Exhibit No.:

Issue: Expansion of Authority Witness: Gerard J. Howe

Sponsoring Party: Big River Telephone

Company, LLC

Type of Exhibit: Surrebuttal Testimony Case No.: TA-2007-0093

## BIG RIVER TELEPHONE COMPANY, LLC

## SURREBUTTAL TESTIMONY

OF

GERARD J. HOWE

TA-2007-0093

January 31, 2007

STATE OF MISSOUC COUNTY OF St Louis Co	) ) SS.
COUNTY OF St. LOUIS CO	)
BEFORE THE MISSOURI PU	BLIC SERVICE COMMISSION
In the Matter of the Application of Big River Telephone Company, LLC to Expand its Certificate of Basic Local Service Authority to include provision of Basic Local Exchange Telecommunications Services in the Exchanges of BPS Telephone Company and to Continue to Classify the Company and its Services as Competitive.	) ) ) Case No. TA-2007-0093 ) ) ) ) )
AFFIDAVIT OF	GERARD J. HOWE
sworn, deposes and states:  1. My name is Gerard J. Howe. I LLC.  2. Attached hereto and made a Testimony in the above-referenced case.	awful age, sound of mind and being first duly am the CEO for Big River Telephone Company, part hereof for all purposes is my Surrebuttal that my statements contained in the attached we knowledge and belief.  Security Contained In the attached we knowledge and belief.
SUBSCRIBED AND SWORN to before 2007.	ore me. a Notary Public. this <u>30th</u> day of Amduw Thomas Schwauther Notary Public
Not S Cc	W THOMAS SCHWANTNER ary Public - Notary Seal TATE OF MISSOUR! Jefferson County Ommission #06893876 mission Expires 5 / 31 / 2010

## PRE-FILED SURREBUTTAL TESTIMONY OF GERARD J. HOWE

I	Q.	PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.
2	A.	My name is Gerard J. Howe. My business address is 24 So. Minnesota Ave., Cape
3		Girardeau, Missouri, 63703.
4	Q.	DID YOU PREVIOUSLY SUBMIT DIRECT TESTIMONY IN THIS CASE?
5	<b>A.</b>	Yes.
6	Q.	WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?
7	<b>A.</b>	The purpose of my surrebuttal testimony is to respond to the rebuttal testimony
8		submitted by staff witness John Van Eschen and BPS witness Schoonmaker.
9	Q.	IN HIS REBUTTAL TESTIMONY, STAFF WITNESS JOHN VAN ESCHEN
10		INDICATES THAT STAFF ONLY HAS ONE CONCERN WITH BIG RIVER'S
11		APPLICATION, INVOLVING SUBMISSION OF QUARTERLY QUALITY OF
12		SERVICE REPORTS. HOW DO YOU RESPOND TO THAT CONCERN?
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1	<b>A.</b>	While Staff otherwise supports our application, Mr. Van Eschen appropriately brings to
2		the Commission's attention that Big River had not submitted some required quarterly
3		quality of service reports.
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5		Once Staff informed Big River of this oversight, we immediately commenced efforts to
6		generate the required reports. We have now submitted the reports, which show that we
7		are currently meeting all the applicable standards. Unfortunately, with a change in
8		personnel we had a breakdown in our submittal process, but that has now been
9		corrected. We regret the oversight and are committed to prevent any recurrence. We
10		have met with Staff and discussed our reports and plan to immediately address their
11		remaining concerns about the manner in which we track and compile the data.
12		
13	Q.	ON PAGE 3 OF HIS REBUTTAL TESTIMONY, BPS WITNESS
14		SCHOONMAKER TESTIFIES THAT BIG RIVER'S APPLICATION IS
15		UNIQUE; DO YOU AGREE?
16 17	<b>A.</b>	No. For example, the Commission previously granted authority to Missouri State
18		Discount Telephone to provide basic local telecommunications service in all exchanges
19		in the state, including those served by BPS. (Case No. TA-2001-0334, see Schedule 2).
20		The authority granted was not limited, so I believe that Mr. Schoonmaker is incorrect
21		when he states that our application is the first for facilities-based authority. I recognize
22		and accept Mr. Van Eschen's testimony (page 9) that there are few examples of prior

1		authorizations of basic local competition in small ILEC exchanges, but Mr.
2		Schoonmaker's assertion that we are the first is incorrect.
3		
4	Q.	BPS WITNESS SCHOONMAKER ASSERTS THAT BIG RIVER HAS NOT
5		MET THE APPLICABLE STANDARDS REGARDING ITS APPLICATION TO
6		EXPAND ITS SERVICE AREA SO THAT IT CAN COMPETE IN THE BPS
7		EXCHANGES. DO YOU AGREE?
8 9	<b>A.</b>	No. I believe through our Application and my Direct Testimony, Big River has satisfied
10		the requirements of the statutes and rules that govern issuance of the requested
11		expansion of our certificate of authority to include the exchanges served by BPS,
12		continuing to classify Big River and its services as competitive, and continuing to grant
13		the requested waivers. Staff witness Van Eschen agrees. (Van Eschen Rebuttal).
14		
15		BPS witness Schoonmaker inaccurately disputes the point, but only as to compliance
16		with Section 392.451.2(4). (Schoonmaker Rebuttal p. 5).
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18		I re-read Section 392.451.2(4) and I believe it states the Commission should establish
19		rules that at a minimum require a CLEC to comply with all of the same rules and
20		regulations as the commission may impose upon the incumbent. It seems significant
21		to me that this provision does not reference statutes, just 'rules and regulations as the
22		commission may impose'. The rate of return regime imposed by statute (392.240.1) on

incumbents should not apply to competitors and the Commission should waive that statute as to Big River as it always has done for CLECs pursuant to Section 392.361.5. It is my understanding that once a statute is waived, the Commission's authority to apply the underlying regulations to the CLEC is removed, making waiver of such rules seem completely appropriate. After certification and upon Big River providing service in BPS's service area, it would appear that under section 392.245 BPS will be eligible to elect price cap regulation, so even BPS would not be subject to rate of return regulation. But whether BPS takes advantage of that option, Big River should not be subject to rate of return regulation. Section 392.451.2(4) should be interpreted in light of that reality, so as not to require Big River to meet regulations which only pertain to the exercise of rate of return regulation. In addition, it appears to me that no purpose would be served if the Commission were to suddenly refuse to continue to waive rule 4 CSR 240-10.020 (income on depreciation fund investments) and rule 4 CSR 240-30.040 (uniform system of accounts). The only other rule for which Big River has applied for waiver as to the BPS service area is 4 CSR 240-3.550(5)(C) which concerns exchange boundary maps. Given that Big River must follow BPS's exchange boundaries, submission of an additional map would seem superfluous.

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1 2 From my perspective, there does not seem to be a legitimate issue underlying Mr. 3 Schoonmaker's concern with the limited waivers sought by Big River. BPS has 4 attempted to create an issue where none exists presumably because it seeks to forestall 5 competition, to the public's detriment. 6 7 Based on my review of Commission records, I understand that when the Commission 8 certificated Missouri Discount Telephone (MSDT) to offer basic local service in the 9 BPS exchanges, it waived these same statutes and rules with BPS's stipulated consent. 10 So BPS has not consistently opposed granting standard waivers of statutes and rules to 11 CLECs seeking authority to compete in its exchanges and BPS has offered no reasons 12 why it opposes granting of the waivers for Big River, yet consented to the same waivers 13 for another CLEC, MSDT. 14 15 I understand, in Case No. TO-2001-334, BPS joined in a stipulation submitted on or 16 about February 28, 2001 that called for the Commission to grant a certificate of 17 authority to MSDT to provide basic local service throughout the state including in the

BPS exchanges. BPS and the other parties stipulated that the Commission should grant to MSDT the same standard waivers that Big River now requests. A copy of the stipulation is attached hereto as Schedule 1. In March 2001, in reliance on the stipulation, the Commission issued its Order granting the requested certificate of

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1 authority to MSDT, and granted the requested waivers. A copy of the order is attached 2 hereto as well as Schedule 2. 3 4 The background of BPS's support for MSDT's application for authority and waivers is 5 illuminating. In May 2002 the Commission commenced proceedings regarding Staff's 6 complaint that BPS was over-earning by \$852,419 annually (Case No. TC-2002-1076). 7 It appears that BPS twice tried to fend off that complaint by electing price cap 8 regulation under Section 392.245; both times in reliance upon the existence of MSDT 9 as an authorized competitor. Both times the Commission denied BPS's election. (Case 10 Nos. IO-2003-0012 and IO-2004-0597, copies of orders attached as Schedules 3 and 4 11 respectively). Ultimately, I understand that the over-earnings complaint was resolved in 12 April 2005 when BPS stipulated to a reduction of \$460,000. (A copy of the final order 13 in the complaint proceeding is attached as Schedule 5). 14 15 While the over-earnings complaint proceeding was pending, and as it found that the 16 Commission was not going to accept competition from MSDT as a sufficient basis for a 17 price cap election, BPS repeatedly urged Big River to become its competitor as well. 18 At the time, it was not a high priority expansion for Big River. But now that the over-19 earnings complaint has been resolved, and with the amendment of the price cap election 20 standards by the Missouri Legislature in 2005 (SB 237) to allow wireless competitors 21 to provide a basis for an election by a small ILEC in lieu of CLEC competition, it

1		appears BPS no longer needs Big River as a competitor. And now BPS asserts that the
2		standard waivers which it stipulated were appropriate for MSDT are not legally
3		permissible for Big River. Obviously, Big River disagrees.
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5		The Commission should take notice of the foregoing orders and pleadings regarding
6		MSDT and BPS.
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8	Q.	ON PAGES 6 AND 7 OF HIS TESTIMONY, BPS WITNESS SCHOONMAKER
9		LISTS VARIOUS REPORTS AND STATES THAT BIG RIVER MUST FILE
10		THEM WITH THE COMMISSION. DO YOU HAVE ANY COMMENTS
11		ABOUT THIS LIST OF REPORTS?
12 13	<b>A.</b>	While I generally agree with his list of required reports, BPS witness Schoonmaker
14		incorrectly asserts that annual reports for a CLEC must be in the same format as ILEC
15		reports. (Schoonmaker Rebuttal p. 6-7).
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17		After reviewing Mr. Schoonmaker's testimony, I re-read Section 392.451.2(3) which
18		states that the Commission should establish rules that at a minimum require a
19		competing provider of basic local telecommunications service in an area served by a
20		small incumbent (less than 100,000 access lines in the state per 386.020(30)) to make
21		reports and other informational filings with the Commission as required of the
22		incumbent. The statute does not state that the Commission must direct both incumbent

and competitor to use exactly the same reporting format. Hence, it remains appropriate for the Commission to require BPS to use the prescribed Incumbent Local Exchange Carrier annual report form, and to require Big River to use the prescribed Competitive Local Exchange Carrier annual report form. As already indicated, the Commission should not impose rate of return regulation upon a CLEC. Likewise, no purpose would be served to require Big River to incur the cost of submitting information that would only be pertinent to a company subject to rate of return regulation, such as is found in the ILEC annual report form. Further, I believe that the aforementioned Section 392.451.2(3) should be interpreted in conjunction with Section 392.361.5, which I believe served as the basis upon which the Commission originally granted Big River waivers with respect to certain Commission rules. I understand 392.361.5 continues to authorize the waivers requested. Again from reading 392.361.5, I also understand that the only exceptions to the Commission's waiver authority are set forth in Section 392.390. Again, just a simple reading of 392.390(1) reveals that it expressly allows for different forms of annual reports for different companies. ON PAGES 7 TO 9 OF HIS REBUTTAL TESTIMONY BPS WITNESS SCHOONMAKER EXPRESSES CONCERN ABOUT WHETHER BIG RIVER

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1		WILL OFFER SERVICE TO END USERS IN AREAS NOT SERVED BY
2		CABLE TELEVISION FACILITIES. HOW DO YOU RESPOND?
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4	A.	Mr. Schoonmaker raises unfounded concerns about how Big River will provide service.
5		(Schoonmaker Rebuttal p. 7). As stated in the Application and in my Direct
6		Testimony, Big River will directly offer services throughout the three exchanges.
7		
8		Mr. Schoonmaker apparently misunderstood my direct testimony, where in the course
9		of discussing Big River's use of cable television facilities I indicated that we served
10		about 4,500 customers using such facilities. Big River also serves over 14,000 access
11		lines by means of resale of ILEC services and use of ILEC UNE facilities. There
12		simply is no factual basis for Mr. Schoonmaker's "concern" about the number of
13		customers that Big River serves using "telephone company lease or resold facilities".
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15	Q.	AT PAGE 9 OF HIS REBUTTAL TESTIMONY BPS WITNESS
16		SCHOONMAKER STATES THAT BIG RIVER CURRENTLY DOES NOT
17		HAVE AN INTERCONNECTION AGREEMENT WITH BPS. HOW DO YOU
18		RESPOND?
19	A.	BPS witness Schoonmaker is correct that Big River does not yet have an
20		interconnection agreement with BPS. As I stated in my direct testimony at pages 6-7,
21		Big River will seek an interconnection agreement with BPS. We will pursue such an

agreement both for the general purpose of interconnection and for the purpose of providing services to customers that cannot be served by cable television facilities. Of course, we also have the option of installing our own facilities if that makes sense to us and the customer. Based on my previous negotiations with other small incumbent telephone companies, I understand that as an incumbent local exchange carrier, BPS is obligated under Section 251(a) of the Telecommunications Act of 1996 to interconnect directly or indirectly with Big River's facilities and equipment. I understand that it is also obligated under Section 251(b) of the Act to allow Big River to resell its telecommunications services, provide number portability, provide dialing parity and permit nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings, afford access to poles, ducts, conduits and rights-of-way, and establish reciprocal compensation arrangements for the transport and termination of telecommunications. Further, it is my understanding that under Section 251(c), BPS must also negotiate interconnection agreements, provide interconnection, unbundled network elements, resale, notice of changes, and collocation. I do also understand that Section 251(f) provides for an exemption from Section 251(c) for rural carriers until this Commission reviews a bona fide request, and allows this Commission to grant certain suspensions and modifications to obligations under

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Sections 251(b) and (c) based on specific standards. However, I do not see how such provisions could provide a basis for denying Big River's Application in this case. To the contrary, it is customary and appropriate for Big River to obtain its certificate first and then pursue an interconnection agreement with BPS. This is what Big River has done in other states. Whatever obstacles BPS may try to raise at that point to delay our entry into BPS' markets should be separately addressed by the Commission. AT PAGES 9 TO 11 OF HIS REBUTTAL TESTIMONY BPS WITNESS SCHOONMAKER EXPRESSES CONCERN ABOUT WHETHER BIG RIVER WILL OFFER DIFFERENT SERVICES TO CUSTOMERS SERVED THROUGH CABLE TELEVISION FACILITIES VERSUS THROUGH TELEPHONE COMPANY FACILITIES. HOW DO YOU RESPOND? When required by law, the services will be the same throughout these exchanges, at the same prices. When the law allows different services and/or pricing, Big River will certainly utilize available flexibility to better address customer needs. I am aware of recent changes in Missouri statutes that were strongly promoted by ILECs which include the flexibility to offer packages of services under section 392.200.12 without the constraints that have applied to individual services concerning price differentiation and exchange-wide offerings. Big River is entitled to offer such packages of services just as the ILECs who sought this flexibility. I believe Mr. Schoonmaker's implication

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1		that Big River must in all instances make identical offerings without regard to the
2		underlying facilities is simply incorrect.
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4		The Poplar Bluff "example" mentioned by Mr. Schoonmaker at pages 9-10 of his
5		Rebuttal testimony is illustrative, for the package of services in question obviously is
6		not basic local service or the set of "essential services", but rather is a package
7		including broadband internet access. Big River provides various other services and
8		packages in Poplar Bluff using both cable television facilities and large incumbent
9		AT&T Missouri facilities.
10		
11		It is worth noting that Big River currently is not authorized to provide service in a small
12		ILEC's service area in Missouri, so its current operations cannot be examined for
13		compliance with Missouri requirements regarding service in small ILEC exchanges that
14		do not yet apply to it.
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16	Q.	AT PAGES 10-11 BPS WITNESS SCHOONMAKER EXPRESSES CONCERNS
17		ABOUT CONSISTENCY BETWEEN BIG RIVER'S SERVICE OFFERINGS
18		AND ITS TARIFFS. HOW DO YOU RESPOND?
19	A.	Big River's service offerings include voice-over-internet-protocol (VOIP) services.
20		Until recently, Big River understood from FCC decisions that such services were not
21		subject to regulation by the Commission. However, Big River now understands from

1		proceedings involving other companies that the Commission is asserting jurisdiction
2		over such services. Big River does not intend to dispute the matter with the
3		Commission and will revise its tariffs accordingly to include its VOIP offerings.
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5	Q.	MR. SCHOONMAKER ALSO TESTIFIES THAT HE COULD NOT FIND
6		INFORMATION ABOUT ALL OF BIG RIVER'S SERVICES ON ITS
7		WEBSITE. HOW DO YOU RESPOND?
8	A.	We provide information about our services in various ways. We do not provide
9		information about each and every service in all media. Further, such information
10		changes frequently.
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12	Q.	AT PAGES 11-14 OF HIS REBUTTAL TESTIMONY BPS WITNESS
13		SCHOONMAKER EXPRESSES CONCERN THAT BIG RIVER DOES NOT
14		DIRECTLY PROVIDE SERVICES TO ITS CUSTOMERS. HOW DO YOU
15		RESPOND?
16	A.	Mr. Schoonmaker is incorrect. Big River directly provides service to its customers.
17		When a cable television provider is also involved, that company frequently markets Big
18		River's services in conjunction with its own cable television offerings, but the customer
19		signs an agreement with Big River for the telephone service and Big River is
20		responsible for providing it. Our cable partners are promoting our service and are not
21		offering their own services in competition with ours. Big River is normally identified as

the provider on the bill to the customer, even when the cable company is responsible for the billing process. A sample of the customer agreement is attached hereto as Schedule 6. As indicated, with the Commission now asserting jurisdiction over VOIP services, Big River is re-examining how such services are being offered to the public and will revise its tariffs accordingly. Q. DO YOU HAVE ANY FURTHER RESPONSE TO MR. SCHOONMAKER? A. Only that I would hope that the Commission recognizes that BPS has become involved in this case in a fairly transparent effort to obstruct competition from Big River, and its opposition is not in the public interest. As Mr. Van Eschen and I have both testified, granting Big River's Application will promote the public interest by providing customers with a meaningful choice. DOES THAT CONCLUDE YOUR TESTIMONY? Q.

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