

**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 ORDER DIRECTING FILING

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

1. The Commission issued an Arbitration Order in Case No. TO-2005-0336, *Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration*, that resolved issues concerning a successor interconnection agreement to the Missouri 271 Agreement. SBC Missouri appealed to the U.S. District Court for the Eastern District of Missouri in Case No. 4:05-CV-1264CAS, *Southwestern Bell Telephone, L.P. d/b/a SBC Missouri v. The Missouri Public Service Commission, et al.* The court, in an order issued on September 14, 2006, affirmed in part and reversed in part the Commission's Arbitration Order.

2. Big River Telephone Company, LLC, had filed on August 26, 2006, the instant Complaint against Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri (formerly d/b/a SBC Missouri). The Complaint alleges that AT&T Missouri had charged Big River higher amounts for local switching and loops than the rates set forth in the interconnection agreement approved by the Commission pursuant to the Arbitration Order in Case No. TO-2005-0336.

3. Big River and the Staff requested the Commission to stay this proceeding pending appeal of the federal district court's order. AT&T Missouri replied that the Commission does not have the authority to stay or override the district court's order. AT&T Missouri requested dismissal of the Complaint.

4. The Commission has ordered Staff and Big River to verify whether they timely appealed the federal district court's order, and to respond to AT&T Missouri's assertion that a Commission stay of this proceeding would violate the federal court's order.

5. A coalition of CLECs, which includes Big River, timely filed on October 12, 2006, a notice of appeal of the federal court's order. The Commission timely filed a notice of appeal on October 17, 2006. AT&T Missouri timely filed a notice of appeal on October 18, 2006.

6. AT&T Missouri's assertion that a Commission stay of this proceeding would violate the federal court's order is a straw-man argument.¹ First, AT&T Missouri alleges that both Big River and Staff imply that the Order and Injunction is not effective because of the appeal. (AT&T Reply, p. 2) Neither Big River nor Staff implies such a thing. To the contrary, the Staff's October 10 Response affirmatively states at paragraph 6 that "the District Court's orders are in force". However, both Big River and Staff do point out that the district court's order is not final because it is subject to appeal. AT&T Missouri then itself introduces the speculation that the Commission has no jurisdiction to implement a stay of this case "if the effect of such a stay is to preclude AT&T Missouri from taking action to eliminate the provisions of Section 271 elements to Big River or to collect the amounts to which it is entitled." (AT&T Reply, p. 6). Neither Big River nor Staff has suggested that the Commission has the authority to

¹ Black's Law Dictionary defines a "straw-man argument" as "[a] tenuous and exaggerated counterargument that an advocate puts forward for the sole purpose of disproving it."

stay the district court's order. AT&T Missouri has confused a stay of the Commission's proceedings in this case with a stay of the enforcement of the district court's order. A Commission stay of this proceeding will not violate the federal court's order.

WHEREFORE, the Staff requests a stay of the proceedings in this case pending a final non-appealable court order.

Respectfully submitted,

/s/ William K. Haas

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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 9th day of November 2006.

/s/ William K. Haas