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Company, LLC
Type of Exhibit: Rebuttal Testimony
Case No.: TC-2012-0284

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BIG RIVER TELEPHONE COMPANY, LLC

REBUTTAL TESTIMONY

OF

GERARD J. HOWE

TC-2012-0284

October 19, 2012

Big River Exhibit No. 2
Date 08-13 Reporter XF
File No. TC-2012-0284

**PRE-FILED REBUTTAL TESTIMONY
OF
GERARD J. HOWE**

1 **Q. PLEASE STATE YOUR NAME.**

2 A. Gerard J. Howe.

3 **Q. ARE YOU THE SAME GERARD J. HOWE WHO SUBMITTED DIRECT**
4 **TESTIMONY IN THIS CASE?**

5 A. Yes.

6 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

7 A. I am responding to various statements made in the direct testimony of AT&T witnesses
8 and correct erroneous observations they made.

9 **Q. WOULD YOU COMMENT ON THE BACKGROUND TO THIS CASE AS**
10 **DESCRIBED BY AT&T WITNESS GREENLAW?**

11 A. Yes. I have been personally involved in the current dispute between the parties from
12 the very beginning. In fact, my involvement goes back to the initial negotiation of the
13 Interconnection Agreement ("ICA"), the subsequent arbitration of issues arising out of
14 those negotiations, and the appeals of the arbitration decision. I was also personally
15 involved in previous litigation between the parties that involved, among other things,
16 access charges. Despite my direct involvement in the dealings between the parties, I
17 am unaware of the participation of Mr. Greenlaw or Mr. Neinast until after Big River's

1 current Complaint was filed.

2 According, I must conclude that neither of AT&T's witnesses have personal
3 knowledge of the issues involved in this dispute and, therefore, must have been
4 proffered by AT&T as expert witnesses. Mr. Greenlaw, however, if he has any
5 expertise, it's in the area of marketing according to his testimony regarding his
6 educational and work history. Yet, he has offered testimony regarding Big River's
7 network and has provided his opinion as to what constitutes "enhanced services".
8 Conversely, Mr. Neinast has experience in network operations, but he has provided
9 very little technical analysis of Big River's network or the services it provides. Instead,
10 he gives his opinions regarding the state of the law regarding enhanced services and
11 access charges.

12 Their lack of personal knowledge has resulted in their incomplete and erroneous
13 understanding of the background to this case. For example, on page 13 of Mr.
14 Greenlaw's direct testimony, he discusses the history of the ICA between Big River and
15 AT&T but leaves out some facts that are critical, especially given many of the legal
16 arguments provided by both AT&T witnesses. Mr. Greenlaw failed to mention:

- 17 i) that the ICA approved by the Commission in 2005 was arbitrated,
18 including the language at the heart of this dispute which is included in
19 Section 13.3 of Attachment 12,
- 20 ii) that the ICA language at issue in this case (Section 13.3 of Attachment
21 12) was proffered by a CLEC and that despite strenuous legal arguments
22 and alternative language suggested by AT&T in opposition, the
23 language now in the ICA was adopted by the arbitrator,
- 24 iii) that AT&T appealed the arbitrator's ruling regarding the ICA language
25 at issue with exhaustive legal arguments to the full Missouri Public
26 Service Commission ("Commission") which was subsequently denied,

- 1 iv) that AT&T then appealed the arbitrator's ruling to the Federal District
- 2 Court, again accompanied with extensive legal arguments and AT&T's
- 3 suggested wording, which was subsequently rejected by the Federal
- 4 District Court, and
- 5 v) that, upon losing the appeal at the Federal District level, AT&T appealed
- 6 the decision to the Federal Court of Appeals, which also rejected
- 7 AT&T's appeal.

8 In other words, the underlying language of the ICA has been thoroughly

9 litigated and subject to all applicable statute, regulation and case law interpretation.

10 The ICA language now stands on its own.

11 Thus, the issue in this case is a dispute as to the interpretation of the ICA,

12 specifically the wording of Section 13.3 of Attachment 12. I don't know where Mr.

13 Greenlaw and Mr. Neinast were in 2005 and afterward when this ICA was being

14 arbitrated and appealed. Big River and a number of other CLECs, as well as AT&T,

15 litigated the terms of the ICA through arbitration and appeal.

16 On page 2 of his testimony, Mr. Neinast correctly points out that Big River has

17 claimed that 100% of its traffic is enhanced. Mr. Neinast then purports to interpret the

18 ICA according to his understanding of the applicable law to conclude that Big River's

19 traffic is not enhanced. However, Mr. Neinast fails to mention these pertinent facts:

- 20 i) that AT&T never set up any procedure to incorporate billing per the
- 21 Percent Enhanced Usage ("PEU") factor that was contained in the ICA,
- 22 ii) that upon receipt of Big River's letter stating its PEU factor, AT&T
- 23 ignored the information and billed Big River as if the PEU were zero
- 24 without any notice to Big River,
- 25 iii) that AT&T never responded to Big River regarding its PEU factor, and
- 26 iv) that AT&T never performed any audit of the traffic they receive from
- 27 Big River to challenge Big River's asserted PEU.

28 The conclusion then is that AT&T never had any intention of honoring this part

1 of the ICA and has never made any effort to abide by it. And upon the passage of HB
2 1779, it appears that AT&T thought they had legislated around the problem. That
3 statute, though, refers to “[i]nterconnected voice over Internet protocol service.” Big
4 River, however, is not and has never claimed to be an interconnected VoIP service
5 provider.

6 **Q. WHAT OTHER OBSERVATION DO YOU HAVE RELATIVE TO THE**
7 **TESTIMONY OF AT&T WITNESSES?**

8 A. Both AT&T witnesses made the same reference as to the definition of
9 telecommunications and the distinction between telecommunications and enhanced
10 services [Greenlaw Direct P.5, L.16; Neinast Direct P.3, L.5]. This, of course, is the
11 crux of our dispute, and I believe their explanation as to the distinction between the two
12 services provided in their testimony reveals the fundamental difference between
13 AT&T’s position on this dispute versus Big River’s.

14 Both AT&T witnesses give examples of telecommunications. Mr. Greenlaw
15 suggests “‘plain old telephone service” (“POTS”) provided on the PSTN” [Greenlaw
16 Direct P.6, L.2]. Mr. Neinast suggests ‘long distance telephone service’ [Neinast
17 Direct P.3, L.11]. Mr. Greenlaw goes further to explain traditional voice telephone
18 service and indicates it is the transmission of information ‘without any change in the
19 form or content of the information as sent and received (i.e., the speech at one end of
20 the call is reproduced at the other end)’ [Greenlaw Direct P.6, L.6]. His example here
21 is clearly a reference to the statutory site both he and Mr. Neinast make to 47 U.S.C. §

1 153(43), (46) that contains essentially the same wording – ‘without change in the form
2 or content of the information as sent and received’. [Greenlaw Direct P.6, L.1; Neinast
3 Direct P.3, L.10]

4 It is Mr. Greenlaw’s example, above, that ‘the speech at one end of the call is
5 reproduced at the other end’, that belies our fundamental difference regarding whether
6 there is a change in the form or content of the information as sent and received.
7 Clearly, Mr. Greenlaw believes that if the speech at one end of the call is reproduced at
8 the other end, there was no ‘change in the form or content of the information as sent
9 and received’. His perception is in contradiction to the facts as presented in my direct
10 testimony wherein I explained that Big River converts all media exchanged with AT&T
11 [Howe Direct P.5, L.13].

12 Moreover, his perception that the content of the information sent and received is
13 the spoken word, or ‘speech’, suggests a serious lack of understanding of the
14 advancements in technology. The change in the content that Big River makes to the
15 traffic it exchanges with AT&T does not alter the speech; instead, Big River’s
16 conversion is a change in the information that is used to re-create that speech. Big
17 River alters the information to ensure the delivery of the best quality voice over its
18 network through the use of various codecs as I explained in my direct testimony. Big
19 River does not convert the media to avoid access charges; it converts the media to
20 enable the delivery of the best quality sound over a data network and to enable the
21 various enhanced uses of voice telecommunications I included in my direct testimony.

1 I know the concept of codecs, which is the computer processing of audible
2 sounds into streams of zeroes and ones, is somewhat foreign to the average telephone
3 customer but those consumers are exposed to the use of codecs several times a day in
4 various forms. Advances in codecs, both video codecs and audio codecs, have
5 transformed the way we communicate. For instances, the advances in video codecs
6 have allowed cable TV and satellite companies to deliver significantly more channels
7 of entertainment than what was possible ten years ago. People are watching the same
8 movies, but the fact that the codecs used are different means that they have a much
9 larger selection of channels. In addition, advanced video codecs have allowed for the
10 delivery of high definition ("HD") video programming. Again, the viewer is watching
11 the same program but now their viewing experience is significantly enhanced because
12 of the quality of the video that is reproduced on their TV screen. Similarly, advanced
13 video codecs have allowed for the delivery of video programming to smart phones and
14 tablets over 2G, 3G and Wi-Fi networks.

15 Similar to the HD video codec, Big River also uses a high definition audio
16 codec ("HD" or G.722) for some telephone calls as well as teleconferencing, as I
17 explained in my direct testimony. I raise that capability here because of Mr.
18 Greenlaw's observation relative to the speech at one end of the call is reproduced at the
19 other end. Mr. Greenlaw's observation is lacking because the difference in the sound
20 quality of the HD codec and the standard codec ("SD" or G.711) is noticeable to an
21 untrained ear. The difference in the quality of the audio is immediately noticeable

1 despite the fact that, the ‘speech’ is the same. This is attributable to the codecs used to
2 transmit the sound, similar in nature to the change in codecs used by Big River on its
3 network. The difference is not in the content of the speech but in the quality of the data
4 transmitted coupled with the codec used to process the audio information to reproduce
5 in the highest quality manner on the other end. That difference represents one of the
6 conversions made by Big River to all of the data being exchanged with AT&T and is
7 one of the reasons why we believe our traffic is enhanced.

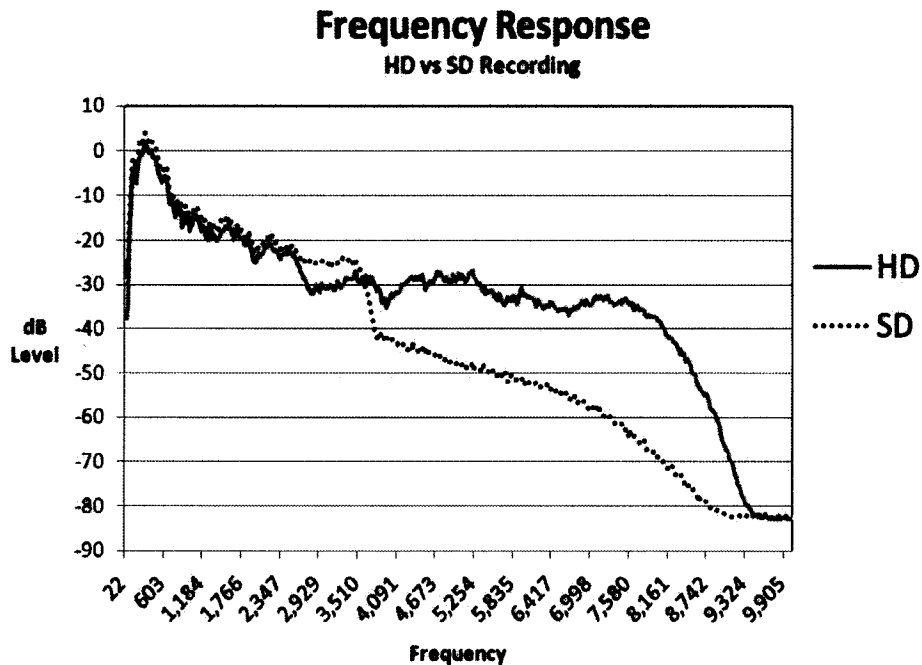
8 So that the Commission can hear the difference between the effects of a change
9 in codecs, I have attached two Wav files to my testimony. See Howe Attachment 1 –
10 HD Recording¹ and Howe Attachment 2 – SD Recording². [These files can be loaded
11 onto a personal computer and played from a standard Windows Media Player]. These
12 recordings are from the same sound source but are recorded over separate telephone
13 connections; one using a G.722 codec, in the case of the HD Recording, and the second
14 connection using a G.711 codec, in the case of the SD Recording.

15 In the event that anyone has difficulty in playing the recordings, I also analyzed
16 the sound, looking at the frequency response using Audacity software. I displayed the
17 results on the graph, below. What is being displayed on the graph is the sound level
18 (on the left axis – in decibels (“dB”)) versus the frequency of the sound across the

¹ Dialed into the Big River HD Conference service using an iPad running Bria HD Phone App, using G.722 codec. Recorded from the audio output from the iPad into an Apple Macbook Pro laptop running GarageBand recording software.

² Dialed into the Big River HD Conference service using an iPad running Bria HD Phone App, using G.711 codec. Recorded from the audio output from the iPad into an Apple Macbook Pro laptop running GarageBand recording software.

1 horizontal axis. As you can see on the graph, the sound recorded with the HD codec
2 has higher decibel levels on the higher frequencies. Thus, the customer can hear a
3 better quality sound because they hear the higher frequencies that are contained in the
4 HD connection but are too low in volume (dB) to hear in the SD connection.



5
6 **Q. DO YOU HAVE ANY OTHER OBSERVATIONS OF AT&T WITNESSES'**
7 **TESTIMONY WITH REGARD TO ANY MISSTATED FACTS?**

8 A. Yes, on page 5 of Mr. Greenlaw's direct testimony, he states that 'calls begin on Big
9 River's circuit-switched network'. His observation is incorrect; Big River does not
10 operate a circuit-switched network. Such a factual error is critical in an assessment of
11 the capabilities of Big River's network. As I pointed out in my direct testimony, there

1 is a considerable amount of transformation and processing of the traffic we exchange
2 with AT&T that takes place in our media gateways. While Mr. Greenlaw didn't see my
3 testimony before he filed his direct testimony, most technically trained individuals
4 experienced in telecommunications networks will be aware of the existence of
5 gateways and their use as described in my direct testimony. This was similarly
6 explained in response to AT&T's first set of data requests (to which Mr. Greenlaw had
7 access and referred to in his direct testimony). Yet he failed to realize that our network
8 is a soft-switch controlled network, utilizing a data network comprised of routers and
9 not a circuit-switched network.

10 The soft-switch nature of our network has been discussed with AT&T
11 personnel from our earliest conversations to establish our initial interconnection. The
12 fact that AT&T now has an 'expert' witness claiming otherwise is preposterous,
13 especially after the years of which our networks have been interconnected and about
14 which Big River was required by AT&T to provide exhaustive detail about our network
15 Our earliest interconnection discussions were held with AT&T in network planning
16 meetings that AT&T refers to as NIT meetings ('NIT' stands for Network
17 Interconnection Team). In preparation of those meetings, Big River completed an
18 AT&T form, the Network Information Sheet ("NIS"), which contains the type of switch
19 Big River operates. As far as I am aware, Mr. Greenlaw has never been a party to any
20 of those discussions and based on the inaccuracy of his testimony on this subject, he
21 has never seen the NIS forms Big River submitted. This would explain his

1 misunderstanding about such a critical element of Big River's network.

2 Based on this observation and another I will rebut shortly, Mr. Greenlaw
3 erroneously concludes that Big River's traffic is not enhanced. His observation is
4 factually in error and his conclusion is, likewise, incorrect.

5 **Q. WHAT OTHER OBSERVATION MADE BY MR. GREENLAW HAS HE**
6 **MADE IN ERROR?**

7 A. On page 6, line 15 of his direct testimony, Mr. Greenlaw actually picks up on an
8 erroneous observation made by Mr. Neinast – that the traffic Big River sends to AT&T,
9 'originate and terminate on the PSTN, just as telephone calls have for decades'. In the
10 case of Big River, this is incorrect and causes Mr. Greenlaw and Mr. Neinast to draw
11 erroneous conclusions.

12 **Q. CAN YOU EXPLAIN?**

13 A. Yes. In fact, Mr. Neinast explains at length why, in his opinion, Big River's network
14 'technology is not sufficient to make all of its traffic an enhanced service, as the FCC
15 has made clear'. In his explanation, Mr. Neinast points to various FCC orders and
16 concludes Big River's processing of calls 'is nothing more than "IP in the middle"
17 traffic'. Regrettably, Mr. Neinast lacks any direct knowledge of Big River's network
18 which is clear by his explanation on pages 4 – 6 of his direct testimony and leads to his
19 fundamental misunderstanding. Again, I have no recollection of ever talking to Mr.
20 Neinast to plan and execute network interconnection and the exchange of traffic.

1 Instead, it appears that Mr. Neinast's confusion arises from his
2 misunderstanding of a letter from John Jennings that he referenced in his direct
3 testimony, coupled with the lack of any working knowledge of Big River's network.

4 Mr. Neinast misreads Mr. Jennings' letter and concludes in his testimony that
5 'Big River states that its traffic consists of PSTN PCM (Pulse Code Modulation) traffic
6 that is converted to IP' [Neinast Direct P.5, L.12]. Mr. Jennings' letter makes no such
7 claim. Instead, Mr. Jennings' letter states that Big River 'first receives media in digital
8 PCM form from the PSTN'. Mr. Jennings' letter describes the processes and interface
9 between Big River's network and AT&T's network (which he referenced as the PSTN)
10 from which Big River receives and to which Big River delivers communications. Mr.
11 Jennings, in his letter, correctly describes how AT&T delivers PCM coded media to
12 Big River, at which point Big River processes and converts the data as explained in my
13 direct testimony for delivery to Big River's customers. Mr. Neinast's conclusion is
14 wrong because he has the wrong facts and lacks an understanding of Big River's
15 network.

16 **Q. DID AT&T REQUEST DETAILS OF BIG RIVER'S NETWORK**
17 **ARCHITECTURE IN ITS DATA REQUESTS?**

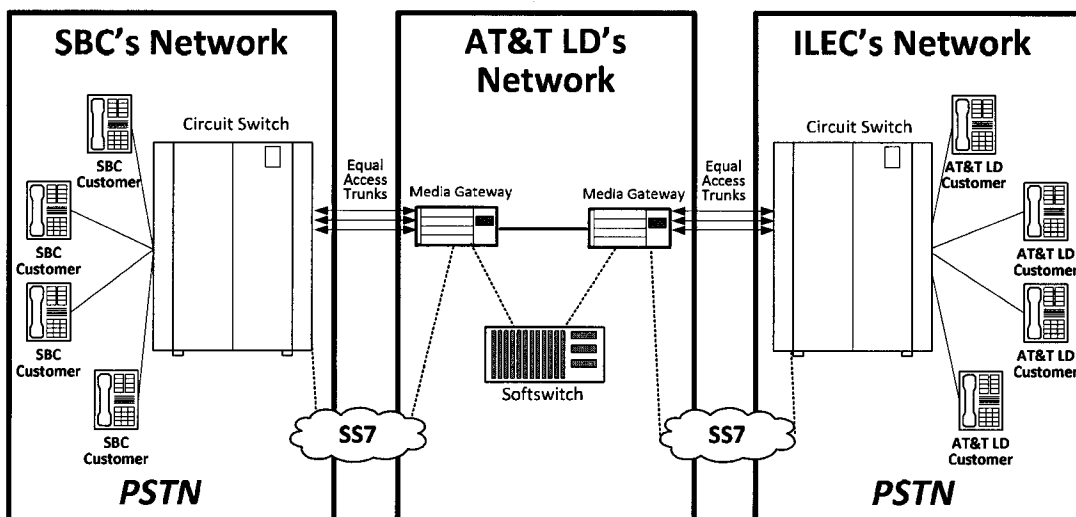
18 A. No, but Big River provided that information in the NIT meetings and NIS forms
19 submitted as described above. Accordingly, there is no basis for Mr. Neinast's
20 misunderstanding.

21 **Q. DOES MR. NEINAST'S ANALYSIS CONTAIN ANY FURTHER ERRORS?**

1 A. Yes, Mr. Neinast then draws an erroneous conclusion that Big River's network is
2 'nothing more than "IP in the middle" traffic' [Neinast Direct P.5, L.17] which is based
3 on his erroneous comparisons of Big River's network to that of AT&T Corp. (prior to
4 its merger with SBC Communications, Inc.) He then uses his misguided conclusion in
5 a legal argument why Big River's traffic is not enhanced. His whole argument is based
6 on erroneous facts.

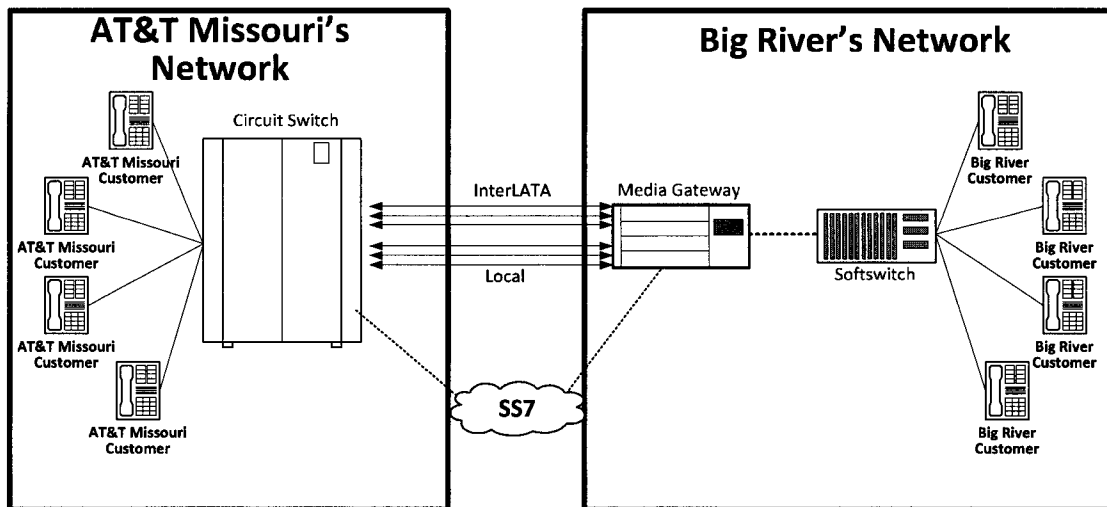
7 I have provided a high level illustration of AT&T Corp. long distance network
8 that was the subject of the cases cited in Mr. Neinast's testimony. One can readily see
9 that in the AT&T Corp. network, a typical long distance operator, AT&T Corp. had to
10 connect to its customers (on the right, in Illustration 1, below) via equal access
11 connections to the PSTN. It is also evident that there are two conversions, as Mr.
12 Neinast suggested, and AT&T Corp. is logically 'in the middle' of the two PSTN
13 connections.

Illustration 1



1 In comparison, I have also provided a high level illustration of the relationship
2 between Big River's network and AT&T Missouri's network, (in Illustration 2, below).
3 As one can see, there are two networks involved in the exchange of traffic; from Big
4 River's customers (on the right) to AT&T Missouri customers (on the left). Thus, there
5 is only one conversion to TDM to the single exchange with the PSTN (in this case,
6 AT&T's network), not the two conversions as indicated by Mr. Neinast.

Illustration 2



7
8 There is a clear difference from the AT&T Corp. network to which Mr. Neinast
9 compared Big River's network which is readily apparent in comparing the two
10 illustrations. Further, while the AT&T Corp. network is 'in the middle' as illustrated
11 above, it is clear that Big River's network is not 'in the middle' of any networks. Since
12 Big River directly connects to its customers, providing a full suite of services, there is
13 neither a second PSTN connection, nor a second conversion as Mr. Neinast incorrectly

1 suggests.

2 Mr. Neinast's understanding of Big River's network is flawed and his
3 conclusions are incorrect.

4 **Q. DOES MR. GREENLAW HAVE A SIMILAR MISUNDERSTANDING OF BIG**
5 **RIVER'S NETWORK?**

6 A. Yes. In Mr. Greenlaw's testimony, he describes "calls from Big River's customers to
7 AT&T Missouri's customers that originate and terminate on the PSTN, just as
8 telephone calls have for decades" [Greenlaw Direct P.6, L.15] and concludes that Big
9 River's traffic is not enhanced. First, while I have just gone through and shown the
10 flaws in Mr. Neinast's analysis of the traffic flow and the errors upon which he based
11 his conclusions, there is nothing in Mr. Greenlaw's testimony that explains how he
12 came to the conclusion on page 6 of his testimony that the traffic "from Big River's
13 customers to AT&T Missouri's customers...originate and terminate on the PSTN".
14 There are no facts, no references, no traffic analysis, no network analysis; nothing to
15 rebut other than Mr. Greenlaw's unsubstantiated claim. While Mr. Greenlaw did not
16 credit Mr. Neinast's testimony for this observation, if he had done so, Mr. Greenlaw's
17 observation is wrong for the reasons I indicated regarding Mr. Neinast's analysis.

18 Second, Mr. Greenlaw is a 'marketing' expert, I presume. He analyzed
19 websites, customer agreements and tariffs for evidence that Big River's offerings would
20 be considered enhanced services. I am unaware of any technical basis to rely on the
21 opinion of an individual with Mr. Greenlaw's marketing background for an assessment

1 of the technical workings of a sophisticated telecommunications network. Further,
2 neither I nor any of Big River's network interconnection staff members have ever met
3 or communicated with Mr. Greenlaw about the way Big River interconnects its network
4 with other networks. Mr. Greenlaw's conclusion that Big River's traffic originates and
5 terminates on the PSTN is baseless.

6 **Q. MR. GREENLAW PROVIDES EVIDENCE THAT BIG RIVER HAS A**
7 **SIGNIFICANT TELECOMMUNICATIONS SERVICES BUSINESS AND**
8 **CONCLUDES BIG RIVER OFFERS VARIOUS TYPES OF**
9 **TELECOMMUNICATIONS SERVICES TO ITS CUSTOMERS PURSUANT**
10 **TO ITS TARIFF FILED WITH THE MISSOURI PSC. IS THIS ACCURATE?**

11 A. Yes, and because of the terms of our Interconnection Agreement, I don't know why Mr.
12 Greenlaw went to such lengths to draw such a conclusion.

13 **Q. WHAT DO YOU MEAN?**

14 A. In Paragraph 2.1.1 of the Definition Appendix to the General Terms and Conditions of
15 our ICA with AT&T, Big River represented and warranted to AT&T that Big River is a
16 telecommunications carrier certified by the Missouri Commission to provide local
17 exchange service. We further warranted that we would notify AT&T as soon as
18 reasonably practical if Big River ceased to be so certificated and failure to notify
19 AT&T would constitute a material breach of the Interconnection Agreement. This
20 representation and warranty was a requirement of AT&T. So, it seems that Mr.

1 Greenlaw conducted his entire analysis of Big River's website, marketing documents
2 and tariffs to come to a conclusion that Big River represented and warranted to AT&T
3 as part of our Interconnection Agreement.

4 **Q. IS BIG RIVER STILL IN COMPLIANCE WITH THAT PROVISION OF THE**
5 **ICA?**

6 A. Yes. We have continually been certificated as a telecommunications provider in the
7 state of Missouri since the execution of our ICA with AT&T.

8 **Q. DOES BIG RIVER PROVIDE INTERCONNECTED VOICE OVER INTERNET**
9 **PROTOCOL SERVICE AS ALLEGED BY AT&T?**

10 A. No. I understand that in order to provide interconnected voice over Internet protocol
11 service in the state of Missouri, Big River would have to submit an application to the
12 Missouri Public Service Commission ("Commission") to operate as such. Big River
13 has never submitted such an application and has never been granted registration as an
14 interconnected voice over Internet protocol service provider by the Commission. Big
15 River has not sought such a registration because Big River does not provide
16 interconnected voice over Internet protocol services. Big River has continuously
17 provided service pursuant to its certificate of service authority granted by the
18 Commission in August 2001, which is in conformance with the provisions of Big
19 River's ICA with AT&T. As Mr. Jennings has testified, we have told AT&T that Big
20 River is not an interconnected voice over Internet protocol service provider [Jennings

1 Direct P.7, L.11].

2 Of course, Mr. Greenlaw further confirmed our status as a telecommunications
3 carrier through the annual reports we are required to file with the Commission. The
4 fact that he seemed surprised by the contents of our annual reports is somewhat
5 perplexing given the representation and warranty that we were required to make as part
6 of our ICA with AT&T, in addition to the fourth "WHEREAS" clause on page 1 of the
7 ICA and the first paragraph of the Introduction on page 2 of the ICA. All of these
8 indicate that the ICA is for the exchange of telecommunications traffic, as well as of
9 course, for the exchange of enhanced services traffic as outlined in paragraph 13.3 of
10 Attachment 12 of the ICA.

11 Further, Mr. Greenlaw seems confused that Big River is providing
12 telecommunications services and enhanced services simultaneously. We believe that
13 AT&T's requirement for us to be a telecommunications carrier, subject to a continuous
14 representation and warranty by Big River to that fact, while simultaneously requiring us
15 to report the percent of our traffic which is enhanced, indicates to both parties that
16 either party would be providing both telecommunications services of which some
17 percentage is enhanced, and some percentage may not be enhanced, thus the Percent
18 Enhanced Usage ("PEU") factor outlined in paragraph 13.3 of Attachment 12 of the
19 ICA. If a telecommunications provider cannot provide enhanced services, as Mr.
20 Greenlaw appears to believe, there would be no reason to include such a provision be in
21 the ICA.

1 **Q. DO YOU HAVE ANY OTHER OBSERVATIONS RELATIVE TO MR.**
2 **GREENLAW'S DIRECT TESTIMONY?**

3 A. Yes. Mr. Greenlaw provides a summary of AT&T's complaint and the relief AT&T is
4 seeking. I had read AT&T's Complaint upon its submission, so I was taken aback
5 when I read Mr. Greenlaw's summary of the relief AT&T is seeking. Mr. Greenlaw
6 added another remedy in his testimony, not contained in AT&T's Complaint:

7 (d) Find that if the access charges outlined in (a), (b), and (e) above
8 are not immediately cured, AT&T Missouri is excused from
9 further performance under the ICA, may suspend Big River's
10 ability to submit requests for additional service, may suspend
11 provisioning of all pending orders; and, may terminate the ICA;
12 [Greenlaw Direct P.23, L.20]

13 Of course, I immediately noticed the addition made by Mr. Greenlaw. His request is
14 what I refer to as 'the nuclear option'. The additional remedy included in Mr.
15 Greenlaw's testimony is anti-competitive and I don't believe is warranted given the
16 facts in this case.

17 **Q. WHAT DO YOU MEAN ANTI-COMPETITIVE?**

18 A. Big River relies on its ICA with AT&T to operate its business. Without access to the
19 capabilities afforded Big River in the ICA, Big River would be driven out of business.
20 Simply without the ability to exchange traffic with AT&T, Big River's customers
21 would not be able to call AT&T's customers and vice versa. AT&T still has the
22 majority of the telecommunications market share in the areas where Big River operates;
23 cutting off the capability for Big River's customers to communicate with AT&T's

1 customers would essentially render Big River's services useless.

2 AT&T is well aware that if Big River were to stop operating, the majority of our
3 customers would go back to AT&T for service. Moreover, their dominant position in
4 the market affords them the ability to make such a request. Conversely, it would be
5 corporate suicide for Big River to come to the Commission for any reason, and request
6 the Commission to allow it to terminate its ICA with AT&T.

7 AT&T is leveraging its dominant position in the marketplace and attempting to
8 destroy the business of one of its competitors. For that reason, I believe AT&T's
9 request for the relief outlined by Mr. Greenlaw to be anti-competitive. For that reason
10 alone, I believe AT&T's request to terminate the ICA should be rejected.

11 **Q. YOU MENTIONED THAT YOU BELIEVE AT&T'S REQUEST, FOR WHAT**
12 **YOU DESCRIBED AS 'THE NUCLEAR OPTION', AS OUTLINED BY MR.**
13 **GREENLAW IS UNWARRANTED. PLEASE EXPLAIN.**

14 In Mr. Greenlaw's testimony, he was asked 'HOW SHOULD THE COMMISSION
15 RULE WITH RESPECT TO AT&T MISSOURI'S COMPLAINT?' While the fact
16 that he was asked and responded to such a question, which is the principal issue in this
17 case, raises fundamental questions as to the purpose and appropriateness of his
18 testimony, he nonetheless responded that the 'Commission should find that Big River
19 has breached the parties' ICA'. His request is unfounded for a variety of reasons.
20 First, Big River has not breached the ICA and no AT&T witness has provided any
21 evidence of such a breach. On the contrary, Mr. Greenlaw himself acknowledged that

1 Big River properly followed the billing dispute procedure set forth in the ICA. Second,
2 AT&T did not include any claim or request any finding in their Complaint that Big
3 River had breached the ICA. Third, the ICA contains provisions for the termination of
4 the ICA pursuant to a material breach, but requires notice to the other party of the
5 breach. AT&T has not provided any notice to Big River of any breach of the ICA.

6 Most importantly, in his testimony, Mr. Greenlaw erroneously concludes that
7 Big River refused to comply with the payment obligations under the ICA [Greenlaw
8 Direct P.18, L.32]. He is wrong. The ICA clearly indicates that a billed party is to 'pay
9 all Undisputed Unpaid Charges to the Billing Party'. Big River has disputed the
10 charges at subject in this case. Per the ICA, disputed amounts need not be paid until
11 the dispute is resolved. Mr. Greenlaw acknowledged this fact in his direct testimony
12 [Greenlaw Direct P.17, L.9].

13 Mr. Greenlaw however, then makes another factual error relative to our dispute.
14 In his testimony, he states that 'In this case, Big River was not satisfied with the
15 outcome of the dispute' [Greenlaw Direct P.18, L.30]. I don't know what Mr.
16 Greenlaw means by 'this case' because he then refers to an 'outcome'. The charges
17 billed by AT&T have been disputed from the outset and have been in dispute ever
18 since. Again, I don't know Mr. Greenlaw and as I have indicated earlier, neither I or
19 any of the Big River staff members remotely involved with this issue have had any
20 direct communication with him, so I am unaware of how he has any direct knowledge
21 of the facts to which he has testified here which probably accounts for him being wrong

1 on so many key facts in his testimony.

2 It seems clear to me that if AT&T really believed these disputed charges were
3 legitimately billed, they would have pursued the next steps laid out in the dispute
4 resolution process outlined in Section 13.5 of the ICA. AT&T did not. Instead, AT&T
5 threatened to unilaterally refuse Big River's requests for additional service and to
6 suspend provision on all pending orders. The ICA does not allow AT&T that option
7 with regard to unpaid amounts in dispute. AT&T's threat was clearly in violation of
8 the ICA. Only after Big River sought protection from the Commission due to AT&T's
9 threats did AT&T pursue a resolution to this dispute. AT&T was prepared to breach
10 the ICA and was prevented to do so when Big River was forced to escalate the issue to
11 the Commission. Big River has not breached the ICA and should not be found to have
12 done so, as Mr. Greenlaw has erroneously suggested.

13 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**


14 **A.** Yes.

STATE OF MISSOURI
COUNTY OF ST. LOUIS

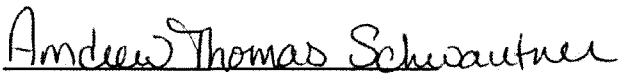
)
) SS.
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VERIFICATION

Gerard J. Howe, being duly sworn upon his oath deposes and states that he is the Chief Executive Officer of Big River Telephone Company, LLC, that he has prepared and reviewed the foregoing, *Rebuttal Testimony*, and that the statements contained therein are true and correct to the best of his knowledge, information and belief.


Gerard J. Howe

Subscribed and sworn to before me, a Notary Public, this 19th day of October, 2012.


Notary Public

My Commission Expires:

5/31/2014

ANDREW THOMAS SCHWANTNER
Notary Public - Notary Seal
STATE OF MISSOURI
Jefferson County
Commission Number 10893876
My commission expires May 31, 2014