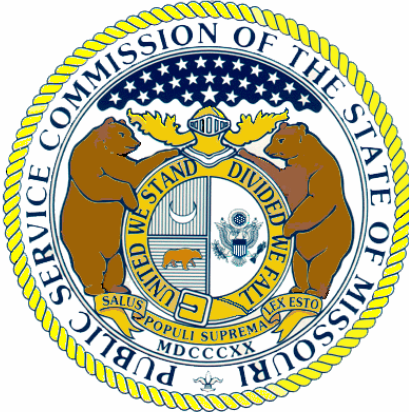


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Application of Big River)
Telephone Company, L.L.C. 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

REPORT AND ORDER

Issue Date: April 24, 2007

Effective Date: May 4, 2007

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Case No. TA-2007-0093

APPEARANCES

Carl J. Lumley, Attorney for Big River Telephone Company, L.L.C., Curtis, Heinz, Garrett & O'Keefe, P.C., 130 S. Bemiston, Suite 200, Clayton, Missouri 63105.

William R. England, III, Attorney for BPS Telephone Company, Brydon, Swearngen & England, P.C., 312 East Capitol Avenue, P. O. Box 456, Jefferson City, Missouri 65102.

Jennifer Heintz, Assistant General Counsel, Missouri Public Service Commission, P. O. Box 360, Jefferson City, Missouri 65102. Attorney for the Staff of the Commission.

REGULATORY LAW JUDGE: **Harold Stearley**

REPORT AND ORDER

Procedural History

On August 30, 2006, Big River Telephone Company, L.L.C. ("Big River") applied for a certificate of service authority to provide basic local exchange telecommunications services in portions of Missouri that are being served by BPS Telephone Company ("BPS"), and for competitive classification. BPS timely requested and was granted intervention. BPS opposes the grant of the certificate.

BPS raised three issues concerning Big River's application: (1) whether Big River met all applicable requirements of Sections 392.450, 392.451, and 392.455, RSMo,¹ and 4 CSR 240-3.510; (2) whether Big River's request to continue to be classified as competitive and to designate the services it proposes to offer in the BPS service area as competitive services is permissible under Section 392.451; and (3) whether Big River's request for waivers of statutes and rules relative to providing service in BPS exchanges is permissible under Section 392.451. These issues were adopted by the Commission as those to be decided at the scheduled evidentiary hearing. The evidentiary hearing was conducted on February 13, 2007.

During the hearing, BPS attempted to offer what was marked Exhibit 8 into evidence. This exhibit consisted of a response from Big River to a data request made by BPS to produce marketing materials. The parties discovered that the exhibit, as offered, was incomplete. Consequently, the presiding officer ordered BPS to late-file the complete exhibit. The exhibit was filed and no party objected during the time period allowed by the Commission, therefore, Exhibit 8 shall be admitted into evidence.

¹ All statutory references are to RSMo 2000 unless otherwise noted.

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. When making findings of fact based upon witness testimony, the Commission will assign the appropriate weight to the testimony of each witness based upon their qualifications, expertise and credibility with regard to the attested to subject matter.

The Parties

1. Big River is a limited liability company duly organized and existing under and by virtue of the laws of the State of Delaware.²

2. Big River is a privately-owned entity with no other affiliate companies.³

3. Big River is duly authorized to conduct business in the State of Missouri.⁴

4. Big River began its Missouri operations upon the completion of the Commission's approval of Big River's acquisition of LDD, Inc. on December 21, 2001.⁵

5. Big River is currently authorized to, and does, provide basic local exchange telecommunications service within the service territory of AT&T(formerly Southwestern Bell Telephone), pursuant to approved tariffs.⁶

² Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 2, lines 14-19.

³ *Id.*

⁴ *Id.*; Application of Big River Telephone Company, L.L.C. to Expand Certificate of Basic Local Service Authority, p. 3, paragraph 5, and Exhibit 1 to the application; Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 3 lines 1-4, and Exhibit B of Hearing Exhibit 3A, *Order Approving Transfer of Assets, Granting Motion for Expedited Treatment, and Granting a Waiver of 4 CSR 240-33.150*, Case No. TM-2001-700.

⁵ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 3, lines 1-12; Case No. TM-2001-700.

⁶ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 5, lines 1-7; Exhibit H of Hearing Exhibit 3A, Intrastate Interexchange Telecommunications Services Tariff, Missouri P.S.C. Tariff No. 1; *In the Matter of the Application of Big River Telephone Company, LLC, for Certificates of Service Authority to Provide Basic Local, Local Exchange, Exchange Access, and Interexchange Telecommunications Services in the State of Missouri and to Classify Said Services and the Company as Competitive*, Case No. TA-2001-699.

6. Big River is also currently authorized to provide basic local exchange telecommunications services within the service territories of CenturyTel, Spectra and Embark (formerly Sprint Communications) and is completing the process of making necessary arrangements to provide service in these territories.⁷

7. In addition to local and long distance services provided in Missouri, Big River currently provides local and long distance telephone service in Arkansas, Kentucky, Mississippi and Tennessee.⁸

8. Big River will soon be providing local and long distance services in Illinois, Kansas and Nebraska.⁹

9. Big River currently operates in the territories of small incumbent telephone companies in Kentucky and Tennessee under the same rules as it does with larger incumbents in those states.¹⁰

10. Big River is a competitively classified company without carrier of last resort obligations.¹¹

⁷ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 5, lines 1-7; Exhibit H of Hearing Exhibit 3A, Intrastate Interexchange Telecommunications Services Tariff, Missouri P.S.C. Tariff No. 1; *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 Telecommunications Service in CenturyTel and Spectra Exchanges and to Continue to Classify the Company and Its Services as Competitive*, Case No. LA-2003-0551; *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 Sprint Exchanges and to Continue to Classify the Company and its Services as Competitive*, Case No.TA-2005-0415.

⁸ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 5, lines 8-13.

⁹ *Id.*

¹⁰ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 5, lines 14-19.

¹¹ Hearing Exhibit 2 A, Prefiled Surrebuttal Testimony of John Van Eschen, p. 6, lines 18-19.

11. BPS is duly authorized to conduct business in the State of Missouri, with its principal place of business being located at P .O. Box 550, 120 Stewart Street, Bernie, MO 63822-0550.¹²

12. BPS is a small incumbent local exchange telecommunications company providing telecommunications services to members of the public located in the exchanges of Bernie, Parma and Steele, pursuant to its Commission-approved certificate and tariff.¹³

13. BPS is a rate-of-return regulated company with carrier of last resort obligations.¹⁴

14. The General Counsel of the Missouri Public Service Commission “represent[s] and appear[s] for the commission in all actions and proceedings involving any question under this or any other law, or under or in reference to any act, order, decision or proceeding of the commission . . .”¹⁵

¹² BPS’s General Local and Exchange Tariff, tracking number JI-2003-2153. See also *BPS Telephone Company, et al. v. Voicestream Wireless Corporation*, Case No. TC-2002-1077.

¹³ *Id.*; Hearing Exhibit 5, Prefiled Rebuttal Testimony of Robert C. Schoonmaker, p. 3, lines 20-22; BPS’s General Local and Exchange Tariff, tracking number JI-2003-2153; BPS’s application to intervene, p. 1, paragraph 1.

¹⁴ Hearing Exhibit 2A, Prefiled Surrebuttal Testimony of John Van Eschen, p. 6, lines 17-18.

¹⁵ Section 386.071, RSMo 2000; Commission Rules 4 CSR 240-2.010(8) and 4 CSR 240-2.040(1). Additionally, the General Counsel “if directed to do so by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence and prosecute in the name of the state all actions and proceedings, authorized by law and directed or authorized by the commission, and to expedite in every way possible, to final determination all such actions and proceedings; to advise the commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the commission and the members thereof, and generally to perform all duties and services as attorney and counsel to the commission which the commission may reasonably require of him.” *Id.*

Findings of Fact Related to Big River's Application

15. Big River's application seeks to expand its service territory to include provision of basic local exchange telecommunications services in the exchanges of Bernie, Parma and Steele, all of which are served by incumbent BPS.¹⁶

16. As required by Section 392.455(3) and Commission Rules 4 CSR 240-3.510(1)(B) and 4 CSR 240-3.510(1)(D)(3), Big River's proposed new exchanges will follow the boundaries of BPS's respective exchanges and will not be smaller than BPS's respective exchanges.¹⁷

17. There is an exchange boundary map of BPS's exchanges currently on file with the Commission.¹⁸

18. Big River has network access agreements with Cable TV operators to provide packet-based telephone service over hybrid fiber coax networks in order to provide basic local service in Bernie, Parma and Steele.¹⁹

19. If some areas of the exchanges of Bernie, Parma and Steele lack access to Big River's Cable TV partners, Big River intends to enter an Interconnection Agreement

¹⁶ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 6, lines 3-8.

¹⁷ *Id.*; Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 7, line 15.

¹⁸ Hearing Exhibit 4, Prefiled Surrebuttal Testimony of Gerald J. Howe, p. 4, lines 15-21; Transcripts from Evidentiary Hearing, Volume 2, p. 78, lines 16-24.

¹⁹ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 6, lines 9-16.

with BPS to lease network access wholesale from BPS and resell services to those few end-user customers that are not accessible via the Cable TV network.²⁰

20. If the Commission approves Big River's application, Big River will provide the following services throughout the BPS exchanges:

a. basic local service that consists of a two-way switched voice single residential line with touch tone dialing and access to all advanced and CLASS features;

b. all services the Commission has determined are essential for purposes of qualifying for state universal service fund support as required by Section 392.451.1(1);²¹

c. enhanced 911 services via connectivity to the 911 Selective Router located in Sikeston that serves these communities;

d. access to basic local operator services, basic local directory assistance, equal access (presubscribed '1+' dialing) to the long distance provider of their choice (including a full variety of long distance services from Big River), and standard intercept service;

²⁰ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 6, lines 17-19, p. 7, lines 1-2; Hearing Exhibit 4, Prefiled Surrebuttal Testimony of Gerald J. Howe, p. 10, lines 6-21, p. 11, lines 1-6. Section 251(a) of the Telecommunications Act of 1996 obligates BPS to interconnect directly or indirectly with Big River's facilities and equipment. Section 251(b) allows Big River to resell its telecommunications services, provide number portability, provide dialing parity and permit nondiscriminatory access to telephone number, operator services, directory assistance, and directory listings, afford access to poles, ducts, conduits, and rights-of-way, and establish reciprocal compensation agreements for transportation and termination of telecommunications. Section 251(c) requires BPS to negotiate interconnection agreements, provide interconnection, unbundled network elements, resale, notice of changes, and collocation. Title 47, United States Code, Chapter 5, Subchapter II, Part II, Section 251; See also Hearing Exhibit 4, Prefiled Surrebuttal Testimony of Gerald J. Howe, p. 10, lines 6-21.

²¹ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 8, lines 1-3; Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 8, lines 16-23. See also Commission Rule 4 CSR 240-31.010(6).

e. a standard white pages directory listing for inclusion in the white page directory covering the community in which the subscribers live;

f. call-blocking to block outbound toll calls from the subscriber's phone line, as well as other toll restriction services such as International and '900' call blocking.²²

21. Big River currently provides basic and advanced telephone service by means of network access agreements with Cable TV operators to approximately 4500 customers located in Missouri, Kentucky, Tennessee and Mississippi.²³

22. Big River also serves over 14,000 access lines by means of resale of Incumbent Local Exchange Carrier ("ILEC") services and use of ILEC Unbundled Network Elements ("UNE") facilities.²⁴

23. Big River has been successfully providing basic local telephone service in Missouri since 2001.²⁵

24. In its application, Big River seeks waiver of the requirement of Commission Rule 4 CSR 240-3.510(1)(D), which requires the submission of certain financial data.²⁶

25. Big River has met the Commission's financial qualification test embodied in 4 CSR 240-3.510(1)(D) in two prior cases, Case Nos. LA-2003-0551 and TA-2005-0415.²⁷

²² Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 7, lines 15-19, p. 8, lines 1-14. See also Commission Rule 4 CSR 240-3.510(1)(A)

²³ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 7, lines 7-14.

²⁴ Hearing Exhibit 4, Prefiled Surrebuttal Testimony of Gerald J. Howe, p. 9, lines 1-13.

²⁵ Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 4, lines 1-17.

²⁶ Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 4, lines 1-20; Case Nos. LA-2003-0551 and TA-2005-0415.

²⁷ See Case Nos. LA-2003-0551 and TA-2005-0415; Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 4, lines 1-20.

26. Big River has provided the Commission with an Income Statement and Balance sheet of its consolidated operations for the twelve month period ending September 30, 2006, satisfying the requirements of 4 CSR 240-3.510(1)(D)(1)(A).²⁸

27. Big River is managerially, financially and technically qualified to provide basic local telecommunications services in the State of Missouri as required by Section 392.455(1) and Commission Rule 4 CSR 240-3.510(1)(D)(1).²⁹

28. Big River will offer basic local service as a separate and distinct service in the new exchanges as required by Section 392.455(4) and Commission Rule 4 CSR 240-3.510(1)(D)(4).³⁰

29. Big River will comply with, and satisfy the minimum standards established by the Commission as required by Sections 392.450.2(2), 392.451.2(2) and 392.455(2) and Commission Rule 4 CSR 240-3.510(1)(D)(2).³¹

30. Big River will advertise, in the media of general distribution, the availability and cost of the services it will offer as required by Section 392.451.1(2).³²

²⁸ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 8, lines 17-19, p. 9, lines 1-8. Exhibit I to Hearing Exhibit 3A, classified as being proprietary.

²⁹ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 3, lines 13-19; pp. 4 - 8, p. 9, lines 1-8; Exhibits A, D, and I of Hearing Exhibit 3A; Hearing Exhibit 4, Prefiled Surrebuttal Testimony of Gerald J. Howe, p. 9, lines 1-13.; Hearing Exhibit 1, Rebuttal Testimony of John Van Eschen, p. 4, lines 1-16, p. 7, lines 7-15; Application of Big River Telephone Company to Expand Certificate of Basic Local Service Authority, p.3, paragraphs 6 and 7, filed August 30, 2006. See also Case Nos. TA-2001-699, LA-2003-0551 and TA-2005-0415.

³⁰ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 7, lines 15-19, p. 8, lines 1-16; Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 7, lines 13-15. Transcripts from Evidentiary Hearing, Volume 2, p. 92, lines 24-25, p. 93, lines 2-5. See also FN 63.

³¹ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 7, lines 13-14; p. 12, lines 6-15, p. 1 [sic, pagination was incorrect, should be page 14], lines 18-21, p. 2 [sic, should be page 15], lines 1-2, lines 10-19, p. 3 [sic, should be page 15], lines 1-4 ; Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, pp. 4-9.

³² Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 9, lines 9-19, p. 10, lines 1-5; Hearing Exhibit 4, Prefiled Surrebuttal Testimony of Gerald J. Howe, p. 13, lines 5-10; Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 6, lines 17-20, p. 8, lines 21-23.

31. Approval of Big River's application will expand access to small, rural areas, furthering the public policy of all Missourians receiving equitable access to affordable telecommunications services as required by Section 392.455(5) and 4 CSR 240-3.510(1)(D)(5).³³

32. In its application, Big River requests that the Commission continue to classify it, and its services, as being competitive and subject to a lesser degree of regulation.³⁴

33. Big River seeks waiver of the following Missouri Statutes and Missouri Public Service Commission Rules in association with its request to maintain its competitive classification:³⁵

Section 392.210.2	4 CSR 240-10.020
Section 392.240 (1)	4 CSR 240-30.040
Section 392.270	4 CSR 240-3.550(5)(C)
Section 392.280	
Section 392.290	
Section 392.300.2	
Section 392.310	
Section 392.320	
Section 392.330	
Section 392.340	

34. The Statutory Sections and Commission Rules listed in finding of fact number 33 are statutes and rules that were established in the past under an industry structure

³³ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 10, lines 6-19, p. 11, lines 1-19, p. 12, lines 1-5; Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 7, lines 16-22, p. 8, lines 1-8; Staff made its determination that Big River would offer equal access based upon review of the company's tariff, interconnection agreement and the testimony of Gerald J. Howe. Transcripts from Evidentiary Hearing, Volume 2, p. 92, lines 4-20.

³⁴ Application of Big River Telephone Company, L.L.C. to Expand Certificate of Basic Local Service Authority, p. 5, paragraph 10, filed August 30, 2006; Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 4, lines 14-25; Transcripts from Evidentiary Hearing, Volume 2, p. 78, lines 8-10.

³⁵ Application of Big River Telephone Company, L.L.C. to Expand Certificate of Basic Local Service Authority, pp 5-6, paragraph 11; Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 4, lines 14-21, p. 13, lines 1-17, p. 14, lines 1-11; Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 3, lines 2-22.

where telephone companies were monopolies and regulations were put in place to protect the rate-paying public from potential abuses by monopoly telephone companies.³⁶

35. Big River's requested waivers, as listed in finding of fact 33, are routinely granted to other competitive local exchange carriers.³⁷

36. Big River has previously been granted the same requested waivers, as listed in finding of fact 33, when it was certificated to provide basic local exchange service in the service territories of Southwestern Bell Telephone Company (AT&T), CenturyTel, Spectra and Embarq.³⁸

37. In its application, Big River also seeks a waiver of the requirement of Commission Rules 4 CSR 240-3.510(1)(C), the tariff filing requirement.³⁹

38. At the time of filing its application, Big River was out of compliance with filings of its quarterly quality of service reports, having filed its last report for the second quarter of 2005.⁴⁰

39. The failure to comply was related to changes in Big River's personnel, a problem that has been corrected.⁴¹

³⁶ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 13, lines 1-10. Testimony from Evidentiary Hearing, Volume 2, p. 78, line 25, p. 79 lines 1-25, p. 80, lines 1-2.

³⁷ Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 3, lines 23-27; Testimony from Evidentiary Hearing, Volume 2, p. 112, lines 1-25, p. 113, lines 1-5.

³⁸ Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 3, lines 23-27; Case Nos. TA-2001-699, LA-2003-0551, and TA-2005-0415.

³⁹ Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 4, lines 21-25, p. 5, lines 1-17; Case No. TA-2005-0415.

⁴⁰ Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 9, lines 20-22; Commission Rule 4 CSR 240-3.550(5)(A); Transcripts from Evidentiary Hearing, Volume 2, p. 30, lines 20-25, , p 31, lines 1-25, p. 32, lines 1-21.

⁴¹ Hearing Exhibit 4, Prefiled Surrebuttal Testimony of Gerald J. Howe, p. 2, lines 5-11. Transcripts from Evidentiary Hearing, Volume 2, p. 30, lines 20-25, p. 31, lines 1-13.

40. At the time when Staff's witness John Van Eschen filed his surrebuttal testimony on January 31, 2007, Big River had submitted quality of service reports for quarters 2, 3, and 4 for 2005 and quarters 1 through 4 for 2006.⁴²

41. Based upon a review of the quality of service reports submitted, Big River needs to make adjustments in tracking and compiling results where their cable TV partners are involved, including documenting installation commitments, trouble reports, repair commitments, customer assisted calls, local operator system calls, and the measure for local exchange and interexchange switch calls.⁴³

42. Beginning with the first quarter of 2007, Big River's quarterly quality of service reports will be in full compliance because they will include all the activity with regard to the services that they provide over cable networks.⁴⁴

43. Staff will follow up with Big River after submission of its next quarterly report to ensure compliance and at this time considers this issue resolved.⁴⁵

44. Big River's tariff is outdated and in need of revision. Specifically, Big River's tariff needs to be updated to clearly identify the services and rates offered to its customers, and all of the exchanges in which Big River is offering services as required by Sections 392.450.2(1) and 392.451.2(1).⁴⁶

⁴² Hearing Exhibit 2A, Prefiled Surrebuttal Testimony of John Van Eschen, p. 5, lines 19-23; Transcripts from Evidentiary Hearing, Volume 2, p. 30, lines 20-25, p. 31, lines 1-25, p. 32, lines 1-21.

⁴³ Transcripts from Evidentiary Hearing, Volume 2, p. 98, lines 12-25, p. 99, lines 1-25, p. 100, lines 1-16.

⁴⁴ Transcripts from Evidentiary Hearing, Volume 2, p. 31, lines 17-15, p. 32, lines 1-21, p. 67, lines 13-25, p. 68, lines 1-25.

⁴⁵ Staff of the Missouri Public Service Commission's Status Report, filed March 27, 2007.

⁴⁶ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 12, lines 6-15; Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 9, lines 7-17; Transcripts from Evidentiary Hearing, Volume 2, p. 93, lines 14-25, p. 94, lines 1-25, p. 95, lines 1-25, p. 96, lines 1-25, p. 97, lines 1-11, p. 117, lines 19-25, p. 118, lines 1-25, p. 119, lines 1-9.

45. Big River's tariffs have been updated to incorporate its Voice Over Internet Protocol services, and this tariff must be approved by the Commission prior to a grant of a certificate of service authority to provide basic local exchange telecommunications services in BPS's service territory.⁴⁷

46. Big River's application to extend its provision of basic local telecommunications services into BPS's service territory is the first such application before the Commission where a facilities-based, competitive local exchange carrier ("CLEC") seeks to provide basic local telecommunications services in a small telephone company exchange under the provisions of Section 392.451.⁴⁸

47. The Commission has previously granted basic local certification to CLECs to provide service in the exchanges of small ILECS, when the CLECs were prepaid resellers of service. The Commission further classified these companies as being competitive and granted the standard waivers.⁴⁹

48. In Case No. TA-2001-334, BPS stipulated to the grant of service authority for Missouri State Discount Telephone ("MSDT") to provide basic local telecommunications services in the exchanges of small ILECs, including its own service territory, and supported

⁴⁷ Transcripts from Evidentiary Hearing, Volume 2, p. 32, lines 22-25, p. 33, lines 1-25, p. 34, lines 1-24, p. 69, lines 1-25, p. 70, lines 1-27, p. 71, lines 1-25, p. 72, lines 1-24.

⁴⁸ Hearing Exhibit 5, Prefiled Rebuttal Testimony of Robert C. Schoonmaker, p. 3, lines 19-22; Transcripts from Evidentiary Hearing, Volume 2, p. 86, lines 9-13; Hearing Exhibit 4, Prefiled Surrebuttal Testimony of Gerald Howe, p. 2, lines 13-22, p. 3, lines 1-2.

⁴⁹ Transcripts from Evidentiary Hearing, Volume 2, p. 85, lines 7-25, p. 86, lines 1-8. See *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 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, and *In the Matter of the Application of Universal Telecom, Inc., for a Certificate of Service Authority to Provide Prepaid Basic Local Telecommunications Services in the State of Missouri (Small Incumbent Local Exchanges) and to Classify Said Services and the Company as Competitive*, Case No TA-2002-182.

the classification of MSDT as competitive as well as the standard waivers of statutes and Commission rules.⁵⁰

49. Granting Big River's application is in the public interest because it will: (1) increase equitable access for Missourians; (2) create and enhance competition and expand customer service options consistent with the legislative goals of the Telecommunications Act of 1996 and Chapter 392, RSMo; (3) promote the availability of quality services and increased customer choice; (4) will promote the development of more economic and efficient services affording more customers a choice for innovative, diversified and reliable service offerings.⁵¹

50. Granting Big River's application is in the public interest because Big River will be providing facility-based telecommunications service, which is superior to competition involving only the reselling of the services of the incumbent provider that results in little more than repackaging of the incumbent's services.⁵²

Conclusions of Law

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

Jurisdiction and Authority

Big River is a "public utility" and a "telecommunications company" as defined in Sections 386.010(42), and (51), and is subject to the jurisdiction, control and regulation of the Commission.⁵³

⁵⁰ See Case No. TA-2001-334.

⁵¹ Hearing Exhibit 3A, Prefiled Direct Testimony of Gerald J. Howe, p. 10, lines 6-19, p. 11, lines 1-19, p.12, lines 1-5; Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 7, lines 16-22, p. 8, lines 1-8.

⁵² Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 7, lines 16-22, p. 8, lines 1-8.

⁵³ Sections 386.020(42), (51), (52), and (53).

BPS is a “public utility” and a “telecommunications company” as defined in Sections 386.010(42), and (51), and is subject to the jurisdiction, control and regulation of the Commission.⁵⁴ BPS is also a rural telephone company and an incumbent local exchange carrier as defined by the Federal Telecommunications Act of 1996, and a small local exchange telecommunications company as defined in Section 386.020(30) Cum. Supp. 2005.⁵⁵

Relevant Statutory Provisions and Commission Rules

The relevant statutes governing the Commission’s approval of applications for a certificate of service authority to provide basic local telecommunications services are Sections 392.450, 392.451 and 392.455. The statutes providing the Commission with authority to grant statutory waivers with respect to these applications are Sections 392.361.5 and .6, and Section 392.420. The relevant Commission Rules delineating the filing requirements for such applications are 4 CSR 240-2.060, 4 CSR 240-2.080 and 4 CSR 240-3.510.⁵⁶

Section 392.450 provides:

392.450. 1. The commission shall approve an application for a certificate of local exchange service authority to provide basic local telecommunications service or for the resale of basic local telecommunications service only upon a showing by the applicant, and a finding by the commission, after notice and hearing that the applicant has complied with the certification process established pursuant to section 392.455.

2. In addition, the commission shall adopt such rules, consistent with section 253(b) of the federal Telecommunications Act of 1996 to preserve and

⁵⁴ Sections 386.020(42), (51), (52), and (53). See also BPS’s application to intervene, p. 1, paragraph 1; BPS’s General Local and Exchange Tariff, tracking number JI-2003-2153.

⁵⁵ Section 386.020(30) Cum. Supp. 2005.

⁵⁶ Commission Rules 4 CSR 240-2.060 and 2.080 generally govern applications and pleadings. Commission Rule 4 CSR 240-3.510, specifically governs the filing requirements for applications for a certificate of service authority to provide basic local exchange telecommunications services.

advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. Such rules, at a minimum, shall require that all applicants seeking a certificate to provide basic local telecommunications services under this section:

(1) File and maintain tariffs with the commission in the same manner and form as the commission requires of the incumbent local exchange telecommunications company with which the applicant seeks to compete; and

(2) Meet the minimum service standards, including quality of service and billing standards, as the commission requires of the incumbent local exchange telecommunications company with which the applicant seeks to compete.

Section 392.451 provides:

1. Notwithstanding any provisions of this act to the contrary, and consistent with section 253(f) of the federal Telecommunications Act of 1996, the commission shall approve an application for a certificate of local exchange service authority to provide basic local telecommunications service or for the resale of basic local telecommunications service in an area that is served by a small incumbent local exchange telecommunications company only upon a showing by the applicant, and a finding by the commission, after notice and hearing, that:

(1) The applicant shall, throughout the service area of the incumbent local exchange telecommunication company, offer all telecommunications services which the commission has determined are essential for purposes of qualifying for state universal service fund support; and

(2) The applicant shall advertise the availability of such essential services and the charges therefore using media of general distribution.

2. In addition, the commission shall adopt such rules, consistent with section 253(b) of the federal Telecommunications Act of 1996 to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. Such rules, at a minimum, shall require that all applicants seeking a certificate to provide basic local telecommunications services under this section:

(1) File and maintain tariffs with the commission in the same manner and form as the commission requires of the incumbent local exchange telecommunications company with which the applicant seeks to compete;

(2) Meet the minimum service standards, including quality of service and billing standards, as the commission requires of the incumbent local exchange telecommunications company with which the applicant seeks to compete;

(3) Make such reports to and other information filings with the commission as is required of the incumbent local exchange telecommunications company with which the applicant seeks to compete; and

(4) Comply with all of the same rules and regulations as the commission may impose on the incumbent local exchange telecommunications company with which the applicant seeks to compete.

3. The state of Missouri hereby adopts and incorporates in total the provisions of section 251(f)(1) of the federal Telecommunications Act of 1996 providing exemption for certain rural telephone companies.

Section 392.455 provides:

Upon enactment of this section, the commission shall immediately begin a proceeding to establish a basic local telecommunications certification process. The commission may grant certificates to new entrants to provide basic local telecommunications service on a common carriage basis, subject to the provisions of sections 392.380 and 392.390. In order to preserve and advance universal service, protect the public safety and welfare, insure the continued quality of telecommunications services and safeguard the rights of consumers, such process shall include, but not be limited to:

(1) A requirement that the applicant possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service;

(2) A requirement that the applicant demonstrate that the services it proposes to offer satisfy the minimum standards established by the commission;

(3) A requirement that the applicant set forth the geographic area in which it proposes to offer service and demonstrate that such area follows exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange;

(4) A requirement that all providers must offer basic local telecommunications service as a separate and distinct service;

(5) A requirement that the commission give due consideration to the equitable access for all Missourians, regardless of where they live or their income, to affordable telecommunications services.

Section 392.361.5 and .6 provide:

5. By its order classifying a telecommunications service as competitive or transitionally competitive or a telecommunications company as competitive or transitionally competitive, the commission may, with respect to that service or company and with respect to one or more providers of that service, suspend or modify the application of its rules or the application of any statutory provision contained in sections 392.200 to 392.340, except as provided in section 392.390. The commission may suspend different requirements for different telecommunications companies, if such different treatment is reasonable and not detrimental to the public interest.

6. If the commission suspends the application of a statutory requirement under this section, it may require a telecommunications company to comply with any conditions reasonably made necessary to protect the public interest by the suspension of the statutory requirement.

Section 392.420 provides:

The commission is authorized, in connection with the issuance or modification of a certificate of interexchange or local exchange service authority or the modification of a certificate of public convenience and necessity for interexchange or local exchange telecommunications service, to entertain a petition under section 392.361 and in accordance with the procedures set out in section 392.361, **to suspend or modify the application of its rules or the application of any statutory provision contained in sections 392.200 to 392.340 if such waiver or modification is otherwise consistent with the other provisions of sections 392.361 to 392.520 and the purposes of this chapter.**

Discussion

Big River is requesting that the Commission grant it a certificate of service authority to provide basic local telecommunications services in the exchanges being served by BPS. The Commission may grant an application for a certificate of service authority to provide telecommunications service upon a showing that the applicant has met the statutory

requirements, including relevant service standards,⁵⁷ and that the grant of authority is in the public interest.⁵⁸

In addition to seeking the certificate of service authority, Big River also requests that it and its services be classified as competitive and that the application of certain statutes and regulatory rules be waived. The Commission may classify a telecommunications service as competitive if the Commission determines that the applicant is subject to a sufficient degree of competition to justify a lesser degree of regulation.⁵⁹ The Commission may only classify a telecommunications carrier as competitive if all of its services are so classified.⁶⁰ The Commission may also waive the application of certain statutes and of its rules to a competitive carrier if it determines that such waiver is consistent with the purposes of Chapter 392.⁶¹

The Commission finds that while the concerns BPS has raised regarding Big River's quarterly quality of service reports, updating its tariffs, whether Big River will provide equal access to its customers, whether Big River will provide basic local service as a separate and distinct service, and whether Big River versus its Cable TV partners will be providing the telephone service will be addressed, they all either lack merit or are not so substantial as to impede the grant of Big River's application.⁶²

Staff has resolved the issue concerning the quality of service reports, Big River's tariffs can be updated as a condition to being certificated, and there is no credible evidence

⁵⁷ See Sections 392.450, 392.451 and 392.455.

⁵⁸ Sections 392.430 and 392.440.

⁵⁹ Section 392.361.2.

⁶⁰ Section 392.361.3.

⁶¹ See Sections 392.185, 392.361.5 and .6, and 392.420.

⁶² See Generally, Hearing Exhibit 5, Prefiled Rebuttal Testimony of Robert C. Schoonmaker; Hearing Exhibit 6, Prefiled Surrebuttal Testimony of Robert C. Schoonmaker.

in the record to establish that Big River would not meet the Commission's equal access requirements. Moreover, any future failure of compliance with these matters could be appropriately addressed in a complaint action after Big River has had an opportunity to demonstrate its performance with the provision of basic local telecommunications service.

Additionally, BPS offers no credible evidence to support its speculation that Big River would not provide basic local service as a separate and distinct service. BPS made this assertion based upon hearsay evidence from a phone call to one of Big River's customer service representatives for Big River's southeast Missouri exchanges. This representative allegedly stated there was only one package of services available in Poplar Bluff, Missouri and that there was no choice allowed for long-distance carriers. Big River responded by pointing out that BPS had not inquired about basic local service, but rather a package including broadband Internet access and other features. Big River explained, in depth, the types of services provided and that basic local service is provided as a separate and distinct service.⁶³ Indeed, Big River noted that it is currently not authorized to provide basic local service in a small ILEC's service area in Missouri, so its current operations cannot be examined for regulatory compliance in this regard.⁶⁴

Finally, BPS's concerns over how Big River would provide its services were thoroughly rebutted. Big River provided testimony concerning the number of customers it serves utilizing cable TV facilities, the number served by access lines by resale of ILEC

⁶³ Transcripts from Evidentiary Hearing, Volume 2, p. 61, lines 19-15, pp. 62-66, p. 67, lines 1-12; Hearing Exhibit 4, Prefiled Surrebuttal Testimony of Gerald J. Howe, p. 11, lines 8-20, p. 12, lines 1-14; Hearing Exhibit 6, Prefiled Surrebuttal Testimony of Robert C. Schoonmaker, p. 4, lines 1-20; Transcripts from the Evidentiary Hearing, p. 92, lines 24-25, p. 93, lines 1-9, p. 118, lines 11-15. See also the Commission's findings of fact and FN 30.

⁶⁴ Hearing Exhibit 4, Prefiled Surrebuttal Testimony of Gerald J. Howe, p. 11, lines 8-20, p. 12, lines 1-14; Hearing Exhibit 6, Prefiled Surrebuttal Testimony of Robert C. Schoonmaker, p. 4, lines 1-20; Transcripts from the Evidentiary Hearing, p. 92, lines 24-25, p. 93, lines 1-9, p. 118, lines 11-15. See also the Commission's findings of fact.

services and use of ILEC UNE facilities, its plan to secure an interconnection agreement with BPS, and the option for installing its own facilities to reach its entire customer base.⁶⁵

Big River also established with substantial evidence that it would be the entity providing service to the end user customers, as opposed to Big River's cable TV partners, as intimated by BPS.⁶⁶

BPS also argues that granting Big River competitive status, and granting the statutory and rule waivers that Big River has requested, would be inconsistent with Section 392.451.2(4)'s mandate that a CLEC granted a certificate to provide basic local telecommunications service in the service area of a small ILEC must "[c]omply with all of the same rules and regulations as the commission may impose on the incumbent local exchange telecommunications company with which the applicant seeks to compete." BPS claims that such a grant is an issue of first impression for the Commission.

Big River's application to extend its provision of basic local telecommunications services into BPS's service territory may be an issue of first impression for the Commission in that this is the first such application from a facilities-based CLEC for the provision of basic local telecommunications services in a small telephone company exchange under the provisions of Section 392.451. However, the Commission finds this distinction is without significance in that the Commission has previously granted basic local certification to CLECs that were prepaid resellers to provide service in the exchanges of small

⁶⁵ See Exhibit 4, Prefiled Surrebuttal Testimony of Gerald J. Howe, p. 9, lines 1-21, p. 10 lines 1-21, p. 11, lines 1-6; Commission's Findings of Fact Nos. 18, 19, 21, and 22.

⁶⁶ *Id.*; Exhibit 4, Prefiled Surrebuttal Testimony of Gerald J. Howe, p. 13, lines 12-21, p. 14, lines 1-5. Transcript from Evidentiary Hearing, Volume 2, p. 59, lines 23-25, p. 60, lines 1-25, p. 61, lines 1-18, p. 107, lines 17-25, p. 108, lines 1-2; Transcript from Evidentiary Hearing, Volume 3 (Highly Confidential), pp. 51-54, p. 55, lines 1-17.

incumbents.⁶⁷ The Commission found it consistent in those cases to classify the companies as being competitive and granted the standard waivers that are requested by Big River. In fact, in Case No. TA-2001-334, BPS stipulated to the grant of the certification and the waivers when Missouri State Discount Telephone sought to provide basic local services in the exchanges served by BPS.⁶⁸

Section 392.451.2(4) only applies to rules and regulations, and not the statutes that the Commission has the express authority to waive pursuant to Sections 392.361.5 and .6 and 392.420. Consequently, the only waivers at issue that could possibly create any inconsistency with the statute's mandate to have CLECs comply with all of the same rules and regulations as the commission may impose on the ILECs are waivers of Commission Rules 4 CSR 240-10.020, Income of Depreciation Investments; 4 CSR 240-30.040, Uniform System of Accounts; and 4 CSR 240-3.550(5)(C), the requirement for the filing of an exchange boundary map.

Sections 392.280 and 392.210.2 provide the statutory basis for 4 CSR 240-10.020, and 4 CSR 240-30.040, respectively. Because these regulations are derived from statutory provisions that the Commission has legislative authority to waive, to waive the statutes but not the Commission rules would produce an absurd result. The Commission does not believe it was the legislature's intent to produce such a result and finds that reading the relevant statutes in harmony allows for the waiver of these two regulations, which also comports with the general purposes of Chapter 392.⁶⁹

⁶⁷ See Case Nos. TA-2001-334 and TA-2002-182

⁶⁸ Case No. TA-2001-334, Stipulation and Agreement, p. 6-7, 9-10.

⁶⁹ Section 392.185, entitled, "Purpose of chapter," provides: The provisions of this chapter shall be construed to:

With regard to waiver of 4 CSR 240-3.550(5)(C), the requirement for the filing of an exchange boundary map, the Commission has found that there is already such a map on file with the Commission for the relevant exchanges. To impose this requirement upon Big River at this time would be superfluous and the waiver shall be granted.

Addressing Big River's remaining requests for waivers of Commission Rules, although Big River has provided the Commission with an Income Statement and Balance sheet of its consolidated operations for the twelve month period ending September 30, 2006, satisfying the requirements of 4 CSR 240-3.510(1)(D)(1)(A), Big River seeks waiver of the remaining requirements of Commission Rule 4 CSR 240-3.510(1)(D), which require the submission of certain financial data. Additionally, Big River also seeks waiver of the requirement of Commission Rule 4 CSR 240-3.510(1)(C), the tariff filing requirement.

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- (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.

Because Big River has met the Commission's financial qualification test embodied in 4 CSR 240-3.510(1)(D) in two prior cases, Case Nos. LA-2003-0551 and TA-2005-0415, the Commission finds good cause for waiving the remainder of the requirements of Commission Rules 4 CSR 240-3.510(1)(D) with regard to Big River's current application.⁷⁰ Furthermore, the tariff requirement embodied in Commission Rule 4 CSR 240-3.510(1)(C) is an optional requirement for which Big River needs no waiver.

Decision

In making this decision, the Commission 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. After applying the facts, as it has found them, to its conclusions of law, the Commission has reached the following decision.

Based on Big River's verified application, the sworn testimony of the witnesses for the parties, and the findings of fact and conclusions of law previously delineated in this Report and Order, the Commission finds that Big River satisfies the requirements for certification and that granting its requested certificate is in the public interest. The Commission also finds that Big River will compete with BPS, the incumbent local exchange carrier, in the exchanges in which it seeks to provide basic local telecommunications service. Consequently, the Commission finds that Big River will be subject to a sufficient

⁷⁰ See Case Nos. LA-2003-0551 and TA-2005-0415; Hearing Exhibit 1, Prefiled Rebuttal Testimony of John Van Eschen, p. 4, lines 1-20.

level of competition to justify a lesser degree of regulation.⁷¹ Furthermore, all of the services Big River will offer are qualified for classification as competitive services.

The Commission may waive certain statutes and administrative rules for competitively classified carriers “if such waiver or modification is otherwise consistent with the other provisions of Section 392.361 to 392.520 and the purposes of this chapter.”⁷² The Commission has developed a standard list of statutes and regulations that it waives for competitive local exchange carriers. The Commission finds that the waiver of those statutes and regulation is consistent with the purposes of Chapter 392, and will waive those provisions for Big River.

The Commission may also require a telecommunications company to comply with any conditions reasonably necessary to protect the public interest. Staff routinely recommends that basic local applications be granted subject to certain restrictions regarding switched access rates. These conditions are necessary to protect the public interest and will be adopted.

The Commission places Big River on notice that failure to comply with certain obligations pursuant to law may result in penalties assessed against the company. These obligations include, but are not limited to, the following:

- A) The obligation to file an annual report, as established by Section 392.210. Failure to comply with this obligation will make the utility liable for a penalty of \$100 per day for each day that the violation continues. Rule 4 CSR 240-3.540 requires telecommunications utilities to file their annual report on or before April 15 of each year.

⁷¹ Section 392.361.2 and .3.

⁷² Sections 392.361.5 and 392.420.

- B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370.
- C) The obligation to comply with all relevant laws and regulations, as well as orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2,000 per day of noncompliance, under Section 386.570.
- D) The obligation to keep the Commission informed of its current address and telephone number.

The company is reminded that its officers may not represent it before the Commission. The company must be represented by an attorney licensed to practice law in Missouri.

In addition, Section 392.410.5, RSMo Cum. Supp. 2005, provides that the company's certificate of service authority becomes null and void one year from the date of this order unless the company has exercised its authority under that certificate.

The Commission notes that before providing telecommunications services in Missouri, a party shall possess the following: (1) an interconnection agreement approved by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide interexchange or basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

Big River did not file a proposed tariff as part of its application. In fact, in its application, Big River requested a waiver of the tariff-filing requirement of Commission Rules 4 CSR 240-3.510(1)(C). However, this rule makes the filing of a tariff to provide basic local telecommunications services optional at the time of the filing of the application

and as such no such waiver is required. Although the Commission's regulations do not require that such a tariff be filed along with the application for a certificate, Big River is reminded that it cannot provide basic local service in BPS's exchanges until its tariff is approved by this Commission.

IT IS ORDERED THAT:

1. BPS Telephone Company's late-filed exhibit, marked as Exhibit 8, is admitted into evidence.

2. Big River Telephone Company, L.L.C. is granted a certificate of service authority to provide basic local telecommunications services in the exchanges of Bernie, Parma and Steele, all of which are served by incumbent BPS Telephone Company, subject to the following conditions:

- a. Big River Telephone Company, L.L.C. must submit to the Staff of the Missouri Public Service Commission acceptable quality of service reports beginning with its next quarterly report pursuant to the plan it has agreed to follow with the Staff of the Missouri Public Service Commission.
- b. Within thirty days following the issue date of this order, Big River Telephone Company, L.L.C. shall file with the Commission updated tariff provisions clearly identifying the services and rates offered to its customers for all of its telecommunications services and correcting all deficiencies in its current tariff as delineated in the body of this order.
- c. Big River Telephone Company, L.L.C.'s originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for each incumbent local exchange carrier within whose service area Big River Telephone Company, L.L.C. seeks authority to provide service, unless authorized by the Commission pursuant to Section 392.220 and 392.230, RSMo.
- d. The certificates and competitive service classification for switched exchange access are granted conditioned on the continued applicability of Section 392.200, RSMo, and the requirement that any increase in switched access service rates above the maximum switched access service rates set forth herein shall be made pursuant to Section 392.200 and 392.230, RSMo, and not Section 392.500 and 392.510, RSMo.

- e. If the directly competing incumbent local exchange carrier, in whose service area Big River Telephone Company, L.L.C. is operating, decreases its originating or terminating access service rates, Big River Telephone Company, L.L.C. shall file an appropriate tariff amendment to reduce its originating or terminating access rates in the directly competing incumbent local exchange carrier's service area within 30 days of the directly competing incumbent local exchange carrier's reduction of its originating or terminating access rates in order to maintain the cap.

3. Big River Telephone Company, L.L.C. and the services it offers are classified as competitive.

4. Application of the following statutes and Commission rules is waived:

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 240-3.550(5)(C) - exchange boundary map
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts

5. Big River Telephone Company, L.L.C.'s requested waiver of 4 CSR 240-3.550(5)(C) is granted.

6. Big River Telephone Company, L.L.C.'s requested waiver of 4 CSR 240-3.510(1)(C) is denied.

7. Big River Telephone Company, L.L.C.'s requested waiver of 4 CSR 240-3.510(1)(D) is granted.

8. Big River Telephone Company, L.L.C. is advised that the grant of authority contained in this order may not, by itself, be sufficient to permit it to lawfully provide basic local telecommunications services in Missouri. Specifically, Big River Telephone Company, L.L.C. cannot lawfully provide basic local telecommunications services until it has a tariff in effect for such services. When Big River Telephone Company, L.L.C. submits such a tariff, it shall do so by filing a non-case tariff submission. The tariff submission for providing basic local telecommunications services shall not be filed in this case.

9. The certification granted herein is conditioned upon the Big River Telephone Company, L.L.C.'s compliance with the regulatory obligations set out in this order, and shall not become effective until the Commission is satisfied that current tariff filings are in full regulatory compliance and until it has a new tariff in effect for the provision of basic local telecommunications services for the exchanges delineated in ordered paragraph number 2.

10. The Staff of the Missouri Public Service Commission shall file a status report within five days of Big River Telephone Company, L.L.C.'s filing of its updated tariff appraising the Commission as to whether Big River Telephone Company, L.L.C. has brought its current tariff into compliance with all statutory and regulatory requirements. The submission of the updated current tariff shall be filed in this case utilizing the Case No. TA-2007-0093.

11. Big River Telephone Company, L.L.C.'s certificate shall become effective ten days after the Commission makes a final determination as to if its current tariff filings are in full regulatory compliance.

12. All objections not ruled on are overruled and all motions not granted are denied.

13. This order shall become effective on May 4, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, and Appling, CC., concur;
Gaw and Clayton, CC., concur, with concurring
opinion to follow;
and certify compliance with the provisions of
Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 24th day of April, 2007.