

**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 RENEWED
MOTION TO DISMISS COMPLAINT**

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

1. On August 23, 2006, Big River Telephone Company, LLC, (hereinafter “Big River”) filed a complaint against Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri (hereinafter “AT&T Missouri”), 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. Big River and the Commission’s Staff (hereinafter “Staff”) requested that the Commission stay these proceedings pending appeal of the federal district court order reversing the Commission’s interconnection agreement order.

2. On January 2, 2008, AT&T Missouri renewed a motion to dismiss pending before the Commission. AT&T Missouri states that it has prevailed in the federal litigations against Big River and the Commission, which means that the Commission must dismiss Big River’s Petition.

3. Although the Staff agrees that the federal litigation determined that the Commission lacked authority to require AT&T Missouri to provide section 271 elements to a requesting carrier such as Big River, the Staff suggests, however, that AT&T Missouri’s motion

should be denied. The Staff suggests that one issue remains: Do the rates in the interconnection agreement or do the rates in the Local Wholesale Complete agreement apply to AT&T Missouri's provision of switching and loops to Big River's existing customers (served as 12/31/2005) from 1/1/2006 to 3/11/2006? *See Proposed List of Issues, List of Witnesses, Order of Cross-Examination, and Order of Opening Statements* filed by Staff on August 31, 2007, Paragraph 2, Issue I.

4. In the Triennial Review Remand Order, the Federal Communications Commission established a transition plan requiring competitive LECs to convert their mass market customers to an alternative service arrangement within twelve months of the effective date of the Order. The Order established the rate for unbundled local circuit switching during the transition period at the higher of (1) the rate at which the requesting carrier leased UNE-P on June 15, 2004 plus one dollar, or (2) the rate the state public service commission establishes, if any, between June 16, 2004, and the effective date of the Order, for UNE-P plus one dollar. The Order provides, "Of course, the transition mechanism adopted here is simply a default process, and pursuant to section 252(a)(1), carriers are free to negotiate alternative arrangements superseding this transition period." *In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Order on Remand, rel. February 4, 2005, §§ 226-28.*

5. The transition plan envisioned by TRRO is addressed in the Remand Order Embedded Base Temporary Rider of the parties' interconnection agreement. Section 2.2 at page 227 provides that "during the applicable transition period, the price for the embedded base Mass Market ULS or Mass Market UNE-P shall be the higher of (A) the rate at which CLEC obtained such Mass Market ULS/UNE-P on June 15, 2004 plus one dollar, or (B) the rate the applicable

state Commission established(s), if any, between June 16, 2004, and March 11, 2005, for such Mass Market ULS/UNE-P, plus one dollar.” Section 2.1 at page 226 provides for the transitional period of time to end upon the earlier of:

- (a) CLEC’s disconnection or other discontinuance [except Suspend/Restore] of use of one or more of the Mass Market ULS Element(s) or Mass Market UNE-P;
- (b) CLEC’s transition of a Mass Market ULS Element(s) or Mass Market UNE-P to an alternative arrangement; or
- (c) March 11, 2006.

6. In February 2006, Big River and AT&T Missouri entered into a local Wholesale Complete (LWC) agreement with an effective date of January 1, 2006. Big River takes the position that the LWC rates did not apply to existing customers (Howe Direct Testimony, pp. 12-13). AT&T Missouri takes the position that the LWC rates applied to existing customers beginning with the effective date of the LWC agreement (White Rebuttal Testimony, pp. 4-6). The Staff also takes the position that the LWC rates applied to existing customers as of the effective date of the LWC agreement (McKinnie Rebuttal Testimony, pp.3-6).

7. In summary, the issue of what rates applied from January 1, 2006 through March 11, 2006 remains unresolved. In other words, did Big River transition its mass market customers to an alternative arrangement as of January 1, 2006, or as of March 11, 2006?

WHEREFORE, the Staff requests the Commission to deny AT&T Missouri’s Motion to Dismiss.

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 6th day of February 2009.

/s/ William K. Haas