

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

Big River Telephone Company, LLC,)	
)	
Complainant,)	
)	Case No. TC-2012-0284
v.)	
)	
Southwestern Bell)	
Telephone, L.P., d/b/a)	
AT&T Missouri,)	
)	
Respondent.)	

**AT&T MISSOURI’S ANSWER AND AFFIRMATIVE DEFENSES TO THE
COMPLAINT OF BIG RIVER, AND AT&T MISSOURI’S
COMPLAINT DIRECTED TO BIG RIVER**

COMES NOW Southwestern Bell Telephone Company, formerly known as Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri (“AT&T Missouri”), pursuant to Rule 2.070 (4 CSR 240-2.070), and hereby files its Answer and Affirmative Defenses to the Complaint of Big River Telephone Company, LLC (“Big River”) and its Complaint against Big River, as follows:

ANSWER

As indicated in the introductory portion of the Complaint, Big River claims that AT&T Missouri has engaged in unlawful conduct. Big River bases this claim on the assertion that AT&T Missouri has violated “its Commission-approved interconnection agreement (ICA) with Big River that exempts enhanced services traffic from exchange access charges.” While AT&T Missouri responds herein to each of the specific allegations set forth in the Complaint, AT&T Missouri expressly denies that it has violated its ICA with Big River. To the contrary, AT&T Missouri has proceeded entirely properly under the ICA, which does not exempt Big River in

NON PROPRIETARY

any respect from the imposition of access charges for the traffic at issue, which is non-local traffic that Big River delivered to AT&T Missouri for termination. The traffic at issue is either limited to interconnected voice over Internet protocol service (“interconnected VoIP”) traffic or, to the extent that the traffic at issue is not limited to interconnected VoIP traffic, it is telecommunications service traffic, not enhanced service traffic. In either event, the traffic is subject to switched access charges.

As and for its further Answer to the Complaint, AT&T Missouri states as follows:

1. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint, and therefore denies same.

2. AT&T Missouri admits the allegations of paragraph 2 of the Complaint.

3. Paragraph 3 of the Complaint sets forth no allegations, only contact information regarding Big River’s counsel of record, which information AT&T Missouri shall rely upon for purposes of this proceeding.

4. AT&T Missouri denies the allegation set forth in paragraph 4 of the Complaint that it is a limited partnership. AT&T Missouri admits that Southwestern Bell Telephone Company d/b/a AT&T Missouri is a corporation, that it is the successor in interest to Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri, and that it is an incumbent local exchange carrier (“ILEC”) whose contact information regarding its counsel of record is accurate. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 4 of the Complaint.

5. AT&T Missouri admits that the Commission has jurisdiction to address Big River’s Complaint insofar as the Complaint necessitates interpretation and enforcement of the ICA and amendment thereto (“ICA amendment”) entered into by AT&T Missouri and Big River.

Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 5 of the Complaint.

6. AT&T Missouri denies the allegations of paragraph 6 of the Complaint.

7. AT&T Missouri admits that in light of Big River's failure to pay AT&T Missouri, for which Big River has no valid excuse under the terms of its ICA and ICA amendment with AT&T Missouri, AT&T Missouri conveyed to Big River that should Big River's failure to pay continue, its requests for additional service will not be accepted and provisioning activity on all pending orders will be suspended. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 7 of the Complaint, and specifically denies that non-acceptance of requests for additional service or suspension of provisioning activity on pending orders would disrupt Big River's services to its existing customers or pose a threat to the property interests of Big River or its customers.

8. AT&T Missouri admits the allegations of paragraph 8 of the Complaint.

9. AT&T Missouri admits that the terms of the ICA referred to in paragraph 9 of the Complaint speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 9 of the Complaint.

10. AT&T Missouri admits that the terms of the portion of the ICA referred to in paragraph 10 of the Complaint speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 10 of the Complaint.

11. AT&T Missouri admits the allegations of paragraph 11 of the Complaint.

12. AT&T Missouri admits that the terms of the ICA amendment and the statute referred to in paragraph 12 of the Complaint speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 12 of the Complaint.

13. AT&T Missouri admits that the terms of the statute referred to in paragraph 13 of the Complaint speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 13 of the Complaint.

14. AT&T Missouri admits that the terms of the ICA and the statute referred to in paragraph 14 of the Complaint speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 14 of the Complaint.

15. AT&T Missouri admits that the terms of the ICA referred to in paragraph 15 of the Complaint speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 15 of the Complaint.

16. AT&T Missouri admits that the terms of the ICA referred to in paragraph 16 of the Complaint speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 16 of the Complaint.

17. AT&T Missouri admits that it is in possession of a letter, dated October 20, 2005, which appears to be from Big River to AT&T Missouri, stating that “Big River Telephone’s PEU [Percent Enhanced Usage] for the state of Missouri is 100% as of the effective date of the interconnection agreement.” Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 17 of the Complaint.

18. AT&T Missouri denies the allegations of paragraph 18 of the Complaint.

19. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Complaint, and therefore denies same.

20. AT&T Missouri admits that in a lawsuit which Big River filed against AT&T Missouri in St. Louis County Circuit Court on or about September 29, 2008, Cause No. 08SL-CC01630, Big River alleged that “AT&T billed Big River \$487,779.00 for terminating

23. AT&T Missouri admits that the terms of the ICA amendment and the statute referred to in paragraph 23 of the Complaint speak for themselves, and that AT&T Missouri commenced billing switched access charges to Big River on BAN 110 401 0113 803 on or about February 5, 2010, but AT&T Missouri denies that those access charges were assessed upon enhanced services traffic. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 23 of the Complaint.

24. AT&T Missouri admits that Big River presented a billing issue to AT&T Missouri regarding charges on BAN 110 401 0113 803. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 24 of the Complaint.

25. AT&T Missouri admits the allegations of paragraph 25 of the Complaint.

26. AT&T Missouri admits that Big River supplied AT&T Missouri a letter dated May 19, 2011, the terms of which speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 26 of the Complaint.

27. AT&T Missouri admits that the terms of the above-referenced letter speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 27 of the Complaint.

28. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the Complaint, and therefore denies same.

29. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 of the Complaint, and therefore denies same.

30. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30 of the Complaint, and therefore denies same.

31. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31 of the Complaint, and therefore denies same.

32. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 of the Complaint, and therefore denies same. AT&T Missouri specifically denies that such capabilities, as described, make all of Big River's services enhanced/information services within the meaning of the ICA, even if they are available.

33. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33 of the Complaint, and therefore denies same.

34. AT&T Missouri denies the allegations of paragraph 34 of the Complaint, as Big River owes AT&T Missouri more than \$335,000 in access charges.

35. AT&T Missouri admits that it has conveyed to Big River that absent payment to it for charges due and owing AT&T Missouri, requests for additional service will not be accepted and provisioning activity on all pending orders will be suspended. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35 of the Complaint concerning what Big River understands. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 35 of the Complaint.

36. AT&T Missouri denies the allegations of paragraph 36 of the Complaint.

37. AT&T Missouri admits that the terms of the statute referred to in paragraph 37 of the Complaint speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 37 of the Complaint.

38. AT&T Missouri denies the allegations of paragraph 38 of the Complaint.

39. AT&T Missouri denies that paragraph 39 of the Complaint sets forth a full, complete, or accurate description of the FCC's orders.

40. AT&T Missouri admits that the terms of pertinent FCC orders and/or rules speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 40 of the Complaint.

41. AT&T Missouri admits that the terms of pertinent federal statutes speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 41 of the Complaint.

42. AT&T Missouri denies the allegations of paragraph 42 of the Complaint.

43. AT&T Missouri admits that a copy of Big River's Complaint was delivered to it. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 43 of the Complaint.

AFFIRMATIVE DEFENSES

As and for its affirmative defenses to the Complaint, AT&T Missouri states as follows:

1. The Complaint, and all parts thereof, fail to state a claim on which relief may be granted.

2. Big River has waived the claims which are the subject of its Complaint, including but not limited to Big River's claim that the traffic at issue constitutes enhanced/information services traffic, but not interconnected VoIP traffic.

3. Big River is estopped from asserting the claims which are the subject of its Complaint, including but not limited to Big River's claim that the traffic at issue constitutes enhanced/information services traffic, but not interconnected VoIP traffic.

4. The traffic which is the subject of Big River's Complaint constitutes interconnected VoIP service traffic and/or traffic which is not enhanced/information services traffic.

COMPLAINT

COMES NOW Southwestern Bell Telephone Company, formerly known as Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri ("AT&T Missouri"), pursuant to Rule 2.070 (4 CSR 240-2.070), and hereby files its Complaint against Big River Telephone Company, LLC ("Big River").

1. AT&T Missouri is a Missouri corporation with its principal Missouri office at One AT&T Center, Room 3520, St. Louis, Missouri 63101. It may be contacted at the regular and electronic mail addresses and telephone and facsimile numbers of its attorneys, as set out under the signature block of this pleading. AT&T Missouri is a "local exchange telecommunications company" and a "public utility," and is duly authorized to provide "telecommunications service" within the State of Missouri, as each of those phrases is defined in Section 386.020, RSMo 2000.

2. All correspondence, pleadings, orders, decisions, and communications regarding this proceeding should be sent to:

Robert J. Gryzmala
Leo Bub
Attorneys for Southwestern Bell Telephone Company
d/b/a AT&T Missouri
One AT&T Center, Room 3516
St. Louis, Missouri 63101

3. Big River is a competitive local exchange telecommunications company with which AT&T Missouri has entered into a Commission-approved interconnection agreement ("ICA") pursuant to Section 252 of the federal Telecommunications Act of 1996, which

agreement was subsequently amended to reflect the provisions of House Bill 1779 codified at Section 392.550, RSMo. (“ICA amendment”).

4. Pursuant to the ICA, as amended, Big River has delivered to AT&T Missouri for termination to end users non-local traffic for which Big River is required to pay charges which have been billed to it by means of Billing Account Number (“BAN”) 110 401 0113 803.

5. Non-local traffic that Big River delivers to AT&T Missouri for termination to end users is subject to switched access charges pursuant to Section 13 of Attachment 12 of the ICA, and the ICA amendment, unless such traffic is enhanced/information services traffic that is not interconnected voice over Internet protocol service traffic (“interconnected VoIP traffic”) traffic.

6. The non-local traffic which Big River has delivered to AT&T Missouri for termination and for which Big River is required to pay access charges, which have been billed to it by means of BAN 110 401 0113 803, is not enhanced/information services traffic.

7. As a consequence of an earlier dispute between the parties regarding charges billed to Big River by means of BAN 110 401 0113 803, the parties entered into an October 31, 2009, agreement in which the parties agreed that traffic which had been billed, and which would be billed, under the foregoing BAN would be regarded as interconnected VoIP traffic.

8. Consequently, under the agreement, the parties acknowledged and agreed that Big River would not have to pay switched access charges for traffic billed by AT&T Missouri to Big River under BAN 110 401 0113 803 before January 1, 2010 (whether by suppressing them prior to billing, or reversing or crediting them if billed), but that after January 1, 2010 Big River would, pursuant to the ICA amendment, comply with Section 392.550.2, RSMo., which states that “[interconnected VoIP] shall be subject to appropriate exchange access charges to the same extent that telecommunications services are subject to such charges[,]” but that, in pertinent part,

“[u]ntil January 1, 2010, this subsection shall not alter intercarrier compensation provisions specifically addressing interconnected [VoIP].”

9. This settlement was premised upon Big River’s representation that its traffic was interconnected VoIP traffic. In reliance upon Big River’s representation, AT&T agreed to refund or credit Big River for access charges assessed prior to January 1, 2010, upon the understanding that Big River would pay access charges for its traffic after January 1, 2010, in light of Section 392.550.2, RSMo.

10. By waiver or estoppel, Big River is not permitted to now claim that its traffic was and is non-VoIP enhanced/information services traffic.

11. In any event, if not treated as interconnected VoIP traffic, the traffic that Big River delivered to AT&T Missouri for termination is not enhanced/information services traffic.

WHEREFORE, AT&T Missouri prays the Commission to:

- (1) promptly set a prehearing conference and a deadline for the parties to submit a mutually agreeable procedural schedule so that this case may proceed expeditiously;
- (2) find and determine, upon further proceedings herein, that the access charges AT&T Missouri has billed Big River since January 1, 2010 by means of BAN 110 401 0113 803 are charges for terminating non-local traffic that either is not enhanced/information services traffic or is interconnected VoIP traffic;
- (3) find and determine, upon further proceedings herein, that the access charges AT&T Missouri has billed Big River since January 1, 2010 by means of BAN 110 401 0113 803 are required by and consistent with the parties’ ICA, as amended,

and that Big River has violated the parties' amended ICA by refusing to pay those charges;

- (4) find and determine, upon further proceedings herein, that the access charges AT&T Missouri has billed Big River since January 1, 2010 by means of BAN 110 401 0113 803 are due and owing by Big River; and
- (5) grant such other and further relief to AT&T Missouri as the Commission may deem just and proper.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY 

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on July 31, 2012.


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