

**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 USC 251(f)(1))	

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its Recommendation respectfully states as follows:

1. Big River Telephone Company, LLC (Big River) filed a Notice of Bona Fide Request Pursuant to 47 USC 251(f)(1) on July 2, 2007.

2. In its Response, BPS Telephone Company (BPS) admits that it received an e-mail from Big River CEO Gerald Howe on June 22, 2007. (BPS Response, p. 2). BPS also admits that this e-mail 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.” (BPS Response, p. 2). The e-mail message carried as an attachment a proposed interconnection agreement. (Big River Exhibit 2).

3. BPS denies that the e-mail was a “bona fide request” within the meaning of 47 USC § 251(f). (BPS Response, p. 2).

4. The term “bona fide” with respect to telecommunications issues is not defined in federal or state statutes or regulations. However, the FCC has provided some guidance related to number portability: a requesting carrier makes a specific request, identifies the geographic area and provides a tentative date for implementation. 4 CSR 37.020(1) provides: “Bona fide request occurs when any competitor submits a request for the carrier to deploy local number portability in a rate center. Technical deficiencies

such as typographical errors, misspelled names, incorrect carrier addresses, or incorrect carrier contacts associated with a request, cannot be used to exclude a request from meeting this definition.” This definition appears in the chapter that establishes rules governing number pooling and number conservation. While it is not directly on point, the rule is instructive because it is likely that a Commission rule addressing bona fide requests in the context of rural exemptions would contain similar language.

5. The issue of whether or not the request made by Big River was a “bona fide request” within the meaning of 47 USC § 251(f) is a threshold issue. Staff believes that Big River’s request is “bona fide” within the meaning of 47 USC § 251(f) for the following reasons:

- a. Big River has clearly indicated its desire to negotiate with BPS.
- b. Big River submitted a proposed interconnection agreement outlining terms of interconnection and number portability to be used as a starting point in negotiations.
- c. Big River makes several references to the geographic area meant to be covered by the agreement. The General Terms and Conditions Preface to the proposed agreement contains the phrase “within local calling areas of BPS.” Section 1.1 refers to the incumbent service area of BPS. Attachment C to the proposed agreement refers to the BPS rate center.
- d. 47 USC § 252 provides negotiation and arbitration timeframes once a state commission has determined that the rural exemption

should be lifted. The proposed agreement submitted by Big River triggers the statutory framework.

- e. The type of interconnection requested is addressed in the proposed agreement, which discusses both direct and indirect interconnection. The proposed agreement also addresses items like a meet point within the BPS network.
- f. The proposed interconnection agreement states that the parties will negotiate the terms regarding the quantity of interconnection facilities BPS will provide Big River and addresses issues such as traffic studies for deployment of additional trunks and so on.
- g. A party should not be allowed to avoid compliance with a bona fide request when the intent is clear, despite the format or wording of the request.

6. 47 CSR § 51.401 states “A state commission shall determine whether a telephone company is entitled, pursuant to section 251(f) of the Act, to exemption from, or suspension or modification of, the requirements of section 251 of the Act. Such determination shall be made on a case-by-case basis.” Based on this rule, Staff submits that, if the Commission determines that BPS should not retain the rural exemption in this case, the rural exemption is not automatically lifted for all rural ILECs in Missouri. Rather, the Commission will have to make a company-by-company decision based on the merits of each individual case. The result of this case will be important in future cases insofar as this is a case of first impression before the Commission and the manner in

which the Commission decides this case will provide guidance for how the Commission may handle similar cases in the future.

WHEREFORE, Staff respectfully submits this Recommendation for the Commission's consideration.

Respectfully submitted,

/s/ Jennifer Heintz

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel or parties of record this 25th day of July 2007.

/s/ Jennifer Heintz