

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 18th day  
of September, 2003.

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	)	<b><u>Case No. LA-2003-0551</u></b>
Telecommunications Service in CenturyTel and Spectra	)	
Exchanges and to Continue to Classify the Company	)	
and Its Services as Competitive.	)	

**ORDER APPROVING EXPANSION OF  
CERTIFICATE OF SERVICE AUTHORITY**

**Syllabus:** This order expands the certificate of service authority of Big River Telephone Company, LLC, to provide basic local telecommunications services, classifies those services and the company as competitive, and waives certain statutes and regulations.

**Procedural History**

Big River applied to the Missouri Public Service Commission on June 12, 2003, for permission to expand its certificate of service authority to provide basic local exchange telecommunications services in Missouri. Big River sought to remain classified as a competitive company, and asked the Commission to grant the standard waivers. Also, Big River asked the Commission to temporarily waive 4 CSR 240-3.510(1)(C) to allow it time to obtain interconnection agreements with CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC.

The Commission granted Big River's current certificate in Case No. TA-2001-699. The certificate permits Big River to serve customers in the service territory of Southwestern Bell Telephone Company, as well as interexchange telecommunications services and nonswitched local exchange telecommunications services (limited to providing dedicated, nonswitched local exchange private line services) throughout the state of Missouri. In that same case, the Commission granted Big River competitive classification and the standard waivers. In this application, Big River seeks the additional authority to provide facilities-based and resold basic local exchange telecommunications service in the exchanges comprising the service territories of CenturyTel and Spectra.

On June 16, 2003, Big River filed a motion for a protective order, which the Commission granted by order issued June 17, 2003.

On June 23, 2003, Big River filed a motion for leave to file an amended application, along with the amended application and its additional financial information. The Commission granted leave to file the amended application by order issued July 2, 2003.

On June 24, 2003, the Commission issued a Schedule of Applicants for Basic Local and Nonswitched Local Exchange Service Authority and Opportunity to Intervene. The notice told parties who wished to intervene to file their requests by July 24, 2003. Spectra and CenturyTel filed a timely application to intervene on July 21, 2003, which was later granted by the Commission.

The Staff of the Missouri Public Service Commission filed its recommendation on August 12, 2003. Staff recommended that the Commission expand Big River's current

certificate, grant competitive classification and grant the standard waivers. Staff also recommended the Commission waive Commission Rule 4 CSR 240-3.510(1)(C).

On August 22, 2003, the Commission issued an order that, among other things, directed Spectra and CenturyTel to file a supplemental pleading clarifying whether they object to Big River's application. Spectra and CenturyTel filed a supplemental pleading on August 27, 2003, stating that they do not oppose Big River's application.

### **Discussion**

Big River asks the Commission to expand its certificate to allow it to serve customers in the exchange boundaries of Spectra and CenturyTel. The areas Big River would like to serve are no smaller than an exchange.

The Commission may grant an application for a certificate of service authority to provide basic local telecommunications service upon a showing (1) that the applicant has met the statutory requirements,<sup>1</sup> and (2) that the grant of authority is in the public interest.<sup>2</sup> The applicant must also comply with the Commission's procedural rules.<sup>3</sup>

Big River also requests that it and its basic local services be classified as competitive. The Commission may classify a telecommunications service as competitive if the Commission determines that it is subject to a sufficient degree of competition to justify a

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<sup>1</sup> See Sections 392.450 and 392.455, RSMo 2000. All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

<sup>2</sup> Sections 392.430 and 392.440.

<sup>3</sup> See Chapter 2, 4 CSR 240.

lesser degree of regulation.<sup>4</sup> The Commission may only classify a telecommunications carrier as competitive if all of its services are so classified.<sup>5</sup>

In addition, Big River asks the Commission to waive certain statutes and Commission rules. Along with the “standard waivers” it requests, Big River also asks the Commission to temporarily waive 4 CSR 240-3.510(1)(C). The Commission may waive the application of certain statutes and of its rules to a competitive carrier if it determines that such waiver is consistent with the purposes of Chapter 392.<sup>6</sup>

### **Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

#### **A. Requirements of the Commission’s Rules:**

Commission Rules 4 CSR 240-2.060(1) and 4 CSR 240-3.510(1)(C) require an entity seeking certification to provide basic local telecommunications services to provide various items of information to the Commission in its application. These include a description of the business organization of the applicant, supported by the certificate of the

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<sup>4</sup>Section 392.361.2.

<sup>5</sup>Section 392.361.3.

<sup>6</sup>See Sections 392.185, 392.361.3 and 392.420.

Missouri Secretary of State; names and addresses for contact purposes; a disclosure of any pending or final judgments or decisions against it from any state or federal agency or court involving customer service or rates; a verified statement that there are no outstanding annual reports or assessment fees owed to this Commission; a request to be classified as a competitive telecommunications company, if applicable, and a description of the types of service the applicant intends to provide; the exchanges in which service is to be offered; and a proposed tariff with an effective date which is not fewer than 45 days after its issue date.

The Commission finds that Big River has complied with each of these requirements except for the proposed tariff, 4 CSR 240-3.510(1)(C). Big River requests a temporary waiver of 4 CSR 240-3.510(1)(C) until it has entered into interconnection agreements with the incumbent LECs and those agreements have been approved by the Commission. The Commission finds that a temporary waiver of 4 CSR 240-3.510(1)(C) is consistent with the purposes of Chapter 392, and the Commission will waive 4 CSR 240-3.510(1)(C).

**B. Requirements of Section 392.450:**

Section 392.450.1 provides that the Commission may grant a basic local certificate only upon a finding, after notice and a hearing, that the applicant has complied with the certification process established under Section 392.455. Thus, an applicant's satisfaction of the requirements of the Commission's regulations and of Section 392.455 also satisfies Section 392.450.1. As explained below, the Commission finds that Big River has satisfied the requirements of the Commission's regulations and of Section 392.455,

and consequently finds that Big River has complied with the certification process established by the Commission in satisfaction of Section 392.450.1.

Section 392.450.2 provides that an applicant for a basic local certificate must (1) file and maintain tariffs with the Commission in the same manner as the incumbent local exchange carriers and (2) meet the minimum service standards, including quality of service and billing standards, that the Commission requires of the competing incumbent local exchange carriers.<sup>7</sup>

Big River did not file a proposed tariff in support of its application. However, Big River states that it will comply with all applicable Commission rules except those expressly waived by the Commission. Thereby, Big River has agreed to provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. Staff recommends that the Commission grant the certificate. The Commission finds that Big River has met the requirements of Section 392.450.2.

**C. Requirements of Section 392.455:**

Section 392.455 authorizes the Commission to establish a process to grant basic local certification to new entrants and to grant certificates to new entrants to provide basic local telecommunications service on a common carriage basis. That section further requires that a new entrant (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

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<sup>7</sup> "Incumbent local exchange carrier," or "ILEC," is a term of art in the telecommunications industry which refers to a telephone company authorized to provide local telephone service in a specific geographic area as of December 31, 1995. See Section 386.010(22).

Commission; (3) set forth the geographic area in which it proposes to offer service and demonstrate that such area follows the exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange; and (4) offer basic local telecommunications service as a separate and distinct service. Finally, that section also requires that the Commission give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

Big River stated in its application that it has sufficient technical, financial and managerial resources to provide service in these additional areas. Because the Commission has already approved of Big River's certificate in Case No. TA-2001-699, and because of the Staff's recommendation, the Commission finds that Big River has sufficient technical, financial and managerial resources.

As noted previously, Big River has stated that it will comply with all applicable Commission rules except those expressly waived by the Commission. Based on this statement, the Commission finds that Big River has demonstrated that the services it proposes to offer satisfy the minimum standards established by the Commission, in satisfaction of Section 392.455(2).

Big River seeks certification throughout all exchanges currently served by the incumbent local exchange telecommunications companies of CenturyTel and Spectra, as set forth in the list of exchanges attached to the amended application. Staff agrees that Big River has sufficiently identified the exchanges in which it seeks certification and recommends that the application be approved. Having reviewed Big River's application, amended application, and supporting materials, as well as Staff's Memorandum and

Recommendation and the supplemental pleadings of Spectra and CenturyTel, the Commission finds that Big River has met the requirements of Section 392.455(3) in that it has set forth the geographic area in which it proposes to offer service and has demonstrated that such area follows the exchange boundaries of the incumbent local exchange telecommunications companies and is no smaller than an exchange.

In its verified application, Big River states that it will offer basic service as a separate and distinct service. Based on this statement, the Commission finds that Big River has met the requirements of Section 392.455(4), that all providers offer basic local telecommunications service as a separate and distinct service.

In its verified application, Big River states that it will give consideration to equitable access for all Missourians, regardless of where they reside or their income, to affordable telecommunications service. Therefore, granting the requested certificate will further the goal announced by the Legislature.

**D. Requirements for Competitive Classification:**

If the Commission grants Big River competitive classification, Big River will compete with an incumbent local exchange carrier in each exchange in which it provides basic local telecommunications service. The Commission finds that Big River will thus be subject to a sufficient level of competition to justify a lesser degree of regulation. Furthermore, all of the services Big River will offer are thus qualified for classification as competitive services.

**Conclusions of Law**

The Missouri Public Service Commission has reached the following conclusions of law:



***Jurisdiction:***

The Commission is authorized to create a process by which to certify new entrants to provide local exchange telecommunications services in Missouri as common carriers, and is further authorized to grant such certificates where it is in the public interest.<sup>8</sup> The Commission is also authorized to classify services and companies as competitive or transitionally competitive and to waive certain statutory provisions and Commission rules.<sup>9</sup> The Commission may also impose any reasonable and necessary condition or conditions upon telecommunications service providers if such conditions are in the public interest and consistent with the provisions and purposes of this chapter.<sup>10</sup>

***The Public Interest:***

Having found that Big River has met all of the requirements for certification to provide basic local telecommunications service as a common carrier, the Commission must determine whether it is in the public interest to grant the requested certificate. The public interest is found in the

positive, well-defined expression of the settled will of the people of the state or nation, as an organized body politic, which expression must be looked for and found in the Constitution, statutes, or judicial decisions of the state or nation, and not in the varying personal opinions and whims of judges or courts, charged with the interpretation and declaration of the established law, as to what they themselves believe to be the demands or interests of the public.<sup>11</sup>

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<sup>8</sup> Sections 392.430, 392.450 and 392.455.

<sup>9</sup> Section 392.361.

<sup>10</sup> Section 392.470.1.

<sup>11</sup> *In re Rahn's Estate*, 316 Mo. 492, 501, 291 S.W. 120, 123 (1926), *cert. den'd*, 274 U.S. 745, 47 S.Ct. 591, 71 L.Ed. 1325.

"[I]f there is legislation on the subject, the public policy of the state must be derived from such legislation."<sup>12</sup>

The Commission notes that the General Assembly has expressly provided that "[t]he provisions of this chapter shall be construed to . . . [p]romote diversity in the supply of telecommunications services and products throughout the state of Missouri; [and to] . . . [a]llow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest[.]"<sup>13</sup> In consideration of the foregoing, and based upon its finding that Big River has met all of the requirements for certification, the Commission concludes that granting the expansion of Big River's certificate is in the public interest.

***Competitive Classification:***

Big River has previously been found to be a competitive company and the Commission has found that Big River will be subject to sufficient competition to justify a lesser degree of regulation. The Commission has further found that all of Big River's services will be entitled to classification as competitive services. In consideration of these findings and of the public interest as announced by the General Assembly, the Commission concludes that granting competitive classification to Big River is consistent with the protection of ratepayers and promotes the public interest. Big River shall continue to be classified as a competitive company.

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<sup>12</sup> *Moorshead v. Railways Co.*, 203 Mo. 121, 165, 96 S. W. 261, 271 (banc 1907).

<sup>13</sup> Section 392.185.

**Waivers:**

The Commission may waive certain statutes and administrative rules for competitively classified carriers, "if such waiver or modification is otherwise consistent with the other provisions of sections 392.361 to 392.520 and the purposes of this chapter."<sup>14</sup> The Commission has developed a standard list of statutes and regulations that it waives for competitive local exchange carriers. The Commission will waive these provisions for Big River because to do so furthers the purpose of Chapter 392 to foster and encourage the development of competition in the telecommunications industry.

The Commission may also "require a telecommunications company to comply with any conditions reasonably made necessary to protect the public interest by the suspension of the statutory requirement."<sup>15</sup> Staff recommends that Big River's application be granted subject to the following conditions:

- A. Big River's 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 certificate 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.

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<sup>14</sup> Sections 392.361.5 and 392.420.

<sup>15</sup> Section 392.361.6.

The Commission has considered the conditions proposed by Staff and concludes that they are reasonably necessary to protect the public interest and should be adopted.

The Commission reminds Big River that prior to providing telecommunications service, a party shall possess the following: (1) an interconnection agreement approved by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide interexchange or basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

**IT IS THEREFORE ORDERED:**

1. That Big River Telephone Company, LLC, is granted an expansion of its certificate of service authority to provide basic local telecommunications services.

2. That Big River Telephone Company, LLC's certificate of service authority to provide basic local telecommunications services in the state of Missouri shall include the exchanges of Spectra Communications Group, LLC, and CenturyTel of Missouri, LLC, as listed in Exhibit 2 of the Application of Big River Telephone Company, LLC to Expand Certificate of Basic Local Service Authority, filed on June 12, 2003, and amended on June 23, 2003, subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order.

3. That Big River Telephone Company, LLC, will remain classified as a competitive telecommunications company.

4. That Big River Telephone Company, LLC's certification and competitive status 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 forth in the agreement must be cost-

justified under Sections 392.220, RSMo 2000, and 392.230, rather than Sections 392.500 and 392.510.

5. That Big River Telephone Company, LLC's originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for each incumbent local exchange company 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 2000.

6. That the certificate and competitive service classification for switched exchange access is granted conditioned on the continued applicability of Section 392.200, RSMo 2000, 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 2000, and not Sections 392.500 and 392.510, RSMo 2000.

7. That if the directly competing incumbent local exchange company (ILEC) in whose service area Big River Telephone Company, LLC, 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.

8. That application of the following statutes and Commission regulations is waived:

**Statutes**

392.210.2 - uniform system of accounts  
392.240(1) - just and reasonable rates

- 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
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

### **Commission Rules**

- 4 CSR 240-3.545(2)(C) - posting of tariffs
- 4 CSR 240-3.550(5)(C) - exchange boundary maps
- 4 CSR 240-10.020 - depreciation fund income
- 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

9. That Commission Rule 4 CSR 240-3.510(1)(C) is waived. Big River Telephone Company, LLC, may not operate in the service areas of Spectra Communications Group, LLC, and CenturyTel of Missouri, LLC, until it has submitted its tariffs to the Commission and the Commission approves them.

10. That this order and Big River Telephone Company, LLC's certificate expansion shall become effective on September 28, 2003.

11. That this case may be closed on September 29, 2003.

### **BY THE COMMISSION**

( S E A L )

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

Simmons, Ch., Murray, Gaw,  
Forbis, and Clayton, CC., concur.

Ruth, Senior Regulatory Law Judge