

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

**Case No. TC-2012-0284**

**MOTION TO STRIKE**

**ATTACHMENTS 1 THROUGH 15**

**Attachment 1**  
**Greenlaw P 5, L 16 - P 6, L 23**

1           In this case, Big River disputes the access charges AT&T Missouri has billed Big  
2           River for long distance, voice telephone calls placed by Big River's customers to AT&T  
3           Missouri's customers. The calls begin on Big River's circuit-switched network, are  
4           transported some distance by Big River, and are handed off to AT&T Missouri for  
5           completion to AT&T Missouri's customers using AT&T Missouri's circuit-switched  
6           network. In other words, the calls are simply two-way voice telecommunications  
7           services originating and terminating on the public switched telephone network ("PSTN").

8           Big River asserts that under its interconnection agreement with AT&T Missouri,  
9           it does not have to pay access charges for these calls because they are not  
10          "telecommunications services," but instead are "enhanced" or "information" services.  
11          Under the parties' ICA, enhanced services traffic (sometimes called information services  
12          traffic) is not subject to access charges, unless it is interconnected VoIP traffic, which  
13          remains subject to access charges pursuant to Missouri law (Section 392.550 of the  
14          Missouri statutes) and the interconnection agreement amendment executed by the parties  
15          implementing that statute.

16               The FCC has long distinguished between telecommunications services  
17               (previously called "basic" services) and information services (sometimes called  
18               "enhanced" services).<sup>2</sup> A "telecommunications service" is "the offering of  
19               telecommunications for a fee directly to the public . . . regardless of the facilities used."  
20               "Telecommunications" means "the transmission, between or among points specified by

<sup>2</sup> As the FCC has explained, Congress "codif[ied] the Commission's decades old distinction between 'basic services' and 'enhanced services' as 'telecommunications services' and 'information services,' respectively, in the 1996 Act." Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm'n*, 19 FCC Rcd. 22404, n.118 (2004) ("Vonage Order"), petitions for review denied, *Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

1 the user, of information of the user's choosing, without change in the form or content of  
2 the information as sent and received." 47 U.S.C. §§ 153(43), (46). An example is "plain  
3 old telephone service" ("POTS") provided on the PSTN. Traditional voice telephone  
4 service provides for the "transmission" of "information of the user's choosing" (*i.e.*, the  
5 user's speech) between or among points specified by the user (*i.e.*, between the user's  
6 telephone and whatever telephone he or she chose to call), without any change in the  
7 form or content of the information as sent and received (*i.e.*, the speech at one end of the  
8 call is reproduced at the other end).

9 An "information service," on the other hand, is "the offering of a capability for  
10 generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making  
11 available information via telecommunications." 47 U.S.C. § 153(20). An example is  
12 Internet access service. Internet access service allows users to connect to their provider  
13 and then surf the Internet and acquire, store, transform, process, retrieve, and/or utilize  
14 information from any number of Internet servers located at all manner of distant points.  
15 The calls at issue here – long distance, voice telephone calls from Big River's customers  
16 to AT&T Missouri's customers that originate and terminate on the PSTN, just as  
17 telephone calls have for decades – do not constitute enhanced/information services  
18 traffic, so as to exempt them from access charges under the parties' interconnection  
19 agreement. While Big River may provide its telephone customers additional features and  
20 functions ancillary to their telephone service, analysis based on the available facts, the  
21 FCC's orders on the subject, and other considerations, all refute Big River's position that  
22 those additional features somehow turn Big River's telephone service into an  
23 enhanced/information service.

1 materials, all refute Big River's assertion that the calls it delivers to AT&T Missouri  
2 constitute enhanced services traffic.

3 **Q. ARE BIG RIVER'S RESPONSES TO AT&T'S REQUESTS FOR ADMISSION**  
4 **RELEVANT TO BIG RIVER'S CLAIM THAT 100% OF ITS TRAFFIC IS**  
5 **ENHANCED SERVICES TRAFFIC?**

6  
7 A. Yes.

8  
9 **Q. PLEASE EXPLAIN.**

10 A. On July 31, 2012, AT&T Missouri submitted various requests for admission to Big River  
11 pursuant to the Commission's discovery rules. Big River provided its responses to these  
12 requests on August 20, 2012. Several of Big River's responses bear directly on, and  
13 completely undermine, its claim. Mr. Neinast's Direct Testimony explains in detail why  
14 Big River's own admissions refute its position that the offering of various ancillary  
15 features makes all of its telephone traffic enhanced services traffic. However, one  
16 admission in particular warrants additional emphasis. It has to do with Big River's  
17 offering of service pursuant to tariff.

18 **Q. PLEASE EXPLAIN THIS ADMISSION AND ITS SIGNIFICANCE.**

19  
20 A. AT&T Missouri asked Big River to admit that "[a] portion of the traffic you [Big River]  
21 delivered to AT&T Missouri for termination since February 5, 2010, originated with  
22 customers to whom you provided service pursuant to your Missouri P.S.C. Tariff No. 1."  
23 Big River admitted to this statement without qualification.

24 Big River's admission undermines its central assertion made in this proceeding  
25 that, since 2005, its traffic has been entirely enhanced services traffic. *See*, Complaint,  
26 para. 22 ("Big River's [Percent Enhanced Usage] since that time has continued to be  
27 100%"); *see also*, Big River's Affirmative Defense to AT&T Missouri's Complaint ("Big

1 River's traffic is exempt from the access charges claimed by AT&T Missouri because the  
2 traffic is enhanced.").

3 The relevance of Big River's admission is that for *at least* the portion of that  
4 traffic that originated with customers served by Big River pursuant to its tariffs, it cannot  
5 be the case that this traffic is enhanced. That is because services provided pursuant to  
6 tariffs filed with the Commission are confined to telecommunications services, and do  
7 not include enhanced or information services. Stated another way, it cannot be the case  
8 that 100% of Big River's traffic is enhanced services traffic because Big River admits  
9 that "a portion of the traffic" is telecommunications services traffic provided by means of  
10 its tariffs.

11 **Q. IS BIG RIVER'S HAVING SOUGHT AND OBTAINED FROM THE**  
12 **COMMISSION AUTHORITY TO PROVIDE TELECOMMUNICATIONS**  
13 **SERVICES IN MISSOURI CONSISTENT WITH ITS CLAIM THAT 100% OF**  
14 **ITS TRAFFIC IS ENHANCED SERVICE TRAFFIC?**

15  
16 A. No. Big River's claim that it provides only enhanced services is thoroughly inconsistent  
17 with its status as a certificated telecommunications services provider in Missouri. *See*  
18 *Order Granting Certificate to Provide Basic Local, Local Exchange, and Interexchange*  
19 *Telecommunications Services*, Case TA-2001-699 (Aug. 13, 2001). In accordance with  
20 its certificate, Big River has filed tariffs with the Commission to govern its provision of  
21 local and intrastate long distance services, including a tariff for "intrastate interexchange  
22 *telecommunications services*." Big River M.P.S.C. Tariff No. 1, Second Revised Title  
23 Page. (emphasis added). Pursuant to its certificate of service authority and this tariff, Big  
24 River provides "to residential and business customers" "direct-dialed message  
25 telecommunications services" that allow its customers "to originate calls from a Big  
26 River-provided access line to all other stations on the public switched telephone network



**Attachment 3**  
**Greenlaw P 10, L 16 - P 12, L 2**

1 River's traffic is exempt from the access charges claimed by AT&T Missouri because the  
2 traffic is enhanced."").

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4 traffic that originated with customers served by Big River pursuant to its tariffs, it cannot  
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25 telecommunications services" that allow its customers "to originate calls from a Big  
26 River-provided access line to all other stations on the public switched telephone network

1 bearing the designation of any central office exchanges outside the customer's local  
2 calling area." *Id.* Third Revised Pages 21, 22. This describes precisely the  
3 telecommunications service that Big River provides to its Missouri customers that allows  
4 them to pick up the telephone and make a non-local voice telephone call to one of AT&T  
5 Missouri's customers.

6 Indeed, while Big River claims in this proceeding that the ancillary features it  
7 provides its customers make all of its traffic "enhanced services," that is directly  
8 inconsistent with its prior representations to the Commission. For example, in 2011, Big  
9 River applied to the Commission to expand its certificate of basic local service authority  
10 to include the entire State of Missouri. Application of Big River Tel. Co., LLC to Expand  
11 Certificate of Basic Local Service Authority, Case TA-2011-0273 (filed Feb. 25, 2011).  
12 In that application, sworn to by Big River's CEO, Big River noted it was authorized to  
13 provide "basic local telecommunications service" and "interexchange  
14 telecommunications services," and asserted that it "remains managerially and technically  
15 qualified to provide basic local telecommunications services" and "financially qualified  
16 to provide telecommunications services" because "[i]t has been successfully providing  
17 basic local service since it commenced operations in 2001." *Id.* at 1, 3-4. This, of course,  
18 is inconsistent with Big River's current suggestion that its services are all "enhanced,"  
19 thus, not telecommunications services.

20 More generally, if the offering of ancillary features, like the ability to manage  
21 incoming call options and set-up call forwarding, were sufficient to turn the provision of  
22 voice telephone service into an unregulated enhanced/information service, then likely

1 every telephone provider in Missouri would be classified as an enhanced/information  
2 services provider, not a telecommunications services provider.

3 **Q. DID BIG RIVER PRODUCE DOCUMENTS RELEVANT TO ITS CLAIM THAT**  
4 **ITS TRAFFIC DELIVERED TO AT&T MISSOURI IS 100% ENHANCED**  
5 **SERVICES TRAFFIC?**

6  
7 A. Yes. Big River produced in discovery its Annual Reports submitted to the Missouri  
8 Public Service Commission for each of 2008, 2009, 2010 and 2011. All are attached to  
9 my testimony as Schedules WEG-2(HC) through WEG-5(HC).

10 In each of these reports, Big River confirmed its status as a “Competitive Local  
11 Exchange Telecommunications Carrier” and a “Competitive Interexchange  
12 Telecommunications Carrier.” Further, in each, Big River reported substantial  
13 telecommunication service revenues, including substantial Missouri “net jurisdictional  
14 revenues” for Missouri USF purposes. Such revenues, by definition, account for only the  
15 “provision of intrastate regulated telecommunications services.” 4 CSR 31.010(12).  
16 Enhanced services are not telecommunications services. Big River’s reporting of  
17 substantial revenues for its provision of telecommunication services, all submitted to the  
18 Commission under oath, is flatly inconsistent with its claim that 100% of its traffic is  
19 enhanced services traffic.

20 **Q. WHAT OTHER DOCUMENTS DID BIG RIVER PRODUCE WHICH**  
21 **CONTRADICT ITS CLAIM THAT ITS TRAFFIC DELIVERED TO AT&T**  
22 **MISSOURI IS 100% ENHANCED SERVICES TRAFFIC?**

23  
24 A. Big River produced a generic “Master Service Agreement.” (*see*, Schedule WEG-6,  
25 attached hereto). That agreement confirms that Big River is a provider of  
26 telecommunications services. For example, under the caption “Tariff Considerations (at  
27 page 4 of the Agreement), it states: “Depending on the Customer’s choice of products



**Attachment 4**  
**Greenlaw P 12, L 7 - L 19**

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2 services provider, not a telecommunications services provider.

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26 telecommunications services. For example, under the caption “Tariff Considerations (at  
27 page 4 of the Agreement), it states: “Depending on the Customer’s choice of products

1 for “enhanced/information services traffic, including without limitation Voice over  
2 Internet Protocol (‘VOIP’) traffic and other enhanced services traffic.” To identify this  
3 traffic, the agreement allowed Big River to designate a “Percent Enhanced Usage”  
4 (“PEU”) factor, specifying the percentage of its traffic it claimed was  
5 enhanced/information services traffic. AT&T Missouri commenced billing Big River  
6 access charges for terminating the traffic Big River delivered to AT&T Missouri. In  
7 October, 2005, Big River claimed that the PEU for all traffic it was sending to AT&T  
8 Missouri for termination was 100%, apparently so that Big River would not be obligated  
9 to pay AT&T Missouri any access charges. Big River disputed AT&T Missouri’s  
10 charges, claiming that AT&T was obligated to terminate the traffic in question at no  
11 charge to Big River, pursuant to Attachment 12 of the parties’ agreement. In April, 2008,  
12 litigation in St. Louis County Circuit Court ensued over the matter.

13 **Q. WHAT HAPPENED NEXT?**

14 A. In the meantime, HB 1779 was enacted in 2008. Among other things, HB 1779 added to  
15 Chapter 392 of the Missouri statutes a new Section 392.550. The new section set forth a  
16 process by which providers could offer and provide interconnected VoIP service,  
17 principally by means of a “registration” obtained from the Commission. In addition, the  
18 new law codified an interconnected VoIP provider’s obligation to pay access charges for  
19 the termination of its interconnected VoIP traffic. In particular, Subsection 2 of Section  
20 392.550 states:

21 Interconnected voice over Internet protocol service shall be subject to  
22 appropriate exchange access charges to the same extent that  
23 telecommunications services are subject to such charges. Until January 1,  
24 2010, this subsection shall not alter intercarrier compensation provisions  
25 specifically addressing interconnected voice over Internet protocol service

1 contained in an interconnection agreement approved by the commission  
2 pursuant to 47 U.S.C. Section 252 and in existence as of August 28, 2008.  
3  
4 As its language makes apparent, the new law provided that the imposition of access  
5 charges would not commence until January 2010 to the extent that a pre-existing  
6 agreement already contained compensation provisions relating to interconnected VoIP.  
7 That, of course, was the case with respect to Big River, whose interconnection agreement  
8 contained such provisions.

9 The following year, AT&T and Big River decided to settle all of the disputes  
10 presented in the St. Louis County litigation, including what was referred to as the  
11 "Enhanced Services Dispute." A final settlement agreement was entered into in  
12 October, 2009. Paragraph 1.B of the Settlement Agreement states:

13 \*\*  
14 \_\_\_\_\_  
15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
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24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_ \*\*

27  
28 As is obvious from the foregoing, the parties agreed to a bifurcated solution to their  
29 dispute. First, with respect to charges imposed or to be imposed by AT&T Missouri  
30 upon Big River prior to January 1, 2010, \*\*AT&T Missouri would collect nothing, i.e.,  
31 Big River would get a "free pass" during this period even though AT&T Missouri had  
32 provided Big River services, i.e., terminating Big River's traffic.\*\* Second, with respect

1 contained in an interconnection agreement approved by the commission  
2 pursuant to 47 U.S.C. Section 252 and in existence as of August 28, 2008.  
3

4 As its language makes apparent, the new law provided that the imposition of access  
5 charges would not commence until January 2010 to the extent that a pre-existing  
6 agreement already contained compensation provisions relating to interconnected VoIP.  
7 That, of course, was the case with respect to Big River, whose interconnection agreement  
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11 "Enhanced Services Dispute." A final settlement agreement was entered into in  
12 October, 2009. Paragraph 1.B of the Settlement Agreement states:

13 \*\*  
14 \_\_\_\_\_  
15 \_\_\_\_\_  
16 \_\_\_\_\_  
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23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_ \*\*

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28 As is obvious from the foregoing, the parties agreed to a bifurcated solution to their  
29 dispute. First, with respect to charges imposed or to be imposed by AT&T Missouri  
30 upon Big River prior to January 1, 2010, \*\*AT&T Missouri would collect nothing, i.e.,  
31 Big River would get a "free pass" during this period even though AT&T Missouri had  
32 provided Big River services, i.e., terminating Big River's traffic.\*\* Second, with respect



1 to charges to be imposed by AT&T Missouri upon Big River from and after January 1,  
2 2010, \*\*the traffic would be regarded as interconnected VoIP traffic for which access  
3 charges would be paid, in accordance with Section 392.550.2, RSMo. That was to be  
4 accomplished, as the settlement agreement made clear, "by the Interconnection  
5 Agreement as to be amended as described herein."\*\*

6 **Q. WAS THE ICA BETWEEN THE PARTIES AMENDED THEREAFTER?**

7  
8 A. Yes. The amendment to the parties' 2005 agreement was executed by the parties, it was  
9 filed with the Commission, and it was approved by the Commission on November 5,  
10 2009. As noted in the filing letter submitted to the Commission and distributed to the  
11 parties, the amendment contained "certain VoIP intercarrier compensation provisions  
12 pursuant to Section 392.550 as reflected in the newly enacted HB 1779." The  
13 amendment provided:

14 **House Bill 1779, Section 392.550.** The Parties shall exchange interconnected  
15 voice over Internet protocol service traffic, as defined in Section 386.020  
16 RSMo, subject to the appropriate exchange access charges to the same extent  
17 that telecommunications services are subject to such charges; provided,  
18 however, to the extent that as of August 28, 2008, the Agreement contains  
19 intercarrier compensation provisions specifically applicable to interconnected  
20 voice over Internet protocol service traffic, those provisions shall remain in  
21 effect through December 31, 2009, and the intercarrier compensation  
22 arrangement described in the first clause of this Section shall not become  
23 effective until January 1, 2010.

24  
25 Big River's current complaint, filed with the Commission in March, 2012, concerns  
26 charges billed by AT&T Missouri to Big River -- *after* January 1, 2010 -- pursuant to the  
27 terms of the approved amendment to the interconnection agreement. Seeking to now  
28 disavow itself of both the October, 2009 settlement agreement and subsequent  
29 interconnection agreement amendment approved by the Commission in November, 2009,  
30 Big River claims that its traffic is *not* VoIP, and the "capabilities [of its network] are

1 available to all subscribers and provide enhanced functionality well beyond the  
2 capabilities of VoIP.” Complaint ¶ 32. But that is inconsistent with the parties’  
3 settlement agreement and ICA, which specifically refer to VoIP (not enhanced services)  
4 and whose reference to applicable charges becoming effective January 1, 2010 is a  
5 uniquely direct result of the VoIP access charge provisions of Section 392.550.

6 **Q. WHAT DOES THE PARTIES’ ICA SAY ABOUT PAYMENT OF BILLED**  
7 **CHARGES?**

8 A. Section 14 of the General Terms and Conditions of the parties’ ICA outlines the parties’  
9 payment obligations under the agreement. Section 14.2 states that the billed party should,  
10 “pay all undisputed Unpaid Charges to the Billing Party.”

11 **Q. ARE DISPUTED AMOUNTS EXEMPT FROM THIS REQUIREMENT?**

12 A. Yes, but only for the period of time during which a particular billing dispute is open.  
13 Once resolution of that dispute has been provided, the dispute is considered closed and  
14 the amounts at issue within that dispute are either credited to the billed party or paid by  
15 the billed party, depending upon which party prevails in the dispute.

16 **Q. IF THE BILLED PARTY FAILS TO MEET THE OBLIGATIONS UNDER**  
17 **SECTION 14.2, WHAT IS THE RECOURSE FOR AT&T?**

18 A. Section 14.4 of the General Terms and Conditions of the parties ICA provides for the  
19 actions that AT&T Missouri may take if a past due balance remains unpaid, it states that:  
20

21 After expiration of the written notice furnished pursuant to Section 14.1  
22 hereof, if CLEC continues to fail to comply with Section 14.2.1 through  
23 14.2.4, inclusive, or make payment(s) in accordance with the terms of any  
24 mutually agreed payment arrangement, [AT&T]AT&T MISSOURI may, in  
25 addition to exercising any other rights or remedies it may have under  
26 Applicable Law, furnish a second written demand to CLEC for payment  
27 within five (5) Business Days of any of the obligations enumerated in Section  
28 14.2.1. On the day that [AT&T] MISSOURI provides such written demand  
29 to CLEC, [AT&T] MISSOURI may also exercise any or all of the following  
30 options:

1 necessary to enforce the terms of Big River's agreement pursuant to Section 14 of the  
2 General Terms and Conditions regarding payment of billed amounts, Big River filed its  
3 complaint with the Commission.

4 **V. BIG RIVER'S LIABILITY FOR ACCESS CHARGES**

5  
6 **Q. WHAT IS THE BASIS FOR AT&T MISSOURI'S REQUEST THAT THE**  
7 **COMMISSION RULE THAT BIG RIVER MUST PAY AT&T MISSOURI**  
8 **ACCESS CHARGES?**

9 A. The terms of the ICA are clear and unambiguous regarding payment of AT&T Missouri's  
10 billed charges, so ultimately, the only issue that the Commission needs to determine is  
11 whether the services Big River is providing to end users, resulting in calls originating on  
12 Big River's network and delivered to AT&T Missouri for termination to its end users, are  
13 100% enhanced services, as Big River claims, or whether they constitute mere  
14 telecommunications services involving two parties talking on both ends of a call. As  
15 stated above and as elaborated further in Mr. Neinast's direct testimony, it is clear that  
16 the traffic that Big River is delivering to AT&T Missouri for termination to AT&T  
17 Missouri's end users is not enhanced services traffic; therefore, the calls are subject to the  
18 appropriate access charges.

19 **Q. ARE THE ACCESS CHARGE RATES THAT BIG RIVER OWES SET FORTH**  
20 **IN THE PARTIES' INTERCONNECTION AGREEMENT?**

21 A. No, while the applicability of access charges is set forth in the ICA, the dollars-and-cents  
22 access charge rates are actually tariffed rates, incorporated by reference into the ICA.  
23 AT&T Missouri's federal tariff, filed with the FCC, requires Big River to pay access  
24 charges on the interstate traffic AT&T Missouri has terminated for Big River, and AT&T

**Attachment 8**  
**Greenlaw P 22, L 6 - L 15**

1           example, Big River has never asserted that, if its traffic were classified as  
2           telecommunications services traffic, the amounts billed by AT&T Missouri were wrongly  
3           computed or would not otherwise be due in full.

4   **Q.   HAS THE FCC RECENTLY ADDRESSED THE EFFECTS OF ACCESS-**  
5   **AVOIDANCE?**

6   A.   Yes. On November 18, 2011, the FCC issued its *Connect America Fund Order*.<sup>3</sup> In the  
7           words of FCC Commissioner Michael J. Copps, that Order “puts the brakes on the  
8           arbitrage and gamesmanship that have plagued [intercarrier compensation] for years and  
9           that have diverted private capital away from real investment in real networks....Today we  
10          say ‘no more.’”<sup>4</sup> Commissioner Copps thus decried the fact that the unlawful avoidance  
11          of access charges, also known as access arbitrage, is an ongoing and significant problem  
12          for the industry as a whole. Given the lack of any reasonable support for Big River’s  
13          claim that the traffic at issue here is enhanced services traffic, Big River’s refusal to pay  
14          AT&T Missouri’s access charges certainly appears to be yet another in a long line of  
15          access charge avoidance schemes.

16   **Q.   WHAT IS THE FINANCIAL IMPACT OF BIG RIVER’S DISPUTE?**

17   A.   Through the August 2012 billing cycle, Big River owed AT&T Missouri \$350,637.60 in  
18          unpaid past due access charges billed by means of BAN 110 401 0113 803, excluding  
19          any late payment charges, as applicable. (*See*, Schedule WEG-9(HC), attached hereto).

<sup>3</sup> Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, WC Docket No. 10-90 *et al.* (rel. Nov. 18, 2011) (“*Connect America Fund Order*”), 26 FCC Rcd 17663, available at 2011 WL 5844975.

<sup>4</sup> 26 FCC Rcd at 18404, available at 2011 WL 5844975, \*571 (statement of Commissioner Michael J. Copps).



1 **VII. CONCLUSION**

2  
3 **Q. HOW SHOULD THE COMMISSION RULE WITH RESPECT TO AT&T**  
4 **MISSOURI'S COMPLAINT?**

5  
6 A. The Commission should find that Big River has breached the parties' ICA by failing to  
7 meet its payment obligations under the parties' ICA, as amended.

8 **Q. WHAT RELIEF IS AT&T MISSOURI SEEKING FROM THE COMMISSION?**

9 A. AT&T Missouri is asking the Commission to:

- 10 (a) Find that the access charges AT&T Missouri has billed Big River since  
11 January 1, 2010 by means of BAN 110 401 0113 803 are charges for  
12 terminating non-local traffic that either is not enhanced information  
13 services traffic or is interconnected VoIP traffic;
- 14 (b) Find that the access charges AT&T Missouri has billed Big River since  
15 January 1, 2010 by means of BAN 110 401 0113 803 are required by and  
16 consistent with the parties' ICA, as amended;
- 17 (c) Find that the access charges AT&T Missouri has billed Big River since  
18 January 1, 2010 by means of BAN 110 401 0113 803, plus any late  
19 payment charges, as applicable, are due and owing by Big River;
- 20 (d) Find that if the access charges outlined in (a), (b), and (c) above are not  
21 immediately cured, AT&T Missouri is excused from further performance  
22 under the ICA, may suspend Big River's ability to submit requests for  
23 additional service, may suspend provisioning of all pending orders; and,  
24 may terminate the ICA; and
- 25 (e) Grant all other relief as is just and appropriate.  
26

1           assertions are incorrect and are nothing more than an attempt to avoid paying access  
2           charges, similar to other carriers' attempts in the recent past.<sup>1</sup>

3   **Q.   WHAT IS THE DISTINCTION BETWEEN A TELECOMMUNICATIONS**  
4   **SERVICE AND AN ENHANCED (OR INFORMATION) SERVICE?**

5   A.   As explained more fully in Mr. Greenlaw's opening testimony, federal law has long  
6       distinguished between telecommunications services (or basic services) and enhanced  
7       services (or information services). A "telecommunications service" is "the offering of  
8       telecommunications for a fee directly to the public . . . regardless of the facilities used,"  
9       and "telecommunications" means "the transmission, between or among points specified  
10      by the user, of information of the user's choosing, without change in the form or content  
11      of the information as sent and received." 47 U.S.C. §§ 153(43), (46). An example is  
12      traditional long distance telephone service. An enhanced or information service, on the  
13      other hand, is "the offering of a capability for generating, acquiring, storing,  
14      transforming, processing, retrieving, utilizing, or making available information via  
15      telecommunications." 47 U.S.C. § 153(20). An example is Internet access service,  
16      which allows users to surf the Internet and acquire, process, and utilize information from  
17      any number of Internet servers.

18   **Q.   WHAT IS THE NATURE OF THE TRAFFIC BIG RIVER TERMINATES TO**  
19   **AT&T MISSOURI?**

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<sup>1</sup> Halo Wireless recently argued that its interexchange traffic was wireless simply because it routed the traffic through a WI-MAX tower which then converted it from landline to wireless. Once that argument failed before the FCC and state commissions, Halo then attempted to argue that basic transmission fundamentals which are performed by every carrier somehow "enhances" calls so that access charges are not due. Every state commission, including this Commission, ruled against Halo, determined that Halo's traffic was not enhanced traffic, and found that access charges were due for the termination of its interexchange traffic.

**Attachment 11**  
**Neinast P 4, L 16 - L 17**

1 A. The traffic from Big River that AT&T Missouri assessed access charges upon is  
2 interexchange traffic (*i.e.*, traffic that begins and ends in different local exchange or local  
3 calling areas) consisting of calls from Big River's customers to AT&T Missouri's  
4 customers. AT&T Missouri contends that this long distance traffic is an ordinary  
5 telecommunications service, subject to the same access charges that for decades have  
6 applied to long distance traffic. Big River, on the other hand, points to several features of  
7 its services (in paragraphs 27-31 of its complaint, and in a letter dated May 19, 2011,  
8 referenced in paragraph 26 of the complaint<sup>2</sup>) that it claims makes its services 100%  
9 "enhanced services" and therefore not subject to access charges. I will discuss each of  
10 these features separately.

11 **Q. PARAGRAPH 27 OF THE BIG RIVER COMPLAINT DESCRIBES THE**  
12 **TRAFFIC FLOW THROUGH THE BIG RIVER NETWORK, INCLUDING THE**  
13 **CONVERSION OF THE TRAFFIC TO INTERNET PROTOCOL (IP) FORMAT.**  
14 **DOES THIS MAKE THE TRAFFIC DELIVERED TO AT&T MISSOURI**  
15 **ENHANCED SERVICES TRAFFIC?**

16 A. No, Big River's use of Internet Protocol ("IP") technology is not sufficient to make all its  
17 traffic an enhanced service, as the FCC has made clear.

18 Time Division Multiplexing ("TDM") format is the communications format long used by  
19 the public switched telephone network ("PSTN"), including AT&T Missouri's network.  
20 That is, ordinary telephone calls made on the wireline telephone network have  
21 traditionally originated, been carried, and terminated in TDM format. TDM technology  
22 utilizes dedicated channels between end users for the entire duration of a call. IP, on the  
23 other hand, uses packets of information that do not tie up an entire circuit for the duration  
24 of a call, but only when required, and the packets of information can be sent over diverse

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<sup>2</sup> Schedule 1, attached hereto, is a letter from John Jennings to Janice Mullins dated May 19, 2011.

**Attachment 12**  
**Neinast P 5, L 17 - P 6, L 15**

1 routes with other data packets and then re-assembled at their destination. IP signaling  
2 was designed for computer data, so voice information is converted from analog telephony  
3 to data packets to be delivered to its destination. Because IP sends data in packets and  
4 does not tie up a particular circuit for the duration of a call, it is generally more efficient  
5 than the traditional TDM signaling, especially for long-haul toll traffic such as the long  
6 distance traffic at issue here. As a result, many carriers have incorporated IP into their  
7 networks, particularly for the transmission of calls between the originating and  
8 terminating locations.

9 The traffic from Big River's customers that Big River delivers to AT&T Missouri  
10 originates in TDM format, like ordinary long distance calls. Big River then converts the  
11 call to IP for some portion of the call's transmission, and then converts it back to TDM  
12 for termination to AT&T Missouri. In reading through the letter<sup>3</sup> from John Jennings,  
13 Big River states its traffic consists of PSTN PCM (Pulse Code Modulation) traffic that is  
14 converted to IP. Big River converts the traffic back to TDM for termination to AT&T  
15 Missouri and other third party's end users. In other words, a call begins in TDM format,  
16 is converted to IP, and then must be converted back to TDM.

17 This is nothing more than "IP in the middle" traffic. The FCC has previously  
18 ruled on long distance IP in the middle traffic, holding that it is not enhanced traffic and  
19 that it remains subject to access charges. In the *IP Access Charge Order*,<sup>4</sup> AT&T Corp.  
20 (prior to its merger with SBC Communications, Inc.) had petitioned the FCC for a

<sup>3</sup> See, Schedule 1, first bullet: "The system first receives media in digital PCM form from the PSTN and packetizes the media into IP datagrams."

<sup>4</sup> Order, *In re Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, 19 FCC Rd 7457 (FCC rel. April 21, 2004) ("*IP Access Charge Order*"), available at 2004 WL 856557.



1 declaration that its “phone-to-phone IP telephony services” were exempt from access  
2 charges. The services at issue used IP only in the middle: an interexchange call was  
3 “initiated in the same manner as traditional interexchange calls,” once the call “reaches  
4 AT&T’s network, AT&T converts it from its existing format into an IP format and  
5 transports it over AT&T’s Internet backbone,” and “AT&T then converts the call back  
6 from the IP format and delivers it to the called party through [the local carrier’s PSTN].”  
7 *Id.* ¶ 1. “[U]nder the current rules,” the FCC squarely held, such a service “is a  
8 telecommunications service upon which interstate access charges may be assessed.” *Id.*  
9 The FCC noted that “telecommunications” is the “transmission, between or among points  
10 specified by the user, of information of the user’s choosing, without change in the form  
11 or content of the information as sent and received,” and while AT&T Corp. converted  
12 calls to IP in the middle, users “obtain only voice transmission with no *net* protocol  
13 conversion.” *Id.* ¶ 12 (emphasis added). In other words, what went into one end of the  
14 transmission on the PSTN – a human voice – came out the other end on the PSTN with  
15 no net change. The same is true here.

16 **Q. PARAGRAPH 28 OF THE BIG RIVER COMPLAINT DESCRIBES HOW THE**  
17 **BIG RIVER NETWORK ALLOWS A SUBSCRIBER TO RECORD CALLS.**  
18 **DOES THIS MAKE THE TRAFFIC BIG RIVER DELIVERED TO AT&T**  
19 **MISSOURI ENHANCED SERVICES TRAFFIC?**

20 A. No. Big River contends that because its customers have the ability to record a telephone  
21 call, its traffic is all enhanced services traffic. But the FCC, in its recent *InterCall*  
22 *Order*,<sup>5</sup> held that enabling a customer to record does *not* turn telephone service into an  
23 enhanced/information service:

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<sup>5</sup> Order on Reconsideration, *Petitions for Reconsideration and Clarification of the InterCall Order*, WC Docket No. 06-122, CC Docket No. 96-45, FCC 12-10 (FCC rel. January 27, 2012), available at 2012 WL 258204 at p. 6, ¶¶ 12-13.

**Attachment 13**  
**Neinast P 6, L 21 - P7 L 30**

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3 “initiated in the same manner as traditional interexchange calls,” once the call “reaches  
4 AT&T’s network, AT&T converts it from its existing format into an IP format and  
5 transports it over AT&T’s Internet backbone,” and “AT&T then converts the call back  
6 from the IP format and delivers it to the called party through [the local carrier’s PSTN].”  
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23 enhanced/information service:

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1 As the Commission has previously noted, the classification of a service as  
2 either information or telecommunications hinges on whether the  
3 transmission capability is "sufficiently integrated" with the information  
4 service capabilities to make it reasonable to describe the two as a single,  
5 integrated offering and classify the entire integrated service as an  
6 information service. Merely packaging two services together (such as  
7 teleconferencing packaged with additional features that perform validation  
8 functions, collect billing and participant information, and *enable the*  
9 *participants to record*, delete, playback, mute and unmute, and access  
10 operator assistance) does not create a single integrated service.

11  
12 [W]e find that these separate capabilities are part of a package in which  
13 the customer can conduct its conference call with or without accessing  
14 these features. (emphasis added).  
15

16 Similarly, here Big River offers its customers a service whereby they can make long  
17 distance telephone calls to other telephone customers (like AT&T Missouri's) using the  
18 PSTN. That service is an ordinary telecommunications service. While Big River may  
19 package this service with additional features, like the ability to record a call, the  
20 availability of that feature does not turn a telephone call from a Big River customer to an  
21 AT&T Missouri customer into an enhanced/information service. The ability to record a  
22 call is a separate capability from the ability to make a voice telephone call, and Big  
23 River's customers can place voice telephone calls without recording the calls. Indeed,  
24 Big River admitted in discovery that its "subscribers can place a non-local voice  
25 telephone call to AT&T Missouri's subscribers without activating the program to begin  
26 recording mid-call and store the recording for later access via phone or email." *See*,  
27 Schedule 2, attached hereto, at p. 8. And Big River has not shown that *any* of the long  
28 distance calls it delivered to AT&T Missouri involved the recording of the call. As a  
29 result, this feature, under the test established by the FCC, does not make Big River's  
30 traffic 100% enhanced.

1   **Q.    PARAGRAPH 29 OF THE BIG RIVER COMPLAINT DESCRIBES HOW THE**  
2   **BIG RIVER NETWORK ALLOWS A SUBSCRIBER TO VIEW, CONFIGURE,**  
3   **AND MANAGE ITS INCOMING CALL-HANDLING OPTIONS. DOES THIS**  
4   **MAKE THE TRAFFIC BIG RIVER DELIVERED TO AT&T MISSOURI 100%**  
5   **ENHANCED SERVICES TRAFFIC?**

6   A.    No. The features Big River describes in paragraph 29, such as the ability to reject calls or  
7       forward calls, are “vertical” features that have long been available to telephone  
8       customers. Many of them have existed since electronic switching became available in the  
9       1960s, but others were made available with the advent of CLASS (Custom Local Area  
10      Signaling Services) features that uses SS7, *i.e.*, call rejection and specialized ringing.  
11      These features are added to an end user’s line, but do not turn the underlying telephone  
12      service into an enhanced/information service.

13               Moreover, the call handling options Big River describes are all options for  
14      *incoming* calls. These features have nothing to do with the traffic at issue here –  
15      *outgoing* calls made by Big River customers to AT&T Missouri’s customers. A Big  
16      River customer need not configure his or her incoming call options to place calls to  
17      AT&T Missouri’s customers, nor does placing calls to AT&T Missouri’s customers  
18      somehow activate these features. As a result, these ancillary features, while packaged  
19      with Big River’s telecommunications services, are not sufficiently integrated to make the  
20      basic telephone service provided by Big River an enhanced/information service, as  
21      required by the *InterCall Order*.

22               The FCC reached a similar conclusion in its *Prepaid Calling Card Order*.<sup>6</sup> There,  
23      the FCC rejected the claims of some prepaid calling card providers that their services  
24      were exempt from access charges because they used interactive menus. Upon dialing a

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<sup>6</sup> Declaratory Ruling and Report and Order, *In the Matter of Regulation of Prepaid Calling Card Services*, 21 FCC Rcd. 7290 (rel. June 30, 2006) (“*Prepaid Calling Card Order*”), available at 2006 WL 1826190.



1 toll-free number, a cardholder was “presented with the option to make a telephone call or  
2 to access several types of information,” such as directory, sports, weather, or  
3 entertainment information. *Id.* ¶ 11. The FCC concluded, as it later did in the *InterCall*  
4 *Order*, that “the key question in classifying offerings with both telecommunications and  
5 information service capabilities is whether the telecommunications transmission  
6 capability is ‘sufficiently integrated’ with the information service component ‘to make it  
7 reasonable to describe the two as a single, integrated offering,’” and “merely packaging  
8 two services together does not create a single integrated service.” *Id.* ¶ 14. The FCC  
9 found that “there simply is no functional integration between the information service  
10 features and the use of the telephone calling capability with menu-driven pre-paid calling  
11 cards.” *Id.* ¶ 15. “The menu is a mechanism by which the customer can access the  
12 separate capabilities that are packaged together in a single prepaid calling card,” and  
13 “[t]he customer may use only one capability at a time and the use of the  
14 telecommunications transmission capability is completely independent of the various  
15 other capabilities that the card makes available.” *Id.* “For example, an individual may  
16 use MCI’s Golden Retriever card to make a long distance call without obtaining  
17 restaurant information, sports scores, or stock quotes,” so “even if those additional  
18 capabilities are classified as an information service, the packaging of these multiple  
19 services does not by itself transform the telecommunications component of these cards  
20 into an information service.” *Id.* Thus, the FCC held, pre-paid calling card providers  
21 remained obligated to pay access charges notwithstanding their provision of these  
22 ancillary features. *Id.* ¶ 27.

1 Big River's incoming call-handling options are like the "menu" options addressed  
2 in the *Prepaid Calling Card Order*. They may be packaged and sold together with the  
3 basic function of placing long distance telephone calls, but they are not an integrated  
4 service. Big River's customers can place long distance telephone calls to AT&T  
5 Missouri's customers without going online to configure their incoming call options, and  
6 the two plainly are separate capabilities. Indeed, Big River admitted in discovery that  
7 "[w]hen a Big River subscriber configures his or her incoming call manager through a  
8 Big River web portal, that communications session does not consist of a telephone call  
9 placed by the Big River subscriber to one of AT&T Missouri's subscribers," and "Big  
10 River's subscribers can place a non-local voice telephone call to AT&T Missouri's  
11 subscribers without configuring their incoming call manager, or viewing, configuring, or  
12 managing their call-handling options." *See*, Schedule 2 at pp. 8-9.

13 **Q. PARAGRAPH 30 OF THE BIG RIVER COMPLAINT DESCRIBES HOW THE**  
14 **BIG RIVER NETWORK ALLOWS A SUBSCRIBER TO CONVERT AN**  
15 **INCOMING FAX TRANSMISSION TO DATA IN A PDF FORMAT AND THEN**  
16 **FORWARD THAT INFORMATION TO AN EMAIL ADDRESS. DOES THIS**  
17 **MAKE THE TRAFFIC BIG RIVER DELIVERED TO AT&T MISSOURI**  
18 **ENHANCED SERVICES TRAFFIC?**

19 **A.** No. The traffic at issue in this case consists of telephone calls made by Big River  
20 customers to AT&T Missouri customers. This case does not involve fax transmissions to  
21 Big River customers (which the Big River customers can have converted to pdf and  
22 emailed to them). The fax feature described by Big River would never be delivered to an  
23 AT&T Missouri end user on the PSTN.

24 Further, as explained above, the fact that Big River may package with its  
25 telephone service various additional features, such as this fax feature, does not make its  
26 telephone services traffic an enhanced/information service. Big River's telephone service

**Attachment 15**  
**Neinast P 12, L 4 - L 14**

1 its “subscribers can place a non-local voice telephone call to AT&T Missouri’s  
2 subscribers without accessing the latest GoogleNews from their telephone or obtaining  
3 other information via the web.” *See*, Schedule 2 at p. 9.

4 This kind of ancillary service is precisely what the FCC addressed in the *Prepaid*  
5 *Calling Card Order*, where it held that the ability of customers to access, for example,  
6 “sports, weather, or restaurant or entertainment information” (¶ 11) did not convert long  
7 distance calls made using the calling card into an enhanced/information service. Just as  
8 an individual could “use MCI’s Golden Retriever card to make a long distance call  
9 without obtaining restaurant information, sports scores, or stock quotes,” a Big River  
10 customer can place a long distance voice telephone call to AT&T Missouri’s customers  
11 without accessing GoogleNews, so “even if those additional capabilities are classified as  
12 an information service, the packaging of these multiple services does not by itself  
13 transform the telecommunications component of these cards into an information service.”  
14 *Id.* ¶ 15.

15 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

16 **A.** Yes.