

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

February 13, 2007  
Jefferson City, Missouri  
Volume 2

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

HAROLD STEARLEY, Presiding  
REGULATORY LAW JUDGE

LINWARD "LIN" APPLING,  
COMMISSIONER

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1 P R O C E E D I N G S

2 JUDGE STEARLEY: We're ready to go on the  
3 record. All right. Let's bring our hearing to order.  
4 Good morning. Today is Tuesday, February 13th, 2007, and  
5 we are here for an evidentiary hearing in Case No.  
6 TA-2007-0093 in the matter of the application of Big Rigor  
7 -- Big River Telephone Company, LLC, to expand its  
8 certificate of basic local service authority to include  
9 portions -- or include provision of basic local exchange  
10 telecommunications services in the exchanges of BPS  
11 Telephone Company and to continue to classify the company  
12 and its services as competitive.

13 That was a mouthful. My name is Harold  
14 Stearley, and I'll be the presiding officer in this  
15 matter. Our court reporter this morning is Monnie  
16 VanZant. And we'll begin by taking entries of appearance,  
17 beginning with Big River Telephone Company?

18

19 MR. LUMLEY: Good morning. Thank you, Judge.  
20 Carl Lumley appearing for Big River Telephone Company, the  
21 Curtis Hines Law Firm located in Clayton, Missouri, at 130  
22 South Bemiston, Suite 200. Zip code 63105.

23 JUDGE STEARLEY: Thank you, Mr. Lumley. And BPS  
24 Telephone?

25 MR. ENGLAND: Thank you, your Honor. Let the

1 record reflect the appearance of W.R. England and Sondra  
2 Morgan. Our mailing address is Byrdon, Swearengen &  
3 England, Post Office Box 456, Jefferson city, Missouri,  
4 65102, appearing on behalf of BPS Telephone Company.

5 JUDGE STEARLEY: Thank you, Mr. England. And  
6 Staff of the Missouri Public Service Commission?

7 MS. HEINTZ: Jennifer Heintz and Kevin Thompson  
8 for Staff, P.O. Box 360, Jefferson City, Missouri, 65102.

9 JUDGE STEARLEY: And if I understand correctly,  
10 we have three witnesses this morning. Mr. Gerard Howe for  
11 Big River, John Van Eschen for Staff, and Robert  
12 Schoonmaker for BPS. Or is that Schoonmaker?

13 MR. ENGLAND: Schoonmaker.

14 JUDGE STEARLEY: Schoonmaker. Okay. Thank you.  
15 I'll try not to butcher your names here this morning. And  
16 I guess we will be beginning with opening statements from  
17 the parties in just a moment.

18 Are there any preliminary matters that need to  
19 be resolved at this time?

20 MR. LUMLEY: Judge, I believe the parties have  
21 agreed that we can just mark the prefiled testimony and  
22 admit it at the start of the hearing.

23 JUDGE STEARLEY: All right. If you'd like to go  
24 ahead and premark your testimony. Staff has already done  
25 so, I believe.

1 MS. HEINTZ: Yes.

2 MR. LUMLEY: And ours is up here. And so we  
3 would have Exhibits 1 and 2, Mr. Howe's direct and his  
4 surrebuttal.

5 JUDGE STEARLEY: I believe Staff has already  
6 marked theirs as 1.

7 MS. HEINTZ: And 2-A and 2-B.

8 MR. LUMLEY: Oh, I'm sorry.

9 JUDGE STEARLEY: So let's begin with 3.

10 MR. LUMLEY: All right. So Mr. Howe's direct  
11 would be 3, and Mr. Howe's surrebuttal would be 4.

12 JUDGE STEARLEY: Mr. England, do you have --

13 MR. LUMLEY: Just a minute, Judge. There are  
14 some confidential schedules to his testimony.

15 JUDGE STEARLEY: Are those included with his  
16 direct testimony or surrebuttal?

17 MR. LUMLEY: I believe it's only the direct. So  
18 perhaps what I should do is call that schedule out as a  
19 separate exhibit.

20 JUDGE STEARLEY: Which schedule would that be?

21 MR. LUMLEY: Exhibit I. The direct testimony of  
22 Van Eschen is Exhibit 1?

23 JUDGE STEARLEY: Yeah.

24 MR. LUMLEY: And surrebuttal is --

25 MS. HEINTZ: 2-A and 2-B.

1 JUDGE STEARLEY: And surrebuttal is 2-A and 2-B.

2 MR. LUMLEY: 2A HC and 2B NP?

3 MS. HEINTZ: Correct.

4 MR. LUMLEY: So Exhibit 3 would be Mr. -- 3-A is  
5 Mr. Howe's direct?

6 JUDGE STEARLEY: That would be fine.

7 MR. LUMLEY: And then 3-B is the proprietary  
8 Exhibit I to his direct. And then Exhibit 4 would be  
9 Mr. Howe's surrebuttal.

10 JUDGE STEARLEY: All right. Very good.

11 MR. LUMLEY: Thank you, your Honor.

12 JUDGE STEARLEY: Thank you. Mr. England?

13 MR. ENGLAND: Thank you, your Honor. Just a  
14 second. I'm still filling out my list here. I think all  
15 of our testimony is public. We've got the rebuttal  
16 testimony of Robert C. Schoonmaker, and then we have the  
17 surrebuttal testimony of Robert C. Schoonmaker.

18 So that would be Exhibit 5 for the rebuttal and  
19 Exhibit 6 for the surrebuttal?

20 JUDGE STEARLEY: That's correct.

21 MR. ENGLAND: Thank you.

22 JUDGE STEARLEY: Are there any other preliminary  
23 matters we need to address at this time?

24 MR. LUMLEY: Did you officially receive those  
25 exhibits, your Honor?

1                   MR. ENGLAND: There's no -- we have no objection  
2 to the admission.

3                   JUDGE STEARLEY: All right. If there are no  
4 objections to the -- the Exhibits 1, 2-A, 2-B, 3-A, 3-B,  
5 4, 5 and 6, then they will all be admitted and received  
6 into evidence.

7                   (Exhibit Nos. 1, 2-A, 2-B, 3-A, 3-B, 4, 5, and 6  
8 were offered and admitted into evidence.)

9                   MR. LUMLEY: Thank you.

10                  JUDGE STEARLEY: And if there are no other  
11 preliminary matters, we will start with opening statements  
12 beginning with Big River, Mr. Lumley.

13                               OPENING STATEMENT

14 BY MR. LUMLEY:

15                   MR. LUMLEY: Thank you, and good morning, Judge.  
16 This case involves Big River's application to expand its  
17 basic local service authority to include service to the  
18 three exchanges that are currently served by the incumbent  
19 BPS.

20                   And those are the exchanges known as Burney,  
21 Parma and Steele. And they're the three non-AT&T  
22 exchanges located in the bootheel area of our state.

23                   Additionally, the company seeks continued  
24 classification as a competitive company offering  
25 competitive services, and it seeks continued standard

1     waivers of statutes and rules typically granted to CLECs.

2                 Big River has been providing service in the  
3     State of Missouri since 2001 as a competitive carrier with  
4     the standard waivers that the Commission has always  
5     granted.

6                 It started its business by acquiring the  
7     operations of LDD, which had been in business since 1983  
8     in providing local service since 1999. Big River's main  
9     offices are located in Cape Girardeau, and it has about 50  
10    employees.

11                It's currently authorized to provide service in  
12    the AT&T, CenturyTel, Spectra and Embarq areas of the  
13    state. It provides local and long distance service in  
14    Missouri, Arkansas, Kentucky, Mississippi and Tennessee.  
15    And it's in the process of expanding its operations to  
16    Illinois, Kansas and Nebraska.

17                Currently, Big River serves approximately 20,000  
18    access lines. In support of its application, Big River  
19    has provided the prefiled direct and surrebuttal testimony  
20    of its Chief Executive Officer, Mr. Jerry Howe.  
21    Mr. Howe has been involved in the industry for nearly 30  
22    years. He's worked in various positions for several  
23    different companies, all of which is outlined in his  
24    testimony. And he's been at the head of Big River's  
25    operations since the company began business in 2001.



1           It is fairly unusual in the grand scheme of  
2 things to actually have a formal hearing on a  
3 telecommunications certificate case. But in another  
4 respect, it's -- it's part of the evolutionary cycle of  
5 competition in the telecommunications industry in our  
6 state.

7           Back in the mid 1980s, we fought some pitched  
8 battles to get the first interexchange carriers  
9 certificated, and then those cases became matters of  
10 routine. In the mid '90s, we faced competition as the  
11 CLECs tried to get into business in the large incumbent  
12 areas. And now those cases have matters of the regime.

13           Now, in the middle of the first decade of the  
14 2000s, Big River faces some opposition in the incumbent  
15 small ILEC as it seeks to expand its operations into that  
16 territory.

17           And, presumably, these will become matters of  
18 routine. And hopefully so, so customers can have more and  
19 more choices in our state.

20           JUDGE STEARLEY: Mr. Lumley, I hate to interrupt  
21 you, but could you please make sure your microphone is  
22 turned on?

23           MR. LUMLEY: I think it is. Am I not close  
24 enough to it?

25           JUDGE STEARLEY: Well, I'm hearing you fine, but

1 I got a message from one of our web viewers that they were  
2 having difficulty hearing.

3 MR. LUMLEY: All right.

4 JUDGE STEARLEY: All right.

5 MR. LUMLEY: Yes. As the evidence shows,  
6 however, Big River is not the first CLEC to seek authority  
7 to provide basic local service in small ILEC areas, and  
8 it's not even the first to the BPS territory.

9 The Commission previously authorized Missouri  
10 Discount State Telephone to compete against BPS and  
11 others. Interestingly, that case, as shown by the  
12 evidence, was resolved by stipulation of all of the  
13 parties, including BPS with Missouri Discount State  
14 Telephone receiving the same authority, competitive  
15 classification and waivers that Big River seeks today.

16 In this case, there's no dispute about which  
17 statutes apply, but there is a bit of disagreement about  
18 the correct interpretation with a few of the provisions of  
19 those statutes.

20 But in summary, Section 392.450 and 455 set some  
21 general standards pertaining to all basic local  
22 applicants. The applicants are to demonstrate sufficient  
23 technical financial and managerial resources and  
24 abilities, service that meet minimum standards.

25 They're supposed to have service territories

1 that follow the exchange boundaries of the incumbent and  
2 not be smaller than an exchange. They're to offer basic  
3 local service as a separate and distinct service. And the  
4 Commission is to give due consideration to equitable  
5 access to affordable telecommunications to all Missourians  
6 regardless of location and income level as it assesses the  
7 application.

8           There really is no serious dispute as to Big  
9 River's compliance with these standards, and the evidence  
10 shows that it meets all of them.

11           In particular, the entry of a new competitor to  
12 these exchanges will enhance customer access to affordable  
13 services consistent with state policy. Section 392.451  
14 some additional standards for applicant -- applications to  
15 enter the territory of a small ILEC, which is defined as a  
16 company with less than a hundred thousand access lines.

17           A few of those provisions in that -- in Section  
18 451 are actually duplicative of requirements of all CLECs  
19 that are found elsewhere; for example, the requirement to  
20 file and maintain tariffs in the same manner as the  
21 incumbent and the requirement to make informational  
22 filings as required by the Commission.

23           Other provisions of 392.451 are truly unique to  
24 competitors of small ILECs. The competitor must offer all  
25 essential services as defined in the Commission's

1 Universal Service Fund rule throughout the small ILEC  
2 service area.

3 The competitor must advertise the availability  
4 of those essential services through media of general  
5 distribution. And, finally, and I'll quote this provision  
6 because it's the one that's in dispute, the statute  
7 requires that the competitor "comply with all of the same  
8 rules and regulations as the Commission may impose on the  
9 incumbent."

10 The Commission also adopted Rule 3.510 regarding  
11 these applicaitons. The evidence again shows that Big  
12 River meets all the foregoing requirement. And in  
13 general, there's no dispute, but there are a few issues.

14 First, with regard to Staff's position, the  
15 Staff supports granting Big River the relief requested in  
16 general, but it has expressed a couple of concerns.  
17 First, as a result of this application, Staff realized  
18 that Big River had not continued to file its quarterly  
19 quality of service reports.

20 Obviously, this is a legitimate concern.  
21 There's really no great explanation for it other than  
22 there was a breakdown in communication when staffing  
23 changed at the company. But Big River has rectified the  
24 situation immediately and submitted the missing reports,  
25 and it's committed to staying current with such filings

1 and addressing any Staff concerns about the preparation of  
2 reports.

3           These reports show that Big River is meeting the  
4 minimum standards, and the evidence shows that Big River  
5 has submitted all other reports required by the  
6 Commission.

7           Secondly, staff has expressed concern about some  
8 discrepancies between the services that Big River offers  
9 and its tariffs. These discrepancies have resulted from  
10 the fact that Big River offers voice-over Internet  
11 protocol or VOIP service.

12           Until recently, based on FCC decisions, it was  
13 Big River's understanding that such services did not  
14 belong in a state tariff. It understands now from some  
15 pending Commission matters involving other companies that  
16 the Commission is asserting jurisdiction over these types  
17 of services.

18           Big River has no interest in disputing this  
19 matter with the Commission, and it's committed to updating  
20 its tariffs accordingly to incorporate these services and  
21 make it clear to its customers that it is offering those  
22 services under those tariffs.

23           With respect to both the Staff concerns about  
24 both reports and tariffs, Big River has no objection to  
25 the Commission addressing these as conditions of it's

1 approval of its certificate application.

2           These are the only concerns by Staff that Big  
3 River is aware of today. With regard to BPS's position,  
4 it's raised a few issues of its own in what is a fairly  
5 transparent effort to delay competition.

6           First, BPS asserts for the first time that the  
7 Commission cannot waive a handful of regulations that  
8 pertain solely to rate of return oversight. This is an  
9 issue of statutory interpretation. So, ultimately, it  
10 falls to the Commission to make the decision in the first  
11 instance how to interpret these statutes without regard to  
12 the position of the parties.

13           But given that BPS previously stipulated in the  
14 Missouri Discount State Telephone case that there were no  
15 legal obstacles for the relief matters requested by Big  
16 River, it's hard to lend any credibility to its arguments  
17 today in opposition.

18           And, notably, Staff does not agree with BPS's  
19 legal arguments, and for good reason. It does not make  
20 practical sense to require a CLEC to comply with  
21 regulations having to do with rate of return oversight  
22 when that oversight does not apply to them. And it's not  
23 a proper interpretation of the statute in any event.

24           section 392.451 in the provision I quoted  
25 earlier only speaks to rules and regulations, and it does

1 not purport to restrict the Commission's ability to waive  
2 statutes as to CLECs.

3           Rate of return earnings oversight is based on  
4 Section 392.240.1, which the Commission has routinely  
5 waived for all CLECs since 1996. And BPS does not oppose  
6 any statutory waiver, including that one in its testimony.

7           Once that statute is waived, there's no longer  
8 any basis for applying the rules that stem from that  
9 statute to the CLEC. And so they should be waive for Big  
10 River now as they always have been.

11           Specifically, I'm talking about Rule 10.020,  
12 which concerns income and depreciation from investments,  
13 and Rule 30.040, which concerns the uniform system of  
14 accounts.

15           Absent a waiver of these two rules, the  
16 Commission would require Big River to keep useless rate of  
17 return accounting information for no purpose.

18           Furthermore, with the cert -- certification of  
19 Big River and its exchanges, BPS would be able to elect  
20 price cap regulation and it would not even be subject to  
21 rate of return oversight.

22           The only other rule for which waiver is sought  
23 concerns the filing of exchange boundary maps. Big River  
24 is required to follow BPS's exchange boundary maps, so no  
25 purpose is served by requiring submittal of a duplicative

1 map under Rule 3.550(5)(C).

2 Another question of statutory interpretation,  
3 BPS also asserts that Big River must assert -- must file  
4 its annual reports in the same ILEC format that BPS does  
5 other than the CLEC format that Big River has always used.

6 Again, there's no purpose of requiring a CLEC to  
7 file a more extensive rate of return oriented report.

8 More importantly, Section 392.390 expressly  
9 allows the Commission to require different reporting  
10 formats for companies, including for ILECs versus CLECs as  
11 it has always done.

12 Finally, in its statement of position, BPS seems  
13 to argue that the Commission can not classify Big River as  
14 a competitive company in the exchanges, but there's no  
15 basis for this argument. And, again, it's contrary to the  
16 position that BPS took in the Missouri Discount State  
17 Telephone Case.

18 In addition to these few legal arguments,  
19 there's a little bit of background noise in the testimony.  
20 But at the end of the day, the evidence shows that Big  
21 River meets the requirements for expansion of its  
22 certificate for continued classification as a competitive  
23 company offering competitive services and for continued  
24 standard waivers of statutes and rules.

25 A few final points, in hopes of avoiding some



1 confusion. First of all, Big River provides its services  
2 to its customers. There seems to be some dispute about  
3 that in the testimony. But as a matter of fact, Big River  
4 provides its services to its customers.

5 Big River provides services over cable  
6 facilities when they're available with its cable partners,  
7 but it provides it in other ways when such facilities are  
8 not available.

9 Essential and basic services need to be offered  
10 uniformly in an exchange, but packages of services do not.  
11 New Section 392.200.12 expressly allows price  
12 differentiation and offerings that are not exchange-wide  
13 when packages of services are involved.

14 Next, Big River does not currently operate in  
15 the state in a small ILEC exchange. So its current  
16 operations cannot be examined for compliance with the few  
17 requirements that are unique to a competitor in a small  
18 ILEC exchange. It doesn't have to comply with those rules  
19 yet, so there's no basis for a comparison.

20 And, finally, any dispute about interconnection  
21 between Big River and BPS is for another day. It's  
22 certainly customary in this state to issue the certificate  
23 first and deal with interconnection matters second.

24 So based on the evidence and its application,  
25 Big River requests the Commission to expand its

1 certificate of local service authority to include these  
2 three exchanges, the BPS exchanges of Burney, Parma and  
3 Steele with continued competitive classification and  
4 continued standard waivers of statutes and regulations.  
5 Thank you.

6 JUDGE STEARLEY: Thank you, Mr. Lumley. Before  
7 we continue, we are going to take a short break. I'm  
8 sorry to interrupt at this point, but we're having a few  
9 technical problems with our web casting, which I'd like to  
10 get corrected. So if you all would just bear with me for  
11 a few moments, we'll get back to it here just as quick as  
12 possible.

13 (Break in proceedings.)

14 JUDGE STEARLEY: All right. We are back on the  
15 record and continuing with opening statements with Staff  
16 of Missouri Public Service Commission.

17 OPENING STATEMENT

18 BY MS. HEINTZ:

19 MS. HEINTZ: Good morning. May it please the  
20 Commission. My name is Jennifer Heintz, and I represent  
21 the Staff of the Missouri Public Service Commission.

22 The case before the Commission this morning  
23 presents an unusual situation. Big River Telephone  
24 Company, a Competitive Local Exchange Carrier, seeks to  
25 expand its certificate of service authority into the

1 service area of BPS Telephone Company, a small incumbent  
2 local exchange carrier.

3           What makes Big River's request unusual is that  
4 there are only two CLECs that currently hold certificates  
5 to offer service in the territory of a small ILEC. Big  
6 River requests to continue its competitive classification  
7 and to continue to be subject to the same waivers it has  
8 previously been granted.

9           BPS Telephone Company has intervened challenging  
10 Big River's right to competitive classification and the  
11 associated waivers. Staff's position is that Big River  
12 should be allowed to expand into BPS's service area.  
13 Staff also recommends that BPS should retain its  
14 competitive classification and should be entitled to the  
15 same waivers it has previously been granted.

16           Staff's recommendation is, however, dependent  
17 upon two things, Big River's filing of tariffs that are in  
18 compliance with the Commission's rules and Big River's  
19 continued efforts to correct the matter in which it tracks  
20 the data in its quarterly quality of service reports.  
21 Thank you.

22           JUDGE STEARLEY: Thank you, Ms. Heintz.  
23 Opening statements from BPS? Mr. England?

24                           OPENING STATEMENT

25 BY MR. ENGLAND:

1                   MR. ENGLAND: Thank you, your Honor. May it  
2 please the Commission. My name is Tripp England, and I'm  
3 representing BPS Telephone Company here today.

4                   Both Ms. Heintz and Mr. Cumley -- or Lumley,  
5 excuse me, appropriately or accurately note that at least  
6 one or two other companies have obtained certificates to  
7 provide basic local telecommunications services in the  
8 exchanges of the small Incumbent Local Exchange Carrier or  
9 ILEC.

10                  However, to my knowledge, this is the first case  
11 where a facilities-based Competitive Local Exchange  
12 Carrier or CLEC has sought to provide basic local  
13 telecommunications service in the area served by a small  
14 ILEC. And I think that's what sets this case apart.

15                  Also -- and I'll talk about it in a minute. The  
16 -- one of the cases that Mr. Lumley referred to involving  
17 Missouri State Discount Telephone or MSDT, I think is, is  
18 a little different and can be distinguished in the instant  
19 case.

20                  Again, Mr. Lumley correctly cites the various  
21 statutes in their application to this case. What I'd like  
22 to emphasize is that the statutory requirements to  
23 obtaining a certificate in a small company's territory are  
24 significantly different than the requirements for  
25 obtaining a certificate for basic local telecommunications

1 service in a large incumbent -- incumbent's territory.

2 As Mr. Lumley points out, the appropriate  
3 statute is 392.451, and it specifically addresses the  
4 situation that you have before you today.

5 Notably, that statute requires applicants to  
6 provide all services that the Commission has found to be  
7 essential for Missouri universal service purposes in all  
8 of the exchanges served by the particular small company.

9 It also requires the applicant to advertise the  
10 availability and the rates for those services through  
11 media of general distribution. These are requirements  
12 that are not necessarily applicable to a CLEC who wants to  
13 operate in a large incumbent's territory.

14 These requirements also mean that an applicant  
15 seeking to provide service in a small company exchange  
16 cannot pick and choose among the exchanges served by the  
17 small company.

18 In this case, as noted by Mr. Lumley, BPS  
19 Telephone Company services in the three Missouri exchanges  
20 of Burney, Parma and Steele. So an applicant such as Big  
21 River needs to be willing and able to provide service in  
22 all three of those exchanges.

23 It also means that an applicant for service in a  
24 small company exchange cannot pick and choose between the  
25 town or the rural areas within a particular exchange, nor

1 can it pick and choose between the business and  
2 residential customers that exist within an exchange.

3 Also, while all Competitive Local Exchange  
4 Carriers must comply with PSC rules regarding quality of  
5 service and billing standards, regardless of whether  
6 they're operating in a small or large company exchange, a  
7 CLEC seeking to provide service in a small company's  
8 exchange must also comply with all of the same rules and  
9 regulations that are imposed upon the small ILEC.

10 Excuse me. This provision is contained in  
11 Section 392.451.2(4). We believe that there is a  
12 legitimate question in this case as to whether the  
13 Commission can waive certain statutes and certain rules  
14 that it has admittedly waived for CLECs operating in large  
15 company exchanges when that CLEC seeks to operate in a  
16 small company exchange.

17 We believe that the statute that I just referred  
18 to must mean something. The Legislature did not intend a  
19 meaningless act by specifically including that provision  
20 in the statute.

21 Our intervention is more than academic. In  
22 fact, our intervention can be characterized as once  
23 bitten, twice shy. While this is the first case where a  
24 facilities-based CLEC has sought a certificate in a small  
25 company exchange, Big River correctly notes that this

1 Commission has granted a certificate of basic local  
2 telecommunications service to MSDT to provide such  
3 services in small company areas, including those served by  
4 BPS.

5 Big River also correctly notes that BPS was part  
6 of a group of small companies that intervened in the MSDT  
7 application case and ultimately signed a stipulation that  
8 included the same waivers that are at issue here.

9 BPS and the other small companies signed that  
10 stipulation based upon MSDT's agreement or assurances that  
11 they would comply with the statute, the very statute that  
12 is in issue today, 392.451.

13 However, when BPS attempted to gain a measure of  
14 relaxed regulation by electing price cap status after  
15 certification of MSDT, the Commission ultimately denied  
16 that election, finding that MSDT had not lived up to its  
17 agreement or its assurances and was not providing basic  
18 local telecommunications service as required by the  
19 statute.

20 So in this case, BPS is reluctant to simply rely  
21 upon the representations of the applicant. In fact, in  
22 this case, the record will demonstrate that, until very  
23 recently, the applicant had failed to file its last six  
24 quarterly quality of service reports as required by  
25 Commission rule.

1           The record will reflect -- reflect that the  
2   applicant's tariffs are out of date and incomplete and  
3   appear to have been so for the last six or seven years.

4           There also seems to be a question as to who  
5   actually provides the service and will comply with the  
6   various requirements of the statute.

7           BPS believes the Commission needs to address  
8   these issues upfront in this proceeding. The Commission  
9   needs to determine what is or what is not acceptable at  
10   this point in the process so if BPS, again, seeks to  
11   obtain some relaxed regulation such as price cap  
12   regulation, it is not caught in a regulatory catch 22 as  
13   it has been in the past. Thank you very much.

14           JUDGE STEARLEY: Thank you, Mr. England. All  
15   right. Big River, you may call your witness, Mr. Howe, to  
16   the stand.

17           MR. LUMLEY: Thank you, your Honor.

18           JUDGE STEARLEY: Mr. Howe, if you'll please  
19   raise your right hand, I'll swear you in.

20                           GERARD HOWE,  
21   being first duly sworn to testify the truth, the whole  
22   truth, and nothing but the truth, testified as follows:

23                           DIRECT EXAMINATION

24   BY MR. LUMLEY:

25           JUDGE STEARLEY: You may proceed.



1           Q     (By Mr. Lumley) Could you state your name,  
2 please?

3           A     Gerard J. Howe.

4           Q     And by whom are you employed?

5           A     Big River Telephone Company.

6           Q     And in what capacity?

7           A     Chief Executive Officer.

8           Q     And what's your business address?

9           A     24 South Minnesota Avenue, Cape Girardeau,  
10 Missouri, 63703.

11          Q     Thank you.

12               MR. LUMLEY: Judge, since the testimony has  
13 already been received, I'll skip over the usual questions  
14 validating it and simply tender the witness for cross  
15 examination.

16               JUDGE STEARLEY: All right. Thank you,  
17 Mr. Lumley. And cross-examination by Staff, Mrs. Heintz?

18                               CROSS-EXAMINATION

19 BY MS. HEINTZ:

20          Q     Good morning, Mr. Howe. I have a few questions  
21 about Big River's quality of service reports. And first  
22 of all, Big River is required to file quarterly quality of  
23 service reports?

24          A     Correct.

25          Q     And Big River was delinquent in filing its

1 reports?

2 A That's correct.

3 Q And the delinquency was caused by a change in  
4 office personnel?

5 A That's correct.

6 Q Big River filed all of its delinquent reports on  
7 January 24th of this year?

8 A I know we did in January. I'm not sure of the  
9 day.

10 Q Okay. And prior to this day in January when the  
11 reports were filed, Big River had not filed a quarterly  
12 quality of service report since the first quarter of 2005?

13 A That's correct.

14 Q Okay. And Big River intends to file its  
15 quarterly reports on a timely basis in the future?

16 A That's correct.

17 Q Okay. And I have some questions about the  
18 compilation of the data in those reports. Okay. And like  
19 I said, Big River has filed all of its delinquent  
20 quarterly reports?

21 A That's correct.

22 Q And after it filed the reports, there was a  
23 conference call between members of Staff and Big River?

24 A Yes.

25 Q Okay. And during this conference call, did

1 members of Staff advise Big River about problems with the  
2 data contained in the reports?

3 A They had questions, sought clarification and  
4 then some suggestions for changes.

5 Q One of the major problems emphasized was Big  
6 River's exclusion of installation and service work  
7 provided -- or performed by your cable TV partners?

8 A That's an issue that they raised, correct.

9 Q And Big River now understands that work  
10 performed by these partners must be included in these  
11 reports?

12 A Yes. Starting with the first quarter of 2007,  
13 we will include all the activity with regard to the  
14 services that we provide over cable networks, be they  
15 installation intervals, trouble ticket information, calls  
16 into the call center, response times, things like that  
17 will be included in our reports going forward.

18 Q And you are committed to working with your cable  
19 TV partners to come up with a way of tracking and  
20 compiling the data required by the reports?

21 A Yes.

22 Q Okay. And if I could just ask you some  
23 questions about your tariff. Big River is not -- cable TV  
24 partners is the entity providing telephone service?

25 A That is correct.



1 interstate service, and this was all based upon rulings at  
2 the FCC. That said that it was not to be regulated by the  
3 state. So, therefore, at the time we started to provide  
4 service with cable partners, we did not include it in our  
5 tariff.

6 Subsequently, we have been made aware that the  
7 Commission has made some rules with regard to subjecting  
8 Voice Over IP to regulation. And as such, all the  
9 information should be included in the QOS reports and  
10 those services should be tariffed.

11 I do have a draft of a revised Tariff No. 2 that  
12 includes the services that we offer. And this was all as  
13 a follow-up to the recent -- I think the Federal District  
14 Court refused to impose an injunction on the Commission to  
15 stop them from regulating.

16 With that, we decided to go ahead and  
17 incorporate the Voice Over IP services in our Tariff No.  
18 2.

19 Q Okay. And --

20 A I'm sorry. That was a long answer.

21 Q That's okay. And this tariff must be filed and  
22 approved before Big River may provide phone service in  
23 BPS's territory?

24 A Yes.

25 MS. HEINTZ: All right. Thank you, Mr. Howe.

1 That's all the questions I have.

2 JUDGE STEARLEY: All right. Thank you, Ms.  
3 Heintz. Cross-examination by BPS, Mr. England?

4 MR. ENGLAND: Yes, sir. Thank you. Your Honor,  
5 I need to have an exhibit marked, and it is a copy of a  
6 service agreement between Big River Telephone Company and  
7 one of its cable TV partners. It has been classified as  
8 Highly Confidential, so at least for purpose of my  
9 examination, I think we need to go in-camera.

10 JUDGE STEARLEY: All right. Very well. We can  
11 go ahead and mark that exhibit. We're up to Exhibit No.  
12 7. Mr. Howe, do you have a copy of that? I've got an  
13 extra if you need one.

14 MR. LUMLEY: He does not have one up there. No.

15 JUDGE STEARLEY: And we will go ahead and go  
16 in-camera.

17 REPORTER'S NOTE: At this point, an in-camera  
18 session was held, which is contained in Vol. 3, pages 36  
19 through 56.

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1 CONTINUED CROSS-EXAMINATION OF GERARD HOWE

2 BY MR. ENGLAND:

3 Q Mr. Howe, I'm looking at your direct testimony,  
4 page 10, lines 13 through 19. If you want to, take a  
5 minute or two just to kind of review that testimony. I've  
6 got a -- or two general questions about this.

7 A Yes.

8 Q If I believe what you're -- you're testifying  
9 to, there is a couple of services that you currently  
10 provide. I say you. Big River currently provides,  
11 correct?

12 A Yes.

13 Q And we asked for some information regarding that  
14 in a data request.

15 MR. ENGLAND: And if I may, I'd like to have  
16 that marked as an exhibit, your Honor.

17 JUDGE STEARLEY: Yes, you may. We are at  
18 Exhibit 8.

19 (Exhibit No. 8 was marked for identification.)

20 MR. STEARLEY: You may proceed.

21 MR. ENGLAND: Thank you.

22 Q (By Mr. England) Excuse me. Mr. Howe, do you  
23 have what's been marked for identification purposes as  
24 Exhibit 8 in front of you?

25 A Yes.

1           Q     And I believe that this is your response to our  
2     Data Request No. 17, which asks for copies of marketing  
3     materials describing the features of the pricing plans  
4     that you've described in your testimony there on page 10,  
5     correct?

6           A     Yes.

7           Q     And would you take a look at the response and  
8     make sure that it's an accurate copy of the response you  
9     provided to us, please?

10          A     Yes.

11               MR. ENGLAND: Your Honor, I'd offer the exhibit  
12     at this time.

13               MR. STEARLEY: All right. Are there any  
14     objections to Exhibit 8?

15               MR. LUMLEY: Just a moment, your Honor. I -- I  
16     don't believe it's a complete copy of our response. There  
17     was some additional --

18               MR. ENGLAND: It was intended to be.

19               MR. LUMLEY: There were additional sample  
20     materials attached to the response. I mean, it's -- it's  
21     certainly a portion of the response.

22               MR. ENGLAND: Well, your Honor, I don't want to  
23     be -- because my -- I guess I need to see the rest of it  
24     because I don't mean for it to be a truncated exhibit.

25               JUDGE STEARLEY: Very well.



1           MR. ENGLAND: your Honor, if I may approach the  
2 witness, I want to give him some additional information.

3           JUDGE STEARLEY: You may approach.

4           MR. ENGLAND: I understand it was provided.

5           A     Yes. I believe this was provided in response to  
6 the data request as well.

7           MR. ENGLAND: Your Honor, with respect to 8,  
8 what I think I'll do is ask permission to submit a  
9 late-filed Exhibit 8, which would include copies --  
10 complete copies of -- of all of the marketing materials,  
11 if you'd like.

12          JUDGE STEARLEY: That would be all right. Or --  
13 or are the parties in agreement as to what the complete  
14 exhibit will be when it's submitted?

15          MR. LUMLEY: I believe we are. And, you know,  
16 I'm comfortable leaving those extra pages with Mr. England  
17 to copy, and he'll get those back to me later.

18          JUDGE STEARLEY: Okay. I assume there will be  
19 no objections to that unless there is some alteration when  
20 it's submitted. So at this point, I will tentatively rule  
21 that it will be received into evidence.

22          MR. ENGLAND: Thank you.

23          Q     (By Mr. England) And I'm working now from  
24 memory, and a very brief one, of what I saw there. But it  
25 appeared to me that with the exception of perhaps one of

1    those marketing materials that all of these marketing  
2    materials advertisements, whatever you want call them,  
3    indicate that New Wave is providing the telecommunications  
4    service.  Would you agree with me?

5            A     No.

6            Q     Okay.

7            A     These -- these that you didn't include in the  
8    exhibit clearly identify Big River is providing the  
9    service.  Some of the documents don't really indicate who  
10   provides the service.  It says who to call.

11           Q     Well, how is -- how do you communicate to the  
12   customer that Big River is actually the provider of the  
13   telecommunications services?

14           A     In the agreement that they sign, the bill that  
15   they receive and in communications with the customer that  
16   the cable partner has on our behalf.

17           Q     Uh-huh.

18           A     They're indicating that Big River is the  
19   provider of the service.

20           Q     But the contact information in those  
21   advertisements, at least those that are marketing  
22   materials at New Wave, that's their customer contact;  
23   right?

24           A     That's correct.  Which is pretty much consistent  
25   with the agreement we went over earlier.

1           Q     Where Big River utilizes the networks of cable  
2 TV providers exclusively to provide service in a  
3 particular area, does Big River advertise those  
4 telecommunications services on its own or through its own  
5 name, or does it do so under the cable TV providers name?

6           A     We will generally simply advertise our services  
7 through our cable TV partners. We generally where -- as  
8 you said in your question, where we solely provided over  
9 cable network, we will generally just use the marketing  
10 and sales efforts that we've contracted with our cable  
11 partners and our agreements with our cable partners.

12          Q     Okay. Does New Wave currently provide on its  
13 own a voice service in either Burney, Parma or Steele?

14          A     Excuse me. No.

15          Q     Does New Wave currently provide on its own a  
16 voice service in any of its other Missouri franchised  
17 areas?

18          A     Not that I'm aware of.

19          Q     I'm going to switch gears on you, Mr. Howe. May  
20 I have that back? I think I've asked all the questions  
21 I'm going to ask about that. Thank you.

22                     Actually, you can keep that. This is your  
23 direct testimony at page 8, I believe, lines 7 through 9.  
24 You indicate that Big River's customers will have access  
25 to -- equal access or presubscribed one plus dialing. Do

1     you see that?

2           A     Yes.

3           Q     And we asked you in a data request the list of  
4     IXCs from which your customers could choose their  
5     presubscribed long distance carrier. Do you recall that?

6           A     Yes.

7           Q     And do you recall that you provided us with a  
8     list consisting of approximately 33 to 34 pages of IXCs  
9     with approximately 50 IXCs to a page?

10          A     Yes.

11          Q     Would you agree with me that lists, at a  
12     minimum, 1650 IXCs listed on it?

13          A     Yes.

14          Q     I guess my question is, is it your testimony  
15     that Missouri customers can presubscribe to any one of  
16     these 1650 IXCs?

17          A     If a customer calls us and wants to presubscribe  
18     to one of those valid IXCs, we will put that kick into our  
19     switch.

20          Q     You don't require an access service request from  
21     that IXC?

22          A     Relative to the detailed process, yes, I think  
23     we do. But, generally, the process is if the customer  
24     comes to us with a request and has the proper  
25     authorization and documentation, we will provide access to

1     that long distance carrier.

2           Q     Is the list you gave to us in response to the  
3     data request the same list you give to a customer when he  
4     signs up for service?

5           A     No.

6           Q     What -- what list of carriers do you give him  
7     when he signs up for service?

8           A     We just generally tell them that if they --  
9     generally, most of our customers buy one of our packages.  
10    Most of our packages contain a discounted long distance  
11    element, which we provide only through our long distance  
12    service.

13                   And as such, the majority of our customers take  
14    our long distance service.  It's almost like a -- a  
15    wireless carrier and wireless provider.  So we get very  
16    few requests.  But when we do get requests, we will tell  
17    the customer that whatever long distance provider they  
18    choose to use, we will provide them.

19           Q     So it's up to the customer --

20           A     I'm sorry.  We -- yes.  We generally do not give  
21    them a list.

22           Q     It's up to the customer to specifically request  
23    another IXC?  That's their choice?

24           A     If they ask us, you know, our customer service  
25    folks will probably tell them some of the other long

1 distance carriers, you know.

2           Regrettably, the number of long distance  
3 carriers has been dwindling as AT&T and Verizon have  
4 acquired some of the larger players that, you know,  
5 consolidate a large chunk of the industry before that.

6           But we just don't see it very often. We just  
7 don't see a lot of people coming in saying, Hey, I got a  
8 flyer from AT&T or Verizon, and I want to use their long  
9 distance service. Because generally those carriers are  
10 also providing enhanced packages with their local package  
11 as well.

12         Q     Are your customer service representatives or  
13 those of New Wave that are operating or acting on your  
14 behalf instructed to quote prices for basic local exchange  
15 as a stand-alone service?

16         A     Are they instructed to quote? If they're asked  
17 by a customer for basic local, they will quote. And they  
18 have job aids to enhance -- we have job aids for them. So  
19 when somebody calls, as in this case, Mr. Schoonmaker  
20 called our customer service, they have a job aid that they  
21 reference that they can see what a basic local is.

22           And what we also provide, and I think it was  
23 probably a source of some confusion for Mr. Schoonmaker  
24 when he called our customer service center, is that we  
25 generally quote all required charges as well.

1           So if there is an extended area service charge,  
2   it's -- generally, we will tell the person. And I believe  
3   in the case with Mr. Schoonmaker he said it was \$15 for  
4   maybe Dexter or something. That included all the  
5   mandatory charges, including UKEL (ph.), extended area  
6   service. And -- and it might include -- and they'll  
7   probably indicate the 911 surcharge that's included as  
8   well.

9           Q     To the extent Mr. Schoonmaker was told he  
10   couldn't have the long distance carrier of his choice; is  
11   that --

12          A     It was a misunderstanding, more than likely,  
13   with regard to -- our customer service rep was probably  
14   thinking that he wanted a package. We have a package  
15   called Timeless Talk, which is unlimited domestic U.S.  
16   long distance calling, which we provide in conjunction  
17   when you buy your local service in a package.

18                It's a residential savings package, which  
19   includes basic local lines, mandatory extended area,  
20   three-way calling, call forwarding, Caller I.D. You have  
21   to buy that package to get the Timeless Talk package  
22   included.

23                And as such, you cannot buy that with just basic  
24   local. So if there was a misunderstanding, it was --  
25   they're wanting to -- they thought -- the customer or the

1 caller was wanting to buy a package and wanted to choose  
2 the carrier of their choice.

3 And in that case, we cannot provide unlimited  
4 long distance for MCI or AT&T and -- well, MCI, Verizon  
5 now.

6 Q And why is that?

7 A Because we're not an authorized agent on their  
8 behalf, and we can't put them into terms that they are  
9 not, you know, privy to or a party to.

10 Q I thought maybe it would also be a matter of  
11 economics for you to pay them a permanent rate.

12 A No. But if they're the carrier, I can't  
13 contract their services to a customer.

14 Q So if a customer wants simply basic local  
15 telecommunications service as a stand-alone product and  
16 wants to presubscribe to an IXC other than Big River, they  
17 can do so?

18 A Yes, sir.

19 Q And your customer service reps are instructed to  
20 tell them they can?

21 A Yes.

22 Q And so are the New Wave customer service reps?

23 A Yes, sir.

24 Q Okay. Following up on some other data requests  
25 we've asked you, it's my understanding that at this time,



1 Big River has not determined what new services it will  
2 provide in the BPS exchanges; is that correct?

3 A Other than we will be providing basic services  
4 that are required to go into a small incumbent exchange  
5 carrier's market. We will be providing that. But --  
6 specifics with regard to packages and such, we're not  
7 sure.

8 Q And, similarly, you have not at this time  
9 determined what prices you will charge for new or existing  
10 services that Big River will provide in BPS exchanges,  
11 correct?

12 A That's correct. It's -- yeah. That is correct.

13 Q This may have already been touched upon by Ms.  
14 Heintz, but I want to follow up on it, on the quality of  
15 service reporting. I believe it's your surrebuttal now,  
16 page 2, and I'm looking at lines 9 through 11, where you  
17 say you have met with Staff, discussed your reports and  
18 planned immediately to address Staff's remaining concerns  
19 about the manner in which Big River tracks and compiles  
20 the data. Do you see that?

21 A Yes.

22 Q And can you tell me exactly what are those  
23 "remaining concerns?" Or are they the same as you  
24 discussed with Ms. Heintz?

25 A They were the same that we discussed with Ms.

1 Heintz.

2 Q So --

3 A It was essentially the inclusion of information  
4 relating to cable customers that are provided over cable  
5 networks using Voice Over IP.

6 Q Tracking and compiling data regarding those  
7 calls, correct?

8 A Yes.

9 Q Any other concerns that you recall Staff had  
10 with respect to your quality of service reports?

11 A There was some question with regard to the  
12 classification of local and intraLATA calls, I believe,  
13 and concerned with the fact that we have one switch that  
14 services multiple exchanges.

15 And there was some issue with -- with that. I  
16 think it's just something that needs to be clarified. I  
17 don't think there's really an issue. But it's probably --  
18 it's a subject of further discussions we'll have with  
19 Staff.

20 Q When do you anticipate that these concerns will  
21 be addressed and corrected?

22 A With the first quarter report.

23 Q To be roughly in the second quarter, then, of  
24 this year?

25 A Yes. I believe it's filed on -- middle of May.

1           Q     Also, in your surrebuttal testimony, page 13,  
2     lines 2 and 3. And this follows up on some earlier  
3     testimony that you intend to revise your tariffs to  
4     include these VOIP offerings. Do you see that?

5           A     Yes.

6           Q     Has -- I guess my first question is has Staff  
7     advised you of any other shortcomings in your tariff that  
8     need to be revised or corrected?

9           A     I don't believe so.

10          Q     Are you personally aware of any other  
11     shortcomings in your tariff that need to be fixed, revised  
12     or corrected?

13          A     If there are any, they're probably  
14     clarifications.

15          Q     Now, I believe in response to a question from  
16     Ms. Heintz, you indicated that your local tariff had been  
17     updated in 2003; is that right?

18          A     I speculated that it was updated in 2003. Yes.  
19     I don't -- I might have a copy in front of me. Tariff  
20     No. 2?

21          Q     Your tariff is actually attached --

22          A     Right.

23          Q     -- to your testimony.

24          A     I'm going through it now.

25          Q     Okay.

1           A     Yes. In August of 2003.

2           Q     If I look through the sheets themselves, would  
3     you agree with me that the vast majority of the sheets are  
4     1998 or 1999 effective dates?

5           A     That is correct.

6           Q     And as a matter of fact, most of these tariff  
7     sheets bear the name of your predecessor, LDD, Inc.,  
8     correct?

9           A     That's correct.

10          Q     I would think that -- well, let me -- let me --  
11     there's not a question. Let me ask you a question.

12          A     You know, I used to work at AT&T. Now it's  
13     interesting when I go back through some of their tariffs  
14     to some of the guys I used to work with at the bottom of  
15     the page some of their tariffs are so old.

16          Q     Is the adage that the more things change, the  
17     more they remain the same?

18          A     Yes.

19          Q     Would you agree with me that in a competitive  
20     environment, you would think prices would change over a  
21     seven to eight, nine-year period of time?

22          A     Yeah. You would think.

23          Q     But at least as far as the pricing in this  
24     tariff, they haven't changed?

25          A     That is correct.

1           Q     I also note -- and it's attached to your  
2     testimony -- that Big River acquired additional  
3     certificates to provide basic local telecommunications  
4     services and CenturyTel and Spectra exchanges in September  
5     of '03. And then Sprint, now Embarq, exchanges in July of  
6     '05, correct?

7           A     Correct.

8           Q     Yet, the list of exchanges in your tariff  
9     indicating at least where you provide basic local  
10    telecommunications service hasn't changed since 1999,  
11    correct?

12          A     That's correct.

13          Q     So that's something that would need to be  
14    updated, wouldn't it?

15          A     Well, we requested authority to go in those  
16    areas based upon the relationship that we were developing  
17    with the company plans that it was going to pull us into  
18    those areas. Those plans have subsequently changed.

19                We are continuing to work with other carriers,  
20    possibly to go into Embarq and Century or Spectra  
21    territory. But those plans are not definitive yet for us  
22    to update. We have never been in a position to update the  
23    tariff to the extent -- you know, where we would go in to  
24    do business in those territories.

25          Q     My understanding is that you currently -- at

1    least reading your annual report and the non-proprietary  
2    version that you are currently providing services in a few  
3    CenturyTel and/or Embarq exchanges, notably, Columbia?

4           A     I think we subsequently found that the  
5    information that we had was in error.  I don't know if we  
6    submitted a correction to that.  We just turned this up in  
7    the past week or so.  And the telephone number for which  
8    we attributed service -- the physical service address was  
9    actually a billing address.  And we reviewed and we do not  
10   provide territory in any of Embarq or Century or Spectra's  
11   territory.

12          Q     So to the extent your annual reports indicates  
13   you provide services in Columbia, Cuba, Elsinor, Boling  
14   Green and Fort Leonard Wood --

15          A     Those were all -- yeah.  NPA -- and I don't  
16   know.  I'm trying to remember if we indicated the number  
17   of lines that might have been associated with that.  But  
18   in each case, it was an NPA and XX error that placed a  
19   customer in error either because the billing and physical  
20   address were mixed up or we simply had an NPA and XX  
21   incorrect in our database and incorrectly reported  
22   somebody, for instance, in -- did you mention Boling  
23   Green?

24          Q     I did.

25          A     And we don't have any customers in Boling Green,

1 Bellgrade, Columbia. No local customers anyway.

2 MR. ENGLAND: Just a second. I think I'm about  
3 done. Excuse me a second.

4 JUDGE STEARLEY: All right.

5 MR. ENGLAND: Mr. Howe, I have no other  
6 questions.

7 JUDGE STEARLEY: Thank you, Mr. England.

8 Mr. England, on Exhibit No. 7, I believe Mr. Lumley had  
9 expressed that he didn't have any objections, but I don't  
10 believe you've offered it.

11 MR. ENGLAND: If I haven't, I'll do so now. And  
12 8 was the one that I need to fix, right?

13 JUDGE STEARLEY: Yes. And when that comes in  
14 late filed, it will still have the designation of Exhibit  
15 8. Are there any objections to the offering of Exhibit  
16 No. 7?

17 MR. LUMLEY: No, your Honor.

18 MS. HEINTZ: None.

19 JUDGE STEARLEY: Hearing none, it will be  
20 received and admitted into evidence.

21 JUDGE STEARLEY: And now questions from the  
22 Bench. Commissioner Appling?

23 COMMISSIONER APPLING: I don't have any  
24 questions, Judge, at this point.

25 JUDGE STEARLEY: All right. Redirect,

1 Mr. Lumley?

2 MR. LUMLEY: Very briefly, your Honor.

3 REDIRECT EXAMINATION

4 BY MR. LUMLEY:

5 Q Mr. Howe, with regard to Exhibit 7-HC, your  
6 agreement with New Wave, would it be fair to say that  
7 that's analogous to an interconnection agreement with an  
8 incumbent phone company?

9 A In many ways, it is, yes.

10 Q But cable companies, to your understanding, are  
11 not subject to the requirements of the Telecom Act in  
12 terms of interconnection and unbundled network elements  
13 and things like that, are they?

14 A Not that I'm aware of.

15 Q So it's strictly a commercial agreement between  
16 you and that cable company?

17 A Yes.

18 Q Between Big River and that cable company?

19 A Yes. We certainly weren't looking at any of the  
20 elements of '96 Act to determine what was to go in there.  
21 It was pretty much just a straight negotiation through the  
22 two parties.

23 Q But through that agreement, you're obtaining  
24 similar support in terms of network and customer support  
25 that you could get and often do get from incumbents in



1 other areas, correct?

2 MR. ENGLAND: Counsel's leading.

3 JUDGE STEARLEY: Could you please rephrase,  
4 Mr. Lumley?

5 MR. LUMLEY: Yes, your Honor.

6 Q (By Mr. Lumley) When -- your -- your company is  
7 providing services outside of areas that are -- where you  
8 have a cable partner arrangement, correct?

9 A Yes.

10 Q And in those instances, do you have an  
11 interconnection agreement with the phone company?

12 A Yes. Almost entirely outside of the areas where  
13 we provide service with a cable partner, we provide  
14 service via an interconnection agreement with an incumbent  
15 Local Exchange Carrier.

16 And, in fact, the bulk of our lines that we  
17 service our customers with are via either a commercial  
18 agreement with an incumbent or with unbundled network  
19 elements, either four wire loops or two wire -- two wire  
20 loops.

21 MR. LUMLEY: That's all my questions, your  
22 Honor.

23 JUDGE STEARLEY: All right.

24 COMMISSIONER APPLING: Judge --

25 JUDGE STEARLEY: Okay. Commissioner Appling has

1 a question for you.

2 CROSS-EXAMINATION

3 BY COMMISSIONER APPLING:

4 Q Good morning, sir.

5 A Good morning.

6 Q How are you doing?

7 A Great.

8 Q Good. I have the issues in just three of them I  
9 think is the major issues. I want to you do two things  
10 for me just to recap to see what you're looking for. What  
11 are you asking this Commission to do? Try to keep that  
12 down to four or five minutes if you can, please.

13 And the second thing is you're asking us to  
14 waive some issues on Issue No. 3 as we have done for some  
15 -- some other companies in the State of Missouri. Would  
16 you kind of touch on what we waived and what you're  
17 asking us to waive? Would you do that for me just --  
18 just to bring me up to speed?

19 A Sure. I don't know if I'm going to be able to  
20 stretch out what we're really fundamentally asking for  
21 four or five minutes because we basically provide  
22 telephone service. And as I was telling Mr. Lumley, we  
23 generally provide that service by accessing our customer  
24 with -- through a relationship we have with someone who  
25 has a big vast network.

1           In many instances, we use the network of AT&T  
2   because they touch everybody in a lot of the southeastern  
3   part of the state. So we can go offer service to a  
4   hospital, to a school district and all the ten schools  
5   that might be a part of that school district. We can  
6   provide that service just using the cable pair of  
7   Southwest -- or AT&T.

8           What we're essentially asking to do is to  
9   continue the relationship that we have with cable  
10   companies. For instance, I have an existing relationship  
11   with the company that we want to use to go into the  
12   exchanges of Burney, Parma and Steele, which are served by  
13   BPS Telephone Company.

14           We have a relationship with the cable company in  
15   Dexter, Missouri. And I could use and I have in the past  
16   used AT&T to access my customers in Dexter, Missouri.

17           Well, the cable company, New Wave, came to me  
18   and said, We'd like you to do the same thing using our  
19   network, the cable TV network using this new Voice Over IP  
20   technology.

21           And we told them we use that technology. We can  
22   use your network. And so we struck an agreement with them  
23   to provide service over their network as well, very  
24   similar to what we do with AT&T.

25           Now we want to go into Burney, Parma and Steele,

1    which are small communities served by BPS Telephone  
2    Company, and bring our cable partner who is already there  
3    in the case of Burney and they are acquiring the cable  
4    franchises in Parma and Steele.  Again, they said, Can we  
5    use their cable network to provide our telephone service  
6    to our customers and acquired customers in a relationship  
7    with our cable partner down there.

8                So we essentially want to be allowed to go into  
9    these three small exchanges and provide competitive  
10   telephone service.

11               With regard to the waivers, there are  
12   essentially like three waivers in dispute that we desire.  
13   These are three waivers in combination of many waivers  
14   that are generally provided to Competitive Local Exchange  
15   Companies.

16               For instance, one of the requirements that we  
17   want waived is the requirement to submit an exchange  
18   boundary map.  Well, we are going to file the same  
19   exchange that Burney -- BPS Telephone has established, the  
20   maps that they have submitted.

21               It would be superfluous for us to submit another  
22   set of exchange maps on our behalf when we're using the  
23   same exchange maps and the same territory that they're  
24   using.

25               Another one of the items that we want waived is

1 the -- the requirement for us to report income on a  
2 depreciation fund. I don't imagine there's -- there's  
3 probably still some Staff here that know what income on  
4 depreciation fund is, but it's a rudimentary part of  
5 rate-making in the old rate of return scheme, which I  
6 understand BPS is still subject to.

7 But it's a way of tracking hypothetical income  
8 on a depreciation fund to keep local telephone rates down.  
9 My local rates are -- are kept down by competition. And  
10 my rates are not set in a regulatory rate-making process.

11 And, thus, me to report income on a depreciation  
12 fund for the effect of hypothetically reducing my rates,  
13 which aren't even subject to that rate-making process  
14 makes no sense to me. And, thus, we've asked that to be  
15 waived.

16 And then the final one is just a requirement for  
17 a competitive company to follow the uniform system of  
18 accounts, the FCC's mandated way of tracking all of your  
19 revenue, expenses and investments.

20 Again, that was established in the old rate of  
21 return rate-making scheme. And tracking our financials in  
22 such a manner makes no sense because they will never be  
23 subject to our rate-making process.

24 So, again, we've asked that those waivers are  
25 granted us as we provide service in BPS as those waivers

1 have been provided as we have been granted authority to  
2 provide service in AT&T's territory.

3 Q What services are you providing at Fort Leonard  
4 Wood? Cable?

5 A Yeah. We do not provide any services at Fort  
6 Leonard Wood.

7 Q Okay. I just thought I heard an attorney  
8 mention this morning that Fort Leonard Wood was one of  
9 your areas of operation.

10 A It could have been -- again, if it was  
11 inadvertently listed on our annual report, it was a result  
12 of a clerical error.

13 COMMISSIONER APPLING: Thank you for your time.

14 JUDGE STEARLEY: All right. Is there any  
15 recross based on Commissioner Appling's questions?

16 Ms. HEINTZ: No, your Honor.

17 MR. ENGLAND: No, thanks.

18 JUDGE STEARLEY: Very well. Mr. Howe, you can  
19 step down. You will not be finally excused at this time,  
20 though, just in case the Commissioners might have  
21 additional questions for you later.

22 MR. HOWE: I want to enjoy the snow as well if  
23 that's okay.

24 JUDGE STEARLEY: And, Ms. Heintz, I believe it's  
25 time for your witness. Before we get started, do you

1 anticipate Mr. Van Eschen's testimony is going to be long?

2 MS. HEINTZ: No.

3 JUDGE STEARLEY: Okay. We'll --

4 MR. ENGLAND: I think the more accurate question  
5 is whether the cross-examination of Mr. Van Eschen will --

6 MS. HEINTZ: Mr. Van Eschen will be very short.

7 JUDGE STEARLEY: That's true. I just wanted to  
8 give our court reporter a break here shortly.

9 MR. ENGLAND: I anticipate roughly, time-wise,  
10 probably the same sort of time with Mr. Van Eschen as we  
11 took with Mr. Howe.

12 JUDGE STEARLEY: All right. Why don't we go  
13 ahead and take a ten-minute break at this time? And we'll  
14 come back and pick up with you, Mr. Van Eschen.

15 (Break in proceedings.)

16 JUDGE STEARLEY: All right. We are back on the  
17 record, and we're picking up with staff's witness, John  
18 Van Eschen. Mr. Van Eschen, I'll need to swear you in.

19 JOHN VAN ESCHEN,  
20 being first duly sworn to testify the truth, the whole  
21 truth, and nothing but the truth, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. HEINTZ:

24 JUDGE STEARLEY: Thank you. You may proceed,  
25 Mrs. Heintz.

1           Q     (By Ms. Heintz)  Would you state your name  
2     please and spell it for the court reporter?

3           A     My name is John Van Eschen.  That's V-a-n  
4     E-s-c-h-e-n.

5           Q     And by whom are you employed and in what  
6     capacity?

7           A     I'm the Manager of the Telecommunications  
8     Department on the Staff of the Missouri Public Service  
9     Commission.

10          Q     Okay.  You are the same John Van Eschen who  
11     filed rebuttal and surrebuttal testimony in this case?

12          A     Yes, I am.

13                MS. HEINTZ:  And as his testimony has already  
14     been admitted, I tender this witness for  
15     cross-examination.

16                JUDGE STEARLEY:  Thank you, Ms.  Heintz.

17                MS. HEINTZ:  Thank you.

18                JUDGE STEARLEY:  We have cross-examination  
19     beginning with Mr. Lumley from BPS.

20                MR. LUMLEY:  Big River.

21                JUDGE STEARLEY:  I mean Big River.  Pardon me.

22                MR. LUMLEY:  That's right.  Lawyers are --

23                JUDGE STEARLEY:  My eyes crossed there on my  
24     paper.

25                MR. LUMLEY:  That's all right.  We lawyers are



1 interchangeable, so --

2 MR. THOMPSON: I'm going to object to that.

3 MR. LUMLEY: It would be an upgrade for me.

4 I'll stipulate to that.

5 MR. ENGLAND: But we're not sticks in the mud,  
6 your Honor.

7 MR. LUMLEY: That's right.

8 CROSS-EXAMINATION

9 BY MR. LUMLEY:

10 Q Good morning, Mr. Van Eschen.

11 A Good morning.

12 Q Do you know approximately how many access lines  
13 BPS serves?

14 A No, I do not.

15 Q Would you agree that it's probably under 5,000?

16 A Yes.

17 Q In opening statement, your counsel indicated  
18 that there was two CLECs that currently hold certificates  
19 to provide basic local service in small ILEC territories.  
20 Were you present for that?

21 A Yes.

22 Q Are you aware of the names of the two companies?

23 A Yes, I am.

24 Q And what are they?

25 A I want to make sure I have them correct.

1 Missouri State Discount is one, and the other one is  
2 Universal Telecom.

3 Q Do you know if Universal Telecom -- if its  
4 certificate includes the BPS exchanges?

5 A No, it does not. That certificate that  
6 Universal Telecom received included the service territory  
7 of Alltel and TDS companies.

8 Q Thank you. In your testimony, you touched on  
9 Staff's concerns about Big River's quality of service  
10 reports. Do you recall that?

11 A Yes.

12 Q Do issues like that arise from time to time with  
13 regard to other companies as well in terms of their  
14 submitting reports that are required?

15 A Yes, they do.

16 Q And there's also been testimony regarding the  
17 accuracy of Big River's tariffs. Do you recall that?

18 A Yes.

19 Q Do other phone companies from time to time file  
20 corrective pages because they find their tariffs have  
21 become out of date?

22 A Yes. That does happen.

23 MR. LUMLEY: All right. I don't have any  
24 further questions.

25 JUDGE STEARLEY: Thank you, Mr. Lumley.

1 Cross-examination by BPS, Mr. England?

2 MR. ENGLAND: Thank you, your Honor.

3 JUDGE STEARLEY: You may proceed.

4 MR. ENGLAND: Thank you.

5 CROSS-EXAMINATION

6 BY MR. ENGLAND:

7 Q Good morning, Mr. Van Eschen.

8 A Good morning.

9 Q Let me follow up on a couple of questions that  
10 Mr. Lumley asked you. With respect to the MSDT and  
11 Universal Service companies that you referenced a minute  
12 ago --

13 A Yes.

14 Q -- would you agree with me that those are  
15 resellers of basic local telecommunications services?

16 A I believe that they are, yes.

17 Q In fact, they're prepaid resellers, are they  
18 not?

19 A I think that would be a fair characterization of  
20 their business.

21 Q Is it also fair to say that Staff has  
22 traditionally viewed resellers in a different light than a  
23 facility-based competitor?

24 A Resellers from facility-based?

25 Q Yes.

1           A     I think we -- we have taken positions in prior  
2 cases where we viewed resellers differently in regards to  
3 the granting of competitive classification.

4           Q     Would you agree with me generally that resellers  
5 don't pose a -- as significant a -- a competitive threat,  
6 if you will, as a facility-based carrier?

7           A     I would generally agree with that to the extent  
8 that the incumbent is receiving revenue from the reseller.

9           Q     Okay. And then, finally, would you agree with  
10 me that, at least to your knowledge, this is the first  
11 facility-based CLEC that has sought a certificate in a  
12 small telephone company exchange?

13          A     Yes.

14          Q     Mr. Van Eschen, in your surrebuttal, page 4,  
15 Line 1 through 12, if you want to take a minute to just  
16 kind of scan that, I'm going to ask you a couple of  
17 questions.

18          A     Yes.

19          Q     You -- you indicate or, rather, you state that  
20 you share, to a certain degree, a concern raised by  
21 Mr. Schoonmaker as to whether Big River or the cable TV  
22 partner is providing service. Do you see that?

23          A     Yes.

24          Q     After -- well, after reading Mr. Howe's  
25 surrebuttal testimony and further listening to his

1 cross-examination this morning, do you still share that  
2 same concern?

3 A That part of my testimony reflects some prior  
4 discussions that internally the Staff has had regarding  
5 Big River. And -- and in those discussions, you know, we  
6 looked at, you know, the web sites of the cable TV  
7 companies.

8 And it looks like they're offering phone  
9 service. And there have been other cases where the issue  
10 has come up whether the cable TV company is providing  
11 phone service or whether Big River is.

12 And when we discuss those -- that type of issue  
13 with Big River, they've always said that we're the  
14 provider of the phone service. And when we talk to the  
15 cable TV company in question, they always point to Big  
16 River as the provider of phone service.

17 And to that extent, we've dropped the issue.  
18 And -- but I do recognize that, potentially, there is some  
19 confusion.

20 Q In the past, at least with some of the ILECs, I  
21 know Staff has been very concerned about who is actually  
22 providing the service, particularly with respect to  
23 fictitious names and marketing. Would you agree with me?

24 A Yes. Absolutely.

25 Q Okay. In fact, requiring companies to modify

1 their tariff to include the fictitious names that they may  
2 be offering their service under?

3 A Yes.

4 Q Okay. Section 392.451.1(2) requires an  
5 applicant for a certificate on a small ILEC territory to  
6 "advertise the availability of such essential services and  
7 the charges therefore using media of general  
8 distribution." Are you familiar with that requirement?

9 A Yes.

10 Q Do advertisements that show the cable TV  
11 provider as providing telecommunications service, in your  
12 mind, satisfy that requirement?

13 A I -- I'm not quite sure how to answer that. It  
14 -- it might. I guess my reference would be that the  
15 provider of the telephone service is shown on the  
16 advertisement, so the -- the customer clearly knows who is  
17 the provider of phone service.

18 Q In Mr. Howe's testimony here this morning, he  
19 described how they provide equal access to long distance  
20 carriers or interexchange carriers. The fact that a list  
21 is not provided unless the customer asked for one, is that  
22 your understanding as to how presubscription is to be  
23 provided?

24 A I don't believe that the Commission has any  
25 specific rules that require that a list be provided. I

1 know in the past, there have been issues regarding that.

2 But --

3 Q What about the FCC? They've prescribed some  
4 procedures, have they not, for presubscription?

5 A That, I don't know off the top of my head.

6 Q Okay. Is that something you think that ought to  
7 be cleared up before BPS is given a certificate to provide  
8 service in BPS's exchanges?

9 MS. MORGAN: Big River.

10 Q (By Mr. England) Excuse me. Before Big River  
11 is given a certificate to provide services in BPS's  
12 exchange?

13 A Specifically, what are you asking Big River --

14 Q Whether or not the way in which they offer  
15 presubscription is compliant with the law.

16 A From what I understand, they'll provide  
17 information to the customer upon request on interexchange  
18 carriers. And in my opinion, that's fine.

19 Q Well, and my question was a little different.  
20 My question was, is it -- is it important -- should it be  
21 -- should a grant of a certificate to Big River be  
22 conditioned upon them providing equal access compliant  
23 with the law, regardless of whether you think it's fine or  
24 not?

25 A Yes. I -- I think that's an expectation.

1           Q     At page 8 of your rebuttal testimony, lines 6  
2 through 8, do you see that?

3           A     Yes.

4           Q     You state, Granting Big River's request to be --  
5 to bring more consumer choice and more advanced services  
6 to more rural areas will promote the public interest and  
7 further the goal of providing equitable access to all  
8 Missourians. Do you see that?

9           A     Yes.

10          Q     Would you agree that you are not aware of any  
11 new or advanced telecommunications services that Big River  
12 will bring to the exchanges served by BPS that BPS is not  
13 already providing?

14          A     That is correct.

15               MR. ENGLAND: Your Honor, may I have an exhibit  
16 marked for purposes of identification?

17               JUDGE STEARLEY: Certainly.

18               MR. ENGLAND: This is our Data Request No. 1 to  
19 Staff and Staff's response. I believe it's  
20 non-proprietary.

21               JUDGE STEARLEY: And we're at Exhibit 9.

22               MR. ENGLAND: Thank you, your Honor.

23               COMMISSIONER APPLING: Thank you.

24               JUDGE STEARLEY: You may proceed.

25               MR. ENGLAND: Thank you, your Honor.



1           Q     (By Mr. England) Mr. Van Eschen, do you have  
2 Exhibit 9 in front of you?

3           A     Yes.

4           Q     And do you recognize that as BPS's data request  
5 to Staff?

6           A     Yes.

7           Q     And more importantly, your response to that data  
8 request?

9           A     Yes.

10           MR. ENGLAND: Thank you. I'd offer that exhibit  
11 at this time.

12           JUDGE STEARLEY: Any objections? Hearing none,  
13 Exhibit No. 9 will be received and admitted into evidence.

14                     (Exhibit No. 9 was admitted into evidence.)

15           Q     (By Mr. England) Mr. Van Eschen, in that  
16 exhibit or that data request, we asked Staff if Big River  
17 complied with PSC's modernization rule 4 CSR 240-32.100,  
18 correct?

19           A     Yes.

20           Q     And that is something is that BPS should be  
21 complying with today, not just when they seek to provide  
22 service in a small companies exchange, correct?

23           A     That's true.

24           Q     Okay. I believe you responded in the  
25 affirmative for all elements with the exception of equal

1 access and stated that Staff was unable to verify that.

2 Do you see that?

3 A Yes.

4 Q Has Staff now been able to verify whether B --  
5 excuse me -- Big River provides equal access as required  
6 by the Commission rule?

7 A They claim they offer equal access. And based  
8 on the testimony of Mr. Howe this morning, they say that  
9 they do.

10 Q But -- well, let me ask you this: Is it fair to  
11 say that Staff's investigation as to Big River's  
12 compliance with this aspect -- or this entire rule was  
13 based upon your review of Big River's tariff, correct?

14 A Tariff as well as the interconnection agreement  
15 that Big River has --

16 Q Okay.

17 A -- with AT&T.

18 Q In other words, Staff did no independent  
19 analysis?

20 A That's correct.

21 Q Okay. You -- you issued no data requests to Big  
22 River; is that right?

23 A That's correct.

24 Q Does Staff know of its own accord whether Big  
25 River offers basic local telecommunications service as a

1 separate and distinct service?

2 A Based on their tariff, they say that they do.  
3 And -- and based on the company's application and -- and  
4 the testimony of Mr. Howe, they say that they do and will.  
5 Beyond that, I can't state anything further.

6 Q You didn't -- you or a member of your Staff did  
7 not make a phone call to Big River's representative like  
8 Mr. Schoonmaker did?

9 A No, we did not.

10 Q And now, let me ask you some questions about Big  
11 River's tariff, if I may. At page 1 of your  
12 surrebuttal --

13 A Uh-huh.

14 Q -- lines 23 and 24, you state that, Big River's  
15 tariff doesn't appear to identify its current intrastate  
16 telecommunications service offering. Do you see that?

17 A Yes.

18 Q And I believe then at page 4 of that same  
19 testimony, lines 15 through 17, you recommend that Big  
20 River's tariff be updated to clearly identify the services  
21 and rates offered to the customers?

22 A Yes.

23 Q Has Staff identified any other areas where Big  
24 River's tariff is out of date or inadequate or needs to be  
25 fixed?

1           A     We haven't had any -- any specific discussions  
2     yet with Big River about their tariff. I guess in going  
3     through this proceeding, I think we want to take a good,  
4     close look at and ensure that their tariff clearly spells  
5     out all the expectations and commitments that they have  
6     agreed to.

7           Q     You're not aware of any of the others at this  
8     time other than the service offerings -- all service  
9     offerings don't appear to be listed; is that right?

10          A     Yeah. We -- we could not find the -- the  
11     specific service offerings that were alluded elsewhere in  
12     the testimony.

13          Q     We also asked you for a copy of the unredacted  
14     annual report of Big River, the -- because I believe you  
15     referenced it in your testimony. And I don't want to get  
16     into the highly confidential information, which I  
17     understand to be the number of customers they may serve in  
18     a particular exchange.

19                 But looking at that, would you agree with me  
20     that it appears -- at least from their annual report, Big  
21     River appears to be providing service in several  
22     CenturyTel and/or Embarq exchanges?

23          A     I believe that's correct.

24          Q     Do you have that annual report in front of you?

25          A     Yes, I do.

1           Q     Looking at the residential exchanges served, do  
2     you see Bellgrade, Columbia, Cuba and Elsinor as exchanges  
3     where they appear to be --

4           A     Yes. Yes, I do.

5           Q     -- where they appear to be offering -- or Big  
6     River appears to be offering service? Or providing  
7     service. Excuse me. I don't need numbers. I just --

8           A     Yes.

9           Q     Thank you. And with respect to the business  
10    exchanges, would you agree with me that it appears they  
11    are providing service in Boling Green, Columbia and Fort  
12    Leonard Wood?

13          A     Yes.

14          Q     And those would be exchanges served by  
15    CenturyTel and/or Embarq, right?

16          A     Yes.

17          Q     So it -- it would appear that Big River either  
18    needs to correct its annual report or its tariffs,  
19    wouldn't it?

20          A     Yes. I would agree with that.

21          Q     Do you know if Big River's tariff provisions  
22    regarding deposits and destination of services are  
23    compliant with your rules?

24          A     I -- I -- I don't believe Big River asked for  
25    deposits. I know when we met with the company and talked

1 about the quality of service report, we did discuss some  
2 requirements regarding Chapter 33 of the Commission's  
3 rules concerning certain matters in those rules. And we  
4 did not see anything that raised a concern.

5 Q So as far as you know, their tariff provisions  
6 regarding distance of service are compliant with the most  
7 recent Commission rules?

8 A They appear to be. Yes.

9 Q You specifically note that Big River's tariff  
10 does not -- this is -- I'm sorry -- back in your  
11 surrebuttal testimony. Does not contain a description and  
12 rate for their \$34.95 offering of digital phone service.  
13 Do you see that?

14 A Yes.

15 Q If Big River is offering such a service and it  
16 is not included in its tariff, what corrective action does  
17 Staff believe should be taken?

18 A They need to make a tariff filing and ensure  
19 that that service is described in the rate, properly  
20 identified in its tariff.

21 Q Should they be required to issue a refund to  
22 customers for charging for a service that isn't tariffed?

23 A Perhaps.

24 Q Following up on Mr. Lumley's question earlier,  
25 that's what you would recommend if that was an ILEC that

1 had done that, wouldn't you, sir?

2 A Again, my answer would be perhaps. Probably.

3 Q More often than not, you would require a refund,  
4 wouldn't you, where an Incumbent Local Exchange Carrier is  
5 providing a service that they haven't tariffed?

6 A I -- I would generally agree with that. I -- I  
7 guess it would depend on the circumstances, the  
8 cooperation that we have with the company and that sort of  
9 thing. Those would be considerations that we would  
10 discuss internally and decide whether to seek refund for  
11 the customers.

12 Q Let me turn your attention now to the quality of  
13 service reports. You note in your rebuttal testimony, I  
14 think it's page 9, that Big River was delinquent in filing  
15 certain quarterly quality of service reports, right?

16 A Yes.

17 Q And then on your surrebuttal, on page 5, you  
18 note that Big River has now filed it appears to be seven  
19 quarterly reports from the second quarter of 2005 to the  
20 first -- or excuse me -- last quarter of 2006; is that  
21 right?

22 A They did submit quality of service reports to  
23 us, yes.

24 Q Would you agree with me that it appears to be  
25 seven quarters worth?

1           A     I -- I would agree with that. There were issues  
2 with one of the reports. And I think they submitted a  
3 revised report later on.

4           Q     Okay. So at least six of the reports were  
5 delinquent; is that right?

6           A     Yes.

7           Q     Later, you say, Based on a review of these  
8 reports, Big River needs to make adjustments in tracking  
9 and compiling the results contained in its quality of  
10 service reports, correct?

11          A     Yes.

12          Q     And I know Mr. Howe's addressed that, but I'd  
13 like for you to address it. What exactly are these  
14 adjustments that need to be made as far as Staff is  
15 concerned?

16          A     I think the -- the biggest issue that we came  
17 across when we reviewed the quality of service reports was  
18 simply the fact that the reports did not reflect any  
19 tracking and compilation of the results where their cable  
20 TV partner is involved.

21                 And that hits on quite a few of the quality of  
22 service report measures. You know, installation within  
23 five days, meeting -- commitments provided to customers  
24 for installing service, trouble reports, restoring out of  
25 service trouble within 24 hours.



1           For all those sort of measures, they did not  
2   include orders handled by their cable TV partners. And we  
3   feel that that -- those types of orders, those calls need  
4   to be tracked and compiled into Big River's quality of  
5   service results.

6           And so that affected the measure about  
7   installation within five days, installation commitments,  
8   trouble reports, as I've said earlier, repair commitments,  
9   out of service cleared within 24 hours.

10          There was also some issues with customer  
11   assistance calls, the length of time that it takes for a  
12   call to be answered by a company. And that is something  
13   that also needs to reflect calls to the cable TV provider  
14   when the call involves telephone service.

15          There was an issue about their operator assisted  
16   calls and whether their timing of the length of time that  
17   it takes to respond to what I'll call a zero minus dialed  
18   call, whether that included the switch delay time or not.  
19   And that needed to be addressed.

20          And, plus, we did not think that they were  
21   tracking local operator system calls correctly, and that  
22   needed to be addressed. We wanted confirmation about held  
23   orders, companies that required to keep track of service  
24   order requests that are held for longer than 30 days. And  
25   it looked like the company does not have any health

1 service orders, but we wanted to ensure that both the  
2 cable TV provider and Big River were keeping track of  
3 that.

4           There were some issues regarding the tracking of  
5 the measure for local exchange and interexchange switch  
6 calls, and there was some uncertainty as to whether local  
7 exchange switched -- switched calls actually reflect local  
8 service calls and whether they included intraLATA exchange  
9 calls. And we wanted clarification on that.

10           We also asked about another area that's covered  
11 in -- in the Chapter 32 rules, but it's not part of the --  
12 the quality of service report. So -- and that concerned  
13 ensuring that things like the network interface device  
14 complied with the National Electric Safety Code and  
15 whether Big River is responsible for that or the cable TV  
16 company is responsible for that.

17           And if there are problems, is there an  
18 arrangement between Big River and -- and the cable TV  
19 company regarding correcting problems if they are later  
20 discovered.

21           Q     You had mentioned some major issues with respect  
22 to quality of service. And I think the major issue was  
23 the compilation of data from the cable partners and  
24 tracking data from the cable partners. And then I -- I'm  
25 assuming you also touched upon other issues that you had?

1           A     Yes.

2           Q     Are there any others that you haven't mentioned?

3           A     No.  Those cover all of them.

4           Q     At page 6 of your surrebuttal, line 2, you also  
5     stated, It's unclear whether Big River will be able to  
6     make these adjustments, correct?

7           A     Yeah.  I don't know.  I -- I have gotten some  
8     initial indication from the company that they can meet all  
9     these and adequately address all these issues, but we have  
10    not followed up and been able to discuss those with the  
11    company at this time.

12          Q     These quality of service reports and -- and  
13    their filing and -- and their compliance, that's something  
14    that Big River needs to do whether it's providing service  
15    in a big company exchange or a small company exchange?

16          A     That's correct.

17          Q     In your surrebuttal testimony, page 7 --  
18    actually, the entirety of page 7 through roughly line 8 of  
19    -- of page 8, and I'm paraphrasing your testimony.  But,  
20    essentially, would you agree with me that you disagree  
21    with Mr. Schoonmaker that waivering certain statutes and  
22    rules would be inconsistent with Section 392.451.2(4)?

23          A     That's correct.

24          Q     Okay.  But you also say, I think, on page 8 of  
25    your surrebuttal, line 6 and 7 that you generally support

1 the concept of regulatory parity, correct?

2 A Yes.

3 Q If these statutes and rules are waived for big  
4 River as part of their -- a grant of their application to  
5 provide service in BPS's exchange, would Staff also  
6 support the waiver to BPS as well of these same statutes  
7 and rules?

8 A That's something we would need to discuss  
9 internally. I guess just speaking on my own behalf, I  
10 would think at a minimum before we would seriously  
11 consider waiving these requirements for BPS, the company  
12 would qualify for price cap status or competitive status  
13 before we would even seriously consider that sort of  
14 issue.

15 But, again, I -- I can't speak for everybody  
16 internally on Staff as to whether we would support a  
17 request for BPS to receive the same waivers or not.

18 Q Would you agree with me that in your rebuttal,  
19 page 7, lines 21 through 22, you state that, A grant of  
20 this application will for the first time give customers in  
21 the Burney, Parma and Steele exchanges a meaningful choice  
22 of tell communication service providers?

23 A Yes.

24 Q And you emphasize meaningful choice, as I  
25 recall.

1           A     Yes.

2           Q     So if we're going to have meaningful competition  
3     now in the BPS exchanges, shouldn't there be a meaningful  
4     reduction in the level of regulation that BPS is subjected  
5     to?

6           A     I think to the extent that the -- the statutes  
7     allow it. I think clearly if BPS is -- I mean, Big River  
8     is allowed to provide telephone service in BPS's  
9     territory, I think BPS would qualify for price cap  
10    regulation and no longer be under rate of return  
11    regulation.

12          Q     But you're not prepared to say whether or not it  
13    would be entitled to competitive classification and waiver  
14    of the same statutes and rules that BPS would -- would  
15    enjoy -- or excuse me -- Big River would enjoy?

16          A     No. No, I can't. I think there are other  
17    issues from other departments here at the Commission that  
18    we would need to discuss that. We haven't had those  
19    discussions at this time.

20               MR. ENGLAND: Thank you, sir. No other  
21    questions.

22               JUDGE STEARLEY: Thank you, Mr. England. And  
23    questions from the Bench? Commissioner Appling?

24                               CROSS-EXAMINATION

25    BY COMMISSIONER APPLING:

1 Q Good morning, sir.

2 A Good morning.

3 Q How are you doing?

4 A Good.

5 Q Have you read Mr. Schoonmaker's testimony?

6 A Yes, I have.

7 Q Okay. My question is coming -- I'm not a  
8 preacher, so I won't say from the sermon, the passage of  
9 Psalms 2 or whatever the case is. But at the end of his  
10 -- his rebuttal testimony, there was a question asked of  
11 Mr. Schoonmaker -- Schoonmaker. I'm sorry.

12 Can you summarize your position in regard to the  
13 Big River application for certification in the BPS  
14 exchange? I don't think -- you probably don't have a copy  
15 of his testimony up there. It's on page 13.

16 A Yes, I do, if you would give me a minute.

17 Q Pull out 13.

18 A I have it.

19 Q Okay. If I was asking you this morning to give  
20 a recommendation to the Commission on whether we should  
21 approve or disapprove Big River's application, what would  
22 you recommend to me?

23 A I would say before the Commission would allow  
24 Big River to enter into BPS's territory, Big River needs  
25 to demonstrate to myself and other members of the

1 Commission Staff that they will submit -- or they'll do  
2 two things. One is submit quality of service reports in a  
3 manner that we feel companies need to track and compile  
4 this information. We need to have Big River address the  
5 concerns that Staff raised in how Big River put together  
6 its quality of service reports.

7 I'm not comfortable in saying that -- today that  
8 we -- we've closed that bridge at this time. So that's  
9 something that I would say that needs to be addressed  
10 before the Commission would grant --

11 Q How much -- how much time are you -- how much  
12 time are you talking about if -- if we was going to grant  
13 Big River's request?

14 A Well, I -- I think --

15 Q I think they want that done as soon as possible,  
16 don't they?

17 A Yeah. And I -- I would -- I got over the  
18 weekend an e-mail from the company that they feel that  
19 they've -- are able to adequately address all of the  
20 concerns regarding quality of service.

21 Q Okay.

22 A I would suspect we would have a meeting or a --  
23 a call with Big River officials this week and discuss  
24 that. And if we feel comfortable that they've adequately  
25 addressed that, we would anticipate making some sort of

1 filing into the case indicating that.

2 Q Okay.

3 A The -- the second issue that I think needs to be  
4 addressed is Big River's tariff. I think that there have  
5 been issues brought up in this proceeding that need to be  
6 addressed.

7 Big River needs to make adjustments to its  
8 tariff before the Commission would allow it to enter BPS's  
9 service territory.

10 Q Okay. Let's get back to Mr. Schoonmaker's  
11 rebuttal testimony. I believe that's where it is. On  
12 page 13, and the question starts on line 16. Can you  
13 summarize your position in regards to Big River's  
14 application?

15 And it goes on to say yes. First, it is my --  
16 it is important that the Commission recognize that the  
17 requirement for determining certification in the service  
18 area of small telephone companies are different from those  
19 in large companies. It would be on there?

20 A Yes.

21 Q And it goes on down to say that we ought to pay  
22 close attention to what is being said here by Big River.  
23 And the second line down there, the second -- they are at  
24 this point in time, substantially questioned about Big  
25 River on its cable tel -- TV partners and all of that.



1           I won't go into that. You've seen it already.

2   How satisfied are you with what -- with what

3   Mr. Schoonmaker said there? Do you agree with him, or do

4   you disagree with him?

5           A     Well, I -- I think Mr. Schoonmaker brings up the

6   question of whether Big River or the cable TV company is

7   actually providing phone service. And, admittedly,

8   there's an issue that when we looked at that issue, it

9   might appear that the cable TV company is actually the

10   entity providing phone service.

11           You look at their web site. It looks like they

12   offer phone service. They take the orders of -- directly

13   from customers for phone service. They bill the customers

14   for phone service. All those things help contribute to

15   the perception that the cable TV company is providing

16   phone service.

17           And -- and that, I think, is -- is confusing to

18   a lot of people, including myself. We've talked to both

19   the cable TV partners as well as Big River. And

20   consistently, the cable TV companies claim, no, we're not

21   providing any phone service. Our phone service is solely

22   provided through Big River Telephone Company.

23           And, likewise, Big River Telephone Company steps

24   up and consistently says, yes, we're the provider of the

25   phone service. And from that standpoint, we haven't

1     pursued the issue any further. But I -- I do acknowledge  
2     and recognize that issue in Mr. Schoonmaker's testimony.

3           Q     Okay. I -- I -- I will come back to you later  
4     on and ask you again what your recommendations to me on,  
5     on this issue, but we'll do it later on. Okay?

6           A     Okay.

7           COMMISSIONER APPLING: Thank you very much for  
8     your time.

9           JUDGE STEARLEY: All right. Do we have any  
10    recross-examination? Mr. Lumley?

11                         RE CROSS EXAMINATION

12    BY MR. LUMLEY:

13           Q     On the two points of concern that you were just  
14    addressing with Commissioner Appling, would you agree with  
15    me that one way the Commission could deal with that would  
16    be to issue an order granting the expansion of the  
17    certificate, but provide that it not take effect until  
18    Staff confirms that an appropriate tariff update has been  
19    filed and that Staff is satisfied with the quality of  
20    service reporting?

21           A     That would be another option. Yes.

22           Q     Thank you.

23           JUDGE STEARLEY: Any recross from BPS, Mr.  
24    England?

25           MR. ENGLAND: No questions, your Honor.

1 JUDGE STEARLEY: Redirect?

2 MS. HEINTZ: No, thank you, your Honor.

3 JUDGE STEARLEY: Mr. Van Eschen, I have one  
4 question for you.

5 CROSS-EXAMINATION

6 BY JUDGE STEARLEY:

7 Q Regarding the waivers, and if I understand the  
8 Staff's recommendation, at this point, you recommend the  
9 waivers?

10 A Yes.

11 Q Do you believe this -- I realize you're not an  
12 attorney, but do you believe this is a unique situation  
13 with this particular company? Or if the Commission were  
14 to take BPS's position on this, would this change the way  
15 Staff would have to approach recommending waivers for  
16 other CLECs?

17 A I think, certainly, if the Commission decided  
18 with BPS, yes, that would definitely affect Staff's  
19 recommendation in future proceedings like this.

20 We recommended Commission the grant the waivers  
21 simply because most of them pertain to financial-related  
22 requirements, which, for a competitively classified  
23 company, those requirements really don't make much sense  
24 to me.

25 And in that respect, I -- I really don't see any

1 purpose for granting the waivers other than simply to  
2 comply with 392.451. So we -- I -- I'm recommending that  
3 the Commission grant the waivers.

4 If -- if the Commission feels otherwise, yes,  
5 that will definitely affect Staff's recommendation in  
6 future cases dealing with CLECs that want to operate in  
7 small LEC territory.

8 JUDGE STEARLEY: All right. Thank you. Is  
9 there any recross based upon my question? Any redirect?

10 MS. HEINTZ: No, thank you, your Honor.

11 JUDGE STEARLEY: All right. Thank you, Mr. Van  
12 Eschen, for your testimony. You will not be finally  
13 excused at this time in case the Commission should have  
14 any further questions for you. But thank you for your  
15 testimony.

16 And I believe at this time, we are ready for  
17 BPS's witness, Mr. Robert Schoonmaker. Hopefully, I got  
18 your name right that time.

19 COMMISSIONER APPLING: Schoonmaker.  
20 Schoonmaker.

21 JUDGE STEARLEY: Schoonmaker. I'm getting  
22 there. I will swear you in, Mr. Schoonmaker.

23 ROBERT SCHOONMAKER,  
24 being first duly sworn to testify the truth, the whole  
25 truth, and nothing but the truth, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. ENGLAND:

3 JUDGE STEARLEY: You may be seated. And, Mr.  
4 England, you may proceed.

5 MR. ENGLAND: Thank you.

6 Q (By Mr. England) Would you state your full name  
7 and address for the record, please?

8 A My name is Robert C. Schoonmaker. My address is  
9 2270, La Montana Way, Colorado Springs, Colorado, 80918.

10 Q And by whom are you employed and in what  
11 capacity?

12 A I'm the President and CEO of GVNW Consulting,  
13 Inc.

14 Q And on whose behalf are you appearing here  
15 today?

16 A BPS Telephone Company.

17 MR. ENGLAND: Thank you, sir. I don't have any  
18 other questions of the witness. I understand that his  
19 testimony has already been admitted. So unless there's  
20 something else I need to do, I'll tender him for  
21 cross-examination.

22 JUDGE STEARLEY: All right. Thank you,  
23 Mr. England. And we'll start with cross with Staff.

24 CROSS-EXAMINATION

25 BY MS. HEINTZ:

1 Q Good morning, Mr. Schoonmaker.

2 A Good morning.

3 Q I just have a few very brief questions for you.  
4 Companies that act as monopolies are generally subject to  
5 a higher -- higher level of regulation as a substitute for  
6 competition. Would you agree with that?

7 A That's been policy for a number of years.

8 Q And the Commission routinely waives financial  
9 requirements for competitive companies?

10 A They have in the past for those operating in the  
11 areas of large companies.

12 Q Companies that are granted competitive  
13 classification are generally permitted to operate under a  
14 lesser degree of regulation?

15 A Those waivers give them a lesser degree of  
16 regulation.

17 Q Okay. If a company is rate of return regulated,  
18 it makes sense for the Commission to require that it keep  
19 its accounts in a uniform manner so that Staff can easily  
20 review its books?

21 A It does.

22 Q Okay. And if a company is not rate of return  
23 regulated, it would be unnecessary for the company to keep  
24 its books in a prescribed manner because the books not be  
25 -- do not need to be reviewed for rate setting purposes?

1           A     They wouldn't need to be reviewed for rate  
2     setting purposes. It might behoove the Commission at  
3     times to review them for other purposes.

4           MS. HEINTZ: Thank you. That's all the  
5     questions I have.

6           JUDGE STEARLEY: Thank you, Ms. Heintz.  
7     Cross-examination by Big River at this time?

8           MR. LUMLEY: No questions, your Honor.

9           JUDGE STEARLEY: Any questions from the Bench?  
10    Commissioner Appling?

11                           CROSS-EXAMINATION

12    BY COMMISSIONER APPLING:

13           Q     Robert, I thought -- I thought I was going to  
14     get a little bit more time.

15           A     Well, go ahead and take your time. I'll wait a  
16     minute.

17           Q     I've got a couple of questions. Well, I'll fill  
18     in a little bit by telling you Colorado Springs is a very  
19     nice city. I was stationed at Fort Carson there.  
20     In fact, when I was out there, they had a food war. We  
21     went to a restaurant and got a decent meal for a very  
22     decent price, too.

23           A     Probably less than you could today.

24           Q     Yeah. I'm pretty sure. Going back to page 13  
25     of your rebuttal testimony where you talked about the

1 Commission should be very much aware of some of the things  
2 that we're waiving and granting to Big River here in order  
3 to give them their request, are you still sticking by  
4 those guns? Has anything changed your mind so far on  
5 this?

6       A     Well, I -- I still think that the Commission  
7 needs to give this careful request and -- or careful  
8 review and recognize that there are different statutory  
9 requirements in regards to small companies than larger  
10 ones and that this is a new situation from -- from what  
11 they've had over the past several years with companies who  
12 are competing in large company areas.

13               Now, there's been debate about exactly what  
14 those statutory requirements are, and that's probably less  
15 -- best left to the briefs as to what those statutory  
16 requires mean and how they -- how they apply to the  
17 companies.

18               But I think it is important to give careful  
19 attention to it because this is a new circumstance, and --  
20 and as was pointed out by -- I think it was Mr. Lumley  
21 earlier, that once the Commission makes an initial  
22 decision in regards to precedential setting issues like  
23 this, they tend to follow that in the future. So I think  
24 that it's important that they look at it carefully this  
25 time since this is a new situation with a facilities-based



1 carrier in a small telephone company area and make sure  
2 they get the decision right to begin with.

3 Q Let's go back to page 5 of your rebuttal  
4 testimony. And I think it's line 17 where you're asked --  
5 you've been asked a question there and your opinion.  
6 Reading your answer again -- and just talk to me a little  
7 bit about your answer on -- to that question, if you  
8 would.

9 A Yes.

10 Q You're saying that, in your opinion, the  
11 requirement to comply with the uniform system is going to  
12 be pretty tough to execute?

13 A Well, it's going to be more difficult, presuming  
14 that Big River hasn't voluntarily chosen to set its books  
15 of accounts that way. And I don't know whether they have  
16 or have not. That could take some review of their  
17 accounting processes and the accounts they established and  
18 their charts of accounts and -- and have to record things  
19 differently and train their accounting folks to code and  
20 so forth differently.

21 And that -- that could be a -- a significant  
22 impact. Most of the other requirements, several of the  
23 statutory waivers that they requested that relate to the  
24 issuing of debt and stock and reorganizations and those  
25 kind of things are things that occur rather infrequently.

1           And so I would expect it would impact them less  
2   than -- than the uniform system of accounts. In  
3   looking at this and having reviewed those further, I guess  
4   the other one -- one of the waivers they request would  
5   subject them potentially to rate of return regulation.  
6   And that one, certainly, would be a significant  
7   requirement as well.

8           Q     Should I make the assumption that you have read  
9   the majority of the testimony that's been offered in this  
10  case?

11          A     Yes. I've read it all.

12          Q     And you also read what the issues and what --  
13  the question?

14          A     Yes.

15          Q     And taking into consideration who you are here  
16  talking for, what do you see in this -- in all this  
17  testimony and everything that has been said for you? Give  
18  me your biggest concern about this Commission to approve  
19  or disapprove this one.

20          A     Well, I mean, I think the question of how the  
21  statute applies is one of those questions and whether  
22  those waivers should be granted.

23                 I guess a second question that I think the  
24  Commission should be concerned with, I think the testimony  
25  develops that there are a number of areas where Big River

1 says they will comply in the future. But if we look at  
2 their -- their current compliance, they're not completely  
3 complying.

4 The service quality reports are one of those  
5 areas that -- that's been discussed significantly. I  
6 guess in my mind, the bigger issue may be how they're  
7 offering services to customers and are those consistent  
8 with their tariffs.

9 Now, Mr. Howe has said, We're going to fix those  
10 things. We -- we made a mistake. And I recognize that  
11 clerical mistakes happen at times and people change and  
12 things can fall through the cracks. But there's a pattern  
13 of a number of those things that seem to be happening  
14 here.

15 And, I mean, one of the reasons is that I made  
16 the telephone call that was discussed in my surrebuttal  
17 system was a -- you know, what does a customer get when  
18 they call a company and ask for service?

19 And I -- I tried to probe a number of areas and  
20 find out, are their services consistent with their tariff.  
21 Are they offering things consistent with the Commission  
22 rules or the -- the -- the FCC rules that are related to  
23 presubscription and so forth that the telephone companies  
24 have to comply with.

25 Q And -- and it just seemed to me that there were

1 a number of areas where maybe the tariff needs to be  
2 corrected. But I think there are some areas where the  
3 customer procedures need to be corrected as well.

4 Because it doesn't seem to me -- I mean, I guess  
5 -- I guess a concern that there's initial agreement in  
6 these kinds of hearings that says, yes, you will comply  
7 with all of those Commission rules. And certainly in Big  
8 River's case, an attempt to comply with many of them,  
9 maybe an attempt to comply with all of them and -- and had  
10 misunderstandings.

11 But it seems like to me, and particularly as I  
12 called the service representative and I asked specifically  
13 in Poplar Bluff, is there another package of services  
14 other than the -- the \$50 package that's offered on the  
15 web. The answer was no, that's the only one.

16 Can I subscribe to some other -- other long  
17 distance carrier if I don't want Big River as my long  
18 distance provider? And the answer was no. That doesn't  
19 seem to be consistent with the tariffs and the Commission  
20 rules and those kinds of things.

21 The rates that were quoted to me in the other  
22 communities, although it may have included all things, it  
23 was specifically stated to me it didn't include any custom  
24 calling features, didn't include any long distance. There  
25 wasn't any discussion about the -- a subscriber line

1 charge, which I don't know whether Big River charges or  
2 not. Mr. Howe mentioned it this morning.

3 But the difference between the eight and \$9  
4 rates that are in their tariff, which includes the ESA  
5 charges that I quoted in my testimony, and the \$17 that  
6 the customer service rep quoted to me really raised the  
7 question in my mind as to whether they are offering  
8 services at the rates that they tell the Commission  
9 they're offering.

10 Q I think that finished the question. I feel like  
11 I'm missing something with you here, but I can't think of  
12 what it is, so I will end my questions at this time. But  
13 thank you for your -- for your comments. Okay?

14 A Okay. Thank you.

15 JUDGE STEARLEY: Okay. Do we have any recross  
16 examination based on questions from the Bench? Ms.  
17 Heintz?

18 MS. HEINTZ: No, your Honor.

19 JUDGE STEARLEY: Mr. Lumley?

20 MR. LUMLEY: No, your Honor.

21 JUDGE STEARLEY: Any redirect, Mr. England?

22 MR. ENGLAND: One, I believe, your Honor.

23 RECROSS EXAMINATION

24 BY MR. ENGLAND:

25 Q Mr. Schoonmaker, you were asked a question by

1 Ms. Heintz regarding the -- following the FCC system of  
2 accounts and the -- I believe you indicated one of the  
3 purposes would be to facilitate rate base rate of return  
4 regulation. Do you remember that?

5 A Yes.

6 Q I took it from your answer that maybe there were  
7 other reasons for maintaining your accounts consistent  
8 with the uniform system of accounts. Is that true?

9 A Well, even though the Commission doesn't rate  
10 regulate a competitive company by their choice and by  
11 waiver of those statutes, I mean, the question may arise  
12 -- for example, the question's been raised here as to what  
13 rate they're charging customers and whether they're  
14 consistent with the tariffs and other issues and having  
15 information recorded in their books in a consistent manner  
16 and in a manner which is -- is reviewable by the  
17 Commission if necessary to find other reasons that they  
18 need to do so could be helpful to the Commission.

19 Q Would it also help for purposes of auditing to  
20 determine whether or not revenues were being recorded  
21 correctly for PSC assessment purposes?

22 A Yes.

23 Q No Missouri --

24 A Could. Could. I mean, I -- they may have that  
25 adequately taken care of in whatever chart of accounts

1 they used, but it might help in that regard as well.

2 Q What about applying sales tax?

3 A Less certain about that.

4 MR. ENGLAND: Okay. Thank you, sir. I have no  
5 other questions.

6 JUDGE STEARLEY: Thank you, Mr. England.  
7 Mr. Schoonmaker, you may step down, and you are finally  
8 excused.

9 And at this time, I will finally excuse our  
10 other two witnesses because I don't believe the  
11 Commissioners have any further questions for you.

12 DO the parties wish to make closing statements?  
13 Okay. Then we'll just need to set a briefing schedule.

14 On your late-filed exhibit, Mr. England, why  
15 don't we have that due by next Friday, the 23rd?

16 MR. ENGLAND: That would be fine. Thank you.

17 JUDGE STEARLEY: And I believe the transcript  
18 will be available in ten business days; is that correct?

19 THE COURT REPORTER: Yes.

20 JUDGE STEARLEY: We're looking at the transcript  
21 being available on February 27th if I'm counting that  
22 correctly.

23 And for post-hearing briefs, do the parties just  
24 want one round of briefing, or did you want to do reply  
25 briefs?

1           MR. LUMLEY: I think a single round is  
2 sufficient unless some people disagree. But --

3           MR. ENGLAND: It's okay with me.

4           MR. LUMLEY: Single round.

5           MS. HEINTZ: Single round.

6           JUDGE STEARLEY: Single round of briefing. And  
7 we'd like that 20 days after the filing of transcripts?

8           MR. LUMLEY: That's fine with us.

9           MR. ENGLAND: (Witness nods head.) That will  
10 work.

11          JUDGE STEARLEY: Okay. And I believe all your  
12 exhibits were received and admitted into evidence. So are  
13 there any other issues we need to address at this time  
14 before we adjourn?

15          MR. LUMLEY: No, your Honor.

16          JUDGE STEARLEY: Okay. Very well. The hearing  
17 in Case No. TA-2007-0093 hereby adjourned.

18          MR. ENGLAND: Thank you, your Honor.

19          MS. HEINTZ: Thank you

20          MR. LUMLEY: Thank you.

21          JUDGE STEARLEY: Thank you all very much.

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24 (Exhibits were retained by Judge Stearley.)

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