

In the Matter of the Application of Big River Telephone Company, LLC, for Certificates of Service Authority to Provide Basic Local, Local Exchange, Exchange Access, and Interexchange Telecommunications Services in the State of Missouri and to Classify Said Services and the Company as Competitive.

Exhibit E
12/13/2006

were no applications to intervene. The Staff of the Commission filed a recommendation on August 6, 2001. Staff filed an amendment to its recommendation on August 8, 2001.

Findings of Fact

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. [2] Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application. The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

Big River is a Delaware limited liability company with principal offices located at 24 South Minnesota, Cape Girardeau, Missouri 63072. Commission Rule 4 CSR 240-2.060 requires a foreign company applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of State showing that it is authorized to do business in Missouri, a description of the types of service it intends to provide, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. Big River has provided the required documentation.

Exhibit B to the application lists the names and qualifications of Big River's management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry. Staff stated that in its opinion Big River possesses sufficient technical and managerial experience to provide basic local exchange telecommunications service.

Big River submitted as Exhibit C to its application the necessary financial information. In addition, Staff stated that in its opinion Big River passes the minimum standard to provide basic local exchange telecommunications service.

The Commission finds that Big River possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

Big River stated in its application that it will provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. In its recommendation, Staff concurs with this allegation. The Commission finds that Big River proposes to offer basic local services that satisfy the minimum standards established by the Commission.

Big River is seeking certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by Southwestern Bell Telephone Company. Big River is not asking for certification in any area that is served by a small incumbent local exchange carrier (ILEC). Staff stated in its recommendation that in its opinion, Big River has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange. The Commission finds that Big River has sufficiently identified the geographic area in which it proposes to offer service and that Big River has demonstrated that the area follows ILEC exchange boundaries and is no smaller than an exchange.

Big River states that all the services it proposes to offer will be subject to sufficient competition to justify a lesser degree of regulation. Big River is proposing to offer all forms of basic local exchange and interexchange telecommunications service. Big River intends to provide all forms of resold and facilities-based basic local, local exchange, and interexchange telecommunications services in the state of Missouri.

Big River stated that it will offer basic local telecommunications service as a separate and distinct service and that, in compliance with Section 392.455(5), it will provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it will offer basic local services. In its recommendation,

Staff concurs with this statement. Therefore, the Commission finds that Big River will provide basic local exchange service as a separate and distinct service and that Big River has committed to provide equitable access.

Staff recommends that Big River be classified as a competitive telecommunications carrier. Staff also recommends that Big River's certificate be conditioned upon certain limitations on its ability to charge for its access services and that Big River's certificate become effective when its tariff becomes effective. Staff's recommended conditions are as follows:

- A. If Big River provides access service, its originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for each ILEC within whose service area Big River seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo.
- B. The service authority and service classification for switched exchange access is granted conditioned on the continued applicability of Section 392.200, RSMo, and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be made pursuant to Sections 392.220 and 392.230, RSMo, and not Sections 392.500 and 392.510, RSMo.
- C. If the directly competing ILEC, in whose service area Big River is operating, decreases its originating and/or terminating access service rates, Big River shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

The Commission finds that there is sufficient evidence to find that Big River and its services should be classified as competitive.

In its Motion for Expedited Treatment, Big River requested that the Commission issue its order in this case prior to August 15, 2001. Staff indicated that it has no objection to the company's request for expedited treatment.

Staff notes that Big River requests that the Commission grant it certificate of

service authority to provide “basic local, local exchange, exchange access and interexchange telecommunications services.” Staff points out that neither the Revised Statutes of Missouri nor the Commission’s rules provide for a certificate of service authority to provide exchange access alone. However, Staff states that the provision of basic local exchange services allows for the provision of exchange access. Staff also recommends that the Commission approve Big River’s certificate of service authority to provide intrastate interexchange services.

Conclusions of Law

Certificate of Service Authority

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. Big River has requested certification under Sections 392.410 - 392.450, which permit the Commission to grant a certificate of service authority where it is in the public interest. The federal Telecommunications Act of 1996 and Section 392.455 were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers.^[3]

Section 392.455, RSMo 2000, sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants. A new entrant must: (1) possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service; (2) demonstrate that the services it proposes to offer satisfy the minimum standards established by the Commission; (3) set forth the geographic area in which it proposes to offer service and demonstrate that such area follows exchange boundaries of the ILEC and is no smaller than an exchange; and (4) offer basic local telecommunications service as a separate and distinct service. In addition, the Commission must give due consideration to equitable access for all Missourians to affordable telecommunications services,

regardless of where they live or their income.

The Commission finds that Big River meets the statutory requirements for provision of basic local telecommunications services and has stated it will abide by those requirements in the future. The Commission determines that granting Big River a certificate of service authority to provide basic local exchange telecommunications services is in the public interest.

Competitive Classification

Big River requested that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived. The Commission may classify a telecommunications provider as a competitive company if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation.^[4] In making that determination, the Commission may consider such factors as market share, financial resources and name recognition, among others.

^[5] In addition, the Commission may classify a telecommunications company as a competitive telecommunications company only upon a finding that all telecommunications services offered by such company are competitive telecommunications services pursuant to Section 392.361.3. The Commission has found that whether a service is competitive is a subject for case-by-case examination and that different criteria may be given greater weight depending upon the service being considered.^[6]

The Commission finds that competition in the basic local exchange and intrastate interexchange telecommunications market is in the public interest. The Commission has found that all the telecommunications services offered by Big River are competitive telecommunications services and that the telecommunication services Big River proposes to offer are subject to sufficient competition to justify a lesser degree of regulation.

Therefore, the Commission concludes that Big River should be classified as a competitive company.

Waivers and Conditions

Subsection 392.470.1 authorizes the Commission to impose conditions upon a telecommunications service provider which the Commission deems reasonable and necessary and which are in the public interest and consistent with the purposes of Chapter 392. Sections 392.361 and .420 authorize the Commission to modify or suspend the application of its rules and certain statutory provisions for companies classified as competitive or transitionally competitive.

The Commission finds that Big River has met the requirements of 4 CSR 240-2.060 for applicants for certificates of service authority to provide telecommunications services.

Big River requested a waiver of the following statutes: Sections 392.210.2, 392.240(1), 392.270, 392.280, 392.290, 392.300.2, 392.310, 392.320, 392.330, and 392.340. Big River also requested that the application of these Commission rules be waived: 4 CSR 240-10.020, 4 CSR 240-30.010(2)(C), 4 CSR 240-30.040, 4 CSR 240-32.030(4)(C), 4 CSR 240-33.030, and 4 CSR 240-35.

The Commission has found that the telecommunication services Big River proposes to offer are subject to sufficient competition to justify a lesser degree of regulation. The Commission has also found that Big River is a competitive company. Therefore, the Commission determines that Big River should be granted the same waivers of the statutes and rules as the Commission usually grants to competitive companies. The waivers are set out in the ordered paragraph below.

The Commission also finds that the conditions that the Staff recommends are reasonable and necessary to protect the public interest and that they further the purposes of Chapter 392 as stated in Section 392.185. Therefore, the Commission finds

that Big River's competitive classification and certification should be expressly conditioned as recommended by Staff and as ordered below.

IT IS THEREFORE ORDERED:

1. That Big River Telephone Company, LLC, is granted a certificate of service authority to provide basic local telecommunications services in the state of Missouri, subject to the conditions of certification set out below and to all applicable statutes and Commission rules except as specified in this order.

2. That Big River Telephone Company, LLC, is granted a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to all applicable statutes and Commission rules except as specified in this order.

3. That Big River Telephone Company, LLC, is granted a certificate of service authority to provide local exchange telecommunications services in the state of Missouri limited to providing dedicated private line services, subject to all applicable statutes and Commission rules except as specified in this order.

4. That Big River Telephone Company, LLC, is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived for the provision of basic local telecommunications services:

Statutes

392.210.2	-	uniform system of accounts
392.240.1	-	rates-rentals-service & physical connections
392.270	-	valuation of property (ratemaking)
392.280	-	depreciation accounts
392.290	-	issuance of securities
392.300.2	-	acquisition of stock
392.310	-	stock and debt issuance
392.320	-	stock dividend payment
392.340	-	reorganization(s)
392.330	-	issuance of securities, debts and notes

Commission Rules

4 CSR 240-10.020	-	depreciation fund income
4 CSR 240-30.010(2)(C)	-	posting of tariffs
4 CSR 240-30.040	-	uniform system of accounts
4 CSR 240-32.030(4)(C)	-	exchange boundary maps
4 CSR 240-33.030	-	minimum charges
4 CSR 240-35	-	reporting of bypass and customer-specific arrangements

5. That Big River Telephone Company, LLC, is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived for the provision of interexchange and nonswitched local exchange telecommunications services:

Statutes

392.210.2	-	uniform system of accounts
392.240.1	-	rates-rentals-service & physical connections
392.270	-	valuation of property (ratemaking)
392.280	-	depreciation accounts
392.290	-	issuance of securities
392.300.2	-	acquisition of stock
392.310	-	stock and debt issuance
392.320	-	stock dividend payment
392.340	-	reorganization(s)
392.330	-	issuance of securities, debts and notes

Commission Rules

4 CSR 240-10.020	-	depreciation fund income
4 CSR 240-30.010(2)(C)	-	posting of tariffs
4 CSR 240-30.040	-	uniform system of accounts
4 CSR 240-33.030	-	minimum charges
4 CSR 240-35	-	reporting of bypass and customer-specific arrangements

6. That if Big River Telephone Company, LLC, provides access service, its originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for each incumbent local exchange carrier within whose service area Big River is providing service, unless authorized by

the Commission pursuant to Sections 392.220 and 392.230, RSMo 2000.

7. That the certification and competitive status herein granted to Big River Telephone Company, LLC, are expressly conditioned upon the continued applicability of Section 392.200, RSMo 2000, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set out above must be cost-justified pursuant to Sections 392.220 and 392.230, RSMo 2000, rather than Sections 392.500 and 392.510, RSMo 2000.

8. That if a directly competing incumbent local exchange carrier, in whose service area Big River Telephone Company, LLC, is operating, decreases its originating or terminating access service rates, Big River Telephone Company, LLC, shall file an appropriate tariff amendment to reduce its originating or terminating access rates in that directly competing incumbent local exchange carrier's service area within 30 days of the directly competing incumbent local exchange carrier's reduction of its originating or terminating access rates.

9. That this order shall become effective on August 19, 2001.

10. That this case may be closed on August 20, 2001.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Vicky Ruth, Senior Regulatory Law
Judge, by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 13th day of August, 2001.

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- [1] All statutory references are to Revised Statutes of Missouri 2000 unless otherwise indicated.
 - [2] *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).
 - [3] See Section 392.185.
 - [4] Section 392.361.2.
 - [5] *In the Matter of the Investigation for the Purpose of Determining the Classification of the Services Provided by Interexchange Telecommunications Companies Within the State of Missouri*, 30 Mo. P.S.C. (N.S.) 16 (1989); *In the Matter of Southwestern Bell Telephone Company's Application for Classification of Certain Services as Transitionally Competitive*, 1 Mo. P.S.C. 3d 479, 484 (1992).
 - [6] *Id.* at 487.