

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Bona Fide Request of)	
Big River Telephone Company, LLC for)	
Interconnection, Services and Network)	Case No. TO-2008-0003
Elements from BPS Telephone Company)	
Pursuant to 47 U.S. C. 251(f)(1).)	

RESPONSE OF BPS TELEPHONE COMPANY

BPS Telephone Company ("BPS" or "Company"), by and through its undersigned counsel, hereby makes the following response to the "Notice of Bona Fide Request Pursuant to 47 USC 251(f)(1)" ("Notice") that was filed on July 2, 2007, by Big River Telephone Company, LLC ("Big River"):

1. On information and belief, BPS acknowledges or admits the facts and other information alleged in paragraphs 1 through 3 of Big River's Notice.

2. BPS acknowledges or admits that it is a Missouri corporation, whose principal place of business is located at 120 Stewart Street, Bernie, Missouri 63882; that it is a "noncompetitive telecommunications company," a "public utility," and a "telecommunications company," as those terms are defined in Section 386.020, RSMo; and that it is an "incumbent local exchange carrier," as that term is defined in 47 U.S.C. § 251(h). BPS is also a "rural telephone company," as that term is defined in 47 U.S.C. § 153(37), because it: a) provides common carrier telecommunications services to a service area that has no incorporated city or town with 10,000 or more residents; b) provides service to fewer than 50,000 access lines; and c) provides service in a local exchange carrier study area with fewer than 100,000 access lines. Because it is a rural

telephone company, 47 U.S.C. § 251(f)(1)(A) exempts the Company from certain interconnection obligations. In addition, although Big River's Notice suggests otherwise, BPS does not provide video programming service anywhere within its certificated service area. Moreover, Big River is not "a cable operator providing video programming," so the limitations on BPS's rural telephone company exemption provided by 47 U.S.C. § 251(f)(1)(C) do not apply to Big River's request.

3. BPS acknowledges or admits that on or about June 22, 2007, Gerard J. Howe, Big River's Chief Executive Officer, sent an e-mail message to BPS wherein Mr. Howe stated, in part, that Big River wanted "to continue the discussion on the negotiation of the Interconnection Agreement that we approached BPS with last year." A copy of that e-mail message is attached to Big River's Notice as Exhibit 2. The Company, however, denies that this e-mail message constituted a "bona fide request for interconnection" as contemplated in 47 U.S.C. § 251(f).

4. BPS acknowledges or admits that on or about June 26, 2007, the Company's counsel responded to Mr. Howe's e-mail message. A copy of that response is attached to Big River's Notice as Exhibit 3. In its response, BPS stated that it would not voluntarily waive its exemption as a "rural telephone company" under 47 U.S.C. § 251(f)(1), and further stated that the Company would not entertain discussions or negotiations regarding an interconnection arrangement with Big River until: a) BPS has received a bona fide request for interconnection service, and b) the Commission has determined that the request

for interconnection “is not unduly economically burdensome, is technically feasible, and consistent with Universal Service.”

5. BPS denies the allegations in paragraph 7 of Big River’s Notice. The Commission is under no obligation to convene an investigation and make the determinations required by 47 U.S.C. § 251(f) unless and until Big River submits to BPS a bona fide request for interconnection. That has not yet been done. The June 22nd e-mail message on which Big River relies is not, in fact, a bona fide request; instead, it merely requests to continue discussions regarding interconnection. And although Big River included a proposed interconnection agreement with its June 22nd e-mail message, nowhere in that message – or in the proposed agreement – did Big River state or even suggest the type, quantity, or location of the interconnection facilities it alleges it wants from BPS. Without such information neither BPS nor the Commission can reasonably evaluate whether the interconnection that Big River seeks is economically burdensome, technically feasible, or consistent with 47 U.S.C. § 254. The June 22nd e-mail message expressing Big River’s desire to continue high-level and non-specific discussions regarding future interconnection does not qualify as a bona fide request and, therefore, is not sufficient to trigger or otherwise warrant a formal investigation by the Commission under 47 U.S.C. § 251(f).

6. The Company denies the allegations in paragraph 8 of the Notice that Big River’s request “is not unduly economically burdensome, is technically feasible, and is consistent with section 254” BPS notes that Big River’s pleading states no facts to back up any of these claims. This is understandable

because, as noted earlier in this response, Big River has not provided any details as to the nature, quantity, or location of the interconnection facilities it allegedly wants from the Company. Without such information neither Big River, BPS, nor the Commission can make any judgments as to what it will cost to provide interconnection, whether it is technically feasible to do so, or whether such interconnection is consistent with 47 U.S.C. § 254.¹ In addition, the Company is without sufficient information to admit or deny Big River's allegation that "certain aspects of its request to BPS fall under the obligations of BPS established by Section 251 subparts (a) and (b)" because Big River does not state which aspects of its request it believes are governed by these subparts. Big River's reference to subpart (b) of Section 251 is especially puzzling because that subpart deals with resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation – none of which is included as part of Big River's alleged request for interconnection.

7. BPS acknowledges or admits that, as stated in paragraph 9 of Big River's Notice, if the Commission determines, in accordance with 47 U.S.C. § 251, that BPS's exemption as a "rural telephone company" should terminate then the Commission must establish an implementation schedule for compliance with a bona fide request for interconnection. But, as stated previously in this response, the Company denies that Big River has made a bona fide request;

¹ The lack of facts supporting Big River's allegations is especially significant because the burden of proof that a request for interconnection is not unduly burdensome, is technically feasible, and is consistent with 47 U.S.C. § 254 must be borne by the carrier **requesting** interconnection. *Iowa Util. Bd. v. FCC*, 219 F.3d 744, 762 (8th Cir. 2000), *rev'd. on other grounds*, *Verizon Comm., Inc. v. FCC*, 535 U.S. 476 (2002).

therefore, no proceedings under 47 U.S.C. § 251 are appropriate at this time and BPS's rural telephone company exemption should remain in place.

8. For the reasons stated previously in this response, BPS denies that the Commission should, or is obligated to, issue an order directing BPS to show cause why its rural telephone company exemption should be terminated. Moreover, because *Iowa Util. Bd. v. FCC*, *supra*, clearly establishes that Big River has the burden of proving that BPS's rural telephone company exemption should be terminated, an order to show cause would be inappropriate under any circumstances because such an order would have the effect of shifting Big River's burden to BPS or the Commission Staff.

9. The Company acknowledges or admits that the Commission found, in its *Report and Order* in Case No. TA-2007-0093, that it was in the public interest to grant Big River a certificate of service authority to provide basic local telecommunications services in portions of the territory currently served by BPS. However, BPS denies any suggestion that the Commission's *Report and Order* in that case exempts Big River from its obligation to comply with the requirements of law in seeking to terminate BPS's rural telephone company exemption. One such requirement is that Big River make a bona fide request for interconnection **before** it can request a Commission investigation or a termination of the Company's rural telephone company exemption under 47 U.S.C. § 251(f)(1)(A). Big River has not made a bona fide request, so its allegations in paragraph 12 of the Notice regarding BPS's refusal to grant interconnection are unfounded.

WHEREFORE, for the reasons stated above, BPS requests that the Commission issue an order:

(1) denying Big River's request for an investigation, as provided under 47 U.S.C. § 251(f)(1)(A); and

(2) denying Big River's request that the Commission terminate BPS's rural telephone company exemption and order the Company to enter into an agreement to provide interconnection.

In the alternative, if the Commission determines that an investigation of Big River's request is appropriate, the Commission must, as part of that investigation, schedule an evidentiary hearing to require Big River to present evidence to establish that: a) it has made a bona fide request; and b) that the request is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. § 254. Otherwise any order of the Commission terminating BPS's rural telephone company exemption will not be supported by competent and substantial evidence, as required by law.

Respectfully submitted,

/s/ L. Russell Mitten

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ATTORNEYS FOR BPS TELEPHONE
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on this 13th day of July, 2007, to the following:

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