

**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 RESPONSE TO ORDER DIRECTING FILING

COMES NOW AT&T Missouri,¹ and hereby submits its response to the Commission’s September 7, 2007 Order Directing Filing (“Order”). The Order directed that each party file a pleading addressing four questions.²

1. The first question is: “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?”

Answer: AT&T Missouri is not asking that the Commission enforce or interpret the LWC agreement, because the Commission lacks subject matter jurisdiction over a non-Section 251/252

¹ Southwestern Bell Telephone Company (f/k/a Southwestern Bell Telephone, L.P.) d/b/a AT&T Missouri (“AT&T Missouri”).

² The Commission’s Order states that the parties failed to file a List of Issues and that no issues other than those indicated by Big River were proposed. Order, pp. 1, 2. The parties endeavored to come to agreement regarding the List of Issues and submit them jointly in a pleading prepared by Staff. Ultimately, while AT&T Missouri and Big River Telephone LLC (“Big River”) could not come to such agreement, Staff nevertheless presented the List of Issues submitted by each of the two companies. *See*, Proposed List of Issues, List of Witnesses, Order of Cross-Examination, and Order of Opening Statements, filed August 31, 2007. AT&T Missouri presented the following single issue: Do the rates in the interconnection agreement for Section 271 switching and Section 251 loops, or do the rates in the Local Wholesale Complete agreement for basic analog service (loops with switching), apply to Big River Telephone for its existing customers?” *Id.*, p. 2.

agreement. While Big River referenced the LWC in its Complaint (e.g., ¶¶ 12, 18) and AT&T Missouri responded to Big River's claims, the LWC relates to non-Section 251/252 products and/or services. To the extent Big River's claims are based upon its understanding of the provisions of its 251/252 interconnection agreement and/or associated relevant Commission orders, the Commission has jurisdiction to interpret and enforce the interconnection agreement and those orders, unless precluded by the September 14, 2006, Declaratory Judgment and Permanent Injunction, and Memorandum and Order, entered by the Federal District Court for the Eastern District of Missouri in Southwestern Bell Telephone, L.P. d/b/a SBC Missouri v. Missouri Public Service Commission, 461 F. Supp. 1055 (E.D. Mo. 2006). A proceeding before the Commission is not the appropriate forum for questions relating to the enforcement and/or interpretation of the LWC agreement. Therefore, the Commission should dismiss Big River's claim insofar as it relates to enforcement/interpretation of the LWC.

2. The second question is: "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?"

Answer: The Commission cannot grant Big River the relief it requests, due to the September 14, 2006, Declaratory Judgment and Permanent Injunction, and Memorandum and Order, entered by the Federal District Court for the Eastern District of Missouri in Southwestern Bell Telephone, L.P. d/b/a SBC Missouri v. Missouri Public Service Commission, 461 F. Supp. 1055 (E.D. Mo. 2006). As AT&T Missouri explained in its Position Statement filed on September 7, 2007 (at pp. 2-3), despite the CLECs' subsequent appeal of the Federal Court's ruling, that ruling has not been stayed, and must therefore be obeyed. The Memorandum and Order provides, among other things, as follows:

IT IS FURTHER ORDERED that the Missouri Public Service Commission's Arbitration Order dated July 11, 2005 is contrary to federal law and preempted to the extent that it orders 47 U.S.C. § 271 unbundling obligations to be included as part of Southwestern Bell Telephone, L.P.'s interconnection agreements arbitrated pursuant to 47 U.S.C. § 252, including the requirements that SBC (1) fill new orders for unbundled local switching or the network elements which together comprise the UNE-P Platform , and (2) continue offering unbundled access to de-listed network element. (p. 56)

3. The third question is: "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?"

Answer: The LWC does not address any duties prescribed by Section 251 of the federal telecommunications Act of 1996 ("the Act"), nor does it affect any of the legal obligations under the parties' interconnection agreement, all of which obligations remain enforceable to the extent permitted under federal law. Rather, the LWC establishes "the rates, terms and conditions under which [AT&T Missouri] agrees to provide [Big River] certain non-251/252 telecommunications-related products and/or services." *See*, Commercial Agreement, General Terms and Conditions, Section 1.1. In their LWC, Big River and AT&T Missouri expressly "acknowledge[d] and agree[d] that the provisions set forth in this Agreement are not subject to and/or required by the Communications Act of 1934, as amended, ("Act") including without limitation, Sections 252/252 of the Telecommunications Act of 1996 and any regulation or rule of the FCC or any state commission, and are not subject to negotiation or arbitration under Section 252 of the Act" *Id.*

4. The fourth question is: "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)."

Answer: Not applicable, given the answer to question 3, above.

WHEREFORE, AT&T Missouri respectfully submits the foregoing answers to the questions presented by the Commission's Order Directing Filing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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