

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

BIG RIVER TELEPHONE)
COMPANY, LLC,)
)
Complainant,)
)
V.)
)
SOUTHWESTERN BELL)
TELEPHONE, L.P. D/B/A)
AT&T MISSOURI,)
)
Respondent.)

Case No. TC-2007-0085

BIG RIVER TELEPHONE COMPANY, LLC'S
REPLY TO RESPONSES TO ORDER DIRECTING FILING

COMES NOW Big River Telephone Company, LLC, pursuant to the Commission's Order Directing Filing and provides its Reply to the Responses submitted by Staff and AT&T Missouri to the questions posed in that Order:

- 1. Are the parties asking the Commission to interpret the Local Wholesale Complete agreement (LWC) entered into by Big River and AT&T Missouri to determine whether the terms of that contract apply to all of Big River's customers, irrespective of when they began service, or only apply to new customers obtaining service from Big River after either December 31, 2005 or March 11, 2006?**

- 2. If the parties are not asking the Commission to interpret the LWC agreement, upon what basis could the Commission grant Big River the requested relief?**

As indicated in its Response, Big River is asking the Commission to enforce the approved interconnection agreement and require AT&T to continue to charge the rates set forth therein for local switching and loops. Staff inaccurately describes the issue with a focus on interpretation of the unapproved LWC rather than the appropriate regulatory focus on

enforcement of the approved interconnection agreement. As AT&T Missouri concedes at page 2 of its Response, “the Commission has jurisdiction to interpret and enforce the interconnection agreement.” The situation is analogous to cases which have rejected efforts to override approved rate schedules by private contract. The Commission’s regulatory police power is superior and cannot be abridged by contract under the Missouri Constitution, Article 11, section 3. See, e.g., *State ex rel Consumer Public Service v. PSC*, 180 SW2d 40, 45 (Mo. 1944). Hence, Big River calls upon the Commission to enforce the terms and conditions of an agreement that has been approved pursuant to regulatory procedures and to reject AT&T’s efforts to override that approved agreement with an unapproved document.

1. Why the LWC agreement does not constitute either a newly negotiated interconnection agreement or an amendment to Big River and AT&T’s interconnection agreement?

2. If the LWC is an interconnection agreement or an amendment to the approved interconnection agreement, why the LWC was not filed with the Commission as required by Section 252(e)(1) of the Telecommunications Act of 1996 or Commission Rule 4 CSR 240-3.513(6).

Big River would only reiterate that if the Commission were to require submittal of the LWC for approval, any such “submitted and approved LWC” would only be effective in such form as of the date of PSC approval and, therefore, such approval would only have a prospective impact on this dispute and would not affect the prior periods.

WHEREFORE, Big River Telephone, LLC requests the Commission to hold its hearing and thereupon grant to Big River the relief requested in its Complaint and such other and further relief to Big River as the Commission deems proper.

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

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Certificate of Service

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 17th day of September, 2007, by either placing same in the U.S. Mail, postage paid, by fax or email transmission.

/s/ Carl J. Lumley

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