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2 PUBLIC SERVICE COMMISSION

3 TRANSCRIPT OF PROCEEDINGS

5 Prehearing Conference

6
7 November 18, 2009
8 Jefferson City, Missouri
9 Volume 1

10 In the Matter of Big River)
11 Telephone Company, LLC's Request)
12 for Expedited Approval of its)Case No. TT-2010-0141
13 Tariff Change Introducing Foreign)
14 Exchange Service,)
15

16 NANCY DIPPELL, Presiding

17 DEPIUTY REGULATORY LAW JUDGE
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A P P E A R A N C E S

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P R O C E E D I N G S

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JUDGE DIPPELL: All right. Let's go ahead

and go on the record. This is Case No. TT-2010-0141 in the matter of Big River Telephone Company's, LLC's request for expedited approval of its tariff change introducing foreign exchange service.

My name is Nancy Dippell, and I'm the Regulatory Law Judge assigned to this case. And I've asked you all to come here today for a prehearing conference and -- so that we can discuss the procedure going forward on this particular case.

I'm going to begin by letting the attorneys make their entries of appearance. And I'll start with you, Mr. Lumley.

MR. LUMLEY: Thanks, Judge. This is Carl Lumley of the Curtis Hines firm appearing on behalf of Big River Telephone. My office address is 130 South Bemiston, Suite 200, Clayton, Missouri, 63105.

JUDGE DIPPELL: And for Staff?

MS. DALE: Colleen M. Dale for the Missouri Public Service Commission Staff, Post Office Box 360, Jefferson City, Missouri 65102.

JUDGE DIPPELL: And for Chariton Valley?

1 MR. JOHNSON: Thank you, your Honor. Craig
2 Johnson, Barry Wilson, LLC, 304 East High Street,
3 Jefferson City, Missouri, 65102.

4 JUDGE DIPPELL: And I guess I'll start with the
5 procedural posture -- the procedural posture of the matter
6 of the intervention, which this case is a little odd
7 because if it weren't for Chariton Valley's objection,
8 there really wouldn't be a case. So I'm not sure if they
9 needed to file an intervention, but they did.

10 And so I will just ask Mr. Lumley if you have
11 any objection. The time for responses hasn't run to that
12 yet, but I'm wondering if you have any objection to their
13 application for intervention?

14 MR. LUMLEY: Yes, Judge. Currently, I
15 anticipate filing an objection by the due date of Friday
16 articulating our reasons, although I'm also hopeful that
17 perhaps with some settlement discussions we can alleviate
18 some of them.

19 JUDGE DIPPELL: Okay. For purposes of today's,
20 then, I will allow them to appear as if they are parties,
21 and I will let you have the rest of your time to file that
22 objection, then.

23 MR. LUMLEY: Thank you.

24 JUDGE DIPPELL: I also wanted to ask the
25 attorneys if I had the law right and if this, in fact, is

1 a tariff that would fall under Section 392.220.04.

2 MR. LUMLEY: In terms of the new service?

3 JUDGE DIPPELL: Yes.

4 MR. LUMLEY: Yeah. That's our position.

5 JUDGE DIPPELL: Mr. Johnson?

6 MR. JOHNSON: I checked their existing tariff,
7 and I don't believe they have an FX service tariff, so I
8 would agree with that.

9 JUDGE DIPPELL: Anything? Okay. I just wanted
10 to make sure because that statute does put a time frame on
11 how long the Commission could suspend this, which is very
12 short, only 30 days. And the tariff effective date is
13 December 3rd.

14 So that's the reason I asked you all to come in
15 here so quickly. Is there anything else that you want to
16 discuss on the record with me, or shall I just leave you
17 to your discussions together?

18 MR. LUMLEY: Well, I think you might benefit
19 from a brief explanation from me, Judge, in terms of this
20 issue of mootness that's been asserted.

21 JUDGE DIPPELL: Oh, yes. Yes.

22 MR. LUMLEY: The -- the numbering issues, you
23 know, that were discussed in our request for expedited
24 approval were, obviously, the basis for the request for
25 expedited approval.

1 But since that that's been denied, you know,
2 we're going to have to try and address those issues. You
3 know, again, hopefully we can work them out with Chariton
4 Valley one way or another. But we'll have to address them
5 one way or another. You know, with that -- with expedited
6 approval by the wayside, we just have, you know, the
7 tariff of the new service at issue, and we don't do that
8 as a -- a moot point.

9 We don't believe there's any basis for objecting
10 to our introducing the service that, you know, many other
11 companies offer in the state and that the issues that have
12 been raised in the pleadings -- actually, to the extent we
13 can't work -- work them out all have to do with
14 intersection matters that would not be the subject of this
15 proceeding and would be the subject of different dispute
16 resolution procedures as Chariton Valley points out in
17 their -- in their pleadings. So --

18 JUDGE DIPPELL: Okay.

19 MR. LUMLEY: We have -- we have to solve a
20 number of issues a different way. But we still want to
21 serve the tariff. It's not a moot issue.

22 JUDGE DIPPELL: Okay. And -- and did you, in
23 fact, get the thousand block granted that was alluded to
24 in a couple of the pleadings, but -- I understand your
25 point, but I --

1 MR. LUMLEY: Yeah.

2 JUDGE DIPPELL: Just to clarify.

3 MR. LUMLEY: You know, what we need to work out
4 is right now we've got right to a thousand numbers from a
5 block that was previously assigned to Salisbury. And we've
6 got rights to a thousand numbers from a block that's been
7 newly assigned to Huntsville.

8 JUDGE DIPPELL: Okay.

9 MR. LUMLEY: So if we can't work things out, you
10 know, we'll ultimately, you know, in all likelihood have
11 to use those Huntsville numbers, and, you know, we can
12 release the Salisbury ones.

13 But at the end of the day, they're still going
14 to be assigned to Salisbury, and they'd just be sitting
15 there unused, whereas if we could work this out, we could
16 give back the Huntsville numbers, and the whole ten
17 thousand block would then just go back and be available
18 for use somewhere else.

19 We'd still like to try and work these things
20 out, but, yes, because we can't get expedited approval,
21 right now, we're looking at using the Huntsville numbers.

22 JUDGE DIPPELL: Okay. And --

23 MR. LUMLEY: And just to -- just to further
24 answer that, you know, in terms of practical reality, what
25 we're talking about is nine customers that their

1 Huntsville neighbors aren't able to dial locally. That's
2 -- that's why we sought expedited approval because we have
3 these nine folks that are being inconvenienced.

4 JUDGE DIPPELL: Right.

5 MR. JOHNSON: So I take it, Carl, you don't plan
6 to switch them over to the new Huntsville numbers?

7 MR. LUMLEY: Well, we may well have to do that,
8 and I want to talk to you about that in settlement. It's
9 certainly a potential solution to the dialing issue.

10 JUDGE DIPPELL: Let me ask, Mr. Johnson, then,
11 in your motion to suspend, is -- are -- do you still have
12 issues with the tariff other than your point about the
13 mootness with the thousand block?

14 MR. JOHNSON: As I recall the motion to
15 expedite, the Big River file, the whole reason for filing
16 the tariff had to do with the intersection agreement,
17 which prohibits assigning numbers from -- rated for one
18 exchange to another.

19 And so when we -- when they got their Huntsville
20 thousand block, which I'm not sure when the effective date
21 that that block can be turned on. I think it's towards
22 the end of December. At that point in time, we thought
23 that was the solution to this problem, take the Huntsville
24 numbers that you have now and you assign them to the
25 Huntsville customers, and you don't need this FX tariff.

1 And one of our problems with the FX tariff, as
2 we understand it, it's still premised upon that customer
3 retaining the number -- the Huntsville customer retaining
4 a Salisbury number and then the FX just gets to be a -- I'm
5 not sure I want to use the word fiction, but it's a method
6 for them to say he's not got a presence in the Salisbury
7 exchange when, in my view, it's not really a typical FX
8 circuit.

9 So when we filed the mootness argument, it was
10 based upon the notion that their back-up plan, getting the
11 Huntsville numbers, had been successful. And it was our
12 hope or understanding, then, that this might be mooted if
13 they would just use those numbers instead of the Salisbury
14 numbers for their customers in Huntsville. Does that make
15 sense?

16 JUDGE DIPPELL: That makes sense. But what I
17 hear Mr. Lumley saying is that they still want to pursue
18 the tariff for foreign exchange service even if that
19 doesn't work out. And I'm wondering if Chariton Valley
20 would still -- I mean, even if they go ahead and use the
21 Huntsville numbers, they still want to pursue this tariff.
22 And I'm wondering if your client will still have an
23 objection if that is the case.

24 MR. JOHNSON: Yes. If they still plan to keep
25 the Salisbury assigned numbers for their Huntsville

1 customers, we will object. Whether the tariff proceeding
2 is the proper place to take that up or whether it's an
3 interconnection agreement dispute resolution proceeding, I
4 guess, is somewhat of a -- something that Mr. Lumley and I
5 may need to discuss.

6 JUDGE DIPPELL: Right.

7 MR. JOHNSON: But, yes, we would still oppose
8 the tariff.

9 JUDGE DIPPELL: Okay. That's what I was trying
10 to get at is, is this going to continue to be a tariff
11 dispute, or is this going to turn into an interconnection
12 dispute of some kind? If it --

13 MR. LUMLEY: And my hope is that in discussions,
14 you know, today, but off the record, you know, with
15 Mr. Johnson, we can either resolve things or at least
16 recognize that, you know, the tariff issues is really
17 distinct from these other issues. I mean, I -- we can
18 certainly, I'm convinced, work out something where --
19 until we get things resolved, we're not go doing something
20 that they object to in terms of the traffic.

21 But in terms of the ability to tariff the
22 service, again, we don't think there's any legitimate
23 objection to having the tariff serviced.

24 JUDGE DIPPELL: Okay. Well, keep in mind,
25 again, the short time frame that if -- if you continue to

1 have a tariff dispute that the Commission will have to
2 handle this on, and, you know, with the December 3rd
3 tariff effective date, if you don't get something worked
4 out by -- I'm trying to look at a calendar here. There is
5 liable to be a -- agenda the week of December before that.
6 There's also going to be one sometime next week.

7 So the Commission will have to decide whether or
8 not to suspend the tariff no later than December 2nd,
9 which means I kind of need to know which way this is -- is
10 headed in time to do something for that. So no later than
11 Monday morning the 30th.

12 And if the tariff gets suspended in order to get
13 it worked out, then with 30 days, that also carries over
14 into the holidays. And I wrote down the -- it looks like
15 the Commission would most likely make some kind of final
16 decision probably around December 23rd. So you'd only
17 have a few weeks in December to get this presented and
18 worked out.

19 I did print out the Commission's calendar for
20 you guys to see, and I'll give that to Cully here. She
21 can share it with you all.

22 Anything else that you wanted to bring up with
23 me before I leave you to your discussions? I will mention
24 that Mr. Van Ashen also joined us in the room for those of
25 you on the phone.

1 MR. VAN ASHEN: Hi, Carl.

2 MR. LUMLEY: Good morning.

3 JUDGE DIPPELL: And Mr. Howell is also on the
4 phone.

5 MR. VAN ASHEN: Oh, hey, Jerry.

6 MR. HOWELL: Hi, John.

7 JUDGE DIPPELL: Anything else on the record?

8 All right. You have your marching orders.

9 MR. LUMLEY: Thank you.

10 JUDGE DIPPELL: Thank you. We can conclude this
11 portion of the on-the-record conference and go off the
12 record. Thank you.

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REPORTER'S CERTIFICATE

STATE OF MISSOURI)
)ss.
COUNTY OF OSAGE)

I, Monnie S. Mealy, Certified Shorthand Reporter,
Certified Court Reporter #0538, and Registered
Professional Reporter, and Notary Public, within and for
the State of Missouri, do hereby certify that I was
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