

BIG RIVER TELEPHONE COMPANY, L.L.C.

October 13, 2009

Secretary
Alabama Public Service Commission
RSA Building
100 Union Street, Suite 850
Montgomery, Alabama 36101

In Re: Big River Telephone Company, L.L.C.

Dear Madam/Sir:

Attached is a searchable PDF copy of Big River Telephone Company's Application for Certificate of Public Convenience and Necessity. Big River's Tariffs are also attached.

Your prompt attention is appreciated.

Sincerely,



Brian C. Howe
General Counsel

Attachments





Alabama Public Service Commission

P.O. BOX 304260, 100 N. Union St., RSA Union, Suite 850, Montgomery, AL 36130

APPLICATION

**FOR CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE
TELECOMMUNICATIONS SERVICES
IN THE STATE OF ALABAMA**

**SECTION I
GENERAL**

I-1 Corporate Name: d/b/a (if applicable):

Big River Telephone Company, LLC ("Applicant" or "Big River"),

I-2 Location:

Street: 24 South Minnesota St.
City: Cape Girardeau
State: MO
County: Cape Girardeau
Zip: 63703
Telephone Number: 573-651-3373
FAX Number: 573-651-3605
Web Address: www.bigrivertelephone.com

Name of employee (s) with authority to respond to Commission requests regarding
tariff/regulatory matters or financial/annual reports (list information for each):

Financial/Annual Reports:

Name: John F Jennings
Official Title: Chief Financial Officer
**Direct Telephone
Number:** 314-225-2202
FAX Number: 573-651-3605
Email: Contact Officer: jjennings@bigrivertelephone.com

Tariff/Regulatory and Primary Contact:

Name: Andrew Schwantner
Official Title: Manager – Regulatory Affairs
**Direct Telephone
Number:** 314-225-2205
FAX Number: 573-651-3605
Email: as@bigrivertelephone.com

Other Contacts:

Communications regarding Applicant's operations should be addressed to:

Name: Kevin Keaveny
Official Title: Chief Technical Officer
Direct Telephone Number: 314-225-2207
FAX Number: 573-651-3605
Email: kkeaveny@bigrivertelephone.com

Correspondence concerning this Application should be directed to:

Name: Patty Feiste
Official Title: Project Manager
Direct Telephone Number: 573-388-3741
FAX Number: 573-651-3605
Email: pfeiste@bigrivertelephone.com

I-3 Types of services for which authority is requested. (i.e. Local Exchange Service, Long Distance Interexchange Service, Long Distance Resale Service, Alternate Operator Services, Prepaid Service, etc.) Please include all services which the company intends to provide.

Applicant proposes to provide local exchange, switched exchange access and operator services to its local exchange customers. Applicant already provides Long Distance Interexchange Service pursuant to authority previously granted by the Commission and will provide such services in conjunction with its local exchange service.

Indicate how service(s) will be provided (i.e. Facilities-Based, UNE-P, UNE)

Service will be primarily provided on a facilities-based approach. Some lines may be served using UNE or a wholesale local agreement with the underlying ILEC.

I-4 Attorney (if applicable)

Name: James H. McLemore
Street: 150 South Perry Street
City: Montgomery
State: Alabama
County: Montgomery
Zip: 36104
Direct Telephone Number: 334-241-8058
Email: ihm@chlaw.com

I-5 Registered Agent in Alabama:

Name: The Corporation Company
Address: 2000 Interstate Park Dr. Ste 204
City: State: Montgomery, AL
Zip: 36109

I-6 Geographic area to be served:

Applicant proposes to provide services throughout all exchanges that are open for facilities-based competition statewide.

I-7 Anticipated date of service:

First Quarter 2010

I-8 States in which applicant is authorized to provide service:

Arkansas	New Jersey
Colorado	New Mexico
Illinois	Oklahoma
Kansas	Pennsylvania
Kentucky	Tennessee
Louisiana	Texas
Minnesota	Washington
Mississippi	Wisconsin
Missouri	Wyoming
Nebraska	

I-9 States in which applicant is currently providing service:

Arkansas	Missouri
Colorado	New Mexico
Illinois	Oklahoma
Kansas	Pennsylvania
Kentucky	Tennessee
Louisiana	Texas
Minnesota	
Mississippi	

I-10 Mechanism by which applicant intends to bill for services:

Big River Telephone bills all monthly recurring charges one month in advance and all usage based services in arrears. We utilize both paper and electronic formats for delivery of our invoices to our customers.

SECTION II
ORGANIZATION

II-1 Type of Organization:

- a. Individual.....()
- b. Partnership.....()
- c. Corporation.....()
- d. Other (Identify) **Limited Liability Company** (X)

II-2 If a corporation:

- a. Attach a copy of articles of incorporation and current bylaws.

Not applicable.

- b. Nonresident corporation - attach a copy of Certificate of Authority issued by the Secretary of State granting corporation's authority to do business in Alabama.

Not applicable.

II-3 If a partnership: -

- a. Attach a copy of the partnership agreement.

Not applicable.

- b. Attach a list showing name and address of all partners.

Not applicable.

II-4 If a Limited Liability Company: -

- a. Attach copy of Articles of Organization.

Applicant has attached a copy of its Articles of Organization as EXHIBIT A to this application.

- b. Attach copy of Alabama registration or qualification to do business.

**Applicant has attached a copy of its Certificate of Authority issued by the
Alabama Secretary of State as EXHIBIT B to this application.**

SECTION III

FINANCIAL

III-1 Attach a current certified financial statement including balance sheet, income statement, cash flow statement, and statement of retained earnings (if applicable).

Big River Telephone Company, LLC financial statement is attached as EXHIBIT C.

III-2 Facilities, if any:

Big River Telephone Company, LLC currently has no facilities in Alabama but plans to collocate equipment at local exchange carriers' facilities, carrier hotels or in the head end of cable television providers.

a. Attach statement describing means or method by which facility will be financed. (Attach copies of any agreements, commitments, or other evidence as to source and availability of capital funds.)

From operating cash flow.

b. Attach itemized estimated cost of proposed facilities.

\$10,000.

c. Attach itemized estimated operating expenses to be incurred in providing proposed service.

Operating Expense (OPEX) and Cost of Sales are illustrated on EXHIBIT D,

III-3 Provide a list of the number of prospective subscribers and estimated annual operating revenues.

Prospective Subscribers (Line Count) and Total Revenue are provided on EXHIBIT D.

III-4 Provide a description of any proposed or existing agreement of interconnecting service between applicant and any other telecommunications company.

With CLEC Certification from the Alabama Commission, Big River's initial intent to apply for Interconnection Agreement with AT&T (BellSouth), CenturyTel and Roanoke Telephone Company. Generally, the scope of the agreement with other telecommunications companies will cover the mutual exchange of local traffic, the coordination of porting telephone numbers and the lease of some network elements. Applicant has more than 20 Interconnection agreements across the 14 states listed on I.9.

III-5 Provide a description any lease or rental contract concerning any property - (real and/or personal) possessed, controlled or occupied by applicant, or by any subsidiary to which applicant owns and in which he has a controlling interest, or any parent company of which he is a subsidiary.

Not applicable.

III-6 If a subsidiary corporation, provide a list of the parent organization and submit a copy of most recent annual report.

Not applicable.

III-7 Attach statement that provides copy of three-year projected cash flow statement and/or market feasibility study.

EXHIBIT D shows projected cash flows for 2010, 2011 and 2012.

SECTION IV

ENGINEERING

IV-1 Provide a statement that describes fully the facility to be provided by applicant for rendering the proposed service at each location, if applicable.

Applicant proposes to provide local exchange and switched exchange access services throughout any exchanges in which it partners with a local cable TV company with whom it will lease local network to gain access to customers. Service will be provided from Applicant's own network and via the leased local network of the Cable TV company with whom Applicant partners. Applicant may also lease transport facilities from ILECs statewide and will do so pursuant a negotiated interconnection agreement.

IV-2 Provide a statement that describes transmission capabilities of applicant.

For transmission purposes, Big River Telephone, LLC leases network access from cable TV companies. The capabilities of the underlying cable TV networks are significant and can readily provide 10 to 50 Mbps of bandwidth. Additionally, Big River will, where necessary, lease network transmission facilities from other telecommunications companies either at the DS-1 (1.5 Mbps) or DS-3 (45 Mbps) level.

IV-3 Attach a statement that provides the location of switching equipment.

Big River Telephone, LLC operates a Class 5 local switching system with Network Operations located in Cape Girardeau, Missouri. The Class 5 Call Agent is located in Cape Girardeau but Big River has PSTN gateways located in various other

locations. Initially, Big River will serve Alabama customers out of a gateway located in St. Louis, Mo.

SECTION V

LICENSES

V-1 Attach a copy of each certificate, license or other operating authority applicable to Alabama issued to Applicant by any federal authority.

Not applicable.

SECTION VI

TARIFFS

Filed at same time as application. Each applicant shall file a proposed tariff as follows:

VI-1 The tariff must provide services and descriptions, rates or charges, rules, and regulations proposed by the company for Commission approval. (Refer to sample tariff at www.psc.state.al.us)

VI-2 The tariff must enumerate and define the classifications of services available to subscribers. Attach a copy of the proposed form of contract governing each service to be furnished by applicant to its subscribers.

VI-3 Requirements for size, form identification, and filing of tariffs:

- a. All tariffs including maps shall be in loose leaf form of size eight and one-half inches by eleven inches and shall be plainly printed or reproduced on paper of good quality.
- b. A margin of not less than three-fourths inch without any printing thereon, shall be allowed at the binding edge of each tariff sheet.
- c. Tariff sheets are to be numbered consecutively by section, sheet, and revision number. Each sheet shall show an issue date, effective date, revision number, section number, sheet number, name of the company, name of the tariff, and title of the section in a consistent manner.
- d. An official tariff filing (original plus ten copies) shall be made to the Alabama Public Service Commission.

Overnight Delivery Address:

Secretary
Alabama Public Service Commission
RSA Building
100 N Union Street, Suite 850
Montgomery, Alabama 36101

NOTE: Applicants can elect to file an electronic copy of the application and tariff. Prior to submitting the tariff, contact the Secretary's Office at 334-242-5218 to obtain approval/authorization.

Secretary

Alabama Public Service Commission

P.O. Box 304260

Montgomery, Alabama 36130-4260

SECTION VII

SUBMISSION OF APPLICATION

All of the following must be submitted before an application will be considered valid and scheduled for hearing:

VII-1 The application fee of one hundred (\$100) dollars made payable to the “Alabama Public Service Commission” must be attached to original copy.¹

NOTE: Any application for certification or additional/amended certification submitted to the Commission that does not have the required fee attached will be considered an invalid/incomplete application and will not be processed further.

VII-2 An original plus ten copies of the completed application and proposed tariff must be provided.

VII-3 Application and application fee should be submitted to the address listed in Section VI – 3.d.

¹ The *Communications Reform Act of 2005*, *CODE OF ALABAMA 1975*, Section 37-2A-9b, Standards for New Entrants, states: “Every application for a Certificate of Public Convenience and Necessity by a new entrant to provide telecommunications service in this state shall be accompanied by an application fee in the amount of one hundred dollars (\$100).”

SECTION VIII

REPRESENTATION

Applicant's Representative:

Name:	Gerard Howe
Official Title:	Chief Executive Officer
Direct Telephone Number:	314-225-2203
FAX Number:	573-651-3605
Email:	jhowe@bigrivertelephone.com

Applicant understands that the filing of this application does not constitute nor guarantee operating authority. Applicant will submit any additional materials as required by the Commission. Applicant will also file annual/financial reports and pay annual inspection and supervision fees as required under Section 37-2-41, Code of Alabama 1975.

OATH

STATE OF MISSOURI)
) SS:
County of St. Louis)

Personally appeared before the undersigned, an officer duly authorized to administer oaths, who first being duly sworn, deposes and says that he is of the Chief Executive Officer for Big River Telephone, LLC. in this application, that he has read the same and knows the contents thereof, and that the statements made herein are true to the best of his knowledge and belief.

I, Gerard J. Howe, of lawful age, being first duly sworn upon my oath, state: I am Chief Executive Officer of Big River Telephone Company, LLC, and that the facts set forth in the foregoing application have been prepared by me or under my direction, from the original books, papers and records of Big River Telephone Company. I have examined same, and declare same to be true and correct to the best of my knowledge and belief. Further, I understand that the Alabama Public Service Commission has jurisdiction affecting local service providers and Big River Telephone Company will comply with the applicable requirements of this Commission.

Respectfully submitted, this _____ day of September, 2009.

Big River Telephone Company, LLC

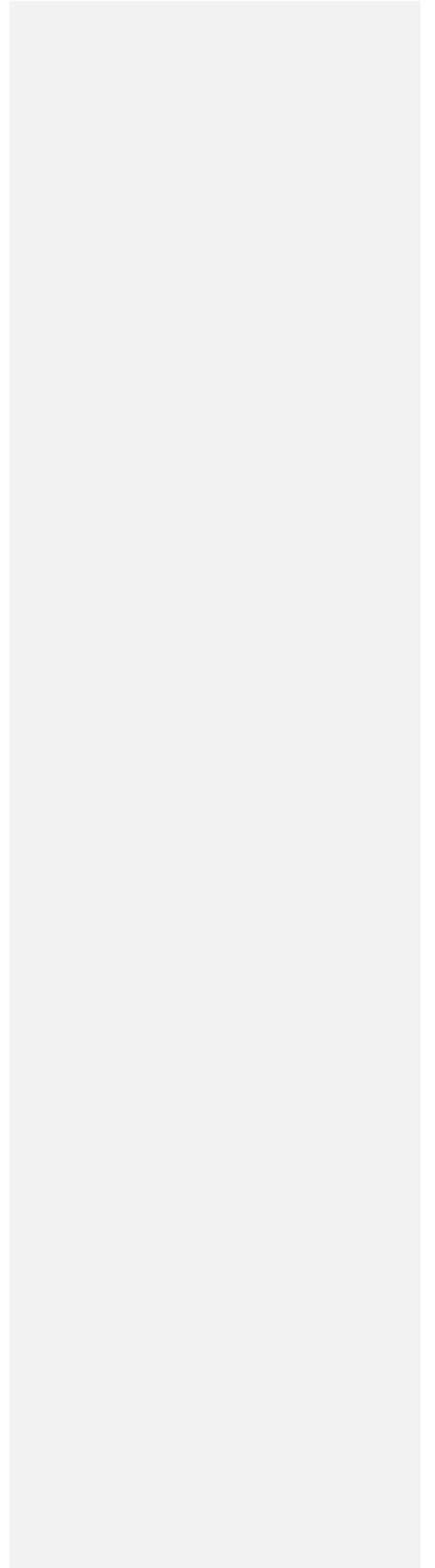
By: _____
Gerard Howe
Chief Executive Officer
24 S. Minnesota
Cape Girardeau, MO 63703
Telephone: (314) 225-2203
Facsimile: (573) 651-3605

Subscribed and sworn before me, this _____ day of September, 2009.

My Commission Expires: _____

EXHIBIT A

Articles of Organization



**Big River Telephone Company, LLC
Amended and Restated
Limited Liability Company Operating Agreement**

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT (including the appendices hereto, this “Agreement”) is entered into as of this 16th day of November, 2001.

Recitals

The parties have agreed to the formation of a limited liability company, and the operation of such limited liability company, under the Delaware Limited Liability Company Act, 6 Del. C. §18-101 et seq., in accordance with the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the parties, intending legally to be bound, agree as follows:

**Section I
Defined Terms**

The following terms shall have the meanings specified in this Section I. Other terms are defined in the text of this Agreement (including Schedule A); and, throughout this Agreement, those terms shall have the meanings respectively ascribed to them.

“Act” means the Delaware Limited Liability Company Act, 6 Del.C. § 18-101 et seq., as amended from time to time.

“Adjusted Capital Account Deficit” means, with respect to any Interest Holder, the deficit balance, if any, in such Interest Holder’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Interest Holder is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Section 1.704-2(g) and 1.704-2(i)(5); and

(ii) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

“Affiliate” means, with respect to any Member or Manager, any Person: (i) which owns or controls more than 10% of the voting interests in such Member or Manager; or (ii) in which the Member or Manager owns more than 10% of the voting interests; (iii) in which more than 10% of the voting interests are owned by a Person who has a relationship with the Member or Manager described in clause (i) or (ii) above, (iv) which directly or indirectly controls, is

controlled by or is under common control with such Person or (v) any officer, director, manager or general partner of such Person. For purposes of this definition, the terms “controlled”, “is controlled by”, or “is under common control with” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” means this Limited Liability Company Agreement, as amended from time to time.

“Board of Managers” means those persons designated as Managers under this Agreement.

“Capital Account” means the account to be maintained by the Company for each Interest Holder in accordance with the following provisions:

(i) an Interest Holder’s Capital Account shall be credited with the Interest Holder’s Capital Contributions, the amount of any Company liabilities assumed by the Interest Holder (or which are secured by Company property distributed to the Interest Holder), the Interest Holder’s distributive share of Profit and any item in the nature of income or gain specially allocated to such Interest Holder pursuant to the provisions of Section IV; and

(ii) an Interest Holder’s Capital Account shall be debited with the amount of money and the fair market value of any Company property distributed to the Interest Holder, the amount of any liabilities of the Interest Holder assumed by the Company (or which are secured by property contributed by the Interest Holder to the Company), the Interest Holder’s distributive share of Loss, and any item in the nature of expenses or losses specially allocated to the Interest Holder pursuant to the provisions of Section IV.

(iii) If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Interest.

It is intended that “Capital Accounts” shall be maintained in compliance with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Board of Managers shall determine that it is prudent to modify the manner in which the Capital Accounts or any debits or credits thereto are computed in order to comply with such Regulations, the Board of Managers shall make such modification. The Board of Managers also shall (a) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Interest Holders and the amount of Company capital reflected on the Company’s balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(g), and (b) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

“Capital Contribution” means the total amount of cash and the Gross Asset Value of any other assets contributed or deemed contributed under the Code to the Company by a Member, net of liabilities assumed or to which the assets are subject. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Company by the maker of the note (or a person or entity related to the maker of the note within the meaning of Regulations Section 1.704-1(b)(2)(ii)(c)) shall not be included in the Capital Account of any Member until the Company makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2).

“Capital Securities” means as to any Person that is a corporation, the authorized shares of such Person’s capital stock, including all classes of common, preferred, voting and nonvoting capital stock, and, as to any Person that is not a corporation or an individual, the ownership or membership interests in such Person, including, without limitation, the right to share in profits and losses, the right to receive distributions of cash and property, and the right to receive allocations of items of income, gain, loss, deduction and credit and similar items from such Person, whether or not such interests include voting or similar rights entitling the holder thereof to exercise control over such Person.

“Cash Flow” means all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any non-cash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by the Board of Managers increased by the reduction of any reserve previously established.

“Certificate of Formation” means the Certificate of Formation of the Company filed with the Office of the Delaware Secretary of State in accordance with the Act.

“Code” means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

“Company” means the limited liability company formed in accordance with this Agreement.

“Company Assets” means all property held by the Company.

“Conversion” has the meaning set forth in Section 10.1.

“Depreciation” means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with

reference to such beginning Gross Asset Value using any reasonable method selected by the Board of Managers.

“Employee Option Plan” is defined in Section 3.1.4.

“Exit Transaction” means (i) the sale by the Company of all or substantially all of the Company’s assets, including without limitation, the sale of all or substantially all of the assets of the Company and all of the Subsidiaries to a third party (other than a Member or an Affiliate of a Member), and the subsequent dissolution and winding up of the affairs of the Company in accordance with this Agreement and applicable law; (ii) the merger or consolidation of the Company with one or more of the third parties (other than a Member or an Affiliate of a Member) in a transaction in which such third parties thereafter control, directly or indirectly, more than fifty percent (50%) of the voting power of the Company; (iii) the sale of all or substantially all of the issued and outstanding Capital Securities of the Company to one or more third parties (other than a Member or an Affiliate of a Member) in a transaction in which such third parties thereafter control, directly or indirectly, more than fifty percent (50%) of the voting power of the Company.

“Fiscal Year” means as applicable: (i) the period commencing on the effective date of this Agreement and ending on the immediately succeeding December 31; (ii) any subsequent twelve (12) month period commencing on January 1 and ending on December 31; and (iii) any portion of the period described in clause (ii) for which the Company is required to allocate Profits, Losses and other items of Company income, gain, loss or deduction pursuant to Section IV hereof or such other year as required by the Code.

“Gross Asset Value” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

- (i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Board of Managers;
- (ii) The Gross Asset Value of all Company assets shall be adjusted to equal their gross fair market values, as determined by the Board of Managers, as of the following times: (a) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (b) the distribution by the Company to a Member of more than a *de minimis* amount of property as consideration for an interest in the Company; and (c) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (a) and (b) above shall be made only if the Board of Managers reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;
- (iii) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Board of Managers; and

- (iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m), in determining Profit and Loss, and in making special allocations in accordance with Schedule A; provided, however, that Gross Asset Values shall not be adjusted pursuant to this Part (iv) to the extent that the Board of Managers determines that an adjustment pursuant to Part (ii) of this definition of Gross Asset Value is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Part (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to any of Parts (i), (ii), and (iv) of this definition of Gross Asset Value, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profit and Loss.

“Interest” means an Interest Holder’s share of the Profits and Losses of, and the right to receive distributions from the Company.

“Interest Holder” means any Person who holds an Interest, whether as a Member or an assignee of a Member who has not been admitted to the Company as a Member.

“Involuntary Withdrawal” means, with respect to any Member, the occurrence of any of the following events:

- (i) the Member makes an assignment for the benefit of creditors;
- (ii) the Member files a voluntary petition of bankruptcy;
- (iii) the Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;
- (iv) the Member files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
- (v) the Member seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member’s properties;
- (vi) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in Subsections (i) through (v);

- (vii) within one hundred twenty days (120) days of any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation if the proceeding has not been dismissed, or within ninety (90) days after the appointment of a trustee, receiver, or liquidator for the Member or all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed, or if the appointment is stayed, for ninety (90) days after the expiration of the stay which period the appointment is not vacated;
- (viii) if the Member is an individual, the Member's death or adjudication by a court of competent jurisdiction as incompetent to manage the Member's person or property;
- (ix) if the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust;
- (x) if the Member is a partnership or another limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company;
- (xi) if the Member is a corporation, the dissolution of the corporation or the revocation of its charter; or
- (xii) if the Member is an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

"Manager" is a Person designated as such in this Agreement.

"Member" means each Person signing this Agreement and any Person who subsequently is admitted as a member of the Company in accordance with the terms of this Agreement.

"Membership Rights" means all of the rights of a Member in the Company, including a Member's: (i) Interest; (ii) right to inspect the Company's books and records; and (iii) right to vote on matters properly coming before the Members.

"Negative Capital Account" means a Capital Account with a balance of less than zero.

"New Securities" means any Capital Securities of the Company, whether or not now authorized; provided, however, that "New Securities" does not include (i) Capital Securities of the Company offered to the public pursuant to a registration statement filed under the Securities Act in connection with a public offering; (ii) Capital Securities of the Company issued in consideration of the acquisition of another Person or business by the Company by merger, consolidation, amalgamation, exchange of shares, the purchase of substantially all of the assets or otherwise; (iii) Capital Securities of the Company issued to other service providers of the Company or its subsidiaries pursuant to any form of incentive compensation approved by the Board of Managers; (iv) Capital Securities of the Company issued upon any stock split, stock

dividend, combination or other similar event with respect to the Company's Capital Securities; (v) the original Units issued pursuant to this Agreement; (vi) Capital Securities issued in connection with debt financing transactions or (vii) Capital Securities of the Company issued in satisfaction of the preemptive rights provided for in Section 3.3.

"Percentage" means, as to a Member, the ratio, as determined at any point in time, expressed as a percentage, that the Units held by the Member bears to the sum of all Units then outstanding, and as to an Interest Holder who is not a Member, the Percentage that the Units that have been acquired by such Interest Holder bears to the sum of all Units then outstanding, to the extent the Interest Holder has succeeded to the Interest represented by such Units. The Percentage of any particular Member will be automatically adjusted as Units are issued or redeemed by the Company pursuant to this Agreement.

"Person" means and includes any individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

"Positive Capital Account" means a Capital Account with a balance greater than zero.

"Profit" and "Loss" means, for each Fiscal Year of the Company (or other period for which Profit or Loss must be computed) the Company's taxable income or loss for such year determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

- (i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profit and Loss shall be added to such taxable income or loss; and
- (ii) Any expenditure of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i) not otherwise taken into account in computing Profit or Loss shall be subtracted from such taxable income or loss;
- (iii) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Part (ii) or Part (iii) of the definition of "Gross Asset Value" herein, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such assets for purposes of computing Profit or Loss;
- (iv) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

- (v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year, computed in accordance with the definition of “Depreciation” herein;
- (vi) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of an Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profit or Loss;
- (vii) Notwithstanding any other provision of this definition of “Profit” and “Loss”, any items specially allocated pursuant to Section 2 or Section 3 of Schedule A shall not be taken into account in computing Profits and Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Section 2 of Schedule A shall be determined by making adjustments analogous to those set forth in Parts (i) through (vi) above.

“Public Vehicle” has the meaning set forth in Section 10.1.

“Regulation” means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

“Required Members” means the Members having at least two-thirds (2/3) percent of the Units then held by all Members.

“Subsidiary” means any Person whose Capital Securities, a majority ownership of which, directly or indirectly through the Company or one or more other Persons, (i) the Company has the then exercisable right to acquire or (ii) are owned or controlled by the Company (as control is defined in the definition of Affiliate).

“Transfer” means, when used as a noun, any voluntary sale, hypothecation, pledge, assignment, attachment, or other transfer, and, when used as a verb, means, voluntarily to sell, hypothecate, pledge, assign, or otherwise transfer.

“Units” means units of participation representing Membership Rights in the Company.

“Voluntary Withdrawal” means a Member’s dissociation with the Company by means other than by a Transfer in compliance with this Agreement or an Involuntary Withdrawal.

Section II

Formation and Name: Office; Purpose; Term

2.1. Organization. The parties hereby organize a limited liability company pursuant to the Act and the provisions of this Agreement and, for that purpose, the parties hereby ratify and approve the Certificate of Formation of the Company filed with the Office of the Secretary of State of the State of Delaware on May 2, 2001 and enter into this Agreement.

2.2. Name of the Company. The name of the Company shall be "Big River Telephone Company, LLC." The Company may do business under that name and under any other name or names upon which the Board of Managers selects in its sole discretion. If the Company does business under a name other than that set forth in its Certificate of Formation, then the Company shall file a fictitious name certificate or any other documents as required by applicable law.

2.3. Purpose. The Company is organized solely to purchase, acquire, buy, sell, own, trade in, hold, develop, lease, manage, subdivide and otherwise deal in and with assets used in the operation of regional, local and long distance telephone and internet service providers and to act as such a provider and to do any and all things necessary, convenient, or incidental to that purpose.

2.4. Term. The term of the Company shall be perpetual.

2.5. Registered Office. The registered office of the Company in the State of Delaware shall be located at the address set forth in the Certificate of Formation or at any other place within the State of Delaware which the Board of Managers shall select. The principal office of the Company shall be at any location which the Board of Managers shall select.

2.6. Registered Agent. The name of the Company's registered agent in the State of Delaware shall be the Person named in the Certificate of Formation or such other Person which the Board of Managers shall select.

2.7. Members. The name, present mailing address, taxpayer identification number, Capital Contribution and Percentage of each Member are set forth on Schedule B attached hereto.

Section III

Members; Capital; Capital Accounts

3.1. Contributions to Company Capital; Issuance of Units; Unit Certificates.

3.1.1. There are hereby established and authorized for issuance 3,984,375 Units.

3.1.2. Each Person listed on Schedule B as an Initial Member is hereby issued such number of Units as is set forth opposite such Member's name on Schedule B hereto. The Members listed as Initial Members on Schedule B have, as of the date of this Agreement, made, in the aggregate, Capital Contributions of \$50,000 and are to be issued, in the aggregate, 62,500 Units. The Board of Managers is hereby authorized to

issue, from time to time, up to three million one hundred twenty-five thousand (3,125,000) Units at a price of eighty cents (\$0.80) per Unit, which shall be subscribed and paid in accordance with the terms of this Section 3.1.2. Each Person who wishes to subscribe for a Unit shall deliver to the Board of Managers at the time of subscribing (i) cash in the amount of eighty cents (\$0.80) multiplied by the number of Units for which the Person is subscribing, and (ii) one copy of a properly executed subscription agreement in a form approved by the Board of Managers, and (iii) an executed signature page evidencing such Person's agreement to be bound by the terms of this Agreement. Admission of a Member and issuance of Units shall be made only upon receipt of the above items and acceptance of a subscription by the Board of Managers. The Board of Managers may accept subscriptions, in whole or in part, at its discretion.

3.1.3. The Company may authorize and issue from time to time hereafter additional Units having such designations, preferences or special rights as the Board of Managers may from time to time designate in an amendment to this Agreement. Such an amendment shall not require the consent of the Members so long as the provisions of Section 3.3. are followed.

3.1.4. The Company reserves 796,875 Units for issuance to employees of the Company pursuant to an Employee Option Plan or Employee Option Plans to be adopted and administered by the Board of Managers in their discretion (all such plans, the "Employee Option Plan").

3.1.5. The Company shall issue certificates representing the Units in such form as shall be approved by the Board of Managers. Units may be Transferred, subject to the provisions of this Agreement, only upon the presentation of the certificates representing such Units, duly endorsed. The Company shall maintain a record of the ownership and transfer of all Units. No purported Transfer of a Unit shall be effective unless reflected in such record. All Unit certificates shall bear a legend providing notice of the restrictions imposed by this Agreement. No Unit may be transferred and no transferee of any Unit shall be deemed a Member of the Company with Membership Rights unless the provisions of Section 6 of this Agreement are fully complied with.

3.2. Capital Contributions.

3.2.1. On or prior to the date of this Agreement, each of the Members listed on Schedule B as Initial Members has made initial Capital Contributions to the Company in cash in the amount set forth on Schedule B next to such Member's name. The initial Capital Contribution made by each additional Member shall be set forth on Schedule B which the Board of Managers is authorized to amend from time to time to reflect all Members. Except as contemplated by this Section 3.2., no Member shall be required to make any Capital Contribution to the Company.

3.2.2. The Units received by a Member pursuant to the terms of any Employee Option Plan are subject to the terms of such Employee Option Plan.

3.3. Preemptive Rights. The Company shall only issue New Securities in accordance with the following terms:

3.3.1. The Company shall not issue any New Securities unless it first delivers to each Member (referred to herein as a “Buyer”) a written notice (the “Notice of Proposed Issuance”) specifying the type and total number of such New Securities that the Company then intends to issue (the “Offered New Securities”), the material terms, including the price upon which the Company proposes to issue the Offered New Securities and stating that the Buyer shall have the right to purchase the Offered New Securities in the manner specified in this Section 3.3. for the same price per share and in accordance with the same terms and conditions specified in such Notice of Proposed Issuance.

3.3.2. During the thirty (30) consecutive day period commencing on the date the Company delivers to all of the Buyers the Notice of Proposed Issuance (the “Thirty Day Period”) in accordance with Section 3.3.1. hereof, the Buyers shall have the option to purchase all of the Offered New Securities at the same price per Unit and upon the same terms and conditions specified in the Notice of Proposed Issuance. Each Buyer electing to purchase Offered New Securities must give written notice of its election to the Company prior to the expiration of the Thirty Day Period.

3.3.3. Each Buyer shall have the right to purchase that number of the Offered New Securities as shall be equal to the number of the Offered New Securities multiplied by a fraction, the (i) numerator of which shall be the number of Units then held by such Buyer and (ii) the denominator of which shall be the aggregate number of Units then held by all of the Buyers. The amount of such Offered New Securities that each Buyer is entitled to purchase under this Section 3.3.3. shall be referred to as its “Proportionate Share”.

3.3.4. Each Buyer shall have a right of oversubscription such that if any other Buyer fails to elect to purchase his or its full Proportionate Share of the Offered New Securities, the other Buyer(s) shall, among them, have the right to purchase up to the balance of such Offered New Securities not so purchased. The Buyers may exercise such right of oversubscription by electing to purchase more than their Proportionate Share of the Offered New Securities by so indicating in their written notice given during the Thirty Day Period. If, as a result thereof, such oversubscription exceeds the total number of the Offered New Securities available in respect to such oversubscription privilege, the oversubscribing Buyers shall be cut back with respect to oversubscriptions on a pro rata basis in accordance with their respective Proportionate Share or as they may otherwise agree among themselves.

3.3.5. If some or all of the Offered New Securities have not been purchased by the Buyers pursuant to Section 3.3.1. through 3.3.4. hereof, then the Company shall have the right, until the expiration of one hundred eighty (180) days commencing on the first day immediately following the expiration of the Thirty Day Period, to issue such remaining Offered New Securities to one or more third parties at not less than, and on terms no more favorable to the purchasers thereof than, the price and terms specified in

the Notice of Proposed Issuance. If for any reason the Offered New Securities are not issued within such period and at such price and on such terms, the right to issue in accordance with the Notice of Proposed Issuance shall expire and the provisions of this Agreement shall continue to be applicable to the Offered New Securities.

3.3.6. The Buyer purchasing the greatest percentage of the Offered New Securities shall set the place, time and date for the consummation of the purchase of the Offered New Securities (a "Closing"), which Closing shall occur not more than five (5) days after the first day immediately following the expiration of the Thirty Day Period. The purchase price for the Offered New Securities shall, unless otherwise agreed in writing by the parties to such transaction, be paid in immediately available funds on the date of the Closing. At the Closing, the Buyers shall deliver the consideration required by Section 3.3.2. and the Company shall deliver any documents or instruments, if applicable, representing the Offered New Securities.

3.3.7. The Company may proceed with the issuance of New Securities without first following procedures in Sections 3.3.1. through 3.3.6. above, provided that (i) the purchaser of such New Securities agrees in writing to take such New Securities subject to the provisions of this Section 3.3.7. and (ii) within ten (10) days following the issuance of such New Securities, the Company or the purchaser of the New Securities undertakes steps substantially similar to those in Sections 3.3.1. through 3.3.6. above to offer to all Buyers the right to purchase from such purchaser a pro rata portion of such New Securities or to purchase from the Company additional New Securities, in either case at the same price and terms applicable to the purchaser's purchase thereof so as to achieve substantially the same effect from a dilution protection standpoint as if the procedures set forth in Sections 3.3.1. through 3.3.6. had been followed prior to the issuance of such New Securities.

3.3.8. The rights under this Section 3.3. may be waived in whole or in part as to all of the Buyers with the consent of the Required Members, and any such waiver shall be binding upon all of the Buyers, provided, however, if the Company issues New Securities to one or more Members without offering to all Buyers the right to purchase a Proportionate Share of the New Securities after such waiver is effected, then such waiver shall not be binding upon any Buyer as to such Member's purchase of such New Securities. In no event shall the Company be required to offer or sell New Securities to any Person unless such Person is able to establish, to the satisfaction of the Company, that such Person is an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933 and that such offer and sale will comply with all applicable securities and other laws without the need for substantial additional cost, effort or delay.

3.4. No Interest on Capital Contributions. Interest Holders shall not be paid interest on their Capital Contributions.

3.5. Return of Capital Contributions. Except as otherwise provided in this Agreement, no Interest Holder shall have the right to the return of any Capital Contribution.

3.6. Capital Accounts. A separate Capital Account shall be maintained for each Interest Holder.

3.7. Loans. Any Member or Manager may, at any time, make or cause a loan to be made to the Company in any amount and on those terms upon which the Board of Managers and the Member and/or the Manager making the loan shall agree.

Section IV Profit, Loss, and Distributions

4.1. Allocation of Profits and Losses

4.1.1. Profits. After giving effect to the regulatory allocations set forth in Schedule A, Profits for any Fiscal Year shall be allocated in the following order and priority:

4.1.1.1. First, to the Interest Holders in an amount equal to the excess, if any, of (i) the cumulative Losses allocated to the Interest Holders pursuant to Section 4.1.2.3. for all prior Fiscal Years, over (ii) the cumulative Profits allocated pursuant to this Section 4.1.1.1. for all prior Fiscal Years, pro rata among the Interest Holders in accordance with their respective shares of such excess.

4.1.1.2. Second, to the Interest Holders in an amount equal to the excess, if any, of (i) the cumulative Losses allocated to the Interest Holders pursuant to Section 4.1.2.2. for all prior Fiscal Years, over (ii) the cumulative Profits allocated pursuant to this Section 4.1.1.2. for all prior Fiscal Years, pro rata among the Interest Holders in accordance with their respective shares of such excess.

4.1.1.3. Third, to the Interest Holders pro rata in accordance with their Percentages.

4.1.2. Losses. After giving effect to the regulatory allocations set forth in Schedule A, Losses for any Fiscal Year shall be allocated in the following order and priority:

4.1.2.1. First, to the Interest Holders in an amount equal to the excess, if any, of (i) the cumulative Profits allocated to the Interest Holders pursuant to Section 4.1.1.3. over (ii) the cumulative Losses allocated pursuant to this Section 4.1.2.1. for all prior Fiscal Years, pro rata among the Interest Holders in accordance with their respective shares of such excess.

4.1.2.2. Second, to the Interest Holders in an amount equal to the excess, if any, of (i) the cumulative Profits allocated to the Interest Holders

pursuant to Section 4.1.1.2. over (ii) the cumulative Losses allocated pursuant to this Section 4.1.2.2. for all prior Fiscal Years, pro rata among the Interest Holders in accordance with their respective shares of such excess.

4.1.2.3. Third, to the Interest Holders pro rata in accordance with their Percentages.

4.1.2.4. Losses allocated shall not cause an Interest Holder to have an Adjusted Capital Account Deficit unless no Interest Holder has a Positive Capital Account. In the event that some, but not all, of the Interest Holders would have an Adjusted Capital Account Deficit as a consequence of an allocation of Losses, the limitation set forth in the preceding sentence shall be applied on an Interest Holder by Interest Holder basis.

4.2 Distributions. Except as otherwise provided in Section 4.3., Cash Flow shall be distributed to the Interest Holders pro rata in accordance with their Percentages at such times and in such amounts as the Board of Managers shall determine in its sole discretion.

4.3. Liquidation and Dissolution.

4.4.1. If the Company is liquidated, the assets of the Company shall be distributed to the Interest Holders pro rata in accordance with their Positive Capital Account balances determined after taking into account the allocations of Profit or Loss pursuant to Section 4.1., if any.

4.4.2. No Interest Holder shall be obligated to restore a Negative Capital Account.

4.5. General.

4.5.1. Except as otherwise provided in this Agreement, the timing and amount of all distributions shall be determined by the Board of Managers in its sole discretion.

4.5.2. The Company Assets may be distributed in kind to the Interest Holders, and those assets shall be valued on the basis of their fair market value. The fair market value of the assets shall be determined by an independent appraiser who shall be selected by the Board of Managers.

4.5.3. All Profit and Loss shall be allocated, and all distributions shall be made to the Persons shown on the records of the Company to have been Interest Holders as of the last day of the Fiscal Year for which the allocation or distribution is to be made. Notwithstanding the foregoing, unless the Company's Fiscal Year is separated into segments, if there is a Transfer or an Involuntary Withdrawal or the issuance of additional Units during the Fiscal Year, the Profit and Loss shall be allocated between the original Interest Holder and the successor (in accordance with Code Section 706 using any convention permitted by law and selected by the Board of Managers in its sole

discretion) on the basis of the number of days each was an Interest Holder during the Fiscal Year; provided, however, the Company's Fiscal Year shall be segregated into two or more segments in order to account for Profit, Loss or proceeds attributable to a Capital Transaction or to any other extraordinary non-recurring items of the Company.

4.5.4. The Board of Managers is hereby authorized, upon the advice of the Company's tax counsel, to amend this Article IV to comply with the Code and the Regulations promulgated under Code Section 704(b); provided, however, that no amendment shall materially affect distributions to an Interest Holder without the Interest Holder's prior written consent.

Section V

Management: Rights, Powers, and Duties

5.1. Management.

5.1.1. Board of Managers. The Company shall be managed by the Board of Managers composed of three (3) Managers, who may, but need not, be Members. Gerard J. Howe, Thomas Bartow and Patrick O'Malley are hereby designated to serve as the initial Managers serving on the Board of Managers.

5.1.2. General Powers. The Board of Managers shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated, and to make all decisions affecting such business and affairs, including without limitation, for Company purposes, the power to:

5.1.2.1. acquire by purchase, lease, or otherwise, any real or personal property, tangible or intangible;

5.1.2.2. construct, operate, maintain, finance and improve, and to own, sell, convey, assign, mortgage, or lease any of the Company Assets;

5.1.2.3. enter into agreements and contracts in connection with the Company's business;

5.1.2.4. purchase liability and other insurance to protect the Company's properties and business;

5.1.2.5. borrow money for and on behalf of the Company, and, execute any guaranty on behalf of a third party;

5.1.2.6. execute or modify agreements or contracts with respect to any part or all of the Company's Assets;

5.1.2.7. prepay, in whole or in part, refinance, amend, modify, or extend any mortgages or deeds of trust which may affect any Company Asset and, in connection therewith, to execute for and on behalf of the Company any extensions, renewals, or modifications of such mortgages or deeds of trust;

5.1.2.8. execute any and all other instruments and documents which may be necessary or in the opinion of the Board of Managers desirable to carry out the intent and purpose of this Agreement;

5.1.2.9. make any and all expenditures which the Board of Managers, in its sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities under this Agreement, including, without limitation, all legal, accounting, and other related expenses incurred in connection with the organization, financing, and operation of the Company;

5.1.2.10. enter into any kind of activity necessary to, in connection with, or incidental to, the accomplishment of the purposes of the Company; and

5.1.2.11. invest and reinvest Company reserves in short term instruments or money market funds.

5.1.2.12. confess a judgement against the Company in any amount;

5.1.2.13. make any loan to any Member or Affiliate of any Member;

5.1.2.14. enter into or amend any transaction between the Company and a Member or an Affiliate of a Member, or establish or pay any salaries, bonuses, or other forms of compensation to any Person who is an employee or Affiliate of a Member for service as an employee, consultant, agent or representative of the Company;

5.1.2.15. cause or permit the Company to incur or become liable for capital expenditures;

5.1.2.16. sell, exchange, lease, mortgage, pledge or otherwise dispose of all or substantially all of the assets of the Company in a single transaction or series of related transactions;

5.1.2.17. approve a merger or consolidation with another Person;

5.1.2.18. change the status of the Company from one in which management is vested in the Board of Managers to one in which management is vested in the Members;

5.1.2.19. establish any reserve on the books of the Company;

5.1.2.20. amend the Certificate of Organization of the Company (except for such amendments as may require approval of the Members under Section 5.1.3.);

5.1.2.21. amend this Agreement or waive the enforcement or application of any provision hereof (except as such powers may be limited under Section 5.1.3. hereof);

5.1.2.22. accept subscriptions for new Units, issue new Units and admit any new Member or substitute Member pursuant to the terms of this Agreement;

5.1.2.23. authorize and administer Employee Option Plans;

5.1.2.24. to issue authorized but previously unissued Units pursuant to the terms of this Agreement including Units reserved for issuance pursuant to any Employee Option Plan; to purchase any outstanding Unit at a purchase price acceptable to the Unit holder and the Board of Managers, in its sole discretion; and to reissue any repurchased Unit at a price and upon terms acceptable to the Board of Managers in its sole discretion;

5.1.2.25. cause a Conversion; and

5.1.2.26. terminate, dissolve or windup the Company.

5.1.3. Extraordinary Transactions. Notwithstanding anything to the contrary in this Agreement, the Board of Managers shall not, without the approval of Members holding a majority of the Units then held by Members, (i) allow the Company to engage in business outside the scope of its purpose as described in Section 2.3; (ii) perform any act in contravention of this Agreement; or (iii) amend the Certificate of Organization or this Agreement in such a way as to change the relative rights or obligations of the Members except as may be specifically allowed under this Agreement.

5.1.4. Limitation on Authority of Members.

5.1.4.1. No Member is an agent of the Company solely by virtue of being a Member, and no Member has authority to act for the Company solely by virtue of being a Member.

5.1.4.2. This Section 5.1. supersedes any authority granted to the Members pursuant to the Act. Any Member who takes any action or binds the Company in violation of this Section 5.1. shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

5.1.5. Removal of Manager. The Members, at any time and from time to time and for any reason, by the affirmative vote of the Required Members, may remove any Manager then acting.

5.2. Meetings of and Voting by Members.

5.2.1. A meeting of the Members may be called at any time by the Board of Managers or by the Chief Executive Officer. Meetings of Members shall be held at the Company's principal place of business or at any other place designated by the Person calling the meeting. Not less than ten (10) nor more than ninety (90) days before each meeting, the Person calling the meeting shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the time, place, and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if, before or after the meeting, the Member signs a waiver of the notice which is filed with the records of Members' meetings, or if such Member is present at the meeting in person or by proxy. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person or by proxy of Members holding not less than a majority of the Units then held by Members constitutes a quorum. A Member may vote either in person or by written proxy signed by the Member or by his duly authorized attorney in fact.

5.2.2. Except as otherwise provided in this Agreement, wherever this Agreement requires the approval of the Members, the affirmative vote of members holding a majority or more of the Units then held by Members shall be required to approve the matter.

5.2.3. In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating the consent of Members holding that number of Units then held by Members which are required hereunder to approve the action.

5.3. Personal Services.

5.3.1. No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the Board of Managers, no Member shall perform services for the Company or be entitled to compensation for services performed for the Company.

5.3.2. The Board of Managers shall not be entitled to compensation for services performed for the Company. However, upon substantiation of the amount and

purpose thereof, each Manager shall be entitled to reimbursement for expenses reasonably incurred in connection with the activities of the Company.

5.4. Duties of Parties.

5.4.1. Each Manager shall devote such time to the business and affairs of the Company as is necessary to carry out such Manager's duties set forth in this Agreement.

5.4.2. Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms as determined by the Board of Managers.

5.5. Liability and Indemnification.

5.5.1. No Manager shall be liable, responsible, or accountable, in damages or otherwise, to any Member or to the Company for any act performed by such Manager within the scope of the authority conferred on such Manager by this Agreement, except for fraud, gross negligence, willful misconduct, or an intentional breach of this Agreement.

5.5.2. To the fullest extent permitted by applicable law, the Company shall indemnify each Manager for any act performed by such Manager within the scope of the authority conferred on such Manager by this Agreement, except for fraud, gross negligence, willful misconduct or an intentional breach of this Agreement.

5.5.3. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member or Manager or any officer, director, stockholder, member, partner, representative, employee or agent of such Member or Manager (collectively a "Covered Person") shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Covered Person.

5.5.4. To the fullest extent permitted by applicable law, a Member shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Member for any acts performed by such Member within the scope of the authority conferred on such Member by this Agreement, except for fraud, gross negligence, willful misconduct or an intentional breach of this Agreement.

5.6. Power of Attorney.

5.6.1. Grant of Power. Each Member constitutes and appoints each Manager as the Member's true and lawful attorney-in-fact ("Attorney-in-Fact"), and in the Member's name, place and stead, to make, execute, sign, acknowledge, and file:

5.6.1.1. the Certificate of Formation;

5.6.1.2. all documents (including amendments to the Certificate of Formation) which the Attorney-in-Fact deems appropriate to reflect any amendment, change, or modification of this Agreement;

5.6.1.3. any and all other certificates or other instruments required to be filed by the Company under the laws of the State of Delaware or of any other state or jurisdiction, including, without limitation, any certificate or other instruments necessary in order for the Company to continue to qualify as a limited liability company under the laws of the State of Delaware;

5.6.1.4. one or more fictitious or trade name certificates; and

5.6.1.5. all documents which may be required to dissolve and terminate the Company and to cancel its Certificate of Formation.

5.6.2. Irrevocability. The foregoing power of attorney is irrevocable and is coupled with an interest, and, to the extent permitted by applicable law, shall survive the death or disability of a Member and be binding on such Member's heirs. It also shall survive the Transfer of an Interest, except that if the transferee is approved for admission as a Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the Attorney-in-Fact to execute, acknowledge and file any documents needed to effectuate the substitution. Each Member shall be bound by any representations made by the Attorney-in-Fact acting in good faith pursuant to this power of attorney, and each Member hereby waives any and all defenses which may be available to contest, negate or disaffirm the action of the Attorney-in-Fact taken in good faith under this power of attorney.

5.7. Functioning of the Board of Managers.

5.7.1. Meetings; Proxies. Regular meetings of the Board of Managers shall be held as determined by the Board of Managers. Any Manager may, upon two (2) days notice to the other Managers, call a special meeting of the Board of Managers at any time. Managers may vote by proxy at any meeting.

5.7.2. Notice; Waiver; Minutes. All Managers shall receive notice of each meeting of the Board of Managers together with a copy of the proposed agenda for such meeting at least two (2) days prior to a scheduled regular meeting date or upon the serving of notice of a special meeting. Attendance at a meeting of the Board of Managers shall constitute waiver of notice thereof. The Board of Managers shall keep minutes of its meetings.

5.7.3. Action Without Meeting. Any action which may be taken by the Board of Managers at a meeting thereof may be taken without a meeting by the unanimous written consent of all members of the Board of Managers.

5.8. Officers of the Company.

5.8.1. Executive Officers. The officers of the Company shall be a Chief Executive Officer, a President and a Senior Vice President and may include additional Vice Presidents (the number thereof to be determined by the Board of Managers), a Treasurer, a Secretary and such assistant Treasurers, assistant Secretaries or other officers, if any, as may be elected by the Board of Managers. Any two or more offices may be held by the same person. Initially, Gerard J. Howe shall act as the Chief Executive Officer of the Company, Kevin Cantwell shall act as the President of the Company and Phillip Abbenhaus shall act as the Senior Vice President/Chief Financial Officer of the Company.

5.8.2. Other Officers. The Board of Managers may elect such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Managers.

5.8.3. Election and Term of Office. Vacancies in any office may be filled, or new offices may be created and filled, at any meeting of the Board of Managers. Each officer shall hold office until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

5.8.4. Compensation of Officers. The compensation of all officers of the Company shall be fixed by the Board of Managers.

5.8.5. Removal of Officers; Vacancy. Any officer or agent designated hereunder or appointed by the Board of Managers may be removed by the Board of Managers at any time, with or without cause. Any such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any vacancy in any office may be filled by the Board of Managers for the unexpired portion of the term.

5.8.6. Resignation of Officers. Any officer of the Company may resign at any time by giving written notice to the Board of Managers. Any such resignation shall take effect at the time specified therein, or, if the time be not specified therein, then upon receipt thereof. The acceptance of such resignation shall not be necessary to make it effective.

5.8.7. Duties of the Officers. Officers shall perform their duties as officers in good faith and with that degree of care which an ordinarily prudent person in a like position would use under similar circumstances.

5.8.7.1. Duties of the Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Company. The Chief Executive Officer shall see that all orders and resolutions of the Board of Managers and the Members are carried into effect. In his/her capacity as chief executive officer, the Chief Executive Officer shall preside at all meetings of the Members and of the Board of Managers. The Chief Executive Officer shall have such other powers and duties as the Board of Managers assigns from time to time. Notwithstanding the foregoing, the Chief Executive Officer shall have the power and authority to operate the business affairs of the Company on a day to day basis. The Chief Executive Officer must seek the approval from the Board of Managers of actions performed on behalf of the Company only if those actions would (i) change the relative rights of the Members, (ii) expand the Company's operations into a new line of business, or (iii) require the Company to make expenditures that exceed the Company's annual budget, as set by the Board of Managers; provided that if, in any year, the Board of Managers fails to adopt a budget, then the budget for the applicable year shall be deemed the same as the last budget adopted by the Board of Managers unless and until the Board of Managers adopts a new budget for such year.

5.8.7.2. Duties of the President. In the absence of the Chief Executive Officer or in the event of his inability to act, the President shall perform the duties of the Chief Executive Officer, and when so acting shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer. The President shall perform such other duties as from time to time may be assigned to him by the Chief Executive Officer or by the Board of Managers.

5.8.7.3. Duties of the Vice-President. In the absence of the President or in the event of his inability to act, the Vice-President, if any (or in the event there be more than one Vice-President, the Vice-Presidents in the order designated by the Board of Managers or, if not so designated, in the order of their appointment or election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice-President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Managers.

5.8.7.4. Duties of Other Officers. Any other officers appointed by the Board of Managers hereunder shall perform such duties as from time to time may be assigned to him/her by the Chief Executive Officer or by the Board of Managers.

Section VI
Transfer of Interests, Units and Withdrawals of Members

6.1. Transfers.

6.1.1. No Person may Transfer all or any portion of any Units or any interest or rights in the Person's Membership Rights or Interest unless the following conditions ("Conditions of Transfer") are satisfied:

6.1.1.1. The Transfer will not require registration of Units, Interests or Membership Rights under any federal or state securities laws;

6.1.1.2. The transferee delivers to the Company a written instrument agreeing to be bound by the terms of this Agreement.

6.1.1.3. The Transfer will not result in the termination of the Company pursuant to Code Section 708;

6.1.1.4. The Transfer will not result in the Company being subject to the Investment Company Act of 1940, as amended;

6.1.1.5. The transferor or the transferee delivers the following information to the Company: (i) the transferee's taxpayer identification number and (ii) the transferee's initial tax basis in the Transferred Interest;

6.1.1.6. The transfer will not result in the Company being taxed as a corporation for purposes of federal or state income tax purposes.

6.1.1.7. The transfer has received the written consent of the Board of Managers.

6.1.2. If the Conditions of Transfer are satisfied, then a Member or Interest Holder may Transfer all or any portion of that Person's Interest. The Transfer of an Interest pursuant to this Section 6.1. shall not result, however, in the Transfer of Units or any of the transferor's other Membership Rights, if any, and the transferee of the Interest shall have no right to: (i) become a Member or the holder of a Unit without the consent of the Board of Managers; or (ii) exercise any Membership Rights other than those specifically pertaining to the ownership of an Interest.

6.1.3. Each Member hereby acknowledges the reasonableness of the prohibition contained in this Section 6.1. in view of the purposes of the Company and the relationship of the Members. The Transfer of any Units, Membership Rights or Interests in violation of the prohibition contained in this Section 6.1. shall be deemed invalid, null and void, and of no force or effect. Any Person to whom Units or Membership Rights are attempted to be transferred in violation of this Section shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act

as an agent of the Company or have any other rights in or with respect to the Units or Membership Rights.

6.2 Voluntary Withdrawal. No Member shall have the right or power to effect a Voluntary Withdrawal from the Company. Any Member who effectuates a Voluntary Withdrawal in violation of this Agreement shall not be permitted to receive the fair value of the Member's Interest as of the date of the Voluntary Withdrawal as otherwise provided in Section 18-604 of the Act.

6.3. Involuntary Withdrawal. Immediately upon the occurrence of an Involuntary Withdrawal, the successor of the Withdrawn Member shall thereupon become an Interest Holder but shall not become a Member. The successor Interest Holder shall have all the rights of an Interest Holder but shall not be entitled to receive the fair market value of the Member's Interest as of the date of the Involuntary Withdrawal from the Company as otherwise provided in Section 18-604 of the Act.

6.4. Drag Along Rights. If the Required Members or the Board of Managers elect to effect an Exit Transaction, each Member shall sell the Units then held by such Member, pro rata with other holders of Units, on the terms and conditions approved by the Required Members or Board of Managers (as applicable); provided, however, that the Units of each class being sold by each Member are sold for the same price and upon the same terms and conditions in all material respects as those applicable to the Units of the same class being sold by the Required Members. Each Member will take all action necessary and desirable in connection with the consummation of the sale of Units of the Company including, without limitation, execution and delivery of agreements relating to such sale of Units of the Company. Each Member will bear his/her pro rata share of the cost of any sale of Units or other equity securities pursuant to an Exit Transaction to the extent such costs are incurred for the benefit generally of all equity holders of the Company and are not otherwise paid by the Company or the acquiring party. Costs incurred by equity holders of the Company on their own behalf will not be considered costs of the transaction hereunder.

Section VII

Dissolution, Liquidation, and Termination of the Company

7.1. Events of Dissolution. The Company shall be dissolved upon the happening of any of the following events:

7.1.1. upon the unanimous written agreement of all of the Managers without the consent of the Members;

7.1.2. upon the sale of all or substantially all of the assets of the Company; or

7.13. on March 31, 2002, if the transaction contemplated between the Company, LDD, Inc., DCI, Inc. and Edward Eagleton, described in the Purchase Agreement between such parties has not closed; or

7.1.4. the entry of a decree of judicial dissolution under 6 Del. C. § 18-802.

7.2. Procedure for Winding Up and Dissolution. If the Company is dissolved, the Board of Managers shall wind up its affairs. If there shall be no remaining Manager, the Members shall elect a Person to wind up the affairs of the Company. On winding up of the Company, the assets of the Company shall be distributed, first, to creditors of the Company, including Interest Holders who are creditors, in satisfaction of the liabilities of the Company, and then to the Interest Holders in proportion to their respective Capital Accounts.

7.3. Filing of Certificate of Cancellation. Upon completion of the winding up of the affairs of the Company, a Certificate of Cancellation shall be properly filed with the Office of the Secretary of State of the State of Delaware.

Section VIII **Books, Records, Accounting, and Tax Elections**

8.1. Bank Accounts. All funds of the Company shall be deposited in a bank account or accounts maintained in the Company's name. The Board of Managers shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

8.2. Books and Records.

8.2.1. The Board of Managers shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of the transactions with respect to the conduct of the Company's business. The records shall include, but not be limited to, complete and accurate information regarding the state of the business and financial condition of the Company, a copy of the Certificate of Formation and Limited Liability Company Operating Agreement and all amendments to the Certificate of Formation and the Limited Liability Company Operating Agreement; a current list of the names and last known business, residence, or mailing addresses of all Members; and the Company's federal, state, or local tax returns.

8.2.2. The books and records shall be maintained in accordance with generally accepted accounting practices and shall be available at the Company's principal office for examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours for any purpose reasonably related to such Member's interest as a Member.

8.2.3. Each Member shall reimburse the Company for all costs and expenses incurred by the Company in connection with the Member's inspection and copying of the Company's books and records.

8.3. Annual Accounting Period. The annual accounting period of the Company shall be its Fiscal Year.

8.4. Reports. Within ninety (90) days after the end of each Fiscal Year of the Company, the Board of Managers shall cause to be sent to each Person who was a Member at any time during the accounting year then ended: (i) an annual compilation report, prepared by the Company's independent accountants in accordance with standards issued by the American Institute of Certified Public Accountants, and (ii) a report summarizing the fees and other remuneration paid by the Company to any Member, any Manager or any Affiliate in respect of the Fiscal Year. In addition, within ninety (90) days after the end of each Fiscal Year of the Company, the Board of Managers shall cause to be sent to each Person who was an Interest Holder at any time during the Fiscal Year then ended, that tax information concerning the Company which is necessary for preparing the Interest Holder's income tax returns for that year. At the request of any Member, and at the requesting Member's expense, the Board of Managers shall cause an audit of the Company's books and records to be prepared by independent accountants for the period requested by the Member. If any Member requests such an audit, the Board of Managers may require the requesting Member to deposit with the Company, in advance of such audit, such amount as the Board of Managers reasonably believes will cover the cost of such audit.

8.5. Tax Matters Partner. Gerard J. Howe or his replacement on the Board of Managers shall be the Company's tax matters partner ("Tax Matters Partner"). The Tax Matters Partner shall have all powers and responsibilities provided in Code Section 6221, et seq. The Tax Matters Partner shall keep all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Partner. The Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Tax Matters Partner in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Partner may not compromise any dispute with the Internal Revenue Service without the approval of the Board of Managers.

8.6. Tax Elections. The Board of Managers shall have the authority to make all Company elections permitted under the Code, including, without limitation, elections of methods of depreciation and elections under Code Section 754. The decision to make or not make an election shall be at the Board of Manager's sole and absolute discretion, subject to the Board of Managers' obligations to act in the best interest of the Company and its Members.

8.7. Title to Company Assets.

8.7.1. Except as provided in Section 8.7.2., all real and personal property acquired by the Company shall be acquired and held by the Company in its name.

8.7.2. The Board of Managers may direct that legal title to all or any portion of the Company's Assets be acquired or held in a name other than the Company's name. Without limiting the foregoing, the Board of Managers may cause title to be acquired and held in its name or in the names of trustees, nominees, or straw parties for the Company. It is expressly understood and agreed that the manner of holding title to the

Company's Assets (or any part thereof) is solely for the convenience of the Company, and all of Assets shall be treated as Company Assets.

Section IX

No Expansion of Duties

The parties acknowledge that the Members, Managers and their Affiliates are in the business of making investments in, and have investments in, other businesses similar to and that may compete with the businesses of the Company and its direct and indirect subsidiaries ("Competing Businesses") and reserve the right to make additional investments in other Competing Businesses independent of their investments in the Company. By virtue of a Member holding interests in the Company or by any Manager or any Member having persons designated by or affiliated with such Member serving on or observing at meetings of the Board of Managers or otherwise, no Member, Manager nor any of the Member's or Manager's respective affiliates shall have any obligation to the Company, any subsidiary of the Company or any Member to refrain from competing with the Company or any subsidiary of the Company, making investments in Competing Businesses, or otherwise engaging in any commercial activity; and none of the Company, any Subsidiary or any Member shall have any right with respect to any other such investments or activities undertaken by such Member or Manager. Without limitation of the foregoing, each Member, Manager and any Affiliates thereof may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Company or any Subsidiary, and none of the Company, any Subsidiary or any other Member shall have any rights or expectancy by virtue of such Member's or Manager's relationships with the Company, this Agreement or otherwise in and to such independent ventures or the income or profits derived therefrom; and the pursuit of any such venture, even if such investment is in a Competing Business shall not be deemed wrongful or improper. No Member, Manager nor any of their respective Affiliates shall be obliged to present any particular investment opportunity to the Company or any Subsidiary even if such opportunity is of a character that, if presented to the Company or a subsidiary of the Company, could be taken by the Company or such Member or Manager, and the Members, Managers and their respective Affiliates shall continue to have the right to take for their own respective account or to recommend to others any such particular investment opportunity.

Section X

Conversion Into Corporate Form

10.1. Conversion Into Corporate Form.

10.1.1. In connection with a proposed public offering of equity securities of a Public Vehicle (as defined below), the Board of Managers shall have the power and authority to effect (i) the conversion of the form of the Company's business from a limited liability company to a Delaware corporation, (ii) the merger of the Company with or into a new or previously established but dormant Delaware corporation having no assets or liabilities, debts or other obligations of any kind whatsoever other than those associated with its formation and initial capitalization, or (iii) the liquidation of the Company and the distribution to the Interest Holders of the Capital Securities of a

Subsidiary which owns all of the assets and liabilities of the Company (such a conversion, merger or liquidation is referred to as a “Conversion” and such Delaware corporation is referred to as the “Public Vehicle”).

10.1.2. Upon the consummation of a Conversion, the Units held by each holder thereof shall thereupon be converted into a number of shares of the Public Vehicle’s Common Stock which would, as nearly as practicable, provide each holder with the same economic benefit that such holder would receive if, immediately prior to the Conversion, (i) the Company distributed all of its assets to its Interest Holders in accordance with Section 4.5.2. of this Agreement or (ii) all of the Company’s assets were sold for their fair market value (which value shall be determined in good faith by the Board of Managers) and the Company was liquidated and all of its assets were distributed in accordance with Section 4.4. of this Agreement. The Board of Managers’ determination of the number of shares of the Public Vehicle’s Common Stock that each Member receives upon a Conversion shall be final and binding on the holders of Units absent manifest arithmetic error.

10.2. Member Action. In connection with a Conversion of Units into the Public Vehicle’s Capital Securities effected by the Board of Managers pursuant to Section 10.1., each Member covenants and agrees to take any and all such action and execute and deliver any and all such instruments and other documents as the Board may reasonably request in order to effect or evidence such Conversion of Units. Without limiting the generality of the foregoing, no Member shall have or be entitled to exercise any dissenter’s rights, appraisal rights or other similar rights in connection with such Conversion.

Section XI

General Provisions

11.1. Assurances. Each Member shall execute all such certificates and other documents and shall do all such filing, recording, publishing, and other acts as the Board of Managers deems appropriate to comply with the requirements of law for the formation and operation of the Company and to comply with any laws, rules and regulations relating to the acquisition, operation or holding of the property of the Company.

11.2. Notifications. Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a “notice”) required or permitted under this Agreement must be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, return receipt requested. Any notice to be given hereunder by the Company shall be given by a Manager. A notice must be addressed to an Interest Holder at the Interest Holder’s last known address on the records of the Company. A notice to the Company must be addressed to the Company’s principal office. A notice delivered personally will be deemed given only when acknowledged in writing by the person to whom it is delivered. A notice that is sent by mail will be deemed given three (3) business days after it is mailed. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees.

11.3. Confidentiality. The Members and the Managers acknowledge that they have had access to and become familiar with the following information, and expect to have continuing access to and become familiar with the same type of information in the future, any and all of which constitutes confidential information of the Company (collectively the “Confidential Information”):

- (i) any and all trade secrets concerning the business and affairs of the Company, including without limitation the business plan of the Company, concepts, ideas, designs, inventions, products, specifications, know-how, techniques, processes, software programs, customer lists, projects, plans, prospects, methods and information of the Company and other information, however documented, that is a trade secret within the meaning of Delaware law;
- (ii) any and all information concerning the business and affairs of the Company (which includes financial statements, financial projections and budgets, capital spending budgets, projected sales, however documented); and
- (iii) any and all notes, analyses, compilation studies, summaries and other materials prepared by or for the Company containing or based in whole or in part on the information enclosed in the foregoing.

Members and Managers acknowledge and agree that all Confidential Information known or obtained by them, whether before or after the date hereof, constitutes the property of the Company. Each of the Members and Managers agrees that it will not at any time disclose to any Person (other than its directors, officers, employees, consultants, advisors, investors and others with a need to know such information and who have been advised of the confidential nature thereof) or use for its own account or for the benefit of any third party, any Confidential Information, without the Company’s prior written consent, unless and to the extent that the Confidential Information (a) is or becomes known to or available for use by the public or the Member or Manager other than as a result of the fault of the Member or Manager, or the fault of any other Person bound by a duty of confidentiality to the Company, (b) is previously known to such Member or Manager (as the case may be) free of any obligation to keep it confidentially, or (c) is required to be disclosed by such Member or Manager (as the case may be), based on advice of counsel, in order to comply with any requirement implied by judicial or administrative process or any governmental or court order. If any Member or Manager breaches the covenant set forth in this Section 11.3., the Company shall be entitled, in addition to damages and other rights it may have, to obtain injunctive and other equitable relief, to restrain any breach or threatened breach or otherwise to specifically enforce the provisions of this Section 11.3., it being agreed that money damages alone would be inadequate to compensate the Company and would be an inadequate remedy for such breach.

11.4. Complete Agreement. This Agreement constitutes the complete and exclusive statement of the agreement among the Members. It supersedes all prior written and oral statements including any prior Limited Liability Company Agreement of the Company,

including any prior representation, statement, condition, or warranty. Except as expressly provided otherwise herein, this Agreement may be amended by the unanimous consent of the Board of Managers.

11.5. Applicable Law. All questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of Delaware.

11.6. Section Titles. The headings herein are inserted as a matter of convenience only, and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

11.7. Binding Provisions. This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

11.8. Jurisdiction. The parties of this Agreement consent to the exclusive jurisdiction of the courts of, and the exclusivity of arbitration in, the State of Missouri.

11.9. Terms. Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the Person may in the context require.

11.10. Separability of Provisions. Each and every provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

11.11. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

IN WITNESS WHEREOF, the parties have executed, or caused this Agreement to be executed, as of the date set forth hereinabove.

[Intentionally Blank]

BIG RIVER TELEPHONE COMPANY, LLC
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
(Signature Page)

The undersigned hereby executes and agrees to be bound by the terms and provisions of the Limited Liability Company Operating Agreement of Big River Telephone Company, LLC, dated as of November 16, 2001.

Date of Execution: _____ Name: _____

SCHEDULE A

REGULATORY ALLOCATIONS

1. **Special Definitions.** For purposes of this Schedule A the following terms are defined:

“Adjusted Capital Account” means the Capital Account balance of an Interest Holder, increased by such Interest Holder’s share of Company Minimum Gain and Interest Holder Nonrecourse Debt Minimum Gain.

“Adjusted Capital Contribution” means, as of any day, a Capital Contribution adjusted as follows:

- (i) Increased by any amounts actually paid by such Interest Holder to any Company lender pursuant to the terms of any Assumption Agreement; and
- (ii) Reduced, but not below zero, by the amount of cash distributed to such Interest Holder pursuant to Sections 4.2. and 4.3. of this Agreement.

If any Interest Holder transfers all of any portion of its Interest in the Company in accordance with the terms of this Agreement, such Interest Holder’s transferee shall succeed to the Adjusted Capital Contribution of the transferor to the extent it relates to the Interest.

“Adjusted Capital Account Deficit” has the meaning ascribed to it in Section I.

“Assumption Agreement” means any agreement among the Company, any Interest Holder and any Person to whom the Company is indebted pursuant to a loan agreement, any seller financing with respect to an installment sale, a reimbursement agreement, or any other arrangements (collectively referred to as a “loan” for purposes of this Agreement) pursuant to which any Interest Holder expressly assumes liability with respect to such loan. The amount of any such loan shall be treated as assumed by such Interest Holder or Interest Holders for all purposes under this Agreement in the proportions set forth in such Assumption Agreement, and the amounts so assumed shall be credited to the Capital Accounts of such Interest Holders. To the extent such loan is repaid by the Company, the Capital Accounts of such Interest Holders shall be debited with their pro rata shares of the repayments. To the extent that any portion of such loan is repaid by an Interest Holder from his, her or its own funds, there shall be no adjustment to the Capital Account of such Interest Holder.

“Company Minimum Gain” has the same meaning as “partnership minimum gain, as set forth in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

“Interest Holder Nonrecourse Debt” has the same meaning as “partner nonrecourse debt” set forth in Section 1.704-2(b)(4) of the Regulations.

“Interest Holder Nonrecourse Deductions” has the same meaning as “partner nonrecourse deductions” as set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

“Interest Holder Nonrecourse Debt Minimum Gain” means an amount, with respect to each Interest Holder Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Interest Holder Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

“Nonrecourse Deductions” has the meaning set forth in Section 1.704-2-(b)(1) of the Regulations.

“Nonrecourse Liability” has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

2. Special Allocations. The following special allocations shall be made in the following order:

(i) Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Schedule A, or the Agreement, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Interest Holder shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Interest Holder’s share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Interest Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(ii) Interest Holder Nonrecourse Debt Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Schedule A or the Agreement, if there is a net decrease in Interest Holder Nonrecourse Debt Minimum Gain attributable to an Interest Holder Nonrecourse Debt during any Fiscal Year, each Interest Holder who has a share of the Interest Holder Nonrecourse Debt Minimum Gain attributable to such Interest Holder Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Interest Holder’s share of the net decrease in Interest Holder Nonrecourse Debt Minimum Gain attributable to such Interest Holder Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Interest Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

(iii) Qualified Income Offset. If any Interest Holder unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), Section 1.704-1(b)(2)(ii)(d)(5), or Section 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of income and gain shall be specially allocated to each such Interest Holder in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Interest Holder as quickly as possible, provided that an allocation pursuant to this Section shall be made only if and to the extent that such Interest Holder would have an Adjusted Capital Account Deficit after all other allocations provided for in this Schedule have been tentatively made as if this Section 2(iii) were not part of the Agreement.

(iv) Gross Income Allocation. If any Interest Holder has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount such Interest Holder is obligated to restore pursuant to any provision of this Agreement, and (ii) the amount such Interest Holder is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Interest Holder shall be specially allocated items of income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 2 shall be made only if and to the extent that such Interest Holder would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Schedule A have been made as if Section 2(iii) hereof and Section 2(iv) were not in the Agreement.

(v) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Interest Holders pro rata in proportion to their Interests.

(vi) Interest Holder Nonrecourse Deductions. Any Interest Holder Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Interest Holder who bears the economic risk of loss with respect to the Interest Holder Nonrecourse Debt to which such Interest Holder Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(vii) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to an Interest Holder in complete liquidation of his or her interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Interest Holders in accordance with their interests in the Company in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Interest Holder to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(viii) Allocations Relating to Taxable Issuance of Interest Holder Interests. Any income, gain, loss, or deduction realized as a direct or indirect result of the issuance of an Interest by the Company to an Interest Holder (the "Issuance Items") shall be allocated among the Interest Holders so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Interest Holder, shall be equal to

the net amount that would have been allocated to each such Interest Holder if the Issuance Items had not been realized.

3. Curative Allocations. The allocations set forth in Sections 2(i) through (viii) hereof (the “Regulatory Allocations”) are intended to comply with certain requirements of the Regulations. It is the intent of the Interest Holders that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of income, gain, loss, or deduction pursuant to this Section 3. Therefore, notwithstanding any other provision of this Schedule A (other than the Regulatory Allocations), the Board of Managers shall make offsetting special allocations of income, gain, loss, or deduction in whatever manner they determine appropriate so that, after such offsetting allocations are made, each Interest Holder’s Capital Account balance is, to the extent possible, equal to the Capital Account balance such Interest Holder would have had if the Regulatory Allocations were not part of the Agreement and all items were allocated pursuant to Section 4.1. of the Agreement.

4. Other Allocation Rules.

(i) For purposes of determining the Profit, Loss, or any other items allocable to any period, Profit, Loss, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Board of Managers using any permissible method under Code Section 706 and the Regulations thereunder.

(ii) The Interest Holders are aware of the income tax consequences of the allocations made by this Schedule A and the Agreement and hereby agree to be bound by the provisions of this Schedule A and the Agreement in reporting their shares of income and loss for income tax purposes.

(iii) To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the Interest Holders shall endeavor to treat distributions of Cash Flow as having been made from the proceeds of a Nonrecourse Liability or an Interest Holder Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Interest Holder.

(iv) The Company may request that the Internal Revenue Service waive the provisions of Sections 2(i) and 2(ii) hereof in accordance with Section 1.704-2(f)(4) of the Regulations.

5. Tax Allocations: Code Section 704(c). In accordance with Code Section 704 and the Regulations thereunder, income, gain, loss, and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Interest Holders so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value.

In the event the Gross Asset Value of any Company asset is adjusted pursuant to the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deductions with respect to such asset shall take account of any variation between the adjusted basis of such

asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

Any elections or other decisions relating to such allocations shall be made by the Board of Managers in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section are made solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Interest Holder's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

Schedule B

List of Members, Capital, and Units

<u>Name, Address and Taxpayer I.D. Number</u>	<u>Initial Cash Capital Contribution</u>	<u>Number of Units</u>
I. Initial Members		
Gerard J. Howe	\$16,666	20,832.50
Kevin Cantwell	\$16,667	20,833.75
Phillip Abbenhaus	\$16,667	20,833.75
TOTAL INITIAL INVESTMENT	\$50,000	62,500

II. Additional Members

Beth Chapman
Secretary of State

P.O. Box 5616
Montgomery, AL 36103-5616

STATE OF ALABAMA

I, Beth Chapman, Secretary of State of the State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that

the foreign corporate records on file in this office disclose that Big River Telephone Company, LLC, a Delaware limited liability company, registered in the State of Alabama on June 20, 2001. I further certify that the records do not disclose that a certificate of cancellation has been filed with this office on behalf of Big River Telephone Company, LLC.



In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the City of Montgomery, on this day.

November 21, 2008

Date

Beth Chapman
Beth Chapman Secretary of State

BIG RIVER TELEPHONE COMPANY, LLC
STATEMENTS OF INCOME AND MEMBERS' RETAINED EQUITY (DEFICIT)
FOR THE YEARS ENDED DECEMBER 21, 2008

	<u>2008</u>
Total Revenue	\$ 18,745,130
Total Cost of Sales	9,731,978
Operating Expenses	4,995,824
Depreciation and Amortization	910,631
Other (Income) & Expenses	(693,050)
Net Income	\$ 3,799,747
Members' Retained Deficit - Beginning of Year	\$ (519,274)
Members' Retained Equity (Deficit) - End of Year	<u><u>\$ 3,280,473</u></u>

Big River Telephone Company, LLC
Estimated Income Statement for Alabama
For the Periods Covering 2010 - 2012

	YTD 2010	YTD 2011	YTD 2012
Revenue			
Line Count	1,128	2,256	3,384
Total Revenue	\$ 128,310	\$ 365,190	\$ 602,070
Cost of Sales			
Long Distance	\$ 35,340	\$ 100,584	\$ 165,827
Facilities	20,308	57,802	95,295
Other Cost	10,756	30,609	50,465
Total COS	\$ 66,404	\$ 188,995	\$ 311,587
Gross Margin \$	\$ 61,906	\$ 176,195	\$ 290,483
Gross Margin %	48%	48%	48%
OPEX			
Travel & Entertainment	\$ 2,853	\$ 8,121	\$ 13,388
Dues & Subscriptions	125	358	589
Billing Expense	8	25	41
Lease Expense	1,061	3,022	4,980
Marketing	324	923	1,521
Utilities	60	171	281
Telephone & Internet	7	21	36
Supplies	47	133	221
Contributions	52	148	244
Professional Services	479	1,363	2,249
Bad Debt Expense	1,283	3,652	6,021
Total OPEX	\$ 6,299	\$ 17,937	\$ 29,571
EBITDA	\$ 55,607	\$ 158,258	\$ 260,912
Net Income	\$ 55,607	\$ 158,258	\$ 260,912

TITLE PAGE

**INTRASTATE INTEREXCHANGE TELECOMMUNICATIONS SERVICES
OF
BIG RIVER TELEPHONE COMPANY, LLC**

This tariff applies to the resold and facilities-based intrastate interexchange telecommunications services furnished by Big River Telephone Company, LLC ("Big River" or "Company") between one or more points in the State of Alabama. This tariff applies to residential and business customers. This tariff is on file with the Alabama Public Service Commission. This tariff complies with Alabama Public Service Commission rules and Alabama statutes applicable to the Company.

**BIG RIVER TELEPHONE COMPANY, LLC
24 S. Minnesota Ave.
Cape Girardeau, Missouri, 63703**

Issued: August 27, 2009

Issued By:
Kevin B. Cantwell, President
Big River Telephone Company, LLC

Effective:

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TARIFF FORMAT SHEET

1. **Page Numbering.** Page numbers appear in the upper-right corner of the page. Pages are numbered sequentially. New pages may occasionally be added to the tariff. When a new page is added, the page appears as a decimal. For example, a new page added between pages 34 and 35 would be 34.1.
2. **Page Revisions Numbers.** Page Revision Numbers also appear in the upper-right corner of the page. These numbers are used to determine the most current page revision on file with the Alabama Public Service Commission. For example, the fourth revised Page 34 cancels the third revised Page 34. Because of deferrals, notice periods, *etc.*, the most current page number on file with the Commission is not always the tariff page in effect. Business Customers should consult with check sheet for the page currently in effect.
3. **Paragraph Numbering Sequence.** There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level of coding.
 - 1.
 - 1.1.
 - 1.1.1.
 - 1.1.1.A.
 - 1.1.1.A.1.
 - 1.1.A.1.(a)
 - 1.1.1.A.1.(a)(I)
 - 1.1.1.A.1.(a)(I)(i)
 - 1.1.1.A.1.(a)(I)(i)(1)
4. **Check List of Effective Pages.** When a tariff filing is made with the Commission, an updated Check List of Effective Pages ("Check List") accompanies the tariff filing. The Check List lists the pages contained in the tariff, with a cross-reference to the current revision number. When new pages are added, the Check List is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on the Check List if these are the only changes made to it (i.e., the format, *etc.*). Customers should refer to the latest Check List to find out if a particular page is the most current page on file with the Commission.
5. **Symbols Used in This Tariff.**

(AT)	To signify addition to text.
(C)	To signify a correction.
(CP)	To signify a change in practice.
(CR)	To signify a change in rate.
(CT)	To signify a change in text.
(DR)	To signify a discontinued rate.
(FC)	To signify a change in format lettering or numbering.
(MT)	To signify moved text.
(NR)	To signify new rate.
(RT)	To signify removal of text.

SECTION 1 - DEFINITIONS

Account - Either a Customer's physical location or individual Service represented by a unique account number within the Billing Hierarchy. Multiple Services each with a unique account number may be part of one physical location.

Alternative Local Exchange Carrier ("ALEC") or Competitive Local Exchange Carrier ("CLEC") - means any entity or person providing local exchange services in competition with an ILEC or LEC.

Application for Service - The Big River order process that includes technical, billing and other descriptive information provided by the Customer that allows Big River to provide requested communications Services for the Customer and Customer's Authorized Users. Upon acceptance by Big River, the Application for Service becomes a binding contract between the Customer and Big River for the provision and acceptance of Services.

Authorization Code - A multi-digit code that enables a Customer to access Big River's network and enables Big River to identify the Customer's use for proper billing. Also called a Personal Identification Code or PIN.

Authorized User - A person, firm, or corporation, who is authorized by the Customer to be connected to the Service of the Customer.

Billing Hierarchy - Allows Customers to combine multiple accounts and Services into a single billing structure. Business Customers can choose whether to have all Services invoiced together, invoiced separately, or in any combination thereof. In addition, the Business Customer may specify where the invoices are to be sent and who is to receive them.

BTN: Billed Telephone Number, may consist of one or more WTNs.

Business Hours - The phrase "business hours" means the time after 8:15 A.M. and before 5:00 P.M., Monday through Friday excluding holidays.

Business Office - The phrase "business office" means the primary location where the business operations of Big River are performed and where a copy of Big River's tariff is made available for public inspection. The address of the business office is 24 S. Minnesota Ave., Cape Girardeau, Missouri, 63703.

Business Customer: A Customer whose use of the Services is primarily or substantially for a business, professional, institutional, or occupational purpose.

Called Station - The terminating point of a call (*i.e.*, the called number).

Calling Station - The originating point of a call (*i.e.*, the calling number).

SECTION 1 – DEFINITIONS (cont'd)

Calling Area - A specific geographic area so designated for the purpose of applying a specified rate structure.

Carrier - The term "Carrier" means Big River Telephone Company, LLC.

Central Office - A Local Exchange Carrier's office where a Customer's lines are terminated for the purpose of offering local telephone service and to connect with interexchange carriers.

Collocation: An arrangement whereby the Company's switching equipment is located in a local exchange Company's central office.

Competitive Local Exchange Carrier ("CLEC") or Alternative Local Exchange Carrier ("ALEC") - means any entity or person providing local exchange services in competition with an ILEC or LEC.

Commission - Alabama Public Service Commission ("WPSC").

Company - The term "Company" means Big River Telephone Company, LLC.

Customer - The person, firm, company, corporation, or other entity, having a communications requirement of its own that is responsible for the payment of charges and for compliance with this Tariff. See "End User".

Customer-Provided Equipment - Telecommunications equipment provided by a Customer used to originate calls using Big River's service located at the originating location.

Day - The term "day" means 8:00 A.M. to, but not including, 5:00 P.M. local time at the originating city, Monday through Friday, excluding Company specific holidays.

Delinquent or Delinquency - An account for which payment has not been made in full on or before the last day for timely payment.

DID Trunk: A form of local switched access that provides the ability for an outside party to call an internal extension directly without the intervention of the Company operator or the customer's central answering point.

Direct Inward Dial (or "DID"): A service attribute that routes incoming calls directly to stations, by-passing a central answering point.

Direct Outward Dial (or "DOD"): A service attribute that allows individual station users to access and dial outside numbers directly.

Digital Transmission - Information transmitted in the form of digitally encoded signals.

SECTION 1 – DEFINITIONS (cont'd)

End Office: With respect to each NPA-NXX code prefix assigned to the Company, the location of the Company's "end office" for purposes of this tariff shall be the point of interconnection associated with that NPA-NXX code in the Local Exchange Routing Guide ("LERG"), issued by Bellcore.

End User - The ultimate user of the telecommunications services and who orders service and is responsible for payment of charges due in compliance with the Company's price list regulations. See "Customer".

Exchange Area - A geographically defined area wherein the telephone industry through the use of maps or legal descriptions sets down specified area where individual telephone exchange companies hold themselves out to provide communications services.

Facility (or Facilities) - Any item or items of communications plant or equipment used to provide or connect to Big River Services.

FCC - Federal Communications Commission.

Holiday - The term "holiday" means 8:00 A.M. to, but not including, 11:00 P.M. local time at the originating city on all Company-specific holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. When holidays fall on Saturdays or Sundays, the holiday rate applies unless a larger discount would normally apply.

Hunting: The ability to route a call to an idle station line in a prearranged group when the called station line is busy.

ILEC - means an Incumbent Local Exchange Company.

Incumbent Local Exchange Carrier ("ILEC") - means, with respect to an area or exchange(s), any telecommunications service provider furnishing local exchange service in such area or exchange(s) within the State of Alabama on July 1, 1995, pursuant to a Certificate of Convenience and Necessity or grandfathered authority.

Incomplete Call - Any call where voice transmission between the calling party and the called station is not established (*i.e.*, busy, no answer, etc.).

Interexchange Carrier (IXC) - A common carrier that provides long distance domestic and international communication services to the public.

Local Access Transport Area ("LATA") - The phrase "Local Access Transport Area" means a geographical area established by the U.S. District Court for the District of Columbia in *United States v. Western Electric Co., Inc.*, 552 F. Supp. 131 (D.D.C. 1982), within which a local exchange company provides communication services.

Local Exchange Company (LEC) - A company that furnishes local exchange telephone services.

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Issued By:
Kevin B. Cantwell, President
Big River Telephone Company, LLC

SECTION 1 – DEFINITIONS (cont'd)

Local Exchange Service - is an arrangement which connects the End User's location to the LEC's network switching center, thereby allowing End User to transmit and receive local calls within the End User's local calling area, or mandatory expanded area service (EAS) area, as defined by State commissions or, if not defined by State commission, then defined in the LEC's State Tariffs.

Location - A physical premise to or from which Big River provides Service.

Monthly Recurring Charges: The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

Multiline: An individual flat rate exchange service furnished by means of two or more exchange lines terminating in apparatus which facilities pick-up by associated stations. Multiline rates do not apply where the PBX trunk rate applies or to Centrex Service.

NXX - The designation for the first three digits of a local telephone number where N represents 2-9 and X represents 0-9.

Night/Weekend - The words "night/weekend" mean 11:00 P.M. to, but not including, 8:00 A.M. local time in the originating city, all day on Saturday, and all day Sunday, except from 5:00 P.M. to, but not including, 11:00 P.M.

Non-Business Hours - The phrase "non-business hours" means the time period after 5:00 P.M. and before 8:15 A.M., Monday through Friday, all day Saturday, Sunday, and on holidays.

Nonrecurring Charge ("NRC"): The initial charge, usually assessed on a one-time basis, to initiate and establish service.

NPA - An area code, otherwise called numbering plan area.

Other Common Carrier - The term "other common carrier" denotes a specialized or other type of common carrier authorized by the Federal Communications Commission to provide domestic or international communications services.

PBX: Private Branch Exchange

Premises - A building or buildings on contiguous property (except railroad rights-of-way, etc.).

Primary Interexchange Carrier (PIC) - The interexchange carrier to which a switched access line is presubscribed.

Recurring Charges: The monthly charges to the Customer for services, facilities and equipment which continue for the agreed upon duration of the service.

SECTION 1 – DEFINITIONS (cont’d)

Regular Billing - A standard bill sent in the normal monthly Big River billing cycle. This billing consists of one bill for each account assigned to the Customer with explanatory detail showing the derivation of the charges.

Residential Service - The phrase “residential service” means telecommunication services used primarily as nonbusiness service.

Residential Customer – A Customer whose use of the Service is primarily or substantially of a social or domestic nature; and business use, if any, is incidental.

Service Commencement Date: The first date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards set forth in the Service Order, or this Tariff, in which case the Service Commencement Date is the date of the Customer's acceptance. The Company and the Customer may mutually agree on a substitute Service Commencement Date. If the Company does not have an executed Service Order from the Customer, the Service Commencement Date will be the first date on which the service or facility is used by the Customer or its End User Customers.

Service Order: The written request for Network Services executed by the Customer and the Company in the format devised by the Company. The signing of a Service Order by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this tariff, but the duration of the service is calculated from the Service Commencement Date.

Services - Big River’s regulated common carrier communications services provided under this Tariff.

Subscriber - The term “Customer” is synonymous with the term “subscriber”.

Switch - The term “switch” denotes an electronic device that is used to provide circuit sharing, routing, and control.

Timely Payment - A payment on a Customer’s account made on or before the due date.

Underlying Carrier - A provider of interstate and/or intrastate interexchange telecommunications services from whom Big River acquires services that it resells to Customers.

Usage Based Charges: Charges for minutes or messages traversing over local exchange facilities.

WTN – Working Telephone Number.

Issued: August 27, 2009

Issued By:
Kevin B. Cantwell, President
Big River Telephone Company, LLC

Effective:

SECTION 2 - RULES AND REGULATIONS

2.1 **Scope**

The Company undertakes to furnish communications service pursuant to the terms of this tariff in connection with one-way and/or two-way information transmission between points in the state of Alabama . The Company may offer these services over its own or resold facilities

Subscribers and users may use services and facilities provided under this tariff to obtain access to services offered by other service providers. The Company is responsible under this tariff only for the services and facilities provided hereunder, and it assumes no responsibility for any service provided by any other entity that purchases access to the Company's network in order to originate or terminate its own services, or to communicate with its own Subscribers.

The Company may act as the Subscriber's agent for ordering access connection facilities provided by other carriers or entities as required in the Authority's rules and orders, when authorized by the Subscriber, to allow connection of a Subscriber's location to the Company network. The Subscriber shall be responsible for all charges due for such service arrangements.

2.2 **Terms and Conditions**

- 2.2.1 Service is provided on the basis of a minimum period of at least one-month, 24-hours per day. For the purpose of computing charges in this tariff, a month is considered to have 30 days.
- 2.2.2 Subscribers may be required to enter into written service orders which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in this tariff. Subscribers will also be required to execute any other documents as may be reasonably requested by the Company.
- 2.2.3 At the expiration of the initial term specified in each Service Order, or in any extension thereof, service shall continue on a month-to-month basis at the then current rates unless terminated by either party upon 30 days' written notice. Any termination shall not relieve the Subscriber of its obligation to pay any charges incurred under the service order and this tariff prior to termination. The rights and obligations that by their nature extend beyond the termination of the term of the service order shall survive such termination.
- 2.2.4 In any action between the parties to enforce any provision of this tariff, the prevailing party shall be entitled to recover its legal fees and court costs from the non-prevailing party in addition to other relief a court may award.
- 2.2.5 This tariff shall be interpreted and governed by the laws of the State of Alabama regardless of its choice of laws provision.

- 2.2.6 To the extent that either the Company or any other telephone company exercises control over available cable pairs, conduit, duct space, raceways, or other facilities needed by the other to reach a person or entity, the party exercising such control shall make them available to the other on terms equivalent to those under which the Company makes similar facilities under its control available to its Subscribers. At the reasonable request of either party, the Company and the other telephone company shall cooperate with the owner of the property to allow access for the other party to serve a person or entity.

2.3 Notices and Communications

- 2.3.1 The Subscriber shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that the Subscriber may also designate a separate address to which the Company's bills for service shall be mailed.
- 2.3.2 The Company shall designate on the Service Order an address to which the Subscriber shall mail or deliver all notices and other communications, except that Company may designate a separate address on each bill for service to which the Subscriber shall mail payment on that bill.
- 2.3.3 All notices or other communications required to be given pursuant to this tariff will be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following placement of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- 2.3.4 The Company or the Subscriber shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

2.4 Limitations

- 2.4.1 Service is offered subject to the availability of the necessary facilities and equipment, and subject to the provisions of this tariff.
- 2.4.2 The Company reserves the right to discontinue or limit services when necessitated by conditions beyond its control, or when the Subscriber is using service in violation of provisions of this tariff, or in violation of the law.

- 2.4.3 The Company does not undertake to transmit messages, but offers the use of its facilities when available, and will not be liable for errors in transmission or for failure to establish connections.

2.5 Assignments and Transfers

- 2.5.1 The Company directly controls all facilities provided under this tariff and the Subscriber may not transfer or assign the use of service or facilities without the express written consent of the Company. Such transfer or assignment shall only apply where there is no interruption of the use or location of the services or facilities.
- 2.5.2 Prior written permission from the Company is required before any assignment or transfer. All regulations and conditions contained in this tariff shall apply to all such permitted assignees or transferees, as well as all conditions of service.

2.6 Prohibited Uses

- 2.6.1 The services the Company offers shall not be used for any unlawful purpose or for any use as to which the Subscriber has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- 2.6.2 The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws, regulations, policies, orders, and decisions of the Alabama Public Service Commission .
- 2.6.3 The Company may require a Subscriber to immediately shut down its transmission of signals if said transmission is causing interference to others.

2.7 Liability of the Company

- 2.7.1 The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts or omission, shall be limited to the extension of allowances for interruption as set forth in Section 2.25. The extension of such allowances for interruption shall be the sole remedy of the Subscriber and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Subscriber as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.

-
- 2.7.2 The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.
- 2.7.3 The Company shall not be liable for any act(s) or omission(s) of another entity furnishing to the Company or to the Company's Subscriber's facilities or equipment used for or with the services the Company offers.
- 2.7.4 The Company shall not be liable for any damages or losses due to the fault or negligence of the Subscriber or due to the failure or malfunction of Subscriber-provided equipment or facilities.
- 2.7.5 The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Subscriber indemnifies and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Subscriber or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal presence, condition, location, or use of any installation so provided. The Company reserves the right to require each Subscriber to sign an agreement, acknowledging acceptance of the provisions of this section as a condition precedent to such installations.
- 2.7.6 The Company is not liable for any defacement of or damage to Subscriber premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.
- 2.7.7 The Company shall be indemnified, defended and held harmless by the Subscriber against any claim, loss or damage arising from Subscriber's use of services, involving claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Subscriber's own communications.

2.7.8 The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid the Company by the Subscriber for the specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than one year after the service is rendered.

2.7.9 BIG RIVER MAKES NO WARRANTIES, EITHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES PROVIDED HEREUNDER, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, THOSE OF NONINFRTNGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER AGREES THAT DAMAGES ARISING HEREUNDER SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR SERVICES AND IN NO EVENT SHALL BIG RIVER BE LIABLE TO CUSTOMER FOR DAMAGES OF ANY KIND INCLUDING INCIDENTAL, CONSEQUENTIAL, INDIRECT, DIRECT, SPECIAL OR PUNITIVE DAMAGES.

2.8 **Obligations of the Subscriber**

The Subscriber shall be responsible for:

- 2.8.1 payment of all applicable charges pursuant to this tariff;
- 2.8.2 damage to or loss of the Company's facilities or equipment caused by the acts ,or omissions of the Subscriber; or the noncompliance by the Subscriber, with these regulations, or by fire or theft or other casualty on the Subscriber Premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company;
- 2.8.3 reimbursing Big River for damages to facilities or equipment caused by the negligence or willful acts of the Customer's officers, employees, agents or contractors;
- 2.8.4 charges incurred with interconnect or local operating companies for service or service calls made to the Customer's premises or on the Customer's leased or owned telephonic equipment unless Big River specifically authorizes said visit or repairs in advance of the occurrence and Big River agrees in advance to accept the liability for said repairs or visit;
- 2.8.5 payment for all Big River service charges incurred through usage or direct action on the part of the Customer.

2.9 **Interruption of Service**

- 2.9.1 Credit allowance for the interruption of service that is not due to Big River's testing or adjusting, negligence of the Customer or to the failure of channels or equipment provided by the Customer, are subject to the general liability provisions set forth herein. It shall be the obligation of the Customer to notify Big River immediately of any interruption in

service for which a credit allowance is desired. Before giving such notice, the Customer or end-user shall ascertain that the trouble is not being caused by any action or omission by the Customer within his or her control, or is not in wiring or equipment, if any, furnished by the Customer and connected to Big River's facilities.

An adjustment or refund shall be made:

1. Automatically, if the service interruption lasts for more than forty-eight (48) hours after being reported to the company and the adjustment or refund exceeds \$1.00 in amount; and
2. Upon subscriber oral or written request, if the service interruption lasts twenty-four (24) to forty-eight (48) hours after being reported to the company and the adjustment or refund exceeds \$1.00 in amount.

2.9.2 For purposes of credit computation, every month shall be considered to have 720 hours.

2.9.3 The Customer shall be credited for an interruption at the rate of 1/720th of the monthly charge for the facilities affected for each hour or major fraction thereof that the interruption continues.

Credit Formula:

$$\text{Credit} = A/720 \times B$$

Where "A" - outage time in hours
"B" - total monthly charge for affected facility

2.9.4 If written notice of a dispute as to charges is not received by the Company within 180 days of the date a bill is issued, such charges shall be deemed to be correct and binding on the Customer.

2.10 **Restoration of Service**

The use and restoration of service shall be in accordance with the rules of the Commission.

2.11 **Disconnection of Service by Customer**

2.11.1 By giving notice, Customer may disconnect service at any time following its minimum service requirement(s). The recurring monthly service charge, plus associated taxes, shall be pro-rated for the actual number of days in which service has been provided, with the non-used portion being refunded to the Customer.

2.12 **Cancellation for Cause**

- 2.12.1 The Company may discontinue service or cancel an application for service, pursuant to applicable Commission rules, without incurring any liability for any of the following reasons:
- A. Nonpayment of a delinquent bill for non-disputed regulated telecommunications services within the period;
 - B. Failure to make a required security deposit;
 - C. Violation of or noncompliance with any provision of law, or of the tariffs or terms and conditions of service of the Company filed with and approved by the Commission;
 - C. Refusal to permit the Company reasonable access to its telecommunications facilities for recovery, maintenance, and inspection thereof.
 - D. Interconnection of a device, line, or channel to Company facilities or equipment contrary to the Company's terms and conditions of service on file with and approved by the Commission.
 - E. Use of telephone service in such manner as to interfere with reasonable service to other end users.
- 2.12.2 Service may be discontinued during normal business hours on or after the date specified in the notice of discontinuance. Service shall not be discontinued on a day when the offices of the Company are not available to facilitate reconnection of service or on a day immediately preceding such a day.
- 2.12.3 At least 24 hours preceding a discontinuance, the Company shall make reasonable efforts to contact the Customer to advise it of the proposed discontinuance and what steps must be taken to avoid it.
- 2.12.4 Service shall not be disconnected unless written notice by first class mail is sent or delivered to the Customer at least ten (10) days prior to the date of the proposed discontinuance.

2.13 **Notice and Communication**

- 2.13.1 The Customer shall designate on the Application for Service an address to which Big River shall mail or deliver all notices and other communications, except that Big River may also designate a separate address to which Big River's bills for service shall be mailed.
- 2.13.2 Big River shall designate on the Application for Service an address to which the Customer shall mail or deliver all notices and other communications, except that Big River may designate a separate address on each bill for service to which the Customer shall mail payment on that bill.

2.14 **Taxes, Surcharges and Utility Fees**

Customer is responsible for the payment of all federal, state and local taxes, surcharges, utility fees, or other similar fees (*i.e.*, gross receipts tax, sales tax, municipal utilities tax, 911 surcharges

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or fees, universal service contributions) that may be levied by a governing body or bodies in conjunction with or as a result of the service furnished under this Tariff. These charges will appear as separate line items on the Customer's bill and are not included in the rates contained in this Tariff. There shall be added to the Customer's bill for service, an additional charge equal to the pro rata share of any occupation, franchise, business, license, excise privilege or other similar charge or tax, now or hereafter imposed upon the gross receipts or revenue of Big River by any municipal taxing body or municipal authority whether by statute, ordinance, law or otherwise, and whether presently due or to hereafter become due. The charge applicable to each Customer will appear as a separate line item on the Customer's regular monthly bill and shall be determined on a basis equal to the tax levied by each municipal taxing body or municipal authority.

2.15 **Recovery of Alabama Universal Service Fund Contributions**

2.15.1 General Regulations

- 2.15.1.A Contributions to the Alabama Universal Service Fund (AUSF) are assessed as a uniform percentage of the telecommunications carrier's total retail billed intrastate telecommunications revenue for a 12 month period identified by the AUSF Administrator. This percentage is established annually pursuant to an order issued by the Alabama Public Service Commission .
- 2.15.1.B A telecommunications carrier may, at its option, recover the amount of its contributions to the AUSF from its Customers. Such recovery shall be made in a fair, equitable and nondiscriminatory manner.
- 2.15.1.C Either a flat fee or a percentage recovery charge as described below shall be assessed for the fee recovery.
- 2.15.1.D Recovery shall be accessed on the same retail revenues as those used for contribution purposes.

2.15.2 AUSF Recovery Charge (Percentage or Flat Fee)

- 2.15.2.A Recovery of the AUSF contribution shall be made by a uniform monthly flat fee or percentage, which shall be applied to each Customer's bill in addition to any other applicable rates and charges as provided for in this tariff. The AUSF Recovery Charge is intended to recover the total dollar amount paid into the AUSF, and shall be adjusted to offset for any over-recovery or under-recovery from the Customers.
- 2.15.2.B The results of such calculation(s) shall be rounded to the penny for the purpose of applying this amount to the Customer's bills.
- 2.15.2.C The resulting AUSF recovery amounts are not revenues of the Company, and therefore are not subject to state or local taxes, franchise fees, or any other assessments or fees. The Company shall not include the AUSF Recovery Charge in the calculation of such taxes, fees, or assessment in the Customer's bill.
- 2.15.2.D If recovery is made pursuant to this tariff from the customers, the amount resulting from the AUSF Recovery Charge will be stated separately in the Customer's monthly bill.
- 2.15.2.E Records shall be kept by the Company which reflects the AUSF contributions paid by the Company for each period along with all amounts

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recovered by the Company through the Recovery of AUSF Contributions Tariff. This information shall be provided to the Commission along with any changes in the AUSF Recovery Charge.

2.15.3 Changes in the AUSF Recovery Charge

- 2.15.3.A Any change to the AUSF Recovery Charge shall be made by written notification to the Director of the Public Utility Division. A replacement tariff page reflecting the revised AUSF Recovery Charge shall be included with the notification letter.
- 2.15.3.B Notification of changes to the AUSF Recovery Charge shall be made at least 30 days before effective date of change.
- 2.15.3.C The revised AUSF Recovery Charge shall not be billed to any Customer until the Director of the Public Utility Division receives such notification.
- 2.15.3.D If an AUSF Monthly Recovery Charge is used to recover the AUSF contributions of the Company from its retail Customers, the page which reflect the amount of the recovery charge shall also include the computation or formula used to determine the Monthly Recovery Charge. Additionally, any supporting documentation related to the recovery charge adjustment will be made available at the time that the AUSF Monthly Recovery Charge is changed and notification is given to the Directory of the Public Utility Division.
- 2.15.3.E Revisions for over-recovery and/or under-recovery shall be made no more than once every twelve (12) months, or one time each quarter pursuant to any change of the AUSF contribution factor.

Alabama Universal Service Fund Recovery Charge

Recovery Percentage	0.60%
---------------------	-------

2.16 **Recovery of Alabama High Cost Fund Contributions**

2.16.1 General Regulations

- 2.16.1.A Contributions to the Alabama High Cost Fund (HCF) are assessed as a uniform rate per Retail Billed Minutes of Use (RBMOU) of the Company's total retail-billed intrastate telecommunications revenues for a 12-month period identified by the HCF administrator. RBMOU shall exclude those dedicated point-to-point services not capable of being switched in the Local Exchange Carrier's (LEC's) public switched network. An intrastate billed MOU shall consist of a minute, as defined above, for any call which originates and terminates within the state of Alabama. Calls which originate or terminate on an interexchange carrier's (IXC's), or LEC's network using special access or private access services shall be included in determining the RBMOU. If a service is sold which allows a certain block of minutes for a fixed price, the rate per RBMOU will apply to the actual minutes used instead of minutes allowed.

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- 2.16.1.B Recovery shall be assessed by either a recovery factor or flat recovery charge as described below.
- 2.16.1.C Recovery shall be based on the same retail revenues as those used for contribution purposes.

2.16.2 HCF Recovery Charge

- 2.16.2.A Recovery of the HCF contribution from retail business and residential customers shall be \$.01734 per intrastate RBMOU, which shall be applied to each retail customer in addition to any other applicable rates and charges as provided for in this tariff. The HCF Recovery Charge shall not exceed the currently approved total dollar amount being contributed by the company to the HCF.
- 2.16.2.B The results of such calculation(s) shall be rounded to the penny for the purpose of applying this amount to retail customer's bills.
- 2.16.2.C The resulting HCF recovery amount shall not be subject to state or local taxes or franchise fees.
- 2.16.2.D If recovery is made pursuant to this tariff from the retail customers, the amount resulting from the HCF Recovery Charge will be listed as a separate line item on each customer's bill to the extent the Company has the billing capability to do so.
- 2.16.2.E Records shall be kept by the Company, which reflect the HCF contributions paid by the Company for each period along with all amounts recovered by the Company through the recovery of HCF Contributions. This information shall be made available to the Commission upon request.

2.17 **Customer Billing Inquiries**

Any customer who has a question regarding his/her telephone bill may contact Big River toll free at (800) 455-1608.

Filing a complaint with the Alabama Public Service Commission:

- ▶ If Big River cannot resolve your complaint, you may call the Alabama Public Service Commission Toll Free at (800) 392-8050 between the hours of 8:00 AM to 4:30 PM to file an informal complaint.
- ▶ You may file an informal complaint in writing with the Alabama Public Service Commission at its mailing address above or via the Internet at:
<http://www.psc.state.al.us/Complaints/ComplaintForm.htm>

SECTION 3 – DESCRIPTION OF SERVICES**3.1 General**

The Company provides intrastate interexchange services, including direct-dialed message telecommunications services and 800/888/877/866 service to residential and business customers. Each service is offered independently of the other and is offered via Big River's facilities, conventional network elements purchased from other local or inter-exchange carriers, or via resale of facilities of other local or inter-exchange carriers for the transmission of one-way or two-way communications, unless otherwise noted. Calls are rated based on the duration of the call. Services are available twenty-four (24) hours a day, seven (7) days a week.

Residential and Business Services: Customers may subscribe to services based on the type of customer they are. Residential services and features are for the use of Residential Customers and Business services and features are for the use of Business Customers. Due to the varying usage and cost characteristics of each type of service, customers are restricted to subscribing to services specifically for their customer class.

3.2 Charges Based on Duration of Use

Where charges for a service are specified based on the duration of use, such as the duration of a telephone call, the following rules apply:

- 3.2.1 Calls are measured in duration increments identified for each service. All calls which are fractions of a measurement increment are rounded up to the next whole unit.
- 3.2.2 Timing on completed calls begins when the call is answered by the called party. Answering is determined by hardware answer supervision in all cases where this signaling is provided by the terminating local carrier and any intermediate carrier(s).
- 3.2.3 Timing terminates on all calls when the calling party hangs up or the Company's network receives an on-hook signal from the terminating carrier.
- 3.2.4 Calls originating in one time period and terminating in another will be billed in proportion to the rates in effect during different segments of the call.
- 3.2.5 All times refer to local times at the Customer's Location.
- 3.2.6 Rates are not distance sensitive. As such, unless otherwise indicated, mileage bands are not applicable to the services offered.
- 3.2.7 Unless otherwise indicated, rates do not vary depending upon day or the time of day (Day, Evening, and Night/Weekend).
- 3.2.8 Each call is rated and billed in whole cents. Any rated call with a fraction of a cent less than \$0.004 will be rounded down to the nearest whole cent. Any rated call with a fraction of a cent \$0.005 or greater will be rounded up to the nearest whole cent.

SECTION 3 – DESCRIPTION OF SERVICES (cont'd)

3.3 Product Descriptions

3.3.1 Switched Outbound (1+) Service

Switched Outbound Service provides Big River customers with the ability to originate calls from a Big River-provided access line to all other stations on the public switched telephone network bearing the designation of any central office exchanges outside the customer's local calling area. This service is available on a switched basis only.

This service is available to Local Exchange Telecommunications Services customers of Big River, as well as other Local Exchange Providers, who presubscribe to the Company for long distance Service.

3.3.2 Toll Free Service (8XX)

Toll Free Service is an inbound-only service that allows callers located anywhere in the State of Alabama to place Toll Free Calls to Customers by dialing an assigned telephone number with an 8XX area code. The Company provides Switched Toll Free Service only. Calls may be terminated either to the Customer's local exchange telephone service or dedicated access line.

3.3.3 Post-Paid Calling Card (Travel Card) Services

Post-Paid Calling Card Service enables Customers to make Calls through the use of a long distance calling card to points throughout the State of Alabama. Charges incurred are billed to the Customer's account. Access to the network is available through a 1-800 number or through a local telephone number. The caller will then be prompted to dial the telephone number associated with the called station and an authorization code in order to complete the call.

3.3.4 Directory Assistance

Directory Assistance ("DA") is a Service that provides Customers with access to telephone number information. Access is obtained by direct dialing 1 + (Area Code) 555-1212 or 1-411.

SECTION 3 – DESCRIPTION OF SERVICES (cont'd)**3.3 Product Descriptions (cont'd)****3.3.5 Operator Services**

Operator Services involve assisting Customers with the placement of telephone calls, including collect calls, calling cards, credit card calls, person-to-person calls, third party calls, and other related operator services as well as the obtaining of related information. The Company provides this service for local and intraLATA calls. All other operator assisted calls will be routed to the Company's underlying carrier.

3.3.6 Timeless Talk Plan

3.3.6.A Timeless Talk Plan services are outbound only services provided to residential customers with a single BTN. Multiple BTN aggregation is not available with these services. Customers or end users can access the Company's long distance service by dialing 1 + the area code + the called telephone number from their presubscribed telephone line. Timeless Talk Plan Service is available to new and existing residential customers that:

- 3.3.6.A.1 use Switched Access to reach the long distance network;
- 3.3.6.A.2 subscribe to and maintain the required services, products, and/or features described in Section 3.3.6.D of this Tariff for the rate option selected by the Customer,
- 3.3.6.A.3 subscribe to and maintain Timeless Talk Plan service for the provision of intrastate IntraLATA Service, intrastate InterLATA Service and interstate service (this Service is not available for intrastate Service on a stand-alone basis),
- 3.3.6.A.4 demonstrate to the satisfaction of the Company at the time of subscribing to the Service and associated rate plan that the Residential Customer also subscribe to the required products, services, and/or features described in Section 3.3.6.D of this Tariff.
- 3.3.6.A.5 provide the Company the same billing name and address for all services required to subscribe to the Timeless Talk Plan; and
- 3.3.6.A.6 limit the use of Service to that which is of a standard, domestic, residential nature (see Section 3.3.6.C of this Tariff); and
- 3.3.6.A.7 request to be provisioned under this Service.

SECTION 3 – DESCRIPTION OF SERVICES (cont'd)

3.3 Product Descriptions (cont'd)

3.3.6.B Customers who cancel or discontinue the Company's Service or any of the required products, services or features as described in Section 3.3.6.A.3 of this Tariff or whose Service is refused, cancelled or discontinued by the Company shall forfeit eligibility for rates under this Service. Customers continuing to presubscribe to the Company will be moved to Switched Outbound and the rates described in Section 4.1.1 will apply unless the Customer elects an alternative Service.

3.3.6.C If the Customer uses this Service for non-standard residential or non residential purposes, including but not limited to commercial or broadcast facsimile, resale, telemarketing, internet or other data connections and autodialing, the Company may immediately suspend, restrict or cancel the Customer's Service. As a result of non-standard or nonresidential use of Service, the Company may move the Customer to Switched Outbound and the rates described in Section 4.1.1 of this Tariff will apply to such use.

3.3.6.D Rate Options

The Customer may choose from the following rate options:

3.3.6.D.1 Timeless Talk

For a monthly recurring charge, the Customer receives unlimited intrastate and interstate one plus (1+) Direct-Dialed minutes of use. Intrastate Timeless Talk is provided in conjunction with interstate Timeless Talk and is available only to Customers who subscribe to the interstate service provided in the Company's Interstate Price Guide which can be found at www.bigrivertelephone.com.

Intrastate Timeless Talk is not available on a standalone basis.

3.3.6.D.2 Reserved for future use

SECTION 3 – DESCRIPTION OF SERVICES (cont'd)**3.3 Product Descriptions (cont'd)****3.3.6.D.3 Timeless Talk Plus**

For a monthly recurring charge, the Customer receives unlimited intrastate and interstate one plus (1+) Direct Dialed minutes of use. Intrastate Timeless Talk is provided in conjunction with interstate Timeless Talk and is available only to Customers who subscribe to the interstate service provided in the Company's Interstate Price Guide which can be found at www.bigrivertelephone.com.

Intrastate Timeless Talk Plus is not available on a stand-alone basis.

3.3.7 Long Distance Time Packs

Long Distance Time Packs are optional outbound only services provided to residential customers. Customers or end users can access the Company's long distance service by dialing 1 + the area code + the called telephone number from their presubscribed telephone line for outbound access. All calls are billed in increments of six (6) seconds subject to a minimum connect time (initial period) of thirty (30) seconds. This optional pricing plan is established at the BTN level.

Long Distance Time Packs service is available to new and existing residential customers that:

- use Switched Access to reach the long distance network;
- subscribe to and maintain a Residential Local Advantage line as outlined in Section 3.3.1 of Big River Telephone Company's AL P.S.C. Tariff No. 2,
- subscribe to and maintain this plan for the provision of intrastate IntraLATA Service, intrastate InterLATA Service and interstate service (this Service is not available for intrastate Service on a stand-alone basis),
- demonstrate to the satisfaction of the Company at the time of subscribing to the Service and associated rate plan that the Customer also subscribe to the required products, services, and/or features described herein.
- provide the Company the same billing name and address for all services required to subscribe Long Distance Time Packs; and
- request to be provisioned under this Service.

For a specified monthly recurring charge, the Customer receives a specific amount (block) of time for placing (1) one plus (1+) Direct-Dialed outbound calls that originate from a line presubscribed to the Company. All usage in excess of the selected block of time will be billed at a fixed rate per minute. See Section 4.7 of this Tariff for the number of aggregate intrastate and interstate InterLata minutes allowed and the standard overage rate per minute after the block of time has been used. Any minutes not used in a

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billing cycle will not be carried over to the next billing cycle. No credits will be given for any unused minutes.

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SECTION 4 – RATES AND CHARGES**4.1 Switched Outbound (1+)**

- 4.1.1 For all customers who choose Big River as their presubscribed intraLATA toll and interLATA long distance provider. Based on minimum monthly usage and contractual term commitments, the following rates apply:

		Residential Customers Rates Per Minute			
		Contractual Commitment			
Monthly Minutes of Use		Monthly	1 Yr	2 Yr	3 Yr
	0-300	0.080	0.070	0.067	0.062
	300-500	0.075	0.067	0.064	0.061
	Over 500	0.070	0.065	0.062	0.059

		Business Customers Rates Per Minute			
		Contractual Commitment			
Monthly Minutes of Use		Monthly	1 Yr	2 Yr	3 Yr
	0-500	0.078	0.068	0.067	0.062
	500-1000	0.073	0.066	0.063	0.060
	Over 1000	0.070	0.063	0.061	0.059

- 4.1.2 For customers who do not choose Big River as both their intraLATA toll and interLATA presubscribed long distance provider.

Rate per Minute

IntraLATA Toll Calls	\$0.15 per minute where Big River is the carrier
InterLATA Long Distance Calls	\$0.10 per minute where Big River is the carrier

- 4.1.3 The duration of each call is rounded up to the nearest six second increment, after a minimum of 30 seconds per call.

4.2 Toll Free Service (8XX)

- 4.2.1 Based on minimum monthly usage and contractual term commitments, the following rates apply:

		Residential Customers Rates Per Minute			
		Contractual Commitment			
Monthly Minutes of Use		Monthly	1 Yr	2 Yr	3 Yr
	All	0.100	0.080	0.070	0.065

SECTION 4 – RATES AND CHARGES (cont'd)**4.2 Toll Free Service (8XX) (cont'd)**

		Business Customers Rates Per Minute			
		Contractual Commitment			
		Monthly	1 Yr	2 Yr	3 Yr
Monthly Minutes of Use	0-500	0.090	0.075	0.067	0.062
	500-1000	0.073	0.066	0.063	0.060
	Over 1000	0.070	0.063	0.061	0.059

4.2.2 A \$0.40 per call surcharge will apply to all calls placed from a payphone.

4.2.3 The duration of each call is rounded up to the nearest six second increment, after a minimum of 30 seconds per call.

4.3 Post-Paid Calling Card Services

4.3.1 The rate per minute is \$0.15. For those customers that subscribe to the Company's Switched Outbound service, Post-Paid Calling Card Services calls will be rated at their Switched Outbound rate, except for calls back to the customer's home exchange, which will be rated at \$0.15 per minute.

4.3.2 A \$0.40 per call surcharge will apply to all calls placed from a payphone.

4.3.3 A \$0.40 per call surcharge will apply to calls made to the Company's 800 access number. No such surcharge applies made to the local access number.

4.3.4 The duration of each call is rounded up to the nearest six second increment, after a minimum of 30 seconds per call.

4.4 Directory Assistance

4.4.1 InterLATA Directory Assistance calls, other than calls placed to 8XX toll free DA:

Per call rate: \$ 1.00

SECTION 4 – RATES AND CHARGES (cont'd)**4.4 Directory Assistance (cont'd)****4.4.2 IntraLATA Directory Assistance**

Direct Dialed	\$ 0.75 per call
Via Operator	\$ 0.75 per call

Fully-Automated	
Sent-Paid	\$ 0.00 per call
Collect, Bill to 3rd Number	\$ 2.50 per call

Semi-Automated	
Sent-Paid	\$ 2.00 per call
Collect, Bill to 3rd Numbers	\$ 2.50 per call
Person-to-Person	\$ 4.00 per call

4.4.3 Calls placed to 800/888 toll free DA

Calls placed to 800/888 toll free DA are provided at no charge to the Customer.

4.5 Operator Services

4.5.1 All usage associated with operator assisted calls will be charged the per minute rates as stated in Section 4.1.

4.5.2 In addition to applicable usage charges, the following operator-assisted charges will apply:

Person-to-Person	
IntraLATA	\$ 4.00 per call

Station-to-Station	
IntraLATA	\$ 2.00 per call

The term "Local" is meant to mean a call placed to a point within the customer's local calling area.

SECTION 4 – RATES AND CHARGES (cont'd)**4.6 Timeless Talk Plan****4.6.1 Timeless Talk**

The monthly recurring charge is \$16.00 for unlimited interstate and intrastate MOU as defined in Section 3.3.6.D.1 of this Tariff.

4.6.2 Reserved for future use.**4.6.3 Timeless Talk Plus**

The monthly recurring charge is \$16.00 for unlimited interstate and intrastate MOU as defined in Section 3.3.6.D.3 of this Tariff.

4.7 Long Distance Time Packs

Rates for the various Long Distance Time Pack Plans are listed below.

	Allotted Minutes per Month ¹	Monthly Fee	Per Minute Rate On Overage
60 Pack	60	\$3.00	0.06
180 Pack	180	\$6.00	0.06
480 Pack	480	\$10.00	0.06
960 Pack	960	\$15.00	0.06

¹ The aggregate number of intrastate and interstate InterLata minutes.

SECTION 5 – PROMOTIONS**5.1 General**

From time to time, Big River may elect to offer special promotions to its customers. These promotions will generally consist of a reduced price, a waiver of installation charges, or a free service with a purchase of another service.

Big River will provide written notice to the Commission no less than ten (10) days prior to the beginning of each promotion period identifying the promotion and the exchanges within which the promotion will be offered.

TITLE PAGE

COMPETITIVE TELECOMMUNICATIONS SERVICE

TARIFF SCHEDULE APPLICABLE TO

LOCAL EXCHANGE SERVICES

WITHIN THE STATE OF ALABAMA

BY

BIG RIVER TELEPHONE COMPANY, LLC

Issued by:

Kevin B. Cantwell
President
Big River Telephone Company, LLC
24 S. Minnesota Avenue
Cape Girardeau, MO 63703
(573) 651-3373

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TARIFF FORMAT SHEET

1. **Page Numbering.** Page numbers appear in the upper-right corner of the page. Pages are numbered sequentially. New pages may occasionally be added to the tariff. When a new page is added, the page appears as a decimal. For example, a new page added between pages 34 and 35 would be 34.1.
2. **Page Revisions Numbers.** Page Revision Numbers also appear in the upper-right corner of the page. These numbers are used to determine the most current page revision on file with the Alabama Public Service Commission. For example, the fourth revised Page 34 cancels the third revised Page 34. Because of deferrals, notice periods, *etc.*, the most current page number on file with the Alabama Public Service Commission is not always the tariff page in effect. Business Customers should consult with check sheet for the page currently in effect.
3. **Paragraph Numbering Sequence.** There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level of coding.
 - 1.
 - 1.1.
 - 1.1.1.
 - 1.1.1.A.
 - 1.1.1.A.1.
 - 1.1.A.1.(a)
 - 1.1.1.A.1.(a)(I)
 - 1.1.1.A.1.(a)(I)(i)
 - 1.1.1.A.1.(a)(I)(i)(1)
4. **Check List of Effective Pages.** When a tariff filing is made with the Alabama Public Service Commission, an updated Check List of Effective Pages ("Check List") accompanies the tariff filing. The Check List lists the pages contained in the tariff, with a cross-reference to the current revision number. When new pages are added, the Check List is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on the Check List if these are the only changes made to it (i.e., the format, *etc.*). Customers should refer to the latest Check List to find out if a particular page is the most current page on file with the Alabama Public Service Commission.
5. **Symbols Used in This Tariff.**

(AT)	To signify addition to text.
(C)	To signify a correction.
(CP)	To signify a change in practice.
(CR)	To signify a change in rate.
(CT)	To signify a change in text.
(DR)	To signify a discontinued rate.
(FC)	To signify a change in format lettering or numbering.
(MT)	To signify moved text.
(NR)	To signify new rate.
(RT)	To signify removal of text.

SECTION 17 - DEFINITIONS

SECTION 1 - DEFINITIONS

Account - Either a Customer's physical location or individual Service represented by a unique account number within the Billing Hierarchy. Multiple Services each with a unique account number may be part of one physical location.

APSC – Alabama Public Service Commission

Alternative Local Exchange Carrier ("ALEC") or Competitive Local Exchange Carrier ("CLEC") - means any entity or person providing local exchange services in competition with an ILEC or LEC.

Application for Service - The Big River order process that includes technical, billing and other descriptive information provided by the Customer that allows Big River to provide requested communications Services for the Customer and Customer's Authorized Users. Upon acceptance by Big River, the Application for Service becomes a binding contract between the Customer and Big River for the provision and acceptance of Services.

Authorization Code - A multi-digit code that enables a Customer to access Big River's network and enables Big River to identify the Customer's use for proper billing. Also called a Personal Identification Code or PIN.

Authorized User - A person, firm, or corporation, who is authorized by the Customer to be connected to the Service of the Customer.

Billing Hierarchy - Allows Customers to combine multiple accounts and Services into a single billing structure. Business Customers can choose whether to have all Services invoiced together, invoiced separately, or in any combination thereof. In addition, the Business Customer may specify where the invoices are to be sent and who is to receive them.

BTN: Billed Telephone Number, may consist of one or more WTNs.

Business Hours - The phrase "business hours" means the time after 8:15 A.M. and before 5:00 P.M., Monday through Friday excluding holidays.

Business Office - The phrase "business office" means the primary location where the business operations of Big River are performed and where a copy of Big River's tariff is made available for public inspection. The address of the business office is 24 S. Minnesota Ave., Cape Girardeau, Missouri, 63703.

Business Customer: A Customer whose use of the Services is primarily or substantially for a business, professional, institutional, or occupational purpose.

Called Station - The terminating point of a call (*i.e.*, the called number).

Calling Station - The originating point of a call (*i.e.*, the calling number).

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Effective:

Issued By:
Kevin B. Cantwell, President
Big River Telephone Company, LLC

SECTION 17 - DEFINITIONS

Calling Area - A specific geographic area so designated for the purpose of applying a specified rate structure.

Carrier - The term "Carrier" means Big River Telephone Company, LLC.

Central Office - A Local Exchange Carrier's office where a Customer's lines are terminated for the purpose of offering local telephone service and to connect with interexchange carriers.

Competitive Local Exchange Carrier ("CLEC") or Alternative Local Exchange Carrier ("ALEC") - means any entity or person providing local exchange services in competition with an ILEC or LEC.

Company - The term "Company" means Big River Telephone Company, LLC.

Customer - The person, firm, company, corporation, or other entity, having a communications requirement of its own that is responsible for the payment of charges and for compliance with this Tariff. See "End User".

Customer-Provided Equipment - Telecommunications equipment provided by a Customer used to originate calls using Big River's service located at the originating location.

Day - The term "day" means 8:00 A.M. to, but not including, 5:00 P.M. local time at the originating city, Monday through Friday, excluding Company specific holidays.

Delinquent or Delinquency - An account for which payment has not been made in full on or before the last day for timely payment.

Digital Transmission - Information transmitted in the form of digitally encoded signals.

End User - The ultimate user of the telecommunications services and who orders service and is responsible for payment of charges due in compliance with the Company's price list regulations. See "Customer".

Exchange Area - A geographically defined area wherein the telephone industry through the use of maps or legal descriptions sets down specified area where individual telephone exchange companies hold themselves out to provide communications services.

Facility (or Facilities) - Any item or items of communications plant or equipment used to provide or connect to Big River Services.

FCC - Federal Communications Commission.

SECTION 17 - DEFINITIONS

Holiday - The term "holiday" means 8:00 A.M. to, but not including, 11:00 P.M. local time at the originating city on all Company-specific holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. When holidays fall on Saturdays or Sundays, the holiday rate applies unless a larger discount would normally apply.

ILEC - means an Incumbent Local Exchange Company.

Incumbent Local Exchange Carrier ("ILEC") - means, with respect to an area or exchange(s), any telecommunications service provider furnishing local exchange service in such area or exchange(s) within the State of Alabama on July 1, 1995, pursuant to a Certificate of Convenience and Necessity or grandfathered authority.

Incomplete Call - Any call where voice transmission between the calling party and the called station is not established (i.e., busy, no answer, etc.).

Interexchange Carrier (IXC) - A common carrier that provides long distance domestic and international communication services to the public.

Local Access Transport Area ("LATA") - The phrase "Local Access Transport Area" means a geographical area established by the U.S. District Court for the District of Columbia in *United States v. Western Electric Co., Inc.*, 552 F. Supp. 131 (D.D.C. 1982), within which a local exchange company provides communication services.

Local Exchange Company ("LEC") - A company that furnishes local exchange telephone services.

Local Exchange Service - is an arrangement which connects the End User's location to the LEC's network switching center, thereby allowing End User to transmit and receive local calls within the End User's local calling area, or mandatory expanded area service (EAS) area, as defined by State commissions or, if not defined by State commission, then defined in the LEC's State Tariffs.

Location - A physical premise to or from which Big River provides Service.

NXX - The designation for the first three digits of a local telephone number where N represents 2-9 and X represents 0-9.

Night/Weekend - The words "night/weekend" mean 11:00 P.M. to, but not including, 8:00 A.M. local time in the originating city, all day on Saturday, and all day Sunday, except from 5:00 P.M. to, but not including, 11:00 P.M.

Non-Business Hours - The phrase "non-business hours" means the time period after 5:00 P.M. and before 8:15 A.M., Monday through Friday, all day Saturday, Sunday, and on holidays.

NPA - An area code, otherwise called numbering plan area.

SECTION 17 - DEFINITIONS

Other Common Carrier - The term “other common carrier” denotes a specialized or other type of common carrier authorized by the Federal Communications Commission to provide domestic or international communications services.

Premises - A building or buildings on contiguous property (except railroad rights-of-way, etc.).

Primary Interexchange Carrier (PIC) - The interexchange carrier to which a switched access line is presubscribed.

Regular Billing - A standard bill sent in the normal monthly Big River billing cycle. This billing consists of one bill for each account assigned to the Customer with explanatory detail showing the derivation of the charges.

Residential Service - The phrase “residential service” means telecommunication services used primarily as nonbusiness service by a residential customer.

Residential Customer – A Customer whose use of the Service is primarily or substantially of a social or domestic nature; and business use, if any, is incidental.

Services - Big River’s regulated common carrier communications services provided under this Tariff.

Subscriber - The term “Customer” is synonymous with the term “subscriber”.

Switch - The term “switch” denotes an electronic device that is used to provide circuit sharing, routing, and control.

Timely Payment - A payment on a Customer’s account made on or before the due date.

Underlying Carrier - A provider of interstate and/or intrastate interexchange telecommunications services from whom Big River acquires services that it resells to Customers.

WTN – Working Telephone Number.

SECTION 2 - RULES AND REGULATIONS

2.2.3 Undertaking of Big River

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- 2.1.1 Big River undertakes to provide local exchange telecommunications services within the State of Alabama on the terms and conditions and at the rates and charges specified herein.
- 2.1.2 Big River installs, operates and maintains the communication Services provided hereunder in accordance with the terms and conditions set forth under this Tariff. It may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities when authorized by the Customer to allow connection of a Customer's location to the Big River network. The Customer shall be responsible for all charges due for such service arrangements.
- 2.1.3 Big River's Services and facilities are available twenty-four (24) hours per day, seven (7) days per week.

2.2 Use of Service

- 2.2.1 Services provided under this Tariff may be used only for the transmission of communications in a manner consistent with the terms of this Tariff and regulations of the WPSC.
- 2.2.2 Services provided under this Tariff shall not be used for unlawful purposes. Service will not be furnished if any law enforcement agency, acting within its jurisdiction, advises that such services are being used in violation of the law.

2.3 Limitations

- 2.3.1 Service is offered subject to the availability of the necessary facilities or equipment, or both facilities and equipment, and subject to the provisions of this Tariff. The obligation of Big River to provide Service is dependent upon its ability to procure, construct, and maintain facilities that are required to meet the Customer's order for Service. Big River will make all reasonable efforts to secure the necessary facilities.
- 2.3.2 Big River reserve the right to limit or to allocate the use of existing facilities or to additional facilities offered by Big River, when necessary because of lack of facilities, relevant resources, or due to causes beyond Big River's control. In addition, Big River reserves the right to discontinue Service when the Customer is using the Service in violation of law or the provisions of this Tariff.
- 2.3.3 Big River does not undertake to transmit messages, but offers the use of its facilities when available, and will not be liable for errors in transmission nor for failure to establish connections.

- 2.3.4 Big River reserves the right to refuse service to Customers due to insufficient or invalid charging information.
- 2.3.5 Big River may block calls that are made to certain numbers, cities or central office exchanges, in its sole discretion, that it deems reasonably necessary to prevent unlawful or fraudulent use of Service
- 2.3.6 Big River will use reasonable efforts to maintain the facilities and equipment that it furnishes to the Customer. Big River may substitute, change, or rearrange any equipment or facility at any time and from time to time. Big River shall have the right to make necessary repairs or changes in its facilities at any time and will have the right to suspend or interrupt service temporarily for the purpose of making the necessary repairs or changes in its system. When such suspension or interruption of service for any appreciable period is necessary, Big River will give the Customers who may be affected reasonable notice thereof as circumstances will permit, and will prosecute the work with reasonable diligence, and if practicable at time that will cause the least inconvenience. When Big River is repairing or changing its facilities, it shall take appropriate precautions to avoid unnecessary interruptions of Customer's service.

2.4 Liabilities of Big River

- 2.4.1 Big River's liability for damages arising out of mistakes, omissions, interruptions, delays, errors, or defects in the installation, provision, termination, maintenance, repair, or restoration occurring in the course of furnishing service, channels, or other facilities, and not caused by the negligence of the Subscriber, commences upon activation of service. In no event does Big River's liability exceed an amount equivalent to the proportionate charge to the Customer for the period of service during which such mistakes, omissions, interruptions, delays, errors or defects occur. For the purposes of computing such amount, a month is considered to have thirty (30) days. Credit will be calculated pursuant to Section 2.9 of this Tariff.
- 2.4.2 When the facilities of other carriers are used in establishing connections to points not reached by Big River's facilities, Big River is not liable for any act or omission of the other carrier(s). The Customer will indemnify and save harmless Big River from any third-party claims for such damages referred to in Section 2.4.1.

- 2.4.3 In no event will Big River be responsible for consequential damages or lost profits suffered by a Customer as a result of interrupted or unsatisfactory service. Big River will not be liable for claims or damages resulting from or caused by: (i) Customer's fault, negligence or failure to perform Customer's responsibilities; (ii) claims against Customer by another party; (iii) any act or omission of any other party; or (iv) equipment or service furnished by a third party.
- 2.4.4 Big River does not guarantee or make any warranty with respect to any equipment provided by it or leased on the Customer's behalf where such equipment is used in locations containing an atmosphere which is explosive, prone to fire, dangerous or otherwise unsuitable for such equipment. The Customer shall indemnify and hold Big River harmless from any and all loss, claims, demands, suits or other actions, or any liabilities whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party or persons, for any personal injury or death of any person or persons, and for any loss, damage or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, presence, condition, location or use of such equipment so used.
- 2.4.5 Big River is not liable for any defacement of, or damage to, the premises of a Customer resulting from the furnishing of services or the attachment of equipment, instruments, apparatus, and associated wiring furnished by Big River on such Customer's premises or by the installation or removal thereof, when such defacement or damage is not the result of Big River negligence. No agents or employees of other participating carriers shall be deemed to be agents or employees of Big River without written authorization. The Customer will indemnify and save harmless Big River from any claims of the owner of the Customer's premises or other third party claims for such damages.
- 2.4.6 Big River and Customer shall be excused from performance under this Tariff and under the application for service for any period, and to the extent that the party is prevented from performing any service pursuant hereto, in whole or in part, as a result of delays caused by the other party or an Act of God, governmental agency, war, civil disturbance, court order, lockouts or work stoppages or other labor difficulties, third party nonperformance (including the failure of performance for reasons beyond the control of common carriers, interexchange carriers, local exchange carriers, suppliers and subcontractors), or other cause beyond its reasonable control, including failures or fluctuations in electrical equipment, and such nonperformance shall not be deemed a violation of this Tariff or of the application for service or grounds for termination of service. Both parties retain all rights of recourse against any third parties for any failures which may create a force majeure condition for the other party.

- 2.4.7 Big River is not liable for any damages, including usage charges, the Customer may incur as a result of the unauthorized use of its telephone facilities. This unauthorized use of the Customer's facilities includes, but is not limited to, the placement of calls from the Customer's premises, and the placement of calls through Customer-provided equipment that are transmitted or carried on the Big River network.
- 2.4.8 Where there is a connection via Customer-provided terminal equipment or Customer-provide communications systems, the point of demarcation shall be defined as the Big River facility that provides interconnection. Big River shall not be held liable for Customer-provided access media or equipment. Any maintenance service or equipment arrangements shall be addressed on an individual case basis.
- 2.4.9 Big River will not be responsible if any changes in its service cause hardware or software not provided by Big River to become obsolete require modification or alternation, or otherwise affect the performance of such hardware or software.
- 2.4.10 The Company shall use reasonable efforts to make services available by the estimated service date. The Company shall not be liable for any damages whatsoever resulting from delays in meeting the estimated service date due to delays resulting from normal installation procedures. Such delays shall include, but not be limited to delays in obtaining necessary regulatory approvals for construction, delays in obtaining right-of-way approvals, delays in actual construction work being done by our vendor(s), and any delays due to any LEC where the Company is relying upon such LEC to meet such estimated due date which is beyond the Company's control.
- 2.4.11 With respect to the services, materials and equipment provided hereunder, Big River makes no promises, agreements, understandings, representations or warranties, expressed or implied, and hereby expressly disclaims all warranties, expressed or implied, not stated in this Tariff, and in particular disclaims all warranties of merchantability and fitness for a particular purpose.

2.5 Responsibilities of the Customer

- 2.5.1 The Customer must initiate a service order pursuant to Section 2.6 of this Tariff.
- 2.5.2 The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by Big River, except upon the written consent of Big River. The equipment Big River provides or installs at the Customer premises for use in connection with the service Big River offers shall not be used for any purpose other than for which it was provided.

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- 2.5.3 The Customer shall ensure that the equipment and/or system is properly interfaced with Big River's facilities or service. If the Federal Communications Commission or some other appropriate certifying body certifies terminal equipment as being technically acceptable for direct electrical connection with interstate communications service, Big River will permit such equipment to be connected with its channels without the use of protective interface devices.
- 2.5.4 The Customer shall be responsible for securing its telephone equipment against being used to place fraudulent calls using Big River's service. The Customer shall be responsible for payment of all applicable charges for services provided by Big River and charged to the Customer's accounts, even where those calls are originated by fraudulent means either from Customer's premises or from remote locations.
- 2.5.5 Big River shall be indemnified and held harmless by the Customer against claims of libel, slander, or the infringement of copyright, or for the unauthorized use of any trademark, trade name, or service mark, arising from the material transmitted over Big River's service, against claims for infringement of patents arising from, combining with, or using in connection with, service, Big River's apparatus and systems of the Customer; against all other claims arising out of any act or omission of the member in connection with Big River's service. The Customer shall be liable for:
- 2.5.5.A Loss due to theft, fire, flood, or other destruction of Big River's equipment or facilities on Customer's premises.
- 2.5.5.B Reimbursing Big River for damages to facilities or equipment caused by the negligence or willful acts of the Customer's officers, employees, agents or contractors.
- 2.5.5.C Charges incurred with interconnect or local operating companies for service or service calls made to the Customer's premises or on the Customer's leased or owned telephonic equipment unless Big River specifically authorizes said visit or repairs in advance of the occurrence and Big River agrees in advance to accept the liability for said repairs or visit.
- 2.5.5.D Payment for all Big River service charges incurred through usage or direct action on the part of the Customer.
- 2.5.6 The Customer may be required to verify in writing that it is duly authorized to order service at all locations designated by the Customer for service, and assumes financial responsibility for all locations designated by the Customer to receive Big River's services.
- 2.5.7 The Customer shall not use the Big River name, logo or trademark in any promotional materials, contracts, Tariffs, service bills, etc., without expressed written authorization from Big River. The Customer shall not use the Big River name, logo or trademark in any pre-sale activities. The Customer is prohibited from using Big River's name or trademark on any of the Customer's products or services.

2.6 Application for Service

- 2.6.1 Customer may not assign or transfer any of its rights or services ordered without the prior written consent of Big River. Big River may assign any service orders to its parent company or any affiliate or successor. Big River will notify Customers of any such assignment.
- 2.6.2 Applicants wishing to obtain service must initiate a service order which may include the Customer's authorization for Big River to instruct other carriers and vendors to provide certain services on the Customer's behalf. Big River will obtain the proper authorization from the Customer where necessary, pursuant to Alabama Public Service Commission regulations.
- 2.6.3 An Application for Service may be changed by Customer upon written notice to Big River, subject to acceptance and confirmation by Big River, provided that a charge shall apply to any change when the request is received by Big River after notification by Big River of the acceptance and confirmation. Such charge shall be the sum of the charges and costs for access facilities and other services and features and the lesser of (i) the monthly recurring rate for each service component that has been canceled as a result of the change times the appropriate minimum service period, plus the applicable installation or non-recurring charges, and (ii) the costs incurred by Big River in accommodating each change, less net salvage. The costs incurred by Big River will include the direct and indirect cost of facilities specifically provided or used, the costs of installation, including design preparation, engineering, supply expense, labor and supervision, general and administrative, and any other costs resulting from the preparation, installation and removal effort.
- 2.6.4 Where the Customer or applicant cancels an Application for Service prior to the start of installation of service, lease of network elements, or prior to the start of special construction, no charge applies. Where installation of service has been started prior to the cancellation, a cancellation charge equal to the costs incurred by Big River shall apply, but in no case shall such charge exceed the charge for the minimum period of the service ordered, including applicable installation charges, if any. The costs incurred by Big River will include the direct and indirect costs of facilities specifically leased, provided or used; the cost of installation, including design preparation, engineering, supply expense, labor and supervision, general and administrative, and any other costs resulting from the preparation, installation and removal effort.

2.7 Establishing Credit, Deposits and Advance Payments

2.7.1 Credit Requirement

2.7.1.A Big River may require an applicant for service to satisfactorily establish credit, but such establishment of credit shall not relieve the end-user from complying with Big River's policy regarding the prompt payment of bills.

2.7.1.B For the purposes of this rule, "applicant" is to be defined as a person who applies for service for the first time or reapplies at a new or existing location after a previous discontinuance of service; "customer" is defined as someone who is currently receiving service.

2.7.2 Reestablishment of Credit

Any applicant who previously has been an end-user of Big River and whose service has been discontinued for nonpayment of bills shall be required, before service is rendered, to pay all amounts due Big River or execute a deferred payment agreement.

2.7.3 Deposits

Big River does not require deposits at this time.

2.8 Payment of Charges

2.8.1 The Customer is responsible for the payment of all charges for facilities and services furnished by Big River to the Customer, regardless of whether those services are used by the Customer itself or are resold to or shared with other persons.

2.8.2 For billing of monthly charges, service is considered to be established upon the day in which Big River notifies the Customer of installation and testing of the Customer's services.

2.8.3 Usage charges will be billed monthly in arrears. Customer will be billed for all usage accrued beginning immediately upon access to the service. Customers will be billed for usage occurring during their specific 30-day billing cycle, which for purposes of computing charges shall be considered a month. The rates charged to a Customer for a billing cycle will be the rates in effect on the first day of the Customer's billing cycle.

2.8.4 Monthly charges for all flat rate service components, provided hereunder, are billed in advance of service and reflect the rates in effect as of the date of the invoice. A Customer's first invoice may contain charges from previous periods for service provided from the date of installation through the current invoice period.

- 2.8.5 Bills are due and payable as specified on the bill. Bills may be paid by mail or in person at the business office of Big River or an agency authorized to receive such payment. All charges for service are payable only in United States currency. Payment may be made by cash, check, money order, cashier's check, or certain major credit cards. Customer payments are considered prompt when received by Big River or its agent by the due date on the bill. Amounts not paid within twenty-one (21) days after the mail date of invoice will be considered past due. In the event that a postmark on a customer's payment received after the due date is not discernible, a three day mailing period will be presumed. If the last calendar day for remittance falls on a Sunday, legal holiday, or other day when the offices of Big River are not open to the general public, the final payment date shall be extended through the next business day. If Big River becomes concerned at any time about the ability of a Customer to pay its bills, Big River may require that the Customer pay its bills and make such payments in cash or the equivalent of cash, as opposed to the use of checks or credit card.
- 2.8.6 If any portion of the payment is not received by Big River, or if any portion of the payment is received by Big River in funds that are not immediately available, within thirty (30) days after the date of rendition, then a late payment penalty may be assessed on amounts not previously assessed a late charge. The penalty for late payments shall be a 1.5% charge on the amount of the bill past due.

2.9 Interruption of Service

- 2.9.1 Any disputed charge may be brought to Big River's attention by verbal or written notification. In the case of a billing dispute between the Customer and Big River that cannot be settled to their mutual satisfaction, the undisputed portion and subsequent bills must be paid on a timely basis, or the service may be subject to disconnection. The Customer may request an in-depth investigation into the disputed amount and a review by a Big River manager. During the period that the disputed amount is under investigation, Big River shall not pursue any collection procedures or assess late fees with regard to the disputed amount. The Customer shall be required to pay the undisputed part of the bill, and if not paid, Big River may discontinue service. In the event the dispute is not resolved, Big River shall inform the customer that the customer has the option to pursue the matter with the WPSC.
- 2.9.2 The Customer is responsible to pay Big River for all toll calls or other third party charges resulting from the origination of calls to points outside the local exchange and for charges or calls billed to the Customer's number.
- 2.9.3 Big River may assess up to a twenty-five dollar (\$25) charge for each returned check or credit card chargeback.

- 2.9.4 If service is suspended/disconnected by Big River in accordance with the provisions of the Tariff and later restored, restoration of service will be subject to all applicable installation charges.
- 2.9.5 When circumstances prevent customers from paying their invoices in full, Big River may make special accommodations to assist customers by setting up a regular payment plan. Payment plans are only set up at the request of the customer. Payment plans are intended to function as a short-term solution and will be reviewed and approved on an individual case basis.
- 2.9.6 Credit allowance for the interruption of service that is not due to Big River's testing or adjusting, negligence of the Customer or to the failure of channels or equipment provided by the Customer, are subject to the general liability provisions set forth herein. It shall be the obligation of the Customer to notify Big River immediately of any interruption in service for which a credit allowance is desired. Before giving such notice, the Customer or end-user shall ascertain that the trouble is not being caused by any action or omission by the Customer within his or her control, or is not in wiring or equipment, if any, furnished by the Customer and connected to Big River's facilities.

An adjustment or refund shall be made:

1. Automatically, if the service interruption lasts for more than forty-eight (48) hours after being reported to the company and the adjustment or refund exceeds \$1.00 in amount; and
 2. Upon subscriber oral or written request, if the service interruption lasts twenty-four (24) to forty-eight (48) hours after being reported to the company and the adjustment or refund exceeds \$1.00 in amount.
- 2.9.7 For purposes of credit computation, every month shall be considered to have 720 hours.
- 2.9.8 The Customer shall be credited for an interruption at the rate of 1/720th of the monthly charge for the facilities affected for each hour or major fraction thereof that the interruption continues.

Credit Formula:

$$\text{Credit} = A/720 \times B$$

where "A" - outage time in hours
"B" - total monthly charge for affected facility

- 2.9.9 If notice of a dispute as to charges is not received by the Company within 90 days of the date a bill is issued, such charges shall be deemed to be correct and binding on the Customer.

2.10 Restoration of Service

The use and restoration of service shall be in accordance with the rules of the WPSC.

2.11 Disconnection of Service by Customer

2.11.1 By giving notice, Customer may disconnect service at any time following its minimum service requirement(s). The recurring monthly service charge, plus associated taxes, shall be pro-rated for the actual number of days in which service has been provided, with the non-used portion being refunded to the Customer.

2.12 Cancellation for Cause

2.12.1 The Company may discontinue service or cancel an application for service, pursuant to applicable Alabama Public Service Commission rules, without incurring any liability for any of the following reasons:

- A. Nonpayment of a delinquent bill for non-disputed regulated telecommunications services within the period;
- B. Failure to make a required security deposit;
- C. Violation of or noncompliance with any provision of law, or of the tariffs or terms and conditions of service of the Company filed with and approved by the WPSC.
- D. Refusal to permit the Company reasonable access to its telecommunications facilities for recovery, maintenance, and inspection thereof.
- E. Interconnection of a device, line, or channel to Company facilities or equipment contrary to the Company's terms and conditions of service on file with and approved by the WPSC.
- F. Use of telephone service in such manner as to interfere with reasonable service to other end users.

2.12.2 Service may be discontinued during normal business hours on or after the date specified in the notice of discontinuance. Service shall not be discontinued on a day when the offices of the Company are not available to facilitate reconnection of service or on a day immediately preceding such a day.

2.12.3 At least 24 hours preceding a discontinuance, the Company shall make reasonable efforts to contact the Customer to advise it of the proposed discontinuance and what steps must be taken to avoid it.

2.12.4 Service shall not be disconnected unless written notice by first class mail is sent or delivered to the Customer at least ten (10) days prior to the date of the proposed discontinuance.

2.13 Notice and Communication

- 2.13.1 The Customer shall designate on the Application for Service an address to which Big River shall mail or deliver all notices and other communications, except that Big River may also designate a separate address to which Big River's bills for service shall be mailed.
- 2.13.2 Big River shall designate on the Application for Service an address to which the Customer shall mail or deliver all notices and other communications, except that Big River may designate a separate address on each bill for service to which the Customer shall mail payment on that bill.

2.14 Taxes, Surcharges and Utility Fees

Customer is responsible for the payment of all federal, state and local taxes, surcharges, utility fees, or other similar fees (*i.e.*, gross receipts tax, sales tax, municipal utilities tax, 911 surcharges or fees, universal service contributions) that may be levied by a governing body or bodies in conjunction with or as a result of the service furnished under this Tariff. These charges will appear as separate line items on the Customer's bill and are not included in the rates contained in this Tariff. There shall be added to the Customer's bill for service, an additional charge equal to the pro rata share of any occupation, franchise, business, license, excise privilege or other similar charge or tax, now or hereafter imposed upon the gross receipts or revenue of Big River by any municipal taxing body or municipal authority whether by statute, ordinance, law or otherwise, and whether presently due or to hereafter become due. The charge applicable to each Customer will appear as a separate line item on the Customer's regular monthly bill and shall be determined on a basis equal to the tax levied by each municipal taxing body or municipal authority.

2.15 Customer Billing Inquiries

Any customer who has a question regarding his/her telephone bill may contact Big River toll free at (800) 455-1608.

Filing a complaint with the Alabama Public Service Commission:

- ▶ If Big River cannot resolve your complaint, you may call the Alabama Public Service Commission Toll Free at (800) 392-8050 between the hours of 8:00 AM to 4:30 PM to file an informal complaint.
- ▶ You may file an informal complaint in writing with the Alabama Public Service Commission at its mailing address above or via the Internet at:
<http://www.psc.state.al.us/Complaints/ComplaintForm.htm>

SECTION 3 – DESCRIPTION OF SERVICES**3.4.3.4 General**

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The Company's Local Telephone Service provides a Customer with the ability to connect to the Company's switching network which enables the Customer to:

- place or receive calls to any calling Station in the local calling area, as defined herein,
- access a full set of advanced call features,
- access basic 911 Emergency Service,
- access the interexchange carrier selected by the Customer for interLATA, intraLATA, interstate or international calling;
- access Operator Service,
- access Directory Assistance for the local calling area,
- place or receive calls to 800 telephone numbers,
- access Telephone Relay Service.

- 3.4.1 Service Area: Where facilities are available, service areas are defined by NPA/NXX designations. The Company provides service in all exchanges served by AT&T and CenturyTel.

Local Calling Areas: Customers will be able to place local calls to all telephone subscribers within the same NPA/NXX as well as subscribers in the local calling area for the rate center containing such NPA/NXX as defined in the ILEC's Local Exchange Tariff, including any extended local areas covered under mandatory local calling plans outlined in the respective ILEC tariff. The Company's exchange areas will match those filed by the ILEC.

Residential and Business Services: Customers may subscribe to services based on the type of customer they are. Residential services and features are for the use of Residential Customers and Business services and features are for the use of Business Customers. Due to the varying usage and cost characteristics of each type of service, customers are restricted to subscribing to services specifically for their customer class.

3.5 Local Basic Residential Exchange Line Services

Basic Residential Line provides the Residential Customer with a single, voice-grade communications channel. Each Basic Residence Line will include a telephone number.

- 3.5.1 Optional Features. A Local Basic Residence Exchange Line Customer may order optional features including, but not limited to the following:

Automatic Call Back
Call Forwarding Busy Line
Call Forwarding No Answer
Call Forwarding Variable

Call Waiting
Caller ID
Preferred Call Forwarding
Remote Activation Call Forwarding
Remote Call Forwarding
3-Way Calling
Speed Calling

3.5.2 Optional Feature Descriptions

(a) Automatic Call Back: Allows the user to automatically re-originate a call to the last dialed number regardless of whether the call was answered, unanswered or busy.

(b) Call Forwarding Busy Line: Automatically routes incoming calls to a designated answering point when the called line is busy.

(c) Call Forwarding No Answer: Automatically routes incoming calls to a designated answering point when the called line does not answer within a pre-specified number of rings.

(d) Call Forwarding Variable: Automatically routes incoming calls to a designated answering point, regardless of whether the user's Station is idle or busy.

(e) Call Waiting: Provides the User with a burst of tone to indicate that another call is waiting. The second call can either be answered by flashing the switch hook or hanging up the phone and being rung back by the caller.

(f) Caller ID with Number: Identifies the 10-digit number of the calling party.

(g) Preferred Call Forwarding: Forwards calls from a list of up to six telephone numbers designated by the users.

(h) Remote Activation Call Forwarding: Remote access to call forwarding allows the customer remotely activate or deactivate Call Forwarding from any touch-tone phone.

(i) Remote Call Forwarding: Calls can be remotely forwarded to a to a back- up position or voice mail box.

(j) 3-Way Calling: The User can sequentially call up to two other people and add them together to make up a three-way call.

(k) Speed Call: Provides a User with the option to call up to 8 or 30 selected directory numbers by dialing a one or two-digit code.

3.5.3 Local Basic Residential Exchange Line Rates and Charges: A Basic Residence Line Customer will be charged applicable Non-Recurring Charges and Monthly Recurring Charges.

3.6 Local Residential Packages

Local Residential Packages provides Residential Customers with the ability to buy packages of services that are specifically designed to provide valuable features along with a basic local exchange line.

3.6.1 Residential Local Advantage: Big River's Residential Local Advantage package provides for the following local exchange services along with 60 minutes of Interexchange service as specified in Big River's Alabama Interexchange Tariff. The local exchange services included are:

- Basic local exchange line
- Call Waiting
- Three Way Calling
- Caller ID
- Call Forwarding

3.6.2 Residential Regional Advantage: Big River's Residential Regional Advantage package provides for the following local exchange services along with unlimited interexchange regional service as specified in Big River's Alabama Interexchange Tariff. The local exchange services included are:

- Basic local exchange line
- Call Waiting
- Three Way Calling
- Caller ID
- Call Forwarding

3.6.3 Residential National Advantage: Big River's Residential National Advantage package provides for the following local exchange services along with unlimited interexchange service to all points within the continental U.S. as specified in Big River's Alabama Interexchange Tariff. The local exchange services included are:

- Basic local exchange line
- Call Waiting
- Three Way Calling
- Caller ID
- Call Forwarding

3.7 Local Basic Business Exchange Line Services

The Basic Business Line provides the Customer with a single, voice-grade communications channel. Each Basic Business Line will include a telephone number.

- 3.7.1 Optional Features. A Local Basic Business Exchange Line Customer may order optional features including, but not limited to the residential features listed in Section 3.5.1. Additionally, a Local Basic Business Exchange Line may order Hunting as an additional feature. The Hunting feature will route a call to an idle station line. With Serial Hunting, calls to a member of a hunt group will search from that point to the end of the group and stop.
- 3.7.2 Local Basic Business Exchange Line Rates and Charges: A Basic Business Line Customer will be charged applicable Non-Recurring Charges and Monthly Recurring Charges.

3.8 Local Business Packages

Local Business Packages provides residential customers with the ability to buy packages of services that are specifically designed to provide valuable features along with a basic local exchange line.

- 3.8.1 Business Local Advantage: Big River's Business Local Advantage package provides for the following local exchange services along with 60 minutes of Interexchange service as specified in Big River's Alabama Interexchange Tariff. The local exchange services included are:
- Basic local exchange line
 - Call Waiting
 - Three Way Calling
 - Caller ID
 - Call Forwarding
- 3.8.2 Business Regional Advantage: Big River's Business Regional Advantage package provides for the following local exchange services along with unlimited interexchange regional service as specified in Big River's Alabama Interexchange Tariff. The local exchange services included are:
- Basic local exchange line
 - Call Waiting
 - Three Way Calling
 - Caller ID
 - Call Forwarding
- 3.8.3 Business National Advantage: Big River's Business National Advantage package provides for the following local exchange services along with unlimited interexchange service to all points within the continental U.S. as specified in Big River's Alabama Interexchange Tariff. The local exchange services included are:
- Basic local exchange line
 - Call Waiting
 - Three Way Calling

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- Caller ID
 - Call Forwarding

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3.9 Directory Assistance

Big River furnishes Directory Assistance Service whereby customers may request assistance in determining telephone numbers.

3.9.1 General: Customers may obtain Directory Assistance in determining telephone numbers within its local calling area by calling the Directory Assistance operator. The Customer may request a maximum of two telephone numbers per call to the Directory Assistance service

3.9.2 Credits: A credit will be given for calls to Directory Assistance as follows:

The Customer experiences poor transmission or is cut-off during the call, or

The Customer is given an incorrect telephone number. To obtain such a credit, the Customer must notify its Customer Service representative.

3.10 Operator Assistance

A Customer may obtain the assistance of a local operator to complete local exchange telephone calls in the following manner:

Person to Person: Calls completed with the assistance of an operator to a particular Station and person specified by the caller. The call may be billed to the called party.

Station to Station: Calls completed with the assistance of an operator to a particular Station. The call may be billed to the called party.

3.11 Directory Listing

3.11.1 The Company shall provide for a single directory listing, termed the primary listing, in the telephone directory published by the dominant exchange service provider in the Customer's exchange area of the Station number which is designated as the Customer's main billing number. Directory listings of additional Company Station numbers, other than the Customer's main billing number, associated with a Customer's service will be provided for a monthly recurring charge per listing.

3.11.2 The Company reserves the right to limit the length of any listing in the directory by the use of abbreviations when, in its judgment, the clearness of the listings of the identifications of the Customer's is not impaired thereby. Where more than one line is required to properly list the Customer, no additional charge is made.

3.11.3 The Company may refuse a listing which is known not to constitute a legally authorized or adopted name, obscenities in the name, or any listing which, in the opinion of the Company, is likely to mislead or deceive calling persons as to the identity of the listed party, or is a contrived name used for advertising purposes or to secure a preferential

position in the directory or is more elaborate than is reasonably necessary to identify the listed party. The Company, upon notification to the Customer, will withdraw any listing, which is found to be in violation of rules with respect thereto.

- 3.11.4 Each listing must be designated Residence, Government or Business to be placed in the appropriate section of the directory. In order to aid the user of the directory, and to avoid misleading or deceiving the calling party as to the identity of the listed party, only business listings may be placed in the Business Section. The Company, upon notification to the Customer, will withdraw any listing, which is found to be in violation of its rules with respect thereto.
- 3.11.5 In order for listings to appear in an upcoming directory, the Customer must furnish the listing to the Company in time to meet the directory publishing schedule.
- 3.11.6 Directory listings are provided in connection with each Customer service as specified herein.

Primary Listing: A primary listing contains the name of the Customer, or the name under which a business is regularly conducted, as well as the address and telephone number of the Customer. The listing is provided at no additional charge.

Additional Listing: In connection with business service, additional listings are available only in the names of Authorized Users of the Customer's service, as defined herein.

Non-published Listing: Listings that are not printed in directories nor available from Directory Assistance. A Non-published Telephone Service will be furnished, at the customers request providing for the omission or deletion of the Customer's telephone listing from the telephone directory and, in addition, the Customer's telephone listing will be omitted or deleted from the directory assistance records.

Non-listed Numbers: A Non-listed number will be furnished at the Customers request, providing for the omission or deletion of the Customer's listing from the telephone directory. Such listings will be carried in the Company's directory assistance and other records and will be given to any calling party.

3.12 Emergency Services (Enhanced 911)

Allows customers to reach appropriate emergency services including police, fire and medical services. Enhanced E911 provider so that it reaches the correct emergency service located closest to the caller. In addition, the Customers address and telephone information will be provided to the primary E911 Provider to the primary E911 provider for display at the Public Service Answering Point (PSAP).

3.13 Telecommunications Relay Service (TRS)

Enables deaf, hard-of-hearing or speech-impaired persons who use a Text Telephone (TT) or similar devices to communicate freely with the hearing population not using TT and visa versa. A Customer will be able to access the state provider to complete such calls.

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Monthly TRS fee per exchange access line or arrangement \$0.05

3.14 Public Utility Assessment Fee

Monthly fee collected per access line or arrangement as set by the Alabama Public Service Commission to provide adequate funding to the Public Utility Division of the Corporation Commission. The fee assessed will be equal to that determined by the Corporation Commission on an annual basis.

3.15 Recovery of Alabama Universal Service Fund Contributions

3.15.1 General Regulations

- 3.15.1.A Contributions to the Alabama Universal Service Fund (AUSF) are assessed as a uniform percentage of the telecommunications carrier's total retail billed intrastate telecommunications revenue for a 12 month period identified by the AUSF Administrator. This percentage is established annually pursuant to an order issued by the Alabama Public Service Commission.
- 3.15.1.B A telecommunications carrier may, at its option, recover the amount of its contributions to the AUSF from its Customers. Such recovery shall be made in a fair, equitable and nondiscriminatory manner.
- 3.15.1.C Either a flat fee or a percentage recovery charge as described below shall be assessed for the fee recovery.
- 3.15.1.D Recovery shall be accessed on the same retail revenues as those used for contribution purposes.

3.15.2 AUSF Recovery Charge (Percentage or Flat Fee)

- 3.15.2.A Recovery of the AUSF contribution shall be made by a uniform monthly flat fee or percentage, which shall be applied to each Customer's bill in addition to any other applicable rates and charges as provided for in this tariff. The AUSF Recovery Charge is intended to recover the total dollar amount paid into the AUSF, and shall be adjusted to offset for any over-recovery or under-recovery from the Customers.
- 3.15.2.B The results of such calculation(s) shall be rounded to the penny for the purpose of applying this amount to the Customer's bills.
- 3.15.2.C The resulting AUSF recovery amounts are not revenues of the Company, and therefore are not subject to state or local taxes, franchise fees, or any other assessments or fees. The Company shall not include the AUSF Recovery Charge in the calculation of such taxes, fees, or assessment in the Customer's bill.
- 3.15.2.D If recovery is made pursuant to this tariff from the customers, the amount resulting from the AUSF Recovery Charge will be stated separately in the Customer's monthly bill.
- 3.15.2.E Records shall be kept by the Company which reflect the AUSF contributions paid by the Company for each period along with all amounts recovered by

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the Company through the Recovery of AUSF Contributions Tariff. This information shall be provided to the Commission along with any changes in the AUSF Recovery Charge.

3.15.3 Changes in the AUSF Recovery Charge

- 3.15.3.A Any change to the AUSF Recovery Charge shall be made by written notification to the Director of the Public Utility Division. A replacement tariff page reflecting the revised AUSF Recovery Charge shall be included with the notification letter.
- 3.15.3.B Notification of changes to the AUSF Recovery Charge shall be made at least 30 days before effective date of change.
- 3.15.3.C The revised AUSF Recovery Charge shall not be billed to any Customer until the Director of the Public Utility Division receives such notification.
- 3.15.3.D If a AUSF Monthly Recovery Charge is used to recover the AUSF contributions of the Company from its retail Customers, the page which reflect the amount of the recovery charge shall also include the computation or formula used to determine the Monthly Recovery Charge. Additionally, any supporting documentation related to the recovery charge adjustment will be made available at the time that the AUSF Monthly Recovery Charge is changed and notification is given to the Directory of the Public Utility Division.
- 3.15.3.E Revisions for over-recovery and/or under-recovery shall be made no more than once every twelve (12) months, or one time each quarter pursuant to any change of the AUSF contribution factor.

Alabama Universal Service Fund Recovery Charge

Recovery Percentage	0.60%
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3.16 Promotional Offering

The Company may offer existing services on a promotional basis that provides special rates, terms or conditions of service, in accordance with applicable Commission rules.

3.17 Individual Case Basis (ICB) Arrangements

The Company may furnish a facility and/or service at a rate or charge different from those specified in this tariff. Charges will be determined on an Individual Case Basis. Specialized rates or charges will be made available to similarly situated subscribers on a nondiscriminatory basis and will be provided subject to any applicable Alabama Public Service Commission rules. ICB rates will be specified in a contract between the Company and the Customer pursuant to Alabama Public Service Commission rules.

SECTION 4 – RATES AND CHARGES**4.4.3 General**

Monthly recurring charges will be billed in advance. For partial month's service, the Customer will be charged for the portion of the month in which service was provided based on the number of days in which the service was installed and operational divided by the 30.

4.4 Rates for Local Basic Residential Exchange Line Services

Basic residential exchange service is \$20.00 per month. Installation fee equal to one month's service applies for activation of new service.

Optional features outlined in Section 3.5.1 are \$3.00 per feature per month, except for Caller ID which is \$5.00 per month. Installation fee equal to one month's service applies for activation of new service.

4.5 Rates for Local Residential Packages

4.5.1 Residential Local Advantage is \$22.00 per line per month. Installation fee equal to one month's service applies for activation of new service.

4.5.2 Residential Regional Advantage is \$22.00 per line per month. Installation fee equal to one month's service applies for activation of new service.

4.5.3 Residential National Advantage is \$22.00 per line per month. Installation fee equal to one month's service applies for activation of new service.

4.6 Rates for Basic Business Exchange Lines

Basic business exchange service is \$28.00 per month. Installation fee equal to one month's service applies for activation of new service.

Optional features outlined in Section 3.5.1 are \$4.00 per feature per month, except for Caller ID which is \$6.00 per month. Installation fee equal to one month's service applies for activation of new service.

4.7 Rates for Local Business Packages

4.7.1 Business Local Advantage is \$28.00 per line per month. Installation fee equal to one month's service applies for activation of new service.

4.7.2 Business Regional Advantage is \$28.00 per line per month. Installation fee equal to one month's service applies for activation of new service.

4.7.3 Business National Advantage is \$28.00 per line per month. Installation fee equal to one month's service applies for activation of new service.

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4.8 Rates for Directory Assistance Calls

Customers will be charged \$1.00 per Local Directory Assistance call.

4.9 Rates for Operator Assistance Calls

In addition to any applicable usage charges, the following operator-assisted charges will apply:

Person-to-Person \$ 4.00 per call

Station-to-Station \$ 2.00 per call

4.10 Rates for Directory Listings

4.10.1 Primary listings are free of charge.

4.10.2 Additional listings are \$1.50 for residential lines and \$2.50 for business lines.

4.10.3 Non-published listings are \$1.50 per line, residence and business.

4.10.4 Non-listed numbers are \$1.50 per line, residence and business.

4.11 Rates for Dedicated Leased Line Service

4.11.1 Monthly recurring rates are outlined below. Installation fee equal to one month's service applies for activation of new service.

<u>Speed</u>	<u>Monthly Port Cost</u>	<u>Monthly Mileage Cost</u>
Fractional DS-1	\$120.00	\$1.25
DS-1	\$130.00	\$1.25
DS-3	\$2,000.00	\$12.00

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SECTION 5 – PROMOTIONS

5.15.2 General

From time to time, Big River may elect to offer special promotions to its customers. These promotions will generally consist of a reduced price, a waiver of installation charges, or a free service with a purchase of another service.

Big River will provide written notice to the Alabama Public Service Commission in compliance with Commission rules.

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