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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

SURREBUTTAL TESTIMONY

OF

JOHN VAN ESCHEN

BIG RIVER TELEPHONE COMPANY

CASE NO. TA-2007-0093

**Jefferson City, Missouri
January 2007**

**** Denotes Highly Confidential Information ****

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TABLE OF CONTENTS
SURREBUTTAL TESTIMONY
OF
JOHN VAN ESCHEN
BIG RIVER TELEPHONE COMPANY
CASE NO. TA-2007-0093

EXECUTIVE SUMMARY 1

1
2
3
4
5
6
7
8
9
10
11
12

SURREBUTTAL TESTIMONY

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JOHN VAN ESCHEN

BIG RIVER TELEPHONE COMPANY

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13 Q. Are you the same John Van Eschen who previously filed rebuttal testimony in
14 this case?

15 A. Yes, I am.

16 Q. What is the purpose of your surrebuttal testimony?

17 A. The purpose of this testimony is to address whether I agree with Mr.
18 Schoonmaker's concerns regarding Big River Telephone Company's (Big River's)
19 compliance with Section 392.451.1(1), Section 392.451.2(3), and Section 392.451.2(4).

EXECUTIVE SUMMARY

20 Q. Can you summarize your testimony?

21 A. As will be pointed out in this testimony, I tend to agree with Mr.
22 Schoonmaker's concern as to whether Big River or the cable TV partner is providing phone
23 service. Big River's tariff does not appear to identify its current intrastate
24 telecommunications service offerings. If Big River continues to maintain that Big River is
25 the entity providing phone service then Big River needs to adequately address this concern
26 and ensure its tariff reflects all regulated intrastate telecommunications service offerings.

27 Big River also needs to adequately ensure that the company will accurately track and
28 compile future quarterly quality of service reports. Although Big River has since submitted
29 delinquent quality of service reports, Staff questions Big River's tracking and compilation of

Surrebuttal Testimony of
John VanEschen

1 the results contained in these reports. Both the tariffing and quality of service report concerns
2 need to be addressed before the Commission authorizes Big River to expand service into BPS
3 Telephone Company's service territory.

4 Q. What is your understanding of Mr. Schoonmaker's concerns regarding Big
5 River's compliance with Section 392.451.1(1)?

6 A. This section states, "[T]he applicant shall, throughout the service area of the
7 incumbent local exchange telecommunications company, offer all telecommunications
8 services which the commission has determined are essential for purposes of qualifying for
9 state universal service fund support..." Mr. Schoonmaker raises several issues. One issue
10 raised by Mr. Schoonmaker is whether Big River will offer service to end users in areas not
11 served by its cable TV partners and whether the services will be the same in those areas
12 where Big River does offer service. A second issue is whether Big River or the cable TV
13 partner is providing phone service. This confusion is compounded by the concern that Big
14 River's tariff fails to adequately show the rates and services offered to customers.

15 Q. Do you share Mr. Schoonmaker's concern as to whether Big River will offer
16 service to end users in areas not served by its cable TV partners?

17 A. Perhaps. Big River plans to enter into an interconnection agreement with BPS
18 so Big River can provide service to customers that are not accessible via the cable TV
19 partner's network. Mr. Schoonmaker points out that BPS currently does not have an
20 interconnection agreement with Big River. Mr. Schoonmaker also suggests Big River serves
21 very few, if any, customers using telephone company leased or resold facilities. I agree with
22 Mr. Schoonmaker that until an interconnection agreement is reached between the two
23 companies this aspect of Big River's plan appears to be in doubt. However, based on Big

Surrebuttal Testimony of
John VanEschen

1 River's most recent annual report, Big River has been providing service to customers using
2 telephone company leased or resold facilities.

3 A company's annual report, if correctly reported, will reflect that the company is
4 using an incumbent telephone company's facilities in a variety of ways. The Commission's
5 annual report form uses terms such as "pure resale" and "other resale". Providing local
6 telephone service on a pure resale basis is where a company is offering the incumbent
7 telephone company's service under the CLEC's name and rates. The rates a CLEC pays the
8 incumbent local telephone company for a pure resale arrangement are discounted retail rates
9 of the incumbent local telephone company. Providing local telephone service on an other
10 resale basis refers to CLECs providing service where the CLEC leases facilities from the
11 incumbent local telephone company at a negotiated or arbitrated rate or through an
12 arrangement purchased via a commercial agreement. Providing local telephone service on a
13 pure resale basis or using an other resale basis are ways a CLEC could use the incumbent
14 telephone company's facilities.

15 According to Big River's latest annual report, Big River has served customers on a
16 pure resale and other resale basis. More specifically, Big River appears to have been serving
17 ** _____ ** residential lines on an other resale basis and ** ____ ** residential lines on a pure
18 resale basis. For business service, Big River served ** _____ ** business lines on an other
19 resale basis and ** ____ ** lines served on a pure resale basis. This data indicates Big River
20 has used an incumbent local telephone company's facilities to provide local telephone service
21 in areas of its currently certificated service territory. In my opinion, the fact that Big River
22 and BPS do not currently have an interconnection agreement should not hold up Big River's
23 request to enter BPS's territory.

Surrebuttal Testimony of
John VanEschen

1 Q. Do you share Mr. Schoonmaker's concern as to whether Big River or the cable
2 TV partner is providing phone service?

3 A. To a certain degree I share Mr. Schoonmaker's concern. Browsing the web
4 sites of Big River's cable TV partners suggests the cable TV company might be offering local
5 phone service. Customers can directly call Big River's cable TV partner to request phone
6 service or even repair phone service. Customers can also be directly billed by Big River's
7 cable TV partner. All of these factors complicate the issue of determining which entity is
8 providing basic local phone service to the customers. In prior cases where it became an issue
9 as to whether Big River or the cable TV partner is providing local voice service, Big River
10 has consistently maintained that it is the provider of local voice service. Likewise Big
11 River's cable TV partner has consistently denied being the provider of local voice service. In
12 this respect, the Commission Staff has not pressed the issue.

13 Mr. Schoonmaker raises a concern that Big River's tariff may not show the rates
14 offered to customers. I agree with Mr. Schoonmaker's concern and if Big River continues to
15 claim it is the entity providing telecommunications services I recommend Big River's tariff
16 be updated to clearly identify the services and rates offered to customers for
17 telecommunications services. Big River adopted the tariff of LDD, Inc. on October 31, 2001
18 and to a large extent the tariff has remained relatively unchanged. Section 5.0 of Big River's
19 tariff beginning on Original Page 68 of Tariff No. 2 describes the company's local exchange
20 services. The tariff appears outdated in that it appears to only describe the rates, terms and
21 conditions for local exchange services provided by Big River through the resale of
22 Southwestern Bell's local exchange services. Big River's tariff fails to include other
23 arrangements whereby Big River provides local exchange services. In my opinion, this

Surrebuttal Testimony of
John VanEschen

1 aspect of Big River's tariff clearly needs revision. Likewise, I also am unable to locate a rate
2 of \$34.95 for digital phone service as reflected in RCS Schedule 2 of Mr. Schoonmaker's
3 testimony. Big River's tariff should describe the rates, terms and conditions of Big River's
4 current regulated intrastate telecommunications service offerings. Big River needs to
5 adequately address such tariff concerns before the Commission grants Big River
6 authorization into BPS territory.

7 Q. What is your understanding of Mr. Schoonmaker's concerns regarding Big
8 River's compliance with Section 392.451.2(3)?

9 A. This section states, "[M]ake such reports to and other information filings with
10 the commission as is required of the incumbent local exchange telecommunications company
11 with which the applicant seeks to compete..." Mr. Schoonmaker questions if Big River is
12 supplying all the reports required of BPS Telephone Company. He specifically identifies the
13 following reporting requirements on pages 6 and 7 of his rebuttal testimony: an annual
14 financial report as required by 4 CSR 240-3.540, quarterly quality of service reports, a
15 disaster recovery plan, an annual report on gross intrastate operating revenues as required by
16 Section 386.370.5, and reports to the Missouri USF administrator.

17 Q. Do you share Mr. Schoonmaker's concern that Big River may not be
18 submitting all necessary reports to the Commission?

19 A. Only to a certain extent. As pointed out in my rebuttal testimony Big River
20 has been delinquent in the submission of its quarterly quality of service reports. Big River
21 has since submitted quality of service reports for quarters 2, 3 and 4 for 2005 and quarters 1,
22 2, 3 and 4 for 2006. Staff has reviewed these reports and we have also met with a Big River
23 official to discuss these reports. Based on this review, the company needs to make

Surrebuttal Testimony of
John VanEschen

1 adjustments in tracking and compiling the results contained in its quality of service reports.
2 At this time it is unclear if Big River will be able to make these adjustments. Big River needs
3 to submit an acceptable plan to ensure the company will address Staff concerns regarding the
4 tracking and compilation of its quarterly reports. If Big River submits an acceptable plan,
5 Staff intends to make a filing in this case informing the Commission that an acceptable plan
6 has been submitted.

7 To address Mr. Schoonmaker's other reporting concerns; Big River is currently
8 compliant in the submission of an annual report, disaster recovery plan, Missouri USF reports
9 and an annual report on gross intrastate operating revenues otherwise known as its Statement
10 of Revenue.

11 Q. Do you agree with Mr. Schoonmaker that Big River should be required to
12 submit an annual report that is in the same format as required by incumbent local telephone
13 companies?

14 A. No. The Commission has two different annual report forms. One form is for
15 incumbent local exchange companies (ILECs) while a second form is intended for
16 competitive local exchange carriers (CLECs). The Commission should allow Big River to
17 continue to use the CLEC annual report form. BPS is a rate-of-return regulated company
18 with carrier of last resort obligations. In contrast, Big River is a competitively classified
19 company without carrier of last resort obligations. In my opinion, these distinctions are
20 relevant in maintaining different annual report forms for these two companies.

21 Q. What is your understanding of Mr. Schoonmaker's concerns regarding Big
22 River's compliance with Section 392.451.2(4)?

Surrebuttal Testimony of
John VanEschen

1 A. Section 392.451.2(4) states, “(C)omply with all of the same rules and
2 regulations as the commission may impose on the incumbent local exchange
3 telecommunications company with which the applicant seeks to compete.” Mr. Schoonmaker
4 states that waiving any statutes and rules for Big River is not consistent with the plain reading
5 of the law.

6 Q. Do you agree with Mr. Schoonmaker that the Commission should not waive
7 any statutes or rules for Big River?

8 A. No. Big River should be allowed to retain the same list of waivers normally
9 granted to CLECs. These waivers are as follows:

10	392.210.2:	Uniform system of accounts.
11	392.240.1	Rates-rentals-services and physical connections.
12	392.270	Valuation of property (ratemaking).
13	392.280	Depreciation accounts.
14	392.290	Issuance of securities.
15	392.300.2	Acquisition of stock.
16	392.310	Stock and debt issuance.
17	392.320	Stock dividend payment.
18	392.330	Issuance of securities, debts and notes.
19	392.340	Reorganization(s)
20	4 CSR 240-10.020	Depreciation fund income.
21	4 CSR 240-30.040	Uniform system of accounts.
22	4 CSR 240-3.550(5)(C)	File exchange boundary maps

23
24 Section 392.420 specifically authorizes the Commission in connection with the issuance or
25 modification of a certificate of service authority to suspend or modify the application of its
26 rules or the application of any statutory provision contained in sections 392.200 to 392.340 if
27 such waiver is otherwise consistent with the other provisions and the purposes of the chapter.
28 The issue of whether waivers should be allowed for Big River if the Commission grants Big
29 River’s request to enter BPS territory is a legal issue. From my own perspective, I fail to
30 understand the real purpose of requiring a CLEC to essentially fall under a greater degree of

Surrebuttal Testimony of
John VanEschen

1 regulation when competing in the territory of a small incumbent local telephone company.
2 Big River is a competitively classified telecommunications company while BPS Telephone
3 Company is under rate of return regulation. This distinction warrants a rate of return
4 regulated company to comply with certain financial requirements but it makes little sense to
5 apply these same requirements to a competitively classified company. The waivers listed
6 above are primarily related to financial requirements. Although I generally support the
7 concept of regulatory parity, the Commission should not blindly try to hold CLECs to exactly
8 the same standards as ILECs unless there is a compelling reason to do so.

9 Q. Can you summarize your recommendation to the Commission?

10 A. Yes. Big River should address two issues before the Commission grants Big
11 River's request to expand into BPS Telephone Company's territory.

12 One issue is if Big River continues to maintain that it is the provider of
13 telecommunications services rather than the cable TV partner, then Big River should
14 adequately address concerns raised regarding its tariff. As previously pointed out in Mr.
15 Schoonmaker's testimony and my surrebuttal testimony Big River's tariff does not appear to
16 identify rates for telecommunications services offered by the company.

17 A second issue that Big River needs to address concerns its quarterly quality of
18 service reports. Although the company has submitted delinquent reports since I filed rebuttal
19 testimony the company has not appropriately tracked and compiled the information. Big
20 River needs to submit an acceptable plan to ensure the company will address Staff concerns
21 regarding the tracking and compilation of future quarterly reports.

22 If Big River adequately addresses these issues Staff intends to make a subsequent
23 filing in this case. If such a filing is made by Staff indicating the company has resolved such

Surrebuttal Testimony of
John VanEschen

1 issues then Staff will recommend the Commission authorize Big River to operate in BPS
2 territory, grant the waivers previously addressed in my testimony and maintain Big River's
3 competitive status. If Big River fails to adequately address these issues within a reasonable
4 time period as determined by the Commission then Staff recommends the Commission deny
5 Big River's request.

6 Q. Does this conclude your surrebuttal testimony?

7 A. Yes, it does.