

**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.)	

**STAFF’S RESPONSE TO AT&T MISSOURI’S MOTION TO DISMISS COMPLAINT;
AND STAFF’S MOTION TO STAY PROCEEDINGS**

COMES NOW the Staff of the Missouri Public Service Commission and for its pleading states:

1. On August 23, 2006, Big River Telephone Company, LLC, filed a Complaint against Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri (formerly known as SBC), alleging that AT&T Missouri had charged Big River amounts for local switching and loops beyond the rates set forth in a Commission-approved interconnection agreement. AT&T Missouri filed an Answer and a Motion to Dismiss on September 26.¹ In its Motion to Dismiss, AT&T Missouri asserts that a recent federal court order ruled that the Commission had no jurisdiction to impose Section 271 requirements upon AT&T Missouri in the arbitration proceeding and that, therefore, the Commission has no authority to grant Big River the relief it seeks.²

¹ Paragraph 12 of Big River’s Complaint and Paragraph 12 of AT&T Missouri’s Answer state that Big River and AT&T Missouri entered into a Local Wholesale Complete agreement in February 2006. This agreement was not provided to the Staff or Commission.

² Section 271 of the federal Telecommunications Act of 1996 (the Act) sets forth the conditions for a Bell operating company (here AT&T Missouri) to provide interLATA services. 47 U.S.C. Section 271.

2. On September 27, 2006, the Commission ordered Staff and Big River to respond to AT&T Missouri's Motion to Dismiss no later than October 10, 2006.

3. The U.S. District Court for the Eastern District of Missouri entered its (1) Declaratory Judgment and Permanent Injunction and (2) Memorandum and Order in *Southwestern Bell Telephone, L.P. d/b/a SBC Missouri v. The Missouri Public Service Commission, et al.*, No. 4:05-CV-1264CAS, on September 14, 2006. The Court reversed, in part, and affirmed, in part, the Commission's Arbitration Order in Case No. TO-2005-0336. The Court concluded that the Commission lacks the jurisdiction to order Section 271 unbundling obligations to be included as a part of an interconnection agreement arbitration pursuant to Section 252;³ that the Arbitration Order conflicts with federal law to the extent that it requires SBC to provide unbundled access to switching and the UNE platform; and that the Commission lacks jurisdiction to require the inclusion, in SBC's interconnection agreement, of other network facilities no longer required under Section 251.⁴ The Court permanently enjoined the Commission from enforcing the Arbitration Order, "as well as related orders approving interconnection agreements between Southwestern Bell Telephone, L.P. and each CLEC defendant, to the extent that they require Southwestern Bell Telephone, L.P. to (1) fill new orders for unbundled local switching or the network elements which together comprise the UNE Platform, and (2) continue offering unbundled access to de-listed network elements."

4. Big River's Complaint prays the Commission to, *inter alia*, "issue an order directing AT&T not to take any steps to alter or terminate local switching and/or loop services or

³ Section 252 of the Act sets forth procedures for interconnection agreements to be arrived at through negotiation and arbitration. 47 U.S.C. Section 252.

⁴ Section 251 of the Act requires on incumbent local exchange carrier (here AT&T Missouri) to provide access to unbundled network elements where the failure to provide access would impair the ability of another telecommunications carrier to provide services. 47 U.S.C. Section 251.

billing arrangements to Big River, until further order of the Commission;” and “after further proceedings herein, determine that Big River does not owe any of the additional amounts imposed by AT&T for local switching and loops beyond the rates set forth in the approved interconnection agreement, including any late charges, and accordingly direct AT&T to revise its invoices.”

5. The Staff agrees that, under the current posture of the court case, the Commission lacks authority to enforce the Section 271 requirements included in the Arbitration Order.

6. Although the District Court’s orders are in force, those orders are not final. Parties have 30 days to file a notice of appeal after a district court’s judgment or order is entered. Federal Rule of Appellate Procedure 4.

7. Accordingly, the Staff suggests that the Commission should stay the proceedings in this case pending a final non-appealable court order.

WHEREFORE, the Staff requests a stay of proceedings in this case.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 10th day of October 2006

/s/ William K. Haas