

Exhibit No.:
Issue:
Witness: Gerard J. Howe
Sponsoring Party: Big River Telephone
Company, LLC
Type of Exhibit: Direct Testimony
Case No.: TC-2007-0085

BIG RIVER TELEPHONE COMPANY, LLC

DIRECT TESTIMONY

OF

GERARD J. HOWE

TC-2007-0085

June 21, 2007

STATE OF Missouri)
) SS.
COUNTY OF St. Louis)

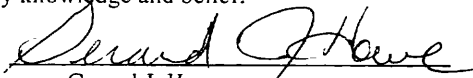
BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

BIG RIVER TELEPHONE)
COMPANY, LLC,)
)
Complainant,)
)
V.) Case No. TC-2007-0085
)
SOUTHWESTERN BELL)
TELEPHONE, L.P. D/B/A)
AT&T MISSOURI.)
)
Respondent.)

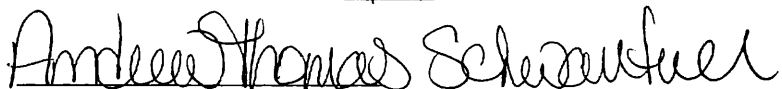
AFFIDAVIT OF GERARD J. HOWE

COMES NOW Gerard J. Howe, of lawful age, sound of mind and being first duly sworn, deposes and states:

1. My name is Gerard J. Howe. I am the CEO for Big River Telephone Company, LLC.
2. Attached hereto and made a part hereof for all purposes is my Direct Testimony in the above-referenced case.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.


Gerard J. Howe

SUBSCRIBED AND SWORN to before me, a Notary Public, this 19th day of June, 2007


Notary Public

My Commission Expires: 5/31/2010
(SEAL)

ANDREW THOMAS SCHWANTNER
Notary Public - Notary Seal
STATE OF MISSOURI
Jefferson County
Commission #06893876
My Commission Expires 5 / 31 / 2010

**PRE-FILED DIRECT TESTIMONY
OF
GERARD J. HOWE**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A.** My name is Gerard J. Howe. My business address is 24 So. Minnesota Ave., Cape
3 Girardeau, Missouri, 63703.

4 **Q. BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?**

5 **A.** I am the CEO of Big River Telephone Company and have been employed there in that
6 capacity since December 21, 2001.

7 **Q. PLEASE DESCRIBE YOUR WORK EXPERIENCE.**

8 **A.** Prior to joining Big River, I worked in the telecommunications industry for 23 years, 18
9 of which as an executive with Southwestern Bell Telephone Company, now known as
10 AT&T. Immediately prior to joining Big River, I was the President and Chief
11 Operating Officer of Gabriel Communications, which was a full service
12 telecommunications company that operated in 13 states, and is now known as NuVox.
13 Prior to joining Gabriel, I was the Senior Vice President in charge of Financial
14 Operations at Brooks Fiber Properties. Brooks Fiber was a leading full-service
15 provider of competitive local and long distance communications services in 44
16 metropolitan areas across the U.S. Brooks constructed and operated digital fiber
17 networks providing high speed data, voice and video services to businesses and
18 governmental entities. During my tenure at Southwestern Bell, I held a variety of

1 positions in finance, regulatory, Information Technology and Customer Service. From
2 1993 through 1995, I served as the Chief Financial Officer of SBC Cablecomms, U.K.,
3 a competitive cable/telephone service provider in the U.K. I have a B.S. in
4 Mathematics from Southern Illinois University and an MBA from St. Louis University.
5 My full CV is attached hereto as Schedule H-1.

6 **Q. PLEASE DESCRIBE THE CORPORATE STRUCTURE OF BIG RIVER.**

7 **A.** Big River is a limited liability company duly organized and existing under and by
8 virtue of the laws of the State of Delaware. It is a privately-owned entity with no other
9 affiliate companies. Big River has been duly authorized to conduct business in the
10 State of Missouri. Schedule H-2 attached hereto is a copy of Big River's certificate of
11 good standing and authority to conduct business in the State of Missouri.

12 **Q. PLEASE DESCRIBE BIG RIVER'S OPERATIONAL HISTORY.**

13 **A.** Big River began operations as a facilities-based competitive local exchange
14 telecommunications company (CLEC) upon the completion of a PSC-approved
15 acquisition of LDD, Inc. on December 21, 2001 (See Mo. PSC Case No. TM-2001-
16 700) and has been successfully running the business since then. Prior to the acquisition
17 by Big River, LDD, Inc. had been a long distance provider since 1983 and had initiated
18 local telephone service in 1999. LDD and its employees, essentially all of which Big
19 River retained, had a significant amount of operational experience and infrastructure to
20 provide reliable local and long distance telephone services. Big River augmented the

1 existing LDD work force with the introduction of key management personnel that
2 brought additional telecommunications management experience to Big River's
3 operations. Big River currently has approximately 50 employees.

4 **Q. WHAT IS THE CURRENT SCOPE OF BIG RIVER'S LOCAL SERVICE**
5 **AUTHORITY IN THE STATE OF MISSOURI?**

6 **A.** In 2001, the Commission granted Big River's initial authority to provide basic local
7 exchange telecommunications service in the service territory of AT&T, formerly
8 Southwestern Bell Telephone, as well as interexchange and non-switched local
9 exchange service throughout the State in Case No. TA-2001-699. On September 28,
10 2003, in Case No. LA-2003-0551, Big River's service territory was expanded when it
11 was granted authority to provide basic local exchange telecommunications service in
12 the territory served by CenturyTel of Missouri and Spectra Communications Group.
13 The Commission authorized Big River to expand its basic local service territory to
14 include the areas served by Sprint Communications (now Embarq) on July 25, 2005 in
15 Case No. TA-2005-0415. Most recently, in June 2007, the Commission authorized Big
16 River to provide basic local service in the exchanges of ILEC BPS Telephone, in Case
17 No. TA-2007-0093.

1 **Q. WHERE DOES BIG RIVER OPERATE IN THE STATE OF MISSOURI?**

2 A. Big River is currently authorized to, and does, provide basic local exchange
3 telecommunications service within the service territory of AT&T, pursuant to approved
4 tariffs. Big River is currently authorized to provide basic local exchange
5 telecommunications services within the service territory of Sprint, CenturyTel, Spectra,
6 and BPS, and is working on the necessary arrangements to provide service there. Big
7 River also provides both interstate and intrastate interexchange services.

8 **Q. DOES BIG RIVER OPERATE OUTSIDE OF THE STATE OF MISSOURI?**

9 A. Yes. In addition to local and long distance services provided across a number of
10 communities in Missouri, Big River currently provides local and long distance
11 telephone service in Arkansas, Illinois, Kansas, Kentucky, Mississippi and Tennessee.
12 Big River will soon be rolling out local and long distance services in Nebraska, as well.

13 **Q. What is the purpose of your testimony?**

14 A. My testimony demonstrates that AT&T has imposed charges in violation of, and
15 repeatedly asserted that it intends to ignore the provisions of, its Commission-approved
16 Interconnection Agreement with Big River that requires it to provide local switching
17 (switching to complete local calls) pursuant to billing arrangements under Section 271
18 of the Telecommunications Act of 1996 (47 USC 271) together with local loops (the
19 "last-mile" connections from local switches to customers' premises) pursuant to billing
20 arrangements under Section 251 of the Act (47 USC 251) for use in serving Big River's

1 existing customers. Further, my testimony establishes that AT&T has repeatedly tried
2 to convert such local switching and loops from the terms and conditions of the
3 approved Interconnection Agreement to the terms and conditions of an unapproved
4 “Local Wholesale Complete” (LWC) agreement that was expressly executed by Big
5 River solely to apply to new customers for so long as a federal court injunction
6 prevents the provisions of the approved Interconnection Agreement from applying to
7 such new customers. My testimony shows that AT&T seeks to unilaterally convert such
8 arrangements solely to impose rates higher than those approved by the Commission, as
9 there is no physical difference or change in the facilities at issue. In dollar terms,
10 AT&T has sought to reach back to January 1, 2006 and retroactively increase charges
11 to Big River for local switching and loops by nearly \$139,000 through the July 2006
12 invoice and currently growing at a pace of about \$40,000.00 per month, as well as late
13 payment charges. My testimony also shows that AT&T has compounded its unlawful
14 conduct by threatening to discontinue provision of local switching to Big River (which
15 in turn would result in total disruption of Big River's services to its customers),
16 although it later retracted such threats.

17 **Q. Please identify the Respondent in this case.**

18 A. As admitted in paragraph 3 of its Answer filed in this case (of which admission the
19 Commission should take notice), Southwestern Bell Telephone, L.P. d/b/a AT&T
20 Missouri (“AT&T”) is a Texas limited partnership with its principal Missouri place of
21 business located at One AT&T Center, St. Louis, Missouri 63101. AT&T is an

1 incumbent local exchange carrier (“ILEC”), as defined in Section 251(h) of the Federal
2 Act, and is a noncompetitive large local exchange carrier (with certain services
3 declared to be competitive in some areas of the state) as defined by Sections 386.020,
4 392.361 and 392.245 R.S.Mo.

5 **Q. Are Big River and AT&T parties to an interconnection agreement made pursuant**
6 **to the Telecommunications Act of 1996?**

7 A. Yes, on or about August 13, 2005 in Case No. TK-2006-0073, the Commission
8 approved an interconnection agreement (the “Interconnection Agreement”) made and
9 submitted by Big River and AT&T, that was the product of an arbitration between the
10 companies (and others) before the Commission in Case No. TO-2005-0336. On or
11 about October 25, 2005 the Commission approved errata to the agreement. A copy of
12 the Interconnection Agreement is attached hereto as Schedule H-3. Copies of the
13 Commission approved orders are attached hereto as Schedules H-4 and H-5.

14 **Q. What is the current term of the Interconnection Agreement between the parties?**

15 A. The current term of the Interconnection Agreement runs through November 20, 2008.

16 **Q. Are there specific provisions of the Interconnection Agreement that are central to**
17 **the dispute presented in this case?**

18 A. Yes.

1 **Q. Please identify those central provisions of the Interconnection Agreement.**

2 A. Pursuant to Attachment 6: Unbundled Network Elements and Remand Order
3 Embedded Base Temporary Rider of the Interconnection Agreement, AT&T was
4 required to provide unbundled local switching under Section 251 (47 USC 251) billing
5 arrangements to Big River for provision of service to Big River's existing customers
6 through and including March 11, 2006, including pursuant to the combination with
7 local loops known as UNE Platform or UNE-P. (See section 6.0 et seq of Attachment 6
8 and Remand Order Embedded Base Temporary Rider). AT&T was also required under
9 these parts of the Interconnection Agreement to provide unbundled local switching
10 under Section 271 (47 USC 271) billing arrangements to new customers. Since March
11 11, 2006, AT&T has been obligated under these parts of the Interconnection Agreement
12 to provide unbundled switching under Section 271 billing arrangements to Big River
13 for all customers. According to Section 6.1 of Attachment 6 to the Interconnection
14 Agreement, the terms and conditions for providing local switching under Section 271
15 billing arrangements were to be the same as those that applied under Section 251 billing
16 arrangements. Moreover, the prices were to remain the same, as the Commission set
17 the rates that applied prior to March 11, 2006 under Section 251 as interim rates to
18 apply to Section 271 local switching. (Appendix UNE Pricing; Arbitration Order,
19 Case No. TO-2005-0336, p. 28-30, excerpts attached hereto as Schedule H-6).
20 Section 7.1 of Attachment 6 of the Interconnection Agreement also provided that Big
21 River could obtain local switching under Section 251 billing arrangements from the
22 effective date of the agreement in August 2005 until January 31, 2006 to provide

1 additional access lines to existing customers and to address moves and changes for such
2 existing customers. Otherwise, for such moves, adds and changes Big River has been
3 entitled under the Interconnection Agreement to obtain local switching under Section
4 271 billing arrangements on the same rates, terms and conditions (again with the rates
5 being interim rates).

6 Additionally, Section 7.3 of Attachment 6 of the Interconnection Agreement requires
7 AT&T to: “develop an ordering process to effect the billing records change necessary
8 to bill [Big River] the Commission-approved rate applicable to Section 271 ULS
9 [unbundled local switching].”

10 **Q. Has AT&T developed such an ordering process?**

11 A. No. To date, AT&T has failed to develop the required process to change the billing
12 records.

13 **Q. Did Big River take action regarding the change in billing arrangements that was**
14 **to occur as of March 11, 2006?**

15 A. Yes. As discussed in greater detail later in my testimony, Big River properly notified
16 AT&T that it intended to migrate all existing customers from Section 251 unbundled
17 local switching billing arrangements to Section 271 billing arrangements on or before
18 March 11, 2006.

1 **Q. What would have changed as a result of such migration of customers?**

2 A. The only potential change would have been a change in billing codes, as the rates,
3 terms and conditions of service were not going to change. The facilities used would
4 remain the same.

5 **Q. Did AT&T take any action to address the interim nature of the Section 271 local**
6 **switching rates?**

7 A. No.

8 **Q. Have there been any developments subsequent to the Commission's approval of**
9 **the Interconnection Agreement that impact the foregoing terms and conditions?**

10 A. Yes. AT&T sought review of the Commission's approval of the Interconnection
11 Agreement in federal court. (Case No. 05-CV-1264, USDC EDMo). In the course of
12 that court proceeding, on or about September 2, 2005, AT&T by consent obtained a
13 Preliminary Injunction Order, enjoining the Commission's prior orders regarding the
14 Interconnection Agreement: "to the extent they require [AT&T] to fill new orders for
15 unbundled local switching or UNE-P." The order was effective immediately "as to
16 orders for unbundled local switching or UNE-P for new customers" and was effective
17 October 7, 2005 "as to orders to add lines or move lines for existing customers." The
18 Injunction expressly provided that it did not affect AT&T's "obligation to continue to
19 provide service on existing unbundled local switching/UNE-P lines to existing

1 customers at existing locations pursuant to the transition rules set out in the Federal
2 Communications Commission's (FCC's) *Triennial Review Remand Order*" (which
3 required continued services to March 11, 2006). Further, it expressly provided that it
4 did not preclude Big River from "obtaining additions or deletion of switch features on
5 existing customer lines at existing locations." (A copy of the Preliminary Injunction
6 Order is attached hereto as Schedule H-7). In accordance with the Preliminary
7 Injunction, under the Agreement Big River remained entitled to obtain unbundled local
8 switching pursuant to the Interconnection Agreement for existing lines at existing
9 locations for existing customers, but not for new or moved lines for existing customers
10 or for new customers. AT&T acknowledged its obligation to provide unbundled local
11 switching at existing locations by email dated September 16, 2005. (Schwantner
12 Schedule S-2). Further, the injunction did not preclude AT&T from voluntarily
13 providing additional unbundled local switching to Big River.

14 On September 14, 2006, the federal district court issued its Declaratory Judgment and
15 Permanent Injunction, together with a Memorandum and Order. Copies of those court
16 orders are attached hereto as Schedules H-8 and H-9. Pertinent to this case, the court
17 held that the Commission's Arbitration Order of July 11, 2005 was pre-empted and the
18 Commission was permanently enjoined from enforcing that order and related orders, to
19 the extent such Commission orders required AT&T to "fill new orders for unbundled
20 local switching or the network elements which together comprise the UNE Platform
21 and continue offering unbundled access to de-listed network elements." Appeals of that

1 decision, including by Big River, are now pending in the 8th Circuit Court of Appeals.
2 Oral argument was held on June 14, 2007.

3 **Q. Did the parties take any action as a result of the federal district court's Preliminary**
4 **Injunction Order?**

5 A. In the Fall of 2005, AT&T personnel began asking me and other Big River employees
6 about our "plans" for Big River's embedded UNE-P customer base. However,
7 notwithstanding the court order, AT&T continued to fill new orders under the existing
8 ordering process for local switching under Section 251 billing arrangements pursuant to
9 the Interconnection Agreement. AT&T began pressuring Big River with threats of
10 complaints to the Commission and service disruption. Big River finally indicated that it
11 planned to transition the customers to its own facilities. (Schwantner Schedule S-4).
12 However, when we more fully explored our rights, we came to understand that we were
13 still entitled to use the Commission-ordered option of Section 271 facilities for our
14 existing customers after March 11, 2006, notwithstanding the preliminary injunction.
15 That became our plan, which we communicated to AT&T.
16 In early 2006, Big River attempted to learn from AT&T what arrangements, if any, it
17 had made to implement the billing code change (from 251 to 271 local switching) that
18 was to take effect as of March 11, 2006 for existing customer arrangements as
19 prescribed by the Interconnection Agreement (which was not affected by the court's
20 Preliminary Injunction). Ultimately, Big River learned that AT&T had not taken any
21 steps to implement such a change.

1 In February 2006, Big River and AT&T entered into a Local Wholesale Complete
2 Agreement with an effective date of January 1, 2006 (a copy of the LWC Agreement is
3 attached hereto as Schedule H-10). The companies did not submit the LWC agreement
4 to the Commission for approval and it was not an amendment to the existing approved
5 Interconnection Agreement. By letter dated February 13, 2006, under cover of which
6 Big River transmitted the signed LWC to AT&T, on behalf of Big River I made clear to
7 AT&T that Big River was entering into the LWC at AT&T's insistence "to cover any
8 small number of accounts that will not be serviced pursuant to our Interconnection
9 Agreement, specifically with the commingling of Section 251 and 271 unbundled
10 network elements." Further, in this letter Big River informed AT&T: "We, in no way,
11 intend for our base of customers to be migrated to Local Wholesale Complete, only
12 those residual customers that, as indicated above, cannot be serviced via 251 and 271
13 elements." (A copy of this transmittal letter is attached hereto as Schedule H-11). Big
14 River entered into the LWC solely at AT&T's insistence and solely to cover the few
15 new customers that would not be served by elements obtained under the
16 Interconnection Agreement while the court's injunction remained in effect. By email
17 dated February 14, 2006 Big River indicated that it did not appear that any changes
18 were required as to existing customers because the rates were to remain the same. In
19 the email, Big River reiterated the matters stated in its February 13, 2006 letter. (A
20 copy of this email is attached hereto as Schedule H-12). AT&T had long been aware
21 that no more than 10% of Big River's UNE-P circuits would be subject to the LWC.
22 (See Schwantner Schedule S-4). AT&T signed and returned the LWC to Big River on

1 or after February 15, 2006, under these conditions. (See Schedule H-11). Prior to
2 signature of the LWC, the parties discussed Big River's foregoing concerns and
3 AT&T's representatives Debbie Josephson (the account representative assigned to Big
4 River) and Howard White (AT&T's chief negotiator with me regarding the LWC)
5 provided assurances to me that Big River would receive 251 local loops and 271 local
6 switching under its Interconnection Agreement starting on or before March 11, 2006,
7 that the intent was only to cover new customers by the LWC, and that if there were any
8 impact on the existing customer base resulting from the LWC (which is what I was
9 absolutely trying to avoid) it would only be an unintentional billing error during LWC
10 implementation that would be immediately corrected.

11 **Q. Are there different prices under the Interconnection Agreement and the LWC?**

12 A. Yes. The pricing for local switching and loops under the Interconnection Agreement
13 depends upon the zones. Switch port rates range from \$2.74 to \$3.47 per month. Usage
14 rates range from \$0.00162 to \$0.002807 per minute of use (mou). Loop rates range
15 from \$12.71 to \$19.74 per month. (See Schedule H-3). In contrast, under the LWC, the
16 rate for the combination of loops and switching (before any discounts) is \$27.00 per
17 month in 2006, \$28.00 per month in 2007, and then increased by the CPI-U change for
18 2008, and in each instance a local switching rate of \$0.0018 per mou also applies. (See
19 Schedule H-10).

1 **Q. How does Big River use AT&T local switching and loop elements?**

2 A. Big River uses AT&T local switching and loop elements to serve many of its customers
3 within areas also served by AT&T. Such elements are essential to Big River's ability
4 to serve those customers and compete against AT&T. The loop elements allow Big
5 River to reach customer premises when it does not have other facilities available. The
6 local switching enables the processing of local calls to and from those customers.

7 **Q. Has the manner in which Big River uses those elements changed?**

8 A. No. Big River has not changed the manner in which it uses such elements since it first
9 ordered those elements from AT&T.

10 **Q. Please describe the events that directly led to the filing of the Complaint in this**
11 **case.**

12 A. On February 8, 2006, Big River submitted a bona fide request to order Section 251
13 loops with Section 271 switching per the Interconnection Agreement, because AT&T
14 had failed to establish the ordering process required under Section 7.3 of Attachment 6
15 of the Interconnection Agreement. (See Schwantner Schedule S-5). On February 10,
16 2006, AT&T refused to process the request. (See Schwantner Schedule S-5). When
17 Big River sought explanation, it was continually put off, even as late as March 7, 2006.
18 (See Schwantner Schedule S-6). On March 10, 2006 at 2:13 PM, Susan Kemp of
19 AT&T (the lead negotiator regarding our interconnection agreement) sent an email and

1 letter to Big River regarding the billing code change for existing customers due to occur
2 on March 11, 2006 that vaguely stated that “to the extent that such an arrangement
3 would be encompassed by the court’s Order, we would be unable to agree to it. There
4 are options available to Big River, however, which would remain permissible under the
5 terms of the court’s Order that would enable you to serve your customers.” (Copies of
6 the email and letter are included in Schedule H-12). AT&T’s communication made no
7 sense, because the court order did not apply to existing service arrangements.
8 Moreover, AT&T’s communication was vague and ambiguous, as there was no
9 explanation of the “extent” to which AT&T thought the court order was applicable, or
10 of what the purported “options” were for Big River.

11 I was truly panic-stricken by this communication, as it appeared to me that AT&T was
12 saying that it was going to discontinue providing local switching to Big River as of
13 March 11, 2006. If AT&T were to take any action to interrupt its provision of local
14 switching and local loops to Big River, it would disrupt service to Big River's
15 customers and effectively prevent Big River from providing service to such customers.
16 However, I was ultimately able to get clarification from AT&T by telephone
17 conversation with Susan Kemp that no immediate interruption of service was planned.
18 I also received such assurance from her by email at 4:09 p.m. on March 10. (A copy of
19 this email exchange is attached hereto as Schedule H-13).

20 However, later in March 2006, in violation of the Interconnection Agreement, AT&T
21 began billing Big River the rates set forth in the LWC retroactive to January 1, 2006 for
22 all arrangements involving local switching, without regard to when the customers were

1 first served. Contrary to such invoicing, AT&T should have only been billing LWC
2 rates for the limited group of customers that were first served at their current location
3 on or after January 1, 2006.

4 **Q. How did Big River try to resolve this situation?**

5 A. Big River disputed and "short paid" the bills. (Rinesmith Schedule R-2). AT&T
6 responded that, despite prior communications attending the signature of the LWC, such
7 disputes would be denied and AT&T was now asserting that "Big River went from
8 UNE-P to LWC ... All UNE-P lines are included; its all or nothing". (See Rinesmith
9 Schedule R-2). On June 5, 2006, after numerous attempts to resolve the matter with
10 AT&T personnel, Big River invoked informal dispute resolution with AT&T pursuant
11 to the Interconnection Agreement regarding AT&T's unilateral attempt to charge rates
12 other than those set forth in the approved Interconnection Agreement. (See Jennings
13 Schedule J-2).

14 **Q. What happened during the informal dispute resolution process?**

15 A. As described in more detail by John Jennings, on June 15, 2006, designated
16 representatives of the parties met by teleconference. Big River described its position.
17 AT&T's designated representative was not prepared for the discussion and requested
18 additional time. On June 23, 2006, designated representatives of the parties again met
19 by teleconference. At that point, AT&T's designated representative stated that the

1 attorneys had instructed him that as a result of the court order, AT&T had “no other
2 option but to move the UNE-P customers to LWC”.

3 In the meantime, as described by John Jennings, Andrew Schwantner and Jennifer
4 Rinesmith, between June 15, 2006 and June 23, 2006, AT&T made multiple attempts to
5 bypass the dispute resolution process and, in our view, tried to trick Big River
6 personnel into agreeing to change existing billing arrangements from the
7 Interconnection Agreement to the LWC. Big River rejected these efforts.

8 On June 28, 2006 AT&T sent an email communication to Big River asserting that “The
9 Preliminary Injunction Order currently in effect is directed to ‘orders for unbundled
10 local switching or UNE-P pursuant to the Federal Telecommunications Act of 1996’.”
11 Further, AT&T stated: “As advised on the [June 23] call, the express language of the
12 Order prohibits the combining of 271 Switching with 251 Loops, since both are
13 ‘pursuant to’ the Act. Therefore, AT&T has no obligation to convert a portion of Big
14 River’s embedded base of UNE-P lines to a combination of 271 and 251 elements.
15 When the litigation regarding this matter is fully resolved, we can determine the actions
16 necessary to implement the resolution.” (See Jennings Schedule J-3). AT&T failed to
17 note that the consent injunction only applied to “**new** orders” placed after September 2,
18 2005, or that notwithstanding the court order it had continued to voluntarily fill orders
19 under the 251 billing arrangements at least through January 1, 2006, if not later, thereby
20 increasing the size of Big River’s existing customer base.

21 AT&T followed up with an email on July 6, 2006 to Big River, indicating that AT&T
22 intended to move the disputed LWC charges for Big River’s embedded customer base

1 to a separate billing account in Big River's name on August 26, 2006. AT&T
2 subsequently informed Big River on August 1, 2006 that it would not make such a
3 unilateral billing account conversion. (See Jennings Schedules J-3 and J-4).
4 AT&T followed up with another email on July 28, 2006 stating that it wanted to
5 provide "a heads up on the finality of this informal dispute issue as of today." Further,
6 the email stated "AT&T's account management team now considers this issue closed."
7 AT&T indicated that it now considered \$138,954.08 in disputed charges "due and
8 payable effective immediately." (See Jennings Schedule J-3). Since then, it appears
9 that the unlawful charges that AT&T seeks to impose are currently accruing at a rate of
10 about \$40,000.00 per month.

11 **Q. At that point, what did Big River do?**

12 A. On August 23, 2006, pursuant to Section 13.5.1 of the Interconnection Agreement
13 (which provides that disputes are to be resolved by complaint to the Commission), Big
14 River filed its Complaint in this case. Big River delivered a copy of its Complaint to
15 AT&T at the time of filing with the Commission as notice of its intent to seek formal
16 dispute resolution.

17 **Q. Has Big River made any payments of the disputed amounts to AT&T?**

18 A. No. Under the agreement and the related Commission orders, Big River is not required
19 to pay disputed amounts pending dispute resolution. Big River tried to make
20 arrangements with AT&T for payment of disputed amounts without prejudice due to

1 the Federal Court's Permanent Injunction (notwithstanding the pending appeal), but
2 AT&T declined to discuss such arrangements.

3 **Q. What is your understanding of the potential ramifications of the pending 8th**
4 **Circuit appeal?**

5 A. If the 8th Circuit Court of Appeals reverses the district court and upholds the
6 Commission's Arbitration Orders, as we believe it should, then AT&T's efforts to alter
7 local switching and loop rates will be shown to have been totally inappropriate and Big
8 River will be entitled to all the relief it has sought in this case from the Commission.
9 If the 8th Circuit affirms the district court, and there are not further court proceedings
10 on this matter, then AT&T's efforts to alter local switching and loop rates would still be
11 in violation of the parties Interconnection Agreement through and including March 11,
12 2006, and Big River would be entitled to billing adjustments through that date, in the
13 amount of \$67,013.00. Big River was entitled to continued provision of local switching
14 combined with local loops under FCC termination rules and the Interconnection
15 Agreement for existing customers (including moves, adds, and changes made through
16 January 31, 2006) regardless of the Commission's decision on 271 switching which has
17 been the subject of the court proceedings.

18 **Q. What relief does Big River seek in this case?**

19 A. Big River seeks relief from unlawful, abusive and anticompetitive practices by AT&T
20 regarding local switching provided together with local loops. Big River believes that

1 AT&T has violated Missouri and Federal law by attempting to impose charges greater
2 than those allowed by the approved Interconnection Agreement and the Commission's
3 orders relating thereto, and by threatening to interrupt established connections between
4 its facilities and those of Big River.

5 Accordingly, in its Complaint, Big River asks the Commission to:

- 6 1. issue an order directing AT&T not to take any steps to alter or terminate
7 local switching and/or loop services or billing arrangements to Big
8 River, until further order of the Commission;
- 9 2. determine that Big River does not owe any of the additional amounts
10 imposed by AT&T for local switching and loops beyond the rates set
11 forth in the approved Interconnection Agreement, including any late
12 charges, and accordingly direct AT&T to revise its invoices; and
- 13 3. grant such other and further relief to Big River as the Commission
14 deems just and proper in the premises.

15 **Q. Does this conclude your direct testimony?**

16 **A. Yes.**