

Exhibit No.:
Issues: Interconnection Agreement
Witness: Adam C. McKinnie
Sponsoring Party: MO PSC Staff
Type of Exhibit: Rebuttal Testimony
Case No.: TC-2007-0085
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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

REBUTTAL TESTIMONY

OF

ADAM C. McKINNIE

BIG RIVER TELEPHONE COMPANY, LLC

CASE NO. TC-2007-0085

**Jefferson City, Missouri
August 2007**

My commission expires 9-21-10

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I. Introduction, Education and Experience

Q. Please state your name and business address.

A. My name is Adam C. McKinnie. My business address is 200 Madison Street, Jefferson City, MO 65102-0360.

Q. By whom are you employed?

A. I am employed by the Missouri Public Service Commission (MoPSC or Commission) as a regulatory economist for the Telecommunications Department Staff (Staff) of the Commission.

Q. What is your educational background?

A. I hold a Bachelor of Arts degree in English and Economics that I received from Northeast Missouri State University (now called Truman State University) in May 1997. I also hold a Master of Science degree in Economics (with electives in Labor, Tax, and Industrial Organization) that I received from the University of Illinois in May 2000.

Q. What are your current responsibilities at the Commission?

A. I review, analyze, and prepare recommendations on controversial tariff filings for both competitive and non-competitive companies, interconnection agreements, certificate applications and merger agreements. I also analyze cost studies and models related to cost structures of companies for various contentious tariff filings; analyze requests for certification

1 and recertification of carriers as eligible telecommunications carriers for the purpose of
2 receiving monies from the Universal Service Fund; and conduct research and work on special
3 projects related to telecommunications and economics.

4 Q. Have you testified in any other Commission cases?

5 A. Yes, I have. A list of other Commission cases I have testified in is attached as
6 Schedule 1.

7 **II. Purpose of Testimony / Executive Summary**

8 Q. What is the purpose of your testimony?

9 A. The purpose of my testimony is to address the complaint filed by Big River in
10 the instant case and respond to the testimony filed by Big River and AT&T witnesses. My
11 testimony will explain why Staff recommends the complaint should be dismissed.

12 **III. Summary**

13 Q. Can you provide a brief summary of the complaint in this proceeding?

14 A. Big River Telephone Company, LLC (Big River), a competitive local
15 exchange carrier (CLEC), has filed a complaint against Southwestern Bell Telephone
16 Company L.P. d/b/a AT&T Missouri (AT&T), an incumbent local exchange carrier (ILEC).
17 This complaint alleges that AT&T charged Big River amounts for loops and switching
18 beyond the rates set forth in a Commission-approved interconnection agreement. Big River,
19 in its complaint, states that AT&T has repeatedly asserted that it intends to convert such local
20 switching and loops from the terms and conditions of the Commission-approved
21 interconnection agreement to the terms and conditions of the unapproved "Local Wholesale
22 Complete" agreement (LWC), "solely to impose rates higher than those approved by the
23 Commission." (Complaint, page 2)

1 The complaint and subsequent testimony filed by Big River witnesses indicate that
2 Big River alleges that only *new* customers, as of the date the LWC was signed, should be
3 subject to the rates in the LWC. Big River further alleges that Big River customers already
4 receiving service as of the effective date of the LWC (“existing” customers) should be subject
5 to the terms of the Interconnection Agreement (IA) between the parties.

6 Neither party has asserted in testimony or in the instant complaint that the LWC is not
7 effective. However, Big River asserts it clarified the intent of LWC through a letter attached
8 to a signed copy of the LWC delivered to AT&T. AT&T disputes the efficacy of the above
9 referenced letter.

10 Q. Was there any notable event that triggered the issues related to this complaint?

11 A. Yes. The Federal Communications Commission (FCC) released its Triennial
12 Review Remand Order (TRRO) on February 4, 2005. The focus of the TRRO was to create a
13 series of rules concerning the availability and pricing of certain unbundled network elements
14 (UNEs), portions of telecommunications network available for leasing to CLECs by ILECs.

15 Q. Why is the TRRO relevant to the instant complaint?

16 A. Essentially, the instant complaint is about whether or not the TRRO transition
17 plan, as it relates to the prices established in the IA, or the prices from the LWC should
18 govern the rate Big River is charged by AT&T for a particular subset of customers (new
19 versus existing customers).

20 **IV. New vs. Existing Customers**

21 Q. Big River witness Howe, on numerous occasions in his Direct Testimony,
22 makes a distinction as to the appropriate treatment of “new” customers versus “existing”

1 customers, claiming that LWC only applies to “new” customers. For instance, beginning on
2 page 5, line 1, Howe writes:

3 Further, my testimony establishes that AT&T has repeatedly tried to convert
4 such local switching and loops from the terms and conditions of the approved
5 Interconnection Agreement to the terms and conditions of an unapproved
6 **“Local Wholesale Complete” (LWC) agreement that was expressly**
7 **executed by Big River solely to apply to new customers** for so long as a
8 federal court injunction prevents the provisions of the approved
9 Interconnection Agreement from applying to such new customers. My
10 testimony shows that AT&T seeks to unilaterally convert such arrangements
11 solely to impose rates higher than those approved by the Commission, as there
12 is no physical difference or change in the facilities at issue. (emphasis added)
13

14 Can you find any evidence contained within the LWC that provides for different
15 treatment of existing lines versus the treatment of orders placed by new customers?

16 A. No, I cannot. I have studied the LWC, including its attachments, and am
17 unable to find any language regarding different treatment for UNE Platform (UNE-P) services
18 ordered by existing customers at the effective date of the agreement (“existing” customers)
19 and services ordered by customers after the effective date of the agreement (“new”
20 customers).

21 There is language in the LWC attachment entitled “Attachment Local Wholesale
22 Complete” which addresses the treatment of existing UNE-P lines. On page 13 of 27 from the
23 aforementioned attachment, section 7 reads:

24 7. PHASED-IN IMPLEMENTATION

25 7.1 The Parties will work cooperatively to implement this Attachment.
26 CARRIER understands and acknowledges that, as of the negotiation of this
27 Attachment, **SBC-13STATE**’s systems (including ordering, provisioning,
28 maintenance, and billing systems) are not yet able to accommodate LWC as a
29 unique and separate product offering. According, the transition shall be
30 performed in two phases:

31 7.1.1 **Phase I:** Phase I involves using existing UNE classes of service and
32 USOCs [Uniform Service Order Codes] with LWC. Beginning within 60 days
33 of the effective date of the Agreement, ***all of CARRIER’s UNE-Ps using***
34 ***basic analog switching to serve Eligible End Users shall be transitioned to,***

1 *and provided as, LWC* with an effective billing date as LWC as of the
2 effective date of the Agreement. (emphasis in original, bold italics added)

3
4 This language clearly states “all” UNE-P customers will be transitioned to LWC.

5 Q. On page 12 of his Direct Testimony, beginning on line 5, Big River witness
6 Howe writes:

7 By letter dated February 13, 2006, under cover of which Big River transmitted
8 the signed LWC to AT&T, on behalf of Big River I made clear to AT&T that
9 Big River was entering into the LWC at AT&T’s insistence “to cover any
10 small number of accounts that will not be serviced pursuant to our
11 Interconnection Agreement, specifically with the commingling of Section 251
12 and 271 unbundled network elements.” Further, in this letter Big River
13 informed AT&T: “We, in no way, intend for our base of customers to be
14 migrated to Local Wholesale Complete, only those residual customers that, as
15 indicated above, cannot be serviced via 251 and 271 elements.” (A copy of this
16 transmittal letter is attached hereto as Schedule H-11).

17
18 Upon your review of this letter, the LWC, and the IA, does it appear this letter
19 supersedes section 7 of the LWC, as referenced above?

20 A. I am not an attorney, but a plain reading of the LWC and my general
21 understanding of agreements or contracts between telecommunications companies leads me to
22 understand it does not. In fact, the LWC specifically states the agreement constitutes the
23 “entire agreement between the Parties”.

24 Section 36 of the LWC states the following:

25
26 **36. ENTIRE AGREEMENT**

27 36.1 **AT&T-12STATE** only: The rates, terms and conditions contained in
28 this Agreement and any Attachments, appendices, exhibits, schedules, and
29 addenda and other documents and instruments referred to herein and
30 incorporated into this Agreement by reference (if any) constitute the entire
31 agreement between the Parties with respect to the subject matter hereof,
32 superseding all prior understandings, proposals and other communications, oral
33 or written between the Parties during the negotiations of this Agreement and
34 through the execution and/or Effective Date of this Agreement. This
35 Agreement shall not operate as or constitute a novation of any agreement or
36 contract between the Parties that predates the execution and/or Effective Date
37 of this Agreement.

1
2 **V. Conclusion / Recommendation**

3 Q. What is your recommendation regarding the instant complaint?

4
5 A. I recommend the Commission dismiss the complaint. Regardless of any other
6 communications between the parties, a plain reading of the language of Section 7 of the LWC
7 Attachment to the LWC agreement reveals that AT&T executed the contract properly when it
8 converted all of Big River's existing UNE-P lines to LWC lines. A plain reading of that same
9 section also reveals that AT&T is well within its rights to bill Big River at the rates contained
10 in the LWC as of the effective date of the LWC, or January 1, 2007.

11 Q. Does this end your testimony?

12 A. Yes, it does.

Adam McKinnie's testimony appendix

Cases I have at least filed testimony in:

- TO-2003-0531, *In the Matter of the Application of Missouri RSA No. 7 Limited Partnership, d/b/a Mid-Missouri Cellular, for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996*
- TO-2005-0384, *Application of USCOC of Greater Missouri, LLC For Designation As An Eligible Telecommunications Carrier Pursuant To The Telecommunications Act Of 1996*
- TO-2004-0527, *In the Matter of the Application of WWC License, LLC, d/b/a CellularOne(R), for Designation as an Eligible Telecommunications Carrier, and Petition for Redefinition of Rural Telephone Company Service Areas*
- TO-2005-0325, *In the Matter of the Third Application of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support pursuant to § 254 of the Telecommunications Act of 1996*
- TO-2006-0172, *In the Matter of the Application of Missouri RSA No. 5 Partnership for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to § 254 of the Telecommunications Act of 1996*
- TO-2005-0466, *In the Matter of the Application of Northwest Missouri Cellular Limited Partnership for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to § 254 of the Telecommunications Act of 1996*
- IO-2003-0281 *In the Matter of the Investigation of the State of Competition in the Exchanges of Sprint Missouri, Inc.*
- TO-2005-0035, *In the Matter of the Second Investigation into the State of Competition in the Exchanges of Southwestern Bell Telephone, L.P., d/b/a SBC Missouri*
- IO-2006-0316, *In the Matter of CenturyTel of Missouri, LLC's Request for Competitive Classification Pursuant to Section 392.245.5, RSMo. (2005)*
- IO-2006-0317, *In the Matter of Spectra Communications Group, LLC d/b/a CenturyTel's Request for Competitive Classification Pursuant to Section 392.245.5, RSMo. (2005)*
- TO-2005-0423, *In the Matter of the Application of Chariton Valley Telecom Corporation for Designation as a Telecommunications Carrier Eligible for Federal Universal Service Support Pursuant to 254 of the Telecommunications Act of 1996*
- TT-2006-0474, *In the Matter of McLeodUSA Telecommunications Services, Inc.'s Tariff Filing to Increase its Missouri Intrastate Access Rates*
- TO-2007-0301, *In The Matter of Embarq Missouri, Inc. Application for Competitive Classification Under Section 392.245.5 RSMo. (2005)*