

Exhibit No.:
Issue: Telephone Specific
Witness: Howard F. White
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Southwestern Bell
Telephone Company
d/b/a AT&T Missouri
Case No.: TC-2007-0085
Date Testimony Prepared: July 23, 2007

SOUTHWESTERN BELL TELEPHONE COMPANY d/b/a
AT&T MISSOURI

CASE NO. TC-2007-0085

REBUTTAL TESTIMONY

OF

HOWARD F. WHITE

Chicago, Illinois

BEFORE THE PUBLIC SERVICE COMMISSION
 OF THE STATE OF MISSOURI

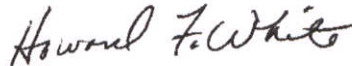
Big River Telephone Company, LLC, <div style="text-align: right;">Complainant,</div>)))))))))	Case No. TC-2007-0085
v.		
Southwestern Bell Telephone , L.P. d/b/a AT&T Missouri, <div style="text-align: right;">Respondent.</div>		

AFFIDAVIT OF HOWARD F. WHITE

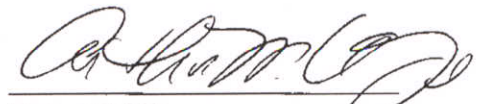
STATE OF ILLINOIS)	
)	SS
COUNTY OF COOK)	

I, Howard F. White, of lawful age, being duly sworn, depose and state:

1. My name is Howard F. White. I am presently a SeniorNetwork Project Manager in AT&T Operations, Inc.
2. Attached hereto and made a part hereof for all purposes is my rebutal testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.


 Howard F. White

Subscribed and sworn to before this __19__ day of July, 2007


 Notary Public

My Commission Expires: July 17, 2011



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REBUTTAL TESTIMONY OF HOWARD F. WHITE

ON BEHALF OF AT&T MISSOURI

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4 **I. INTRODUCTION**

5

6 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

7 **A.** My name is Howard F. White. My business address is 350 N. Orleans Street,
8 Floor 3, Chicago, Il 60654.

9 **Q. BY WHOM ARE YOU EMPLOYED, AND IN WHAT CAPACITY?**

10 **A.** I am employed by Ameritech Services, Inc. as Senior Network Project Manager.
11 I assumed this position in January of 2007.

12 **Q. WHAT ARE YOUR CURRENT JOB RESPONSIBILITIES?**

13 **A.** My primary responsibilities are to coordinate, with others in my work group,
14 various projects which involve pay telephone providers, including but not limited
15 to serving as a single point of contact to resolve or escalate repair troubles
16 reported by pay telephone providers.

17 **Q. PLEASE DESCRIBE YOUR PREVIOUS WORK EXPERIENCE.**

18 **A.** In 2004 I became the company's Lead Negotiator for Commercial Agreements
19 entered into between the AT&T incumbent local exchange carriers ("ILECs")¹

¹ For purposes of the Commercial Agreement, the term "AT&T ILECs" means Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, Nevada Bell Telephone Company d/b/a AT&T Nevada, The Ohio Bell Telephone Company d/b/a AT&T Ohio, Pacific Bell Telephone Company d/b/a AT&T California, The Southern New England Telephone Company d/b/a AT&T Connecticut, Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and AT&T Texas, and Wisconsin Bell, Inc. d/b/a AT&T Wisconsin.

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1 and competitive local exchange carriers (“CLECs”). I had end-to-end, single-
2 point-of-contact responsibility for the negotiating and bargaining of all aspects of
3 the Commercial Agreement with the CLEC. It was in this capacity that I had
4 occasion to work with Big River Telephone LLC (“Big River”). On behalf of all
5 of AT&T’s ILECs, I negotiated with Big River the entirety of the Commercial
6 Agreement (including all of its associated attachments) which Mr. Howe in his
7 capacity as Big River’s Chief Executive Officer signed on February 10, 2006, and
8 which the parties made effective as of January 1, 2006.

9 Other previous job assignments include Regional Service Manager (managing a
10 team of service managers in Wholesale Operations, supporting CLECs), Business
11 Office Manager (supervising service representatives in provisioning complex
12 services), Service Assurance Manager (providing customer support on projects,
13 installation and maintenance issues), Pricing Manager (working on pricing aspects
14 of responding to competitive Requests for Proposals (“RFPs”), and Service
15 Representative (in connection with complex services).

16 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN REGULATORY**
17 **PROCEEDINGS?**

18 A. No.

19

20 **II. PURPOSE OF TESTIMONY**

21

**REBUTTAL TESTIMONY OF
HOWARD F. WHITE**

1 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

2 A. My Rebuttal Testimony responds to the Direct Testimonies filed, on June 21,
3 2007, by Messrs. Gerard Howe and John Jennings regarding my dealings with Big
4 River during the parties' negotiation of the Commercial Agreement I mentioned
5 earlier. In particular, I respond to their claims as to what the parties intended
6 when they entered into this contract, and I explain what portions of the contract
7 govern the dispute and why they should be enforced as written.

8

9 **III. DISCUSSION**

10

11 **Q. PLEASE SUMMARIZE THE ALLEGATIONS MADE BY MR. HOWE'S**
12 **DIRECT TESTIMONY REGARDING THE LWC.**

13 A. Mr. Howe offers a chronology of events during the negotiations and immediately
14 following the parties' entering into the LWC which he alleges lead to Big River's
15 understanding that, despite the express terms of the LWC, AT&T Missouri was
16 not to migrate Big River's embedded base of customer served by ULS to the
17 LWC. According to Mr. Howe, the LWC was merely intended, as he puts it, "to
18 cover any small number of accounts that will not be serviced pursuant to our
19 Interconnection Arrangement, specifically with the commingling of Section 251
20 and 271 unbundled network elements." Howe Direct, p. 12. Mr. Howe also says
21 that Debbie Josephson and I assured him that Big River "would receive 251 local
22 loops and 271 local switching under its Interconnection Agreement starting on or

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1 before March 11, 2006 [the end of the transition period established by the FCC's
2 TRRO]" and that the LWC was intended "only to cover new customers." Howe
3 Direct, p. 13. Mr. Howe further claims that we assured him that "if there was any
4 impact on Big River's existing base of customers, it would only be an
5 unintentional billing error during LWC implementation that would be
6 immediately corrected." Howe Direct, p. 13.

7 **Q. PLEASE SUMMARIZE THE ALLEGATIONS MADE BY MR.**
8 **JENNINGS' DIRECT TESTIMONY REGARDING THE LWC.**

9 **A.** Mr. Jennings claims that he communicated to me and Debbie Josephson that Big
10 River "had been concerned that by executing an LWC agreement with AT&T,
11 that AT&T would try to move all our customers to LWC and that we did not want
12 UNE-P customers under Section 271 to get billed as LWC." Jennings Direct, p. 3.

13 **Q. PLEASE RESPOND TO MR. HOWE'S AND MR. JENNINGS'**
14 **ALLEGATIONS.**

15 **A.** My recollection of events and the discussions of the parties leading up to the
16 execution of the LWC is not at all the same as that of Mr. Howe and Mr.
17 Jennings. When the question arose during LWC negotiations as to the
18 application of LWC to Big River's existing customer base served by UNE-P, I
19 specifically told Jerry Howe and Andrew Schwantner that we would bill Big
20 River LWC rates for all existing eligible UNE-P lines (i.e., all using basic analog
21 switching, as referenced in Sections 2.3 and 7.1 of the Commercial Agreement's
22 Attachment Local Wholesale Complete), beginning with the effective date of the

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1 LWC agreement (which was January 1, 2006, per Section 19.1 of the
2 Commercial Agreement). As I recall, Mr. Howe and Mr. Jennings stated that they
3 wanted to be able to convert only part of Big River’s embedded UNE-P base to
4 LWC. I repeated that it was the entire embedded UNE-P base that had to be
5 converted and not just part, but that once converted, they were free to change to
6 another service if they choose (e.g., resale). In essence, I told them unequivocally
7 that it was not an option to convert just part of the embedded base to the LWC. .
8 Despite their contrary testimony, the negotiations resulted in an agreement which
9 specifically called for all of Big River’s existing UNE-P customers to be
10 transitioned to the LWC through what was called a “Phased-In Implementation.”
11 This implementation was spelled out in Sections 7.1.1 and 7.1.2 of the
12 Commercial Agreement’s Attachment Local Wholesale Complete, which provide,
13 in pertinent part, that “all of CARRIER’s UNE-Ps using basic analog switching to
14 serve Eligible End Users shall be transitioned to, and provided as, LWC with an
15 effective billing date as LWC as of the effective date of this Attachment.”
16 (emphasis added).

17 **Q. IN YOUR EXPERIENCE AS A CONTRACT NEGOTIATOR, HAVE**
18 **THERE BEEN ANY AGREEMENTS MADE TO THE EFFECT ALLEGED**
19 **BY MR. HOWE AND MR. JENNINGS? WOULD THOSE AGREEMENTS**
20 **HAVE BEEN REDUCED TO WRITING AND MADE PART OF THE**
21 **AGREEMENT BETWEEN THE PARTIES?**

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1 **A.** Yes. If the AT&T ILECs had agreed to other rates, terms, or conditions, they
2 would have been spelled out in the LWC.

3 **Q.** **CAN ANY SUCH ALLEGED “SIDE” AGREEMENTS BE REGARDED AS**
4 **PART OF THE BINDING CONTRACT BETWEEN THE AT&T ILECS**
5 **AND BIG RIVER?**

6 **A.** No. Section 36.1 of the Commercial Agreement, entitled “Entire Agreement,”
7 forecloses that possibility. It states as follows:

8 The rates, terms and condition contained in this Agreement and any
9 Attachments, appendices, exhibits, schedules, and addenda and other
10 documents or instruments referred to herein and incorporated into this
11 Agreement by reference (if any) constitute the entire agreement between
12 the Parties with respect to the subject matter hereof, superseding all prior
13 understandings, proposals and other communications, oral or written
14 between the Parties during the negotiations of this Agreement and through
15 the execution and/or Effective Date of this Agreement. This Agreement
16 shall not operate as or constitute a novation of any agreement or contract
17 between the Parties that predates the execution and/or Effective Date of
18 this Agreement.
19

20 Such “Entire Agreement” provisions are quite common. They are meant to
21 preclude the possibility that one party or the other to a contract will later press a
22 claim that they agreed to something different than what is spelled out in the
23 contract. Such provisions are two-way arrangements and thus benefit both parties
24 to a contract in this regard. Here, the AT&T ILECs are entitled to have these
25 provisions respected and enforced for the same reason as Big River would be
26 entitled to have them respected and enforced had the AT&T ILECs claimed that
27 Big River agreed to something that was not incorporated in the LWC.
28

1 **IV. CONCLUSION**

2

3 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

4 **A. Yes.**