

## BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

### **BIG RIVER TELEPHONE COMPANY, LLC'S POSITION STATEMENT, WITNESS LIST AND PROPOSED ORDER OF OPENING STATEMENTS, WITNESSES AND CROSS-EXAMINATION**

COMES NOW Big River Telephone Company, LLC ("Big River") pursuant to Commission Order and presents its Position Statement, Witness List, and Proposed Order of Opening Statements, Witnesses and Cross-Examination, as follows:

#### **Position Statement**

**Issue 1.** Section 392.450.1 states that an applicant for a certificate of service authority to provide basic local telecommunications service must show that it has complied with the certification process established pursuant to Section 392.455, which in turn sets out several requirements for an applicant to meet before a certificate can be granted. An applicant seeking a certificate of service authority to provide basic local telecommunications service in an area served by a small incumbent local exchange telecommunications company such as BPS also must comply with the provisions of Section 392.451 in order for the Commission to approve its application. Pursuant to these statutes the Commission has promulgated 4 CSR 240-3.510 setting out the requirements for an application for certificate of basic local service authority. Has Big River demonstrated that it meets all of the applicable requirements of Sections 392.450, 392.451, and 392.455 and 4 CSR 240-3.510, such that the Commission should approve its application to expand its area of basic local service authority to include the BPS exchanges?

The Commission should approve the Application of Big River Telephone Company, LLC to expand its area of basic local service authority to include the BPS exchanges. The evidence shows that Big River has complied with the certification process established by Sections

392.450, 392.451 and 392.455, and 4 CSR 240-3.510. The evidence shows that Big River will address Staff concerns about its tariffs, including by updating its tariffs regarding VOIP services notwithstanding pending disputes between the Commission and other carriers, and other uncertainties, regarding the Commission's jurisdiction over such services. The evidence shows that Big River is current on required reports and will address Staff's concerns about the tracking and compilation of future quarterly quality of service reports. There is no basis to deny Big River's application.

**Issue 2. In its Application, Big River has requested that the company and the services it proposes to offer in the BPS service area be classified as competitive under Section 392.361. Section 392.451 states that the Commission shall adopt rules requiring applicants to "comply with all of the same rules and regulations as the commission may impose on the incumbent local exchange telecommunications company with which the applicant seeks to compete." Is Big River's request to continue to be classified as competitive and to designate the services it proposes to offer in the BPS service area as competitive services permissible under Section 392.451, such that the Commission should grant the requested continued classification?**

The Commission should grant Big River's request to continue to classify the company and its services as competitive pursuant to Section 392.361. Section 392.451 does not in any way limit the Commission's authority to grant that request. The evidence shows that the Commission should grant the request, as it has done before such as in the case of Missouri State Discount Telephone (Case No. TA-2001-0334) in the BPS exchanges based on stipulation of the parties to that case including BPS. There is no basis to deny Big River's request.

**Issue 3. In its application for a certificate of service authority, Big River has requested that the Commission waive certain statutory provisions and rules that have been waived for other applicants requesting competitive local exchange authority pursuant to Section 392.361. Section 392.451 states that the Commission shall adopt rules requiring applicants to "comply with all of the same rules and regulations as the commission may impose on the incumbent local exchange telecommunications company with which the applicant seeks to compete." Is**

**Big River’s request for waivers of statutes and rules relative to providing service in BPS exchanges permissible under Section 392.451, such that the Commission should grant the requested waivers?**

The Commission should grant the standard waivers of statutes and regulations as requested by Big River. Section 392.451 does not preclude the waiver of statutes and its language regarding application of rules and regulations must be interpreted in the context of other applicable law. The evidence shows that the Commission should waive statutory rate of return earnings oversight for Big River in the BPS exchanges as it has done for Big River in other exchanges and for other CLECs including in the case of Missouri State Discount Telephone (Case No. TA-2001-0334) in the BPS exchanges based on stipulation of the parties to that case including BPS. Once the Commission waives statutory rate of return earnings oversight (Section 392.240.1), there would be no statutory basis to impose related rules and regulations on Big River. Accordingly, such rules and regulations (4 CSR 240-10.020 – income on depreciation fund investments, 4 CSR 240-30.040 – uniform system of accounts) should also be waived, as has been done for Big River in other exchanges and for other CLECs including in the case of Missouri State Discount Telephone (Case No. TA-2001-0334) in the BPS exchanges based on stipulation of the parties to that case including BPS. Big River is required to follow BPS exchange boundaries, making waiver of 4 CSR 240-3.550(5)(C) – exchange boundary maps – appropriate as well. Sections 392.451.2(3), 392.361.5, and 392.390(1) authorize the Commission to continue to allow Big River to file its annual reports in the form prescribed for CLECs. There is no basis to deny Big River’s waiver requests.

### **Opening Statements**

Big River proposes the following order of opening statements:

Big River

Staff

BPS

### **Witness List**

Big River will present witness Gerard J. Howe (Pre-filed Direct and Surrebuttal).

### **Proposed Order of Witnesses and Cross-Examination**

Big River Proposes the following order of witnesses and cross-examination:

Big River Witness Howe (Cross-examination by Staff, then BPS)

Staff witness Van Eschen (Cross-examination by Big River, then BPS)

BPS witness Schoonmaker (Cross-examination by Staff, then Big River)

WHEREFORE, Big River Telephone Company, LLC requests the Commission to hold its hearing in accordance with the foregoing proposals and thereupon grant to Big River the relief requested in its Application including expansion of its area of basic local service authority to include the BPS exchanges, continued classification of the company and its services as competitive, and continued waiver of statutes and rules as previously granted to Big River and other CLECs.

Respectfully submitted,

/s/ Carl J. Lumley

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**Certificate of Service**

I hereby certify that a true and correct copy of this document was emailed to the parties listed below on this 2d day of February, 2007.

/s/ Carl J. Lumley

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