARY**

7 **Q. Please provide an executive summary of your testimony.**

8 A. My testimony sets forth the Telecommunications Department Staff's (Staff's)
9 recommendation for Big River Telephone Company's (Big River's) request to expand its
10 service territory. Staff's only concern is Big River's failure to submit its quarterly of quality
11 of service report. Staff's recommendation is for Big River to adequately correct this
12 deficiency before the Commission grants Big River's request. If Big River adequately
13 addresses this deficiency Staff does not have any objections to the Commission granting Big
14 River's request.

15 **Q. What is your understanding of Big River's application?**

16 A. Big River has filed a verified application to expand its basic local telephone
17 service certificate to include the geographic area of BPS Telephone Company. Big River
18 requests the Commission grant waivers of certain Missouri statutes and Commission rules, all
19 of which have previously been granted to Big River in similar circumstances. Big River also
20 requests the Commission continue the current "competitive" classification of Big River and
21 all its services.

22 **Q. What are the exchange areas in which Big River seeks additional**
23 **certification?**

Rebuttal Testimony of
John Van Eschen

1 A. The exchange areas are Bernie, Parma, and Steele.

2 **Q. What waivers of Commission rules or Missouri statutes is Big River**
3 **requesting?**

4 A. As set forth beginning on page five of its application, Big River requests
5 waivers of the following statutes and Commission rules:

6 Statutes

7 392.210.2 – uniform system of accounts
8 392.240(1) – just and reasonable rates
9 392.270 – valuation of property (ratemaking)
10 392.280 – depreciation accounts
11 392.290 – issuance of securities
12 392.300.2 – acquisition of stock
13 392.310 – stock and debt issuance
14 392.320 – stock dividend payment
15 392.330 – issuance of securities, debts and notes
16 392.340 – reorganization(s)

17
18 Commission Rules

19 4 CSR 240-10.020 – depreciation fund income
20 4 CSR 240-30.040 – uniform system of accounts
21 4 CSR 240-3.550(5)(C) – exchange boundary maps
22

23 **Q. Does the Staff recommend approval of Big River's request for the**
24 **Commission to waive application of the above statutes and rules?**

25 A. Yes. The waivers have previously been granted to Big River on three separate
26 occasions.¹ Moreover, these waivers are routinely granted to other competitive local
27 exchange carriers.

¹ In Case No. TA-2001-699 Big River was certificated to provide local exchange service in the area of Southwestern Bell Telephone Company; in Case No. LA-2003-0551, Big River expanded its certificate by including areas served by CenturyTel and Spectra; and in Case No. TA-2005-0415, Big River again expanded its service area to include areas served by Sprint (now known as Embarq). 4 CSR 240-3.550(5) (C) was previously known as 4 CSR 240-32.030(4)(C).

1 **Q. On page four of its application, Big River also seeks a waiver of 4 CSR**
2 **240-3.510(1)(D) – a requirement for Big River to submit certain financial data along**
3 **with its application. Does the Staff recommend that Big River receive a waiver of this**
4 **requirement?**

5 A. Yes. As stated in its verified application in the instant case, Big River has been
6 successfully providing basic local telephone service in Missouri since 2001. Big River first
7 met the Commission's financial qualification test when Big River received its initial
8 certification in Case No. TA-2001-699. Big River's financial data was again examined in
9 Case No. LA-2003-0551. In Case No. TA-2005-0415, the Commission found that good cause
10 existed to waive the financial reporting requirement. As stated by the Commission:

11 Big River cited to the financial information it had previously provided in
12 Case No. LA-2003-0551. Staff did not object to Big River's request and
13 indicated it had sufficient information to make its recommendation.
14 Therefore, the Commission finds that good cause exists to waive the
15 requirement to file certain financial data with its application as required in 4
16 CSR 240-3.510 (1)(D).²
17

18 Because Big River's financial data has been examined twice before and because Big
19 River has been in successful operation since 2001, the Staff recommends that the
20 Commission again find that good cause exists to waive the financial reporting requirement.

21 **Q. On page four of its application, Big River requests a temporary waiver of**
22 **4 CSR 240-3.510(1) (C) – tariff filing requirement. Does the Staff recommend approval**
23 **of Big River's request for a waiver of this requirement?**

24 A. No, the Staff does not believe such a request is necessary.

25 **Q. Please explain.**

² Order Approving Expansion of Certificate of Service Authority, page 5; Case No. TA-2005-0415.

Rebuttal Testimony of
John Van Eschen

1 A. Big River's instant application (page five) states that it needs to complete the
2 process of obtaining an approved interconnection agreement with BPS Telephone Company
3 before making the necessary tariff sheet changes. However, in Case No. TA-2005-0415, Big
4 River made a similar waiver request which was responded to by the Commission as follows:

5 As Staff states in its recommendation, 4 CSR 240-3.510(1)(C) has recently
6 been revised to provide that the filing of the tariff with the applications is
7 "optional." Therefore, Big River has exercised its right to delay the filing of
8 its tariff and the Commission need not grant a waiver of this rule. Big River
9 must have a tariff approved by the Commission that provides for the
10 provision of services in the exchanges of Sprint before Big River may offer
11 services in those exchanges.
12

13 Based on the Commission's previous determination that a tariff submittal does not
14 have to occur simultaneously with an application, the Staff recommends the Commission
15 deny Big River's request for a waiver of 4 CSR-240-3.510(1)(D). As with Case No. TA-
16 2005-0415, the Staff recommends the Commission simply acknowledge that Big River has
17 exercised its right not to file revised tariff sheet(s) at this time.

18 **Q. Does Big River request that it and its services continue to be classified as**
19 **competitive?**

20 A. Yes, Big River makes this request on page five of its application. In Big
21 River's previous application cases, the Commission determined that Big River is subject to a
22 sufficient degree of competition to justify a lesser degree of regulation. Consistent with prior
23 treatment, the Staff recommends the Commission grant Big River's request for all of its
24 services to remain competitive.

25 **Q. Does Big River's application comply with the application requirements**
26 **found in 4 CSR 240-2.060(1) and 4 CSR 240-3.510?**

Rebuttal Testimony of
John Van Eschen

1 A. Yes. Commission rules 4 CSR 240-2.060(1) and 4 CSR 240-3.510 require an
2 entity seeking certification to provide basic local telecommunications services to provide
3 various items of information to the Commission in its application. This information includes:
4 a description of the business organization of the applicant, supported by the certificate of the
5 Missouri Secretary of State; names and addresses for contact purposes; a disclosure of any
6 pending or final judgments or decisions against it from any state or federal agency or court
7 involving customer service or rates; a verified statement that there are no outstanding annual
8 reports or assessment fees owed to this Commission; a request to be classified as a
9 competitive telecommunications company, if applicable, and a description of the types of
10 service the applicant intends to provide; the exchanges in which service is to be offered; and
11 before providing service, a proposed tariff with an effective date which is not fewer than
12 forty-five days after its issue date.

13 In my opinion, Big River met the requirement to provide these items to the
14 Commission in support of its application. Additionally, and as is explained further in this
15 testimony, Big River's verified application indicates (page five) that it will update its existing
16 tariff before beginning service in BPS Telephone Company's service area.

17 **Q. Does Big River comply with certain statutory requirements for the**
18 **application to provide basic local telecommunications services?**

19 A. Big River complies with Sections 392.455, 392.450.1, and 392.450.2. I will
20 discuss Big River's compliance with each of these sections.

21 **Q. Please discuss Big River's compliance with Section 392.455.**

Rebuttal Testimony of
John Van Eschen

1 A. Section 392.455³ holds that the Commission's basic local exchange
2 telecommunications certification process must include a demonstration that the applicant: (1)
3 possesses sufficient technical, financial and managerial resources; (2) proposes to offer
4 services that satisfy the minimum standards established by the Commission; (3) set forth the
5 geographic area of its service area which shall be no smaller than an exchange and; (4) will
6 offer basic local telephone service as a separate and distinct service.

7 Big River has met these requirements of Section 392.455. Specifically, Big River was
8 previously found to be managerially and technically qualified to provide basic local telephone
9 service. As previously referenced, Big River was also previously found to be financially
10 qualified to provide basic local telephone service. Big River's verified application states that
11 it will comply with all applicable orders and regulations of the Commission (page 7), and that
12 (notwithstanding the requested waivers) it will comply with the same rules and regulations as
13 the Commission may impose on BPS Telephone Company (page 6). Big River's verified
14 application states that it will offer basic local telephone service as a separate and distinct
15 service, and that it will observe the BPS Telephone Company exchange boundaries (page 4).

16 **Q. Please discuss Big River's compliance with Section 392.455(5).**

17 A. Section 392.455(5) holds that the Commission must give due consideration to
18 the equitable access for all Missourians regardless of where they live or their income, to
19 affordable telecommunications service. Approval of Big River's application will expand
20 access to even smaller, more rural areas and, simultaneously, will further the public policy
21 goals because, for the first time in the communities of Berne, Parma, and Steele, customers
22 will have a *meaningful* choice of telephone service providers. I would emphasize the word

³ All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision 2000.

Rebuttal Testimony of
John Van Eschen

1 *meaningful* because both providers (BPS and Big River) will be providing facility-based
2 telecommunications service. Facility-based competition contrasts with other situations where
3 one "competitor" simply resells the services of the incumbent provider, resulting in little
4 more than repackaging of the incumbent's service. In my opinion, it should be expected that
5 additional *meaningful* customer choice should exert some degree of price discipline as well as
6 expand available choice. In the Staff's view, granting Big River's request to bring more
7 consumer choice and more advanced services to more rural areas will promote the public
8 interest and further the goal of providing equitable access to all Missourians.

9 **Q. Please discuss Big River's compliance with Section 392.450.1.**

10 A. Section 392.450.1 provides that the Commission may grant a basic local
11 certification only upon a finding that the applicant has complied with the certification process
12 established under Section 392.455. Since I believe Big River has met the requirements of
13 Section 392.455 and the Commission's regulations, Big River has complied with this portion
14 of the certification process established by the Commission in satisfaction of Section
15 392.450.1.

16 **Q. Please discuss Big River's compliance with Section 392.451.1.**

17 A. 392.451.1 contains two relevant subsections. Subsection 1 requires Big River
18 to, throughout all of BPS Telephone Company's service area, offer all telecommunications
19 services which the Commission has determined are essential for the purposes of qualifying
20 for the state universal service fund support. Big River makes this affirmation on page four of
21 its verified application. Subsection 2 requires Big River to advertise the availability of the
22 essential services and charges using a media of general distribution. Big River makes this
23 affirmation also on page four of its verified application.

1 **Q. Are these two requirements contained in Section 392.451.1 normally**
2 **required for companies seeking a certificate to provide basic local exchange service?**

3 A. No. These two requirements are necessary only when a competitor seeks
4 certification in the geographic area of a small incumbent local exchange carrier. As there are
5 very few competitive local exchange carriers operating in areas of small incumbent local
6 exchange carriers, Big River's application is somewhat different from most applications.

7 **Q. Please discuss Big River's compliance with Section 392.450.2.**

8 A. Section 392.450.2 holds that an applicant for basic local service must (1) file
9 and maintain tariffs in a manner consistent with the incumbent, and (2) meet the minimum
10 service standards, including quality of service and billing standards, as the Commission may
11 require of the incumbent with whom the applicant seeks to compete. Big River requests the
12 Commission take notice of its current Commission-approved local exchange tariff, and
13 incorporates such by reference (verified application, page 4). Big River's verified application
14 states that it will file [additional] tariff [sheets] in a manner consistent with the Commission's
15 current practices in similar circumstances, and that it will make reports and other
16 informational filings, and meet minimum service standards, including quality of service and
17 billing standards, as the Commission requires of BPS Telephone Company (page 5).

18 **Q. Do you have any concerns regarding Big River's compliance with Section**
19 **392.450.2?**

20 A. Yes. Big River has failed to submit its quarterly quality of service report as
21 required by 4 CSR 240-3.550(5)(A). The last quality of service report submitted by Big
22 River was for the second quarter of 2005 time period. The Staff has discussed the matter
23 with Big River's CEO Mr. Gerard J. Howe who was unaware that Big River was not

1 regularly submitting quarterly quality of service reports to the Commission. Mr. Howe
2 assured the Staff that the matter will be corrected.

3 **Q. What is your recommendation to the Commission?**

4 A. The Staff recommends the Commission delay granting Big River's request to
5 expand its service area until Big River has submitted to the Staff a current and acceptable
6 quality of service report. According to 4 CSR 240-3.550(5)(A) companies providing basic
7 local telecommunications service shall file such reports 45 days following the end of each
8 quarter. In this regard fourth quarter 2006 results are due February 15, 2007. Assuming Big
9 River will submit a quarterly report on or before February 15, 2007, Staff intends to review
10 the report and make a subsequent filing into this case and indicate whether Big River has
11 fully complied with all requirements of 4 CSR 240-3.550(5)(A). These requirements include
12 explaining and describing corrective action if the company's service level falls within the
13 Commission's identified surveillance level on an exchange-specific basis as described by 4
14 CSR 240-32.080. Commission rule 4 CSR 240-3.550(5)(A) also requires the company to
15 maintain certain records of applications for basic local service that have not been satisfied
16 within 30 days.

17 **Q. If the Commission ultimately grants Big River's request to expand its**
18 **certificate into the service area of BPS Telephone Company, do you have any additional**
19 **recommendations?**

20 A. Yes. Consistent with all previous Staff recommendations for certificates of
21 service authority to provide basic local exchange telecommunications service, the Staff
22 recommends the following conditions be imposed on Big River's certificate of service
23 authority:

Rebuttal Testimony of
John Van Eschen

1 1. Big River's originating and terminating switched access rates will be no
2 greater than the lowest Commission-approved corresponding access rates in
3 effect for BPS Telephone Company, unless authorized by the Commission
4 pursuant to sections 392.220 and 392.230.

5 2. Big River's certificate and service classification for switched access
6 service is conditioned on the continued applicability of Section 392.200 and
7 the requirement that any increases in switched access service rates above the
8 maximum switched access service rates set forth herein shall be made
9 pursuant to Sections 392.220 and 392.230, and not Sections 392.500 and
10 392.510.

11 3. If BPS Telephone Company decreases its originating and/or terminating
12 switched access rates, Big River shall file an appropriate tariff amendment to
13 reduce its originating and/or terminating switched access rates within 30
14 days of BPS' reduction, in order to maintain the cap.
15

16 **Q. Can you please summarize your testimony?**

17 A. Staff's only concern is the company's failure to submit its quarterly of quality
18 of service report as required by 4 CSR 240-3.550(5)(A). Staff's recommendation is for Big
19 River to adequately correct this deficiency before the Commission grants Big River's request.
20 Staff intends to make a filing in this case and indicate whether Big River has fully complied
21 with all requirements of 4 CSR 240-3.550(5)(A). If Big River adequately addresses this
22 deficiency Staff does not have any objections to the Commission granting Big River's request
23 to expand service into BPS Telephone Company's territory. The prior question and answer
24 identifies specific conditions the Commission should place on Big River. In addition, Staff
25 recommends the Commission grant the requested waivers previously discussed in this
26 testimony, including a waiver of 4 CSR 240-3.510(1)(D) pertaining to the submission of
27 certain financial data. A waiver of 4 CSR 240-3.510(1)(C) is unnecessary and the
28 Commission should simply acknowledge Big River has exercised the option to not file a
29 revised tariff sheet(s) at this time. The Commission should grant Big River's request for all
30 of its services to remain competitive.

Rebuttal Testimony of
John Van Eschen

1 **Q. Does this conclude your rebuttal testimony?**

2 **A. Yes, it does.**