

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Big River Telephone Company, LLC,)	
)	
Complainant,)	
)	Case No. TC-2012-0284
v.)	
)	
Southwestern Bell)	
Telephone, L.P., d/b/a)	
AT&T Missouri,)	
)	
Respondent.)	

AT&T MISSOURI'S POSITION STATEMENT

Southwestern Bell Telephone Company, d/b/a AT&T Missouri ("AT&T")¹ respectfully submits its Position Statement, in accordance with the Commission's August 20 Order.²

AT&T's position with respect to the two agreed-upon issues presented in the case is as follows:

Issue No. 1: Should the traffic which Big River has delivered to AT&T Missouri over the local interconnecting trunks for termination, and for which AT&T Missouri has billed Big River access charges since January, 2010 under Billing Account Number 110 401 0113 803 ("BAN 803"), be classified as interconnected VoIP traffic, enhanced services traffic, or neither?

The traffic which Big River has delivered to AT&T for termination, and for which Big River has not paid applicable access charges to AT&T under BAN 803 for almost three years, is interconnected Voice over Internet Protocol ("I-VoIP") traffic. Because the parties amended their interconnection agreement ("ICA") to make access charges specifically applicable to I-VoIP traffic, the question of whether Big River's traffic may constitute enhanced services traffic

¹ Southwestern Bell Telephone Company was formerly known as Southwestern Bell Telephone, L.P. See, June 26, 2007 Order entered in Case No. TO-2002-185.

² See, Order Setting Procedural Schedule and Establishing Additional Procedural Requirements ("Order"), at 3 ("Each party shall file a simple and concise statement summarizing its position on each disputed issue.").

is moot. In any case, the various features which Big River makes available to its customers do not, contrary to Big River's claim, make Big River's traffic enhanced services traffic.

The parties specifically amended their ICA to provide that "[t]he Parties shall exchange interconnected voice over Internet protocol service traffic, as defined in Section 386.020 RSMo, subject to the appropriate exchange access charges to the same extent that telecommunications services are subject to such charges."³ Among other evidence AT&T will present are the admissions of Big River that Big River provides service that constitutes I-VoIP service. Big River partners with cable companies to provide telephone service in Internet Protocol format over the cable companies' "last mile" facilities, and in some cases uses DSL (broadband service provided over "last mile" telephone facilities) to provide telephone service in IP format. Big River's customers have IP-compatible customer premises equipment, use a broadband connection, engage in two-way voice communications, can make voice telephone calls to people who are served on the public switched telephone network ("PSTN"), and can receive calls from persons calling from the PSTN. As Staff has correctly concluded, this service is I-VoIP service.

Big River's suggestion that its telephone service is not I-VoIP service because it has not registered with the Commission is a *non sequitur*. And, Big River's belated suggestion (in Mr. Howe's surrebuttal testimony) that its traffic is not I-VoIP because its service does not "require" a broadband connection of 200kbps must be rejected. It is untimely, given that Mr. Howe stated no such position in his earlier deposition, and it otherwise is inconsistent with Big River's actual

³ Section 386.020(23), RSMo, defines "Interconnected voice over internet protocol service" as a:

service that: (a) Enables real-time, two-way voice communications; (b) Requires a broadband connection from the user's location; (c) Requires internet protocol-compatible customer premises equipment; and (d) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

service offering. Big River's service is targeted to, and designed for, customers using a broadband connection (whether DSL or cable broadband), and Big River has provided no evidence that it provides its VoIP service to any customers that do not use a broadband connection (that is, over a dial-up connection). That is sufficient to make its VoIP service an I-VoIP service, whether or not the service would continue to work if its customers purposely, as did Big River, ratcheted the speed of the broadband connection down to 40 kbps from its proper operating speed.⁴

Accepting Big River's suggestion would also have massive ramifications to the various "programs" supported by VoIP service providers who could likewise argue that their own services are not I-VoIP because they do not "require" a broadband connection. Such a view, if adopted by the Commission, would likely gut Section 392.550, RSMo, allowing I-VoIP providers throughout the state to avoid the statute (and its various taxing and funding requirements for business licensing, universal service, 911, Telecommunications Relay Service and Commission assessments) on the theory that their service will likewise continue to work if a customer's broadband connection were ratcheted down to sub-200 kbps speeds. It would also threaten public safety, as the FCC's 911 rules apply only to interconnected VoIP providers, and not other VoIP providers.⁵

A finding that Big River's service is I-VoIP service moots the issue of whether it is enhanced service. In any event, Big River's assertions that various features available to Big River's customers make Big River's service enhanced must be rejected. Some, like incoming faxes (as one example) do not apply at all to this case (which concerns calls made by Big River

⁴ In explaining that I-VoIP "service requires a broadband connection from the user's location," the FCC has noted that "[w]hile we recognize that some kinds of VoIP service can be supported over a dialup connection, we expect that most VoIP services will be used over a broadband connection." See *In the Matters of IP-Enabled Services*, 20 FCC Rcd 10245, 2005 WL 1323217, ¶ 24 & n.76 (2005).

⁵ 47 C.F.R. Section 9.5.

customers, not faxes or other calls received by them). And under the pertinent FCC orders, the features described by Big River simply are incidental to Big River's voice telephone service. Stated another way, they are not sufficiently integrated with Big River's telephone service to convert it into an enhanced service.

Issue No. 2: What charges, if any, should apply to the traffic referenced in Issue No. 1?

The Commission should find that the charges applicable to this traffic are those which have been billed to Big River under BAN 803 for almost three years. Through the August 2012 billing cycle, these charges are a total of \$350,637.60 (excluding amounts billed thereafter and applicable late charges). AT&T's testimony presents a month-by-month summary of the access charges that AT&T billed beginning in 2010. Big River does not dispute that this is the amount sought by AT&T, nor does Big River dispute that this amount reflects the total of the access charges that were billed monthly by AT&T and that Big River refused to pay.

Instead, Big River has claimed in testimony that the accuracy of AT&T's bills is questionable and that AT&T should be required to provide Big River additional call detail. Big River's "billing accuracy" argument should be rejected. Even if Big River's claim were correct (and it is not), AT&T's position is that Big River is legally precluded from asserting it before the Commission in this proceeding. First, it is beyond the scope of the pleadings, because Big River's Complaint does not place in issue or at all challenge the calculation or accuracy of the charges billed by AT&T under BAN 803.⁶ Instead, the Complaint raises but a single issue: whether 100% of Big River's traffic is "enhanced services" traffic that is entirely *exempt* from

⁶ Missouri law and the Commission's rules are clear that the issues to be adjudicated in a case are those which are framed by the facts alleged in the complaint and in the defenses to the complaint. *See, e.g.*, Mo. Civ. Pro. Rule 55.05; 4 CSR 240-2.070(4), (9).

access charges. This is no surprise, as Big River has maintained from the outset of this dispute that it is entirely exempt from the charges AT&T has billed to Big River.

Second, the argument is precluded by the terms of the parties' ICA. Under the ICA, Big River is required to specifically identify to AT&T the basis for any dispute of the charges billed by AT&T. The only basis identified by Big River when it disputed AT&T's bills was that it is purportedly exempt from access charges. Big River did not dispute AT&T's bills on the ground that AT&T had incorrectly calculated any of the charges, and the ICA does not permit Big River to raise any such dispute now.

Big River's testimony that AT&T failed to provide "sufficient supporting detail" warrants no sympathy. Big River requested call details for just one month over the almost three years of billings and, when it was provided detail for a portion of a month, Big River never followed up on the matter thereafter. AT&T's testimony establishes that there was no further communication from Big River directed to AT&T Missouri, and Big River's witnesses do not claim otherwise.

Finally, it is too late for Big River to challenge the accuracy of AT&T's bills. The parties' ICA provides that no claims can be brought for disputes more than 24 months from the date on which the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention. In the exercise of due care and attention to the monthly billing statements that AT&T Missouri provided to Big River, any claim as to the accuracy of AT&T's bills could and should have been made as early as February of 2010, but they were not. As a result, such a claim is now barred.

In conclusion, AT&T respectfully submits its Position Statement for the Commission's consideration in this proceeding.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY 

ROBERT J. GRYZMALA

#32454

LEO J. BUB

#34326

Attorneys for Southwestern Bell Telephone Company,
d/b/a AT&T Missouri

One AT&T Center, Room 3520

St. Louis, Missouri 63101

314-235-6060 (Telephone)/314-247-0014 (Facsimile)

robert.gryzmala@att.com

Hans J. Germann (admitted *pro hac vice*)

Mayer Brown LLP

71 S. Wacker Drive

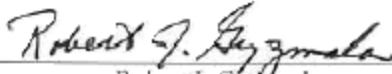
Chicago, IL 60606

312-782-0600 (Telephone)/312-701-7711 (Facsimile)

HGermann@mayerbrown.com

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on December 21, 2012.


Robert J. Gryzmala

John Borgmeyer
General Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City, Mo 65102
GenCounsel@psc.mo.gov
john.borgmeyer@psc.mo.gov

Lewis Mills
Public Counsel
Office of the Public Counsel
PO Box 7800
Jefferson City, MO 65102
opcservice@ded.mo.gov

Brian C. Howe #36624
Big River Telephone Company, LLC
12444 Powerscourt Drive, Suite 270
St. Louis, Missouri 63131
Email: bhowe@bigrivertelephone.com