

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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 Service in Sprint Exchanges and to Continue to Classify the Company and its Services as Competitive.)
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) **Case No. TA-2005-0415**
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ORDER APPROVING EXPANSION OF CERTIFICATE OF SERVICE AUTHORITY

Issue Date: July 15, 2005

Effective Date: July 25, 2005

Syllabus: This order expands Big River Telephone Company's certificate of service authority 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 May 13, 2005, for permission to expand its certificate of service authority to provide basic local exchange telecommunications services in Missouri. Big River also 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 the requirement found in 4 CSR 240-3.510(1)(C) to file its tariff with its application and the requirement in 4 CSR 240-3.510(1)(D) to file certain financial data.

The Commission granted Big River's current certificates in Case Nos. TA-2001-699 and LA-2003-0551. The certificates currently permit Big River to serve

customers in the exchanges of Southwestern Bell Telephone Company, CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC, as well as provide interexchange telecommunications services (limited to providing dedicated, nonswitched local exchange private line services) throughout the state of Missouri. In those cases, the Commission granted Big River competitive classification and the standard waivers.

On May 24, 2005, 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 June 8, 2005. No parties responded to the notice.

The Staff of the Missouri Public Service Commission filed its Recommendation on June 23, 2005. Staff recommended that the Commission expand Big River's current basic local certificate, grant competitive classification and grant the standard waivers. Staff asked the Commission to grant Big River's expanded basic local certificate subject to certain conditions. Staff also recommended that the Commission deny the waiver of Commission Rule 4 CSR 240-3.510(1)(C), as it was not necessary under the recently revised rule.

Discussion

Big River asks the Commission to expand its certificate to allow it to serve customers in the exchange boundaries of Sprint. Big River is not asking for certification in any area that is served by a small incumbent local exchange provider. 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,¹ and (2) that the grant of authority is in the public interest.²

Big River also requests that it and its basic local services continue to 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 lesser degree of regulation.³ The Commission may only classify a telecommunications carrier as competitive if all of its services are so classified.⁴

In addition, Big River asks the Commission to waive certain statutes and Commission rules. 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 392.⁵

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

¹ 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.

² Sections 392.430 and 392.440.

³ Section 392.361.2.

⁴ Section 392.361.3.

⁵ See Sections 392.185, 392.361.3 and 392.420.

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 require an entity seeking certification to provide basic local telecommunications services to provide various items of information to the Commission in its application. This information includes: a description of the business organization of the applicant, supported by the certificate of the 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 before providing service, 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 with the exception of filing its financial information and filing its proposed tariff. Big River requests a waiver of 4 CSR 240-3.510(1)(C) and (D). As Staff states in its recommendation, 4 CSR 240-3.510(1)(C) has recently been revised to provide that the filing of the tariff with the application is "optional." Therefore, Big River has exercised its right to delay the filing of its tariff and the Commission need not grant a waiver of this rule. Big River must have a tariff approved by the Commission that provides for the provision of services in the exchanges of Sprint before Big River may offer services in those exchanges.

Big River cited to the financial information it had previously provided in Case No. LA-2003-0551. Staff did not object to Big River's request and indicated it had sufficient information to make its recommendation. Therefore, the Commission finds that good cause exists to waive the requirement to file certain financial data with its application as required in 4 CSR 240-3.510(D).

B. Requirements of Section 392.450:

Section 392.450.1 provides that the Commission may grant a basic local certificate only upon a finding 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.

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. 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 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 previously approved Big River's certificate to serve other exchanges, and because of the Staff's recommendation of approval, the Commission finds that Big River has sufficient technical, financial and managerial resources and has met the requirements of Section 392.455(1).

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 to add certification throughout all exchanges currently served by the incumbent local exchange telecommunications carrier, Sprint. 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 and supporting materials, as well as Staff's Memorandum and Recommendation, 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.

Big River also states that it will give consideration to equitable access for all Missourians, regardless of where they reside or their income, to affordable telecommunications service. Big River states that the public interest will be served by the Commission's approval of its application because its proposed services will enhance competition in portions of northern Missouri, and increase the variety of telecommunications service

available. The Commission finds these representations are consistent with the legislative goals set forth in the Telecommunications Act of 1996 and Chapter 392, RSMo. Therefore, the Commission finds that granting the requested certificate will further the goals 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. All of the services Big River will offer are thus qualified for classification as competitive services. Since all the services offered by Big River are competitive services, the Commission finds that Big River should remain classified as a competitive company. The Commission further finds that waiving the statutes and Commission rules set out in the ordered paragraphs below is reasonable and not detrimental to the public interest.

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.⁶ The Commission is also authorized to classify services and companies as competitive or

⁶ Sections 392.430, 392.450 and 392.455.

transitionally competitive and to waive certain statutory provisions and Commission rules.⁷

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.⁸

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.⁹

"[I]f there is legislation on the subject, the public policy of the state must be derived from such legislation."¹⁰

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

⁷ Section 392.361.

⁸ Section 392.470.1.

⁹ *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.

¹⁰ *Moorshead v. Railways Co.*, 203 Mo. 121, 165, 96 S. W. 261, 271 (banc 1907).

with the protection of ratepayers and otherwise consistent with the public interest[.]”¹¹ 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.

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.”¹² 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.

¹¹ Section 392.185.

¹² Sections 392.361.5 and 392.420.

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.”¹³ 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 access service 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 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 the company that failure to comply with its regulatory obligations may result in the assessment of penalties against it. These regulatory obligations include, but are not limited to, the following:

- A) The obligation to file an annual report, as established by Section 392.210, RSMo 2000. Failure to comply with this obligation will make the utility liable to a penalty of

¹³ Section 392.361.6.

\$100 per day for each day that the violation continues. 4 CSR 240-3.540 requires telecommunications utilities to file their annual report on or before April 15 of each year.

B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000.

C) The obligation to comply with all relevant laws and regulations, as well as orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2000 per day of noncompliance, pursuant to Section 386.570, RSMo 2000.

D) The obligation to keep the Commission informed of its current address and telephone number.

Furthermore, the company is reminded that, if it is a corporation, its officers may not represent the company before the Commission. Instead, the corporation must be represented by an attorney licensed to practice law in Missouri.

The Commission reminds Big River that prior to providing telecommunications service, it 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.

In addition, the company is reminded that Section 392.410.6, RSMo Supp. 2004, renders the company's certificate of service authority null and void one year from the date of this order unless it has exercised its authority under that certificate.

IT IS THEREFORE ORDERED:

1. That for the purposes of this case, Big River Telephone Company is granted a waiver of 4 CSR 240-3.510(D) requiring it to submit certain financial information with its application.
2. That Big River Telephone Company is granted an expansion of its certificate of service authority to provide basic local telecommunications services to include the exchanges of Sprint Missouri, Inc., 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 will remain classified as a competitive telecommunications company.
4. That Big River Telephone Company'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 under to Sections 392.220 and 392.230, RSMo 2000.
5. That Big River Telephone Company'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 herein shall be made under Sections 392.220 and 392.230, RSMo, and not under Sections 392.500 and 392.510, RSMo.
6. That if the directly competing ILEC, in whose service area Big River Telephone Company, 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.

7. 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 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-3.550(5)(C) - exchange boundary maps

8. That Big River Telephone Company shall not conduct business in the additional exchanges until the Commission approves its interconnection agreement.

9. That the request for a waiver of 4 CSR 240-3.510(1)(C), regarding the filing of a tariff with the application is unnecessary and is denied.

10. That prior to delivering services under its expanded certificate of service authority, Big River Telephone Company, shall file, in a separate case, tariff sheets with an effective date which is not fewer than 45 days from the issue date and which reflect the

rates, rules, regulations, and the services it will offer. The tariff shall also include a listing of the statutes and Commission rules waived above.

11. That this order shall become effective on July 25, 2005.

12. That this case may be closed on July 26, 2005.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 15th day of July, 2005.