

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 19th day of
February, 2009.

Big River Telephone Company, LLC,)	
)	
Complainant,)	
)	
v.)	
)	
Southwestern Bell Telephone, L.P.,)	
d/b/a AT&T Missouri,)	
)	
Respondent.)	

Case No. TC-2007-0085

ORDER REGARDING MOTION TO DISMISS

Issue Date: February 19, 2009

Effective Date: February 19, 2009

Syllabus: This order grants in part, and denies in part, AT&T Missouri's motion to dismiss, and sets the case for a prehearing conference.

On August 23, 2006, Big River Telephone Company, LLC, (hereafter Big River) filed a complaint against Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri (hereafter 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. AT&T Missouri filed an Answer and a Motion to Dismiss on September 26, 2006. 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.

At the request of both Big River and the Staff of the Commission (hereafter “Staff”), the Commission stayed these proceedings while the parties sought judicial review of the Commission’s decision in Case No. TO-2005-0336. That case has wound its way through both the U.S. District Court and the U.S. Court of Appeals, and The Supreme Court of the United States has denied petitions for writs of certiorari. Thus, the federal litigation is complete.

AT&T Missouri has renewed its motion to dismiss, stating that the federal courts have ruled that the Commission had no authority to order AT&T Missouri to provide Big River “Section 271” elements. While AT&T Missouri’s claim is true, both Staff and Big River point out that the complaint asks for more; namely, it asks that the Commission find that AT&T Missouri overbilled Big River for “Section 251” elements for the period of January 1, 2006 to March 11, 2006.

The Commission will therefore grant AT&T Missouri’s motion to dismiss as it pertains to Big River’s claims concerning Section 271 elements, and deny the remainder of AT&T Missouri’s motion to dismiss. The Commission notes that the parties have prefiled testimony. The Commission will convene a prehearing conference for the parties to discuss how to update that prefiled testimony, and to discuss the potential for settlement.

THE COMMISSION ORDERS THAT:

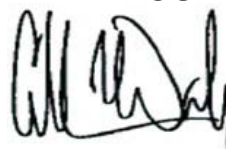
1. The Motion to Dismiss filed by Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri is granted in part and denied in part, as described above.

2. A prehearing conference shall be held on March 3, 2009, beginning at 10:00 a.m., in Room 305 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. This meeting will be held in a building that meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the hearing.

3. The parties shall jointly prepare and file a proposed procedural schedule no later than March 10, 2009.

4. This order shall become effective immediately upon issuance.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Clayton, Chm., Murray, Davis,
Jarrett, and Gunn, CC., concur.

Pridgin, Regulatory Law Judge