

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

BIG RIVER TELEPHONE	)	
COMPANY, LLC,	)	
	)	
Complainant,	)	
	)	
V.	)	Case No.
	)	
SOUTHWESTERN BELL	)	
TELEPHONE, L.P. D/B/A	)	
AT&T MISSOURI,	)	
	)	
Respondent.	)	

**COMPLAINT**

Comes Now Big River Telephone Company, LLC ("Big River") pursuant to Sections 386.040, 386.230, 386.250, 386.310, 386.320, 386.330, 386.390, 386.400 R.S.Mo., Sections 392.200.1 and .6, 392.240.2 and .3, and 392.400.6 R.S.Mo., the Telecommunications Act of 1996 (the "Act") and FCC regulations and orders issued pursuant thereto, and Missouri Public Service Commission ("Commission") Rule 4 CSR 240-2.070 and, for its Complaint against Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri ("AT&T"), states to the Commission:

Big River seeks relief from unlawful, abusive and anticompetitive practices by AT&T regarding local switching provided together with local loops. AT&T has imposed charges in violation of, and repeatedly asserted that it intends to ignore the provisions of, its Commission-approved interconnection agreement with Big River that requires it to provide local switching pursuant to billing arrangements under Section 271 of the Act together with local loops pursuant to billing arrangements under Section 251 for use in serving Big River's existing customers. AT&T has repeatedly asserted that it intends to convert such local switching and loops from the

terms and conditions of the approved interconnection agreement to the terms and conditions of an unapproved "Local Wholesale Complete" (LWC) agreement that was expressly executed by Big River solely to apply to new customers for so long as a federal court injunction prevents the provisions of the approved interconnection agreement from applying to such new customers. AT&T seeks to convert such arrangements solely to impose rates higher than those approved by the Commission, as there is no physical difference or change in the facilities at issue. In dollar terms, AT&T has sought to reach back to January 1, 2006 and unilaterally increase charges to Big River for local switching and loops by nearly \$139,000 through the July 2006 invoice and an estimated \$22,000.00 per month thereafter, as well as late payment charges. AT&T has compounded its unlawful conduct by threatening to discontinue provision of local switching to Big River (which in turn would result in total disruption of Big River's services to its customers), although it has retracted such threats. Big River has attempted to resolve this matter directly with AT&T, without success. Accordingly, Big River herein seeks resolution of this dispute by the Commission as provided in the interconnection agreement.

## **PARTIES**

1. Big River is a competitive facilities-based telecommunications limited liability company duly organized and existing under and by virtue of the laws of the State of Delaware and authorized to do business in the State of Missouri as a foreign corporation. Its principal Missouri offices are currently located at 24 S. Minnesota Ave., Cape Girardeau, Missouri 63703, Telephone Number: (573) 651-3373, Fax Number: (573) 651-3605, E-Mail: [jhowe@bigrivertelephone.com](mailto:jhowe@bigrivertelephone.com). Big River is an authorized provider of intrastate switched and non-switched local exchange and interexchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission. Big River is also an authorized

provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission.

2. All communications and pleadings in this case should be directed to:

Carl J. Lumley  
Leland B. Curtis  
Curtis, Heinz, Garrett & O'Keefe, PC  
130 S. Bemiston, Suite 200  
Clayton, Missouri 63105  
314-725-8788  
314-725-8789 (FAX)  
clumley@lawfirmemail.com  
lcurtis@lawfirmemail.com

3. AT&T is a Texas limited partnership with its principal Missouri place of business located at One AT&T Center, St. Louis, Missouri 63101. AT&T is an incumbent local exchange carrier ("ILEC"), as defined in Section 251(h) of the Federal Act, and is a noncompetitive large local exchange carrier as defined by Sections 386.020, 392.361 and 392.245 R.S.Mo. Its address, telephone number and facsimile number are, respectively:

One AT&T Center, Room 3520  
St. Louis, Missouri 63101  
(314) 235-4300  
(314) 247-0014 (FAX)

### **JURISDICTION**

4. The Commission has general jurisdiction over both Big River and AT&T as telecommunications companies and their telecommunications facilities, including pursuant to Section 386.250 RSMo., and including all powers necessary or proper to enable it to carry out fully and effectually all its regulatory purposes as provided in Section 386.040. The Commission has jurisdiction to supervise AT&T and its facilities pursuant to Section 386.320 RSMo. The

Commission has jurisdiction to pursue complaints regarding unlawful conduct by telecommunications companies, such as this one against AT&T, pursuant to Sections 386.230, 386.310, 386.330, 386.390, 386.400 and 392.400.6 RSMo. As described in greater detail herein below: (i) AT&T has violated Sections 392.200.1 and 392.240.2 RSMo. by attempting to impose charges greater than those allowed by an approved interconnection agreement and the Commission's orders relating thereto; (ii) AT&T has violated Sections 392.200.6 and 392.240.3 RSMo. by threatening to interrupt established connections between its facilities and those of Big River; and (iii) AT&T has violated the Act and related FCC rules and orders by attempting to impose unapproved local switching and loop rates.

## **BACKGROUND**

5. On or about August 13, 2005 in Case No. TK-2006-0073, the Commission approved an interconnection agreement made and submitted by Big River and AT&T, that was the product of an arbitration between the companies before the Commission in Case No. TO-2005-0336. On or about October 25, 2005 the Commission approved errata to the agreement. The Commission should take notice of the agreement and its orders, which are contained in its files and incorporated herein by this reference.

6. The current term of the approved agreement runs through November 20, 2008.

7. Pursuant to Attachment 6: Unbundled Network Elements and Remand Order Embedded Base Temporary Rider of the approved agreement, AT&T was required to provide unbundled local switching under Section 251 billing arrangements to Big River for provision of service to its existing customers through and including March 11, 2006. (See section 6.0 et seq of Attachment 6 and Remand Order Embedded Base Temporary Rider). AT&T was also

required to provide unbundled local switching under Section 271 billing arrangements to new customers. Since March 11, 2006, AT&T has been obligated under the agreement to provide unbundled switching under Section 271 billing arrangements to Big River for all customers. According to Section 6.1 of Attachment 6 to the agreement, the terms and conditions for providing local switching under Section 271 billing arrangements are the same as those that applied under Section 251 billing arrangements. Moreover, the prices remain the same, as the Commission set the rates that applied prior to March 11, 2006 under Section 251 as interim rates to apply to Section 271 local switching after March 11, 2006. (Appendix UNE Pricing; Arbitration Order, Case No. TO-2006-0336, p. 28-30).

8. Section 7.3 of Attachment 6 of the agreement requires AT&T to: “develop an ordering process to effect the billing records change necessary to bill [Big River] the Commission-approved rate applicable to Section 271 ULS [unbundled local switching].” To date, AT&T has failed to develop the required process to change the billing records. Big River properly notified AT&T that it intended to migrate all existing customers from Section 251 unbundled local switching billing arrangements to Section 271 billing arrangements on or before March 11, 2006. The only potential change would have been a change in billing codes, as the rates, terms and conditions of service were not going to change.

9. Section 7.1 of Attachment 6 of the agreement also provided that Big River could obtain local switching under Section 251 billing arrangements from the effective date of the agreement in August 2005 until January 31, 2006 to provide additional access lines to existing customers and to address moves and changes for such existing customers. Otherwise, for such moves, adds and changes Big River has been entitled to obtain local switching under Section 271

billing arrangements on the same rates, terms and conditions (again with the rates being interim rates).

10. AT&T has sought review of the Commission's approval of the interconnection agreement in federal court. (Case No. 05-CV-1264, USDC EDMo). In the course of that court proceeding, on or about September 2, 2005, AT&T by consent obtained a Preliminary Injunction Order, enjoining the Commission's prior orders regarding the interconnection agreement: "to the extent they require [AT&T] to fill new orders for unbundled local switching or UNE-P." The order was effective immediately "as to orders for unbundled local switching or UNE-P for new customers" and was effective October 7, 2005 "as to orders to add lines or move lines for existing customers." The Injunction expressly provides that it does not affect AT&T's "obligation to continue to provide service on existing unbundled local switching/UNE-P lines to existing customers at existing locations pursuant to the transition rules set out in the Federal Communications Commission's (FCC's) *Triennial Review Remand Order*." Further, it expressly provides that it does not preclude Big River from "obtaining additions or deletion of switch features on existing customer lines at existing locations." In accordance with the Preliminary Injunction, under the Agreement Big River remains entitled to obtain unbundled local switching pursuant to the agreement for existing lines at existing locations for existing customers, but not for new or moved lines for existing customers or for new customers. Further, the injunction does not preclude AT&T from providing unbundled local switching to Big River. The federal court proceeding remains pending.

11. In the Fall of 2005, AT&T began asking Big River about "plans" for Big River's embedded UNE-P customer base. Notwithstanding the court order, AT&T continued to fill new

orders under the existing ordering process for local switching under 251 billing arrangements pursuant to the interconnection agreement.

12. In February 2006, Big River and AT&T entered into a Local Wholesale Complete Agreement with an effective date of January 1, 2006. The companies did not submit the LWC agreement to the Commission for approval and it was not an amendment to the existing approved interconnection agreement. By letter dated February 13, 2006, under cover of which it transmitted the signed LWC to AT&T, Big River made clear to AT&T that Big River was entering into the LWC at AT&T's insistence "to cover any small number of accounts that will not be serviced pursuant to our Interconnection Agreement, specifically with the commingling of Section 251 and 271 unbundled network elements." Further, Big River informed AT&T: "We, in no way, intend for our base of customers to be migrated to Local Wholesale Complete, only those residual customers that, as indicated above, cannot be serviced via 251 and 271 elements." Big River entered into the LWC solely at AT&T's insistence and solely to cover the few new customers that would not be served by elements obtained under the interconnection agreement while the court's injunction remains in effect. By email dated February 14, 2006 Big River indicated that it did not appear that any changes were required as to existing customers because the rates were to remain the same. In the email, Big River reiterated the matters stated in its February 13, 2006 letter. AT&T signed and returned the LWC to Big River under these conditions. Prior to signature of the LWC, the parties discussed Big River's foregoing concerns and AT&T's representative provided assurances that Big River was able to order 251 local loops and 271 local switching under its interconnection agreement, that the intent was only to cover new customers by the LWC, and that any impact on the existing customer base resulting from the LWC would only be an unintentional billing error that would be corrected.

13. The pricing for local switching and loops under the interconnection agreement depends upon the zones. Switch port rates range from \$2.74 to \$3.47 per month. Usage rates range from \$0.00162 to \$0.002807 per mou. Loop rates range from \$12.71 to \$19.74 per month. In contrast, under the LWC, the rate for the combination of loops and switching (before discounts) is \$27.00 per month in 2006, \$28.00 per month in 2007, and then increased by the CPI-U change for 2008, and in each instance a local switching rate of \$0.0018 per mou also applies.

14. Big River uses AT&T local switching and loop elements to serve many of its customers within areas also served by AT&T. Such elements are essential to Big River's ability to serve those customers and compete against AT&T. Big River has not changed the manner in which it uses such elements since it first ordered those elements from AT&T.

## **DISPUTE**

15. In early 2006, Big River attempted to learn from AT&T what arrangements, if any, it had made to implement the billing code change (from 251 to 271 local switching) that was to take effect as of March 11, 2006 for existing customer arrangements as prescribed by the interconnection agreement. Ultimately, Big River learned that AT&T had not taken any steps to implement such a change. Because there was to be no change in rates, terms or conditions, this failure by AT&T had no direct impact on Big River.

16. However, on March 10, 2006 at 2:13 PM, AT&T sent an email to Big River regarding the billing code change for existing customers due to occur on March 11, 2006 that vaguely stated that "to the extent that such an arrangement would be encompassed by the court's



Order, we would be unable to agree to it. There are options available to Big River, however, which would remain permissible under the terms of the court's Order that would enable you to serve your customers." AT&T's communication made no sense, because the court order does not apply to existing service arrangements. Moreover, AT&T's communication was vague and ambiguous, as there was no explanation of the "extent" to which AT&T thought the court order was applicable, or of what the purported "options" were for Big River.

17. Big River was panic-stricken by AT&T's implication that it was going to discontinue providing local switching as of March 11, 2006. However, Big River was ultimately able to get clarification from AT&T by telephone conversation that no immediate interruption of service was planned.

18. Also, in March 2006, in violation of the interconnection agreement, AT&T began billing Big River the rates set forth in the LWC retroactive to January 1, 2006 for all arrangements involving local switching, without regard to when the customers were first served. Contrary to such invoicing, AT&T should have only been billing LWC rates for the limited group of customers that were first served at their current location on or after January 1, 2006.

19. On June 5, 2006, after numerous attempts to resolve the matter with AT&T personnel, Big River invoked informal dispute resolution with AT&T pursuant to the interconnection agreement regarding AT&T's unilateral attempt to charge rates other than those set forth in the approved interconnection agreement.

20. On June 15, 2006, designated representatives of the parties met by teleconference. Big River described its position. AT&T's designated representative was not prepared for the discussion and requested additional time.

21. On June 23, 2006, designated representatives of the parties again met by teleconference. At that point, AT&T's designated representative stated that the attorneys had instructed him that as a result of the court order, AT&T had "no other option but to move the UNE-P customers to LWC".

22. In the meantime, between June 15, 2006 and June 23, 2006, AT&T made multiple attempts to bypass the dispute resolution process and essentially trick Big River personnel that were not directly involved in the dispute resolution discussions into agreeing to change existing billing arrangements from the interconnection agreement to the LWC. Big River rejected these efforts.

23. On June 28, 2006 AT&T sent an email communication to Big River asserting that "The Preliminary Injunction Order currently in effect is directed to 'orders for unbundled local switching or UNE-P pursuant to the Federal Telecommunications Act of 1996'." Further, AT&T stated: "As advised on the [June 23] call, the express language of the Order prohibits the combining of 271 Switching with 251 Loops, since both are 'pursuant to' the Act. Therefore, AT&T has no obligation to convert a portion of Big River's embedded base of UNE-P lines to a combination of 271 and 251 elements. When the litigation regarding this matter is fully resolved, we can determine the actions necessary to implement the resolution." AT&T failed to note that the consent injunction only applies to "**new** orders" placed after September 2, 2005, or that notwithstanding the court order it had continued to fill orders under the 251 billing arrangements at least through January 1, 2006, if not later, thereby increasing the size of Big River's existing customer base.

24. AT&T followed up with an email on July 6, 2006 to Big River, indicating that AT&T intended to move the disputed LWC charges for Big River's embedded customer base to

as separate billing account in Big River's name on August 26, 2006. AT&T subsequently informed Big River on August 1, 2006 that it would not make such a unilateral billing account conversion.

25. AT&T followed up with another email on July 28, 2006 stating that it wanted to provide "a heads up on the finality of this informal dispute issue as of today." Further, the email stated "AT&T's account management team now considers this issue closed." AT&T indicated that it now considered \$138,954.08 in disputed charges "due and payable effective immediately." Since then, it appears that the unlawful charges that AT&T seeks to impose are currently accruing at a rate of about \$22,000 per month.

26. Section 13.5.1 of the interconnection agreement provides that disputes are to be resolved by complaint to the Commission. Under the agreement and the related Commission orders, Big River is not required to pay disputed amounts pending dispute resolution.

27. AT&T's attempts to unilaterally change the rates for local switching and loops provided to Big River violate the express provisions of the interconnection agreement between the parties, and the Commission's orders relating thereto. Hence, AT&T has billed for and seeks to collect unlawful charges in violation of Sections 392.200.1 and 392.240.2 RSMo and the Act.

28. If AT&T were to take any action to interrupt its provision of local switching and local loops to Big River, it would disrupt service to Big River's customers and effectively prevent Big River from providing service to such customers. Any such action to interrupt established connections would violate Sections 392.200.6 and 392.240.3 RSMo. and the Act.

29. Big River has already delivered a copy of this Complaint to AT&T as notice of its intent to seek formal dispute resolution.

WHEREFORE, premises considered, Big River prays the Commission to:

(1) immediately formally serve this Complaint and its notice upon AT&T, directing AT&T to answer this Complaint;

(2) issue an order directing AT&T not to take any steps to alter or terminate local switching and/or loop services or billing arrangements to Big River, until further order of the Commission;

(3) promptly set a prehearing conference and a deadline to file a procedural schedule, so that this case may proceed to hearing;

(4) 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; and

(5) grant such other and further relief to Big River as the Commission deems just and proper in the premises.

CURTIS, HEINZ,  
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

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Carl J. Lumley, #32869  
Leland B. Curtis, #20550  
130 S. Bemiston, Suite 200  
Clayton, Missouri 63105  
(314) 725-8788  
(314) 725-8789 (FAX)  
clumley@lawfirmemail.com  
lcurtis@lawfirmemail.com

Attorneys for Big River Telephone Company, LLC

**Certificate of Service**

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 23rd day of August, 2006, by placing same in the U.S. Mail, postage paid and by fax or email transmission.

/s/ Carl J. Lumley

Office of Public Counsel  
P.O. Box 7800  
Jefferson City, Missouri 65102  
Fax 573-751-5562

Office of General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102  
Fax 573-751-9285

Legal Department  
AT&T Missouri  
One AT&T Center, Room 3520  
St. Louis, Missouri 63101-1976  
Fax 314-247-0014