

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).)

ORDER APPROVING STIPULATION AND CLOSING CASE

Issue Date: August 21, 2007

Effective Date: September 1, 2007

On August 15, 2007, Big River Telephone Company, LLC, BPS Telephone Company, the Office of the Public Counsel, and the Staff of the Missouri Public Service Commission filed a Unanimous Stipulation. The Stipulation purports to settle all issues in this matter. The parties request that the Commission accept their Stipulation as a resolution of this case.

The parties have agreed as follows:

a. The Commission should promptly issue its order resolving this case by approving this Unanimous Stipulation. The Commission's order should have an effective date of September 1, 2007.

b. If the Commission approves this Unanimous Stipulation, BPS agrees not to assert or rely on any and all exemptions under 47 USC 251(f) with respect to Big River's request for an interconnection agreement; provided, however, that nothing in this Unanimous Stipulation, or in the Commission's order approving it, shall prohibit BPS from asserting its rural telephone company exemption under 47 USC 251(f)(1)(A) with respect to any request for interconnection that BPS receives from any telecommunications services provider other than Big River.

c. If the Commission approves this Unanimous Stipulation, Big River agrees to withdraw the request for interconnection that it

submitted to BPS on or about June 22, 2007. On or after September 1, 2007, Big River may submit to BPS a letter requesting the commencement of negotiations pursuant to 47 USC 252 for purposes of establishing a starting date for proceedings under 47 USC 252(b). Upon submittal of such letter, Big River and BPS agree to negotiate in good faith regarding the terms and conditions of an interconnection agreement between them. Assuming Big River submits its letter on September 1, 2007, and in the event Big River and BPS are not able to resolve all issues concerning an interconnection agreement by negotiation, either of them would be able to file a petition for arbitration with the Commission under 47 USC 252(b) from January 14, 2008 to February 8, 2008. For purposes of meeting its obligation under 47 USC 251(f) to establish an implementation schedule, by approving this Unanimous Stipulation the Commission shall be deemed to have directed the parties to meet as needed during the 135 days following submittal of a letter requesting the commencement of negotiations by Big River and to negotiate in good faith during such period (and after, as needed) in compliance with applicable law.

d. All parties agree that all pending and unanswered (partially or wholly) discovery requests shall be deemed withdrawn to the extent unanswered as of the date of submission of this Unanimous Stipulation. For purposes of efficiency, the parties agree that discovery responses submitted in this matter may be used during the negotiations between Big River and BPS and during any subsequent arbitration, subject to continuing protection of proprietary and highly confidential information in accordance with the Commission's rules and orders. Certificates of compliance submitted herein pursuant to 4 CSR 240-2.135 shall be sufficient for the time being, but in the event an arbitration is commenced such certificates shall be re-filed in the new proceeding.

e. As indicated, the procedural schedule in this matter should be immediately suspended. In the event the Commission rejects this Unanimous Stipulation in whole or in part, including by issuing an order that does not fully comport with the terms and conditions hereof, the parties agree that the Commission should immediately set a prehearing conference to develop a new case schedule. The parties shall be free to fully litigate the issues in this matter pursuant to such new schedule without prejudice related to this Unanimous Stipulation and the parties shall retain all procedural and due process rights as fully as though this Unanimous Stipulation had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Unanimous Stipulation shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not

be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever. All discovery requests deemed withdrawn pursuant to the terms hereof shall be deemed newly submitted (i.e. responses due 20 days thereafter) as of the date of the Commission's rejection order. Further, the parties agree that under such circumstances the deadline for action under 47 USC 251(f)(1) shall be deemed extended from October 30, 2007 to the date that is 90 days after the issuance of such rejection order. In the event the Commission does not issue its order either approving and implementing, or rejecting, this Unanimous Stipulation by September 1, 2007, it shall be deemed on that date to have issued an order rejecting the Unanimous Stipulation and any party may file a motion seeking a prehearing conference date to develop a new case schedule in accordance with the foregoing terms and conditions.

f. Solely for purposes of issuing an order that comports herewith, the parties agree that Big River's Notice of Bona Fide Request and this Unanimous Stipulation shall be deemed received into evidence.

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case.¹ In reviewing the agreement, the Commission notes that²

Every decision and order in a contested case shall be in writing, and, except in default cases, or cases disposed of by stipulation, consent order or agreed settlement, the decision, including orders refusing licenses, shall include or be accompanied by findings of fact and conclusions of law. * * *

Consequently, the Commission need not make either findings of fact or conclusions of law in this order.

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.³ Since

¹Section 536.060, RSMo Cum. Supp. 2006.

²Section 536.090, RSMo Cum. Supp. 2006. This provision applies to the Public Service Commission. *State ex rel. Midwest Gas Users' Association v. Public Service Commission of the State of Missouri*, 976 S.W.2d 485, 496 (Mo. App., W.D. 1998).

³ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

no one has requested a hearing in this case, the Commission may grant the relief requested based on the Stipulation.

The Commission finds that the parties have reached a just and reasonable settlement in this case. Accordingly, the Commission will direct the parties to abide by the terms of the Stipulation. Therefore, the Commission finds that BPS shall not assert or rely on any exemption under 47 U.S.C. 251(f) with respect to a request from Big River for an interconnection agreement. This finding shall not prohibit BPS from asserting an exemption under 47 U.S.C. 251(f)(1)(A) with respect to any request for interconnection BPS receives from any telecommunications services provider other than Big River.

The Commission therefore sets out an implementation schedule by directing Big River and BPS to negotiate interconnection in good faith during the 135 days following the submission of a letter requesting such negotiations by Big River to BPS. If Big River and BPS are unable to reach a negotiated interconnection agreement and arbitration is desired, Big River and BPS are directed to proceed under the statutory timeframes for arbitration as set out in 47 U.S.C. 252.

IT IS ORDERED THAT:

1. The Unanimous Stipulation filed on August 15, 2007, is hereby approved as a resolution of all issues in this case.
2. The parties to this case are ordered to comply with the terms of the Unanimous Stipulation.
3. BPS Telephone Company shall not assert an exemption under 47 U.S.C. 251(f) with respect to a request for an interconnection agreement by Big River Telephone Company, LLC.

4. Nothing in this order shall prohibit BPS Telephone Company from asserting an exemption under 47 U.S.C. 251(f) with respect to any other telecommunications company's request for an interconnection agreement.

5. Big River Telephone Company, LLC, and BPS Telephone Company shall proceed under the implementation schedule for its negotiations as set out above.

6. This order shall become effective on September 1, 2007.

7. This case shall close on September 2, 2007.

BY THE COMMISSION

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

Colleen M. Dale
Secretary

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 21st day of August, 2007.