

**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, L.P.	)	
d/b/a AT&T Missouri,	)	
	)	
Respondent.	)	

**AT&T MISSOURI'S REPLY TO THE PARTIES' RESPONSES TO QUESTIONS  
PRESENTED IN THE ORDER DIRECTING FILING**

AT&T Missouri<sup>1</sup> hereby replies to the September 12, 2007, responses submitted by Big River Telephone Company, LLC ("Big River") and Staff to the questions presented in the Commission's September 7, 2007 Order Directing Filing ("Order").

Big River confirms that no interpretation of the LWC is requested,<sup>2</sup> and further, that the interconnection agreement remains "enforceable except to the extent currently limited by court order[.]" and that the Local Wholesale Complete ("LWC") agreement "did not amend the interconnection agreement."<sup>3</sup> AT&T Missouri agrees with each of these statements, all of which is to say that the Commission can resolve Big River's Complaint insofar as it relies on the interconnection agreement between Big River and AT&T Missouri, unless precluded by federal law (including the September 14, 2006, ruling by the Federal District Court for the Eastern District of Missouri). On the other hand, the Commission should dismiss Big River's claim insofar as it relies on the LWC agreement between Big River and AT&T Missouri.

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<sup>1</sup> Southwestern Bell Telephone Company (f/k/a Southwestern Bell Telephone, L.P.) d/b/a AT&T Missouri ("AT&T Missouri").

<sup>2</sup> Big River's Response, p. 1.

<sup>3</sup> Big River's Response, pp. 1, 3.

Big River also states that “the latent ambiguity created by the dual documents and the court orders calls for interpretation of the agreements consistent with Big River’s letter.”<sup>4</sup> To the extent Big River means to suggest that an ambiguity regarding the terms of the interconnection agreement was caused by the LWC and Big River’s February 13, 2006, transmittal letter, such a suggestion should be rejected. No such “ambiguity” was in fact created notwithstanding Big River’s attempt to do so with its transmittal letter; moreover, any such ambiguity that theoretically might have been created cannot alter the rights and responsibilities of the parties under the pre-existing interconnection agreement. On the other hand, if Big River means to suggest that these collective documents generated some ambiguity regarding the rights and obligations of the parties under the LWC, that suggestion should likewise be rejected because any decision regarding those rights and responsibilities must be made by a forum other than the Commission, which can determine that Big River’s self-serving letter, like other matters involving “[t]he character and quality of negotiations[,] do not vary the terms of a written contract between sophisticated businesses.”<sup>5</sup>

Further, a resolution of this case does not require the Commission to decide whether, as Staff summarily asserts, the LWC is “either a newly negotiated interconnection agreement or an amendment to Big River and AT&T Missouri’s interconnection agreement” which the parties should have filed with the Commission.<sup>6</sup> Nor should the Commission decide the question, particularly given the late stage of these year-long proceedings, the fact that the record is entirely barren of testimony or other evidence on the matter, and the fact that the sole judicial decision cited by Staff, Qwest Corp. v. Public Utilities Corporation of Colorado, 479 F. 3d 1184 (10<sup>th</sup> Cir. 2007),

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<sup>4</sup> Big River’s Response, n. 2.

<sup>5</sup> Utility Service and Maintenance, Inc. v. Noranda Aluminum, Inc., 163 S.W. 3d 910 (Mo. en banc 2005).

<sup>6</sup> Staff’s Response, p. 2.

has not been considered much less adopted by the Eighth Circuit or any other circuit, and should not be followed.<sup>7</sup>

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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<sup>7</sup> For purposes of clarity, AT&T Missouri disagrees with Big River's suggestion that "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." Big River's Response, p. 5.

## **CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on September 17, 2007.

  
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