

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

Big River Telephone Company, LLC,)	
)	
Complainant,)	
)	
v.)	Case No. TC-2012-0284
)	
SOUTHWESTERN BELL)	
TELEPHONE, L.P. d/b/a)	
AT&T MISSOURI)	
)	
Respondent.)	

**BIG RIVER TELEPHONE COMPANY, LLC’S MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION FOR SUMMARY DETERMINATION**

Big River Telephone Company, LLC (“Big River”) has filed a Motion for Summary Determination against Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri (“AT&T Missouri”). Each party has filed a Complaint against the other. Both Complaints arise out of AT&T Missouri’s claim that Big River owes access charges for termination of non-local traffic.

Under 4 CSR 240-2.117(1)(A), “any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading.” The Commission may, under 4 CSR 240-2.117(1)(E), “grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest.” In the case at hand, AT&T Missouri has failed to establish a genuine issue of material fact regarding the actual amount it alleges Big River owes in for access charges.

Big River's Complaint asserts that it does not owe any access charges because all of the non-local traffic it terminates with AT&T Missouri is enhanced services traffic. (Big River Complaint, ¶ 17) According to 4 CSR 240-2.070(9), "All grounds of defense, both of law and of fact, shall be raised in the answer." Accordingly, AT&T Missouri's Answer should have presented all of AT&T Missouri's legal and factual defenses. It did not. AT&T Missouri failed to respond to Big River's assertion that it owes no access charges. The Answer contains no assertion of what amount of access charges AT&T Missouri claims Big River does owe.

Similarly, AT&T Missouri's Complaint fails to identify the amount that Big River allegedly owes in access charges. A formal complaint "shall" include the "nature of the complaint" and the "relief requested." 4 CSR 240-2.070(4) Again, AT&T Missouri's pleading does not contain an allegation of what amount of access charges Big River purportedly owes.

Prior to the filing of the present actions, Big River had requested from AT&T Missouri documentation to support the bills it had received for access charges. AT&T Missouri provided one week's worth of traffic data in support of a bill that encompasses a month's worth of traffic. As Big River's witness John Jennings explained, the insufficient data made it impossible to reconcile AT&T Missouri's bill, and thus, the purported charges.

In its Requests for Admission directed to Big River, AT&T Missouri asked for multiple admissions regarding the veracity of its billing of the traffic in dispute. Big River denied each and every one of those requests, specifically because it had insufficient data to verify AT&T's purported charges.

AT&T Missouri was, therefore, well aware that, in addition to the issue of what constitutes enhanced services traffic, Big River also questioned the accuracy of AT&T

Missouri's bills. Section 2.130(7)(A) states "Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief." AT&T Missouri could easily have addressed this in their direct testimony by presenting one of its employees to testify to the validity of the billing. It chose not to do so.

Instead, AT&T Missouri presented two professional witnesses, neither of whom has any knowledge of billing in general or the disputed bills in particular. Only Mr. Greenlaw even purported to address the amount in dispute. He made an unsubstantiated claim that Big River allegedly owes \$350,637.60 to AT&T Missouri for unpaid access charges.

As pointed out in Big River's motion, Mr. Greenlaw's employment does not involve billing, and he has no experience or expertise in billing or accounting. Further, he had no involvement with the billing dispute until after Big River filed its Complaint. Accordingly, he could not, and did not, identify: (i) the access rates allegedly applied or the manner in which such rates were applied; (ii) the traffic for which access charges are allegedly owed or the jurisdictional nature of such traffic; or (iii) the number of minutes, calls, or rate elements to which AT&T Missouri allegedly applied the access charges. At the most basic level, Mr. Greenlaw did not establish that he has sufficient knowledge to even state that the Billing Account Number to which he refers in his testimony is even associated with traffic originated by Big River.

AT&T Missouri has the burden of proof to demonstrate the amount of access charges allegedly owed to it by Big River if AT&T believes the amount to be different from zero. It failed to do so in its Answer, its Complaint, and in the testimony of its witnesses.

CONCLUSION

AT&T Missouri has failed to demonstrate a genuine issue of material fact as to an alleged amount of access charges owed by Big River, and Big River is, therefore, entitled to summary determination on its Complaint and AT&T Missouri's Complaint.

RESPECTFULLY SUBMITTED,
BIG RIVER TELEPHONE COMPANY,
LLC

/s/ Brian C. Howe

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served upon all parties via e-mail on November 9, 2012.

/s/ Brian C. Howe
