

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

Big River Telephone Company, LLC,)	
)	
Complainant,)	
)	
v.)	Case No. TC-2007-0085
)	
Southwestern Bell Telephone Company,)	
d/b/a AT&T Missouri,)	
)	
Respondent.)	

AT&T MISSOURI’S REPLY IN SUPPORT OF ITS RENEWED MOTION TO DISMISS

Southwestern Bell Telephone Company, d/b/a AT&T Missouri (“AT&T Missouri”), hereby submits its Reply to Staff’s and Big River Telephone Company, LLC’s (“Big River’s”) responses to the Commission’s January 27, 2009, Order Directing Filing.

Neither Staff nor Big River are at all unclear about the result of the extended, but now-concluded, federal litigation regarding the Commission’s assertion of section 271 jurisdiction. Staff “agrees that the federal litigation determined that the Commission lacked authority to require AT&T Missouri to provide section 271 elements to a requesting carrier such as Big River.” Staff’s Response, ¶ 3. For its part, Big River “fully acknowledges that the federal court proceedings invalidated the provisions of the interconnection agreement concerning rates for section 271 elements.” Big River’s Response, ¶ 6. Since AT&T Missouri has already demonstrated that Big River’s complaint rests on purported section 271 violations, AT&T Missouri’s renewed motion to dismiss should be granted in its entirety.

Staff and Big River, however, suggest that AT&T Missouri's motion should be denied because, in their view, the applicable rates for about ten weeks (between January 1 through March 11, 2006) remain in dispute.¹ That suggestion should be rejected.

As AT&T Missouri has already explained, Big River's complaint expressly relies on the section 271-related provisions in the parties' interconnection agreement as the basis for the relief sought in the complaint. *See*, AT&T Missouri's Renewed Motion to Dismiss Complaint, Attachment 2, pp. 5-6 & n. 17. Thus, AT&T Missouri's motion applies with no less force to the period before March 11, 2006, as it applies to the period after March 11, 2006. Big River's claims relating to both of these periods are foreclosed.

In addition, it would defy common sense to conclude that AT&T Missouri should be deprived any longer of undisputed amounts rightfully owed it over the last three years (from January 1, 2006, the effective date of the parties' Local Wholesale Complete agreement, through the present) when the only conceivable objection to payment is now confined to a period of just ten weeks (January 1 through March 11, 2006). Even assuming that Big River is correct in its assertion that these ten weeks still represent a dispute that survives AT&T Missouri's motion, that dispute amounts to but \$67,000 in claimed excessive billings according to Big River's Response (¶ 6). That amount pales in comparison to unpaid amounts over this three-year period, which now exceed \$1.2 million (the amount for which AT&T Missouri filed suit against Big River in April, 2008, in St. Louis County Circuit Court). Neither Staff nor Big River even tries to explain how such an outcome is fair to AT&T Missouri. Nor do either explain why Big River should be allowed to continue its unfair advantage over other Missouri CLECs by continuing to withhold its bill payments, particularly given that the section 271 theory on which Big River

¹ That being said, Staff's position and testimony are that "the LWC rates applied to existing customers as of the effective date [i.e., January 1, 2006] of the LWC agreement." Staff's Response, ¶ 6.

hung its hat has been so thoroughly repudiated by the federal District Court and the Eighth Circuit Court of Appeals.

Consequently, even if the Commission is at all inclined to find that this ten-week period should prevent Big River's answering to over three years of unpaid billings, AT&T Missouri urges that the Commission do two things. First, it should grant the portion of AT&T Missouri's motion which no one disputes, that is, the Commission should dismiss the portion of the complaint relating to the period after March 11, 2006. Such a result would be far more consistent with the governing law of this case -- and eminently more fair to AT&T Missouri and Missouri CLECs other than Big River -- than simply denying the entirety of AT&T Missouri's motion.²

Second, before proceeding any further, the Commission should order Big River and AT&T Missouri to submit to mediation the portion of the complaint relating to the period from January 1 through March 11, 2006.³ This would better conserve finite Commission, Staff and party resources, and it would better foster the prospect of a settlement, than doing as Big River proposes (i.e., simply denying AT&T Missouri's motion and convening a prehearing conference for the parties to discuss settlement and scheduling matters). Big River's Response, ¶ 9.

In sum, Staff's and Big River's suggestions invite the Commission to place itself at risk of violating the permanent injunction that was instituted over two years ago by the federal District Court, and upheld by the Eighth Circuit Court of Appeals. That is hardly an appropriate course, especially given these courts' unequivocal rulings rejecting the Commission's assertion of section 271 authority, the complaint's misplaced reliance on the Commission's purported

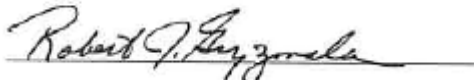
² While such an order is required by the law of this case and no additional authority is needed, such an order would also be entirely consistent with Rule 2.117(2) (4 CSR 240-2.117(2)) (stating that "the [C]ommission may, on its own motion or on the motion of any other party, dispose of all or any part of a case on the pleadings...").

³ 4 CSR 240-2.125(2)(A).

section 271 jurisdiction, and the relatively small amount at stake for the brief ten-week period Staff and Big River claims should survive AT&T Missouri's motion. Consequently, AT&T Missouri's motion should be granted and Big River's complaint should be dismissed in its entirety. In all events, the Commission should at a minimum dismiss the complaint in part (i.e., the portion of the complaint relating to the period after March 11, 2006) and the Commission should order mediation as to the remainder.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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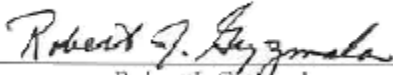
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CERTIFICATE OF SERVICE

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